

Technical and Bibliographic Notes / Notes techniques et bibliographiques

The Institute has attempted to obtain the best original copy available for filming. Features of this copy which may be bibliographically unique, which may alter any of the images in the reproduction, or which may significantly change the usual method of filming are checked below.

L'Institut a microfilmé le meilleur exemplaire qu'il lui a été possible de se procurer. Les détails de cet exemplaire qui sont peut-être uniques du point de vue bibliographique, qui peuvent modifier une image reproduite, ou qui peuvent exiger une modification dans la méthode normale de filmage sont indiqués ci-dessous.

- Coloured covers / Couverture de couleur
- Covers damaged / Couverture endommagée
- Covers restored and/or laminated / Couverture restaurée et/ou pelliculée
- Cover title missing / Le titre de couverture manque
- Coloured maps / Cartes géographiques en couleur
- Coloured ink (i.e. other than blue or black) / Encre de couleur (i.e. autre que bleue ou noire)
- Coloured plates and/or illustrations / Planches et/ou illustrations en couleur
- Bound with other material / Relié avec d'autres documents
- Only edition available / Seule édition disponible
- Tight binding may cause shadows or distortion along interior margin / La reliure serrée peut causer de l'ombre ou de la distorsion le long de la marge intérieure.
- Blank leaves added during restorations may appear within the text. Whenever possible, these have been omitted from filming / Il se peut que certaines pages blanches ajoutées lors d'une restauration apparaissent dans le texte, mais, lorsque cela était possible, ces pages n'ont pas été filmées.

- Coloured pages / Pages de couleur
- Pages damaged / Pages endommagées
- Pages restored and/or laminated / Pages restaurées et/ou pelliculées
- Pages discoloured, stained or foxed / Pages décolorées, tachetées ou piquées
- Pages detached / Pages détachées
- Showthrough / Transparence
- Quality of print varies / Qualité inégale de l'impression
- Includes supplementary material / Comprend du matériel supplémentaire
- Pages wholly or partially obscured by errata slips, tissues, etc., have been refilmed to ensure the best possible image / Les pages totalement ou partiellement obscurcies par un feuillet d'errata, une pelure, etc., ont été filmées à nouveau de façon à obtenir la meilleure image possible.
- Opposing pages with varying colouration or discolourations are filmed twice to ensure the best possible image / Les pages s'opposant ayant des colorations variables ou des décolorations sont filmées deux fois afin d'obtenir la meilleure image possible.

Additional comments / Commentaires supplémentaires: **This copy is a photoreproduction. Pagination is as follows: [1], [1]-5, [7]-14 p.**

This item is filmed at the reduction ratio checked below / Ce document est filmé au taux de réduction indiqué ci-dessous.

10x	12x	14x	16x	18x	20x	22x	24x	26x	28x	30x	32x
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

1616

33

c. 10/21

Printed for the use of the Colonial Office.

CONFIDENTIAL.

MFID
JX
238
N65
11705
1866
File
c.2

NOV 1 1866

NORTH AMERICAN FISHERIES.

Letter respecting Instructions to be sent to the Admiral on the
North American Station, with reference to the Determination
of the Reciprocity Treaty.

Colonial Office,
April 12, 1866.

CONFIDENTIAL.

Copy
~~Draft~~ of a Letter from the Secretary
of State for the Colonies to the
Lords of the Admiralty.

Downing Street,
My Lords, April 12, 1866.

The determination of the Reciprocity Treaty contracted in 1854 between Great Britain and the United States revives the 1st Article of a Convention* of the 20th of October, 1818, with various Imperial and Colonial Acts enumerated in the margin,† of which the operation had been suspended during the continuance of the Treaty by the Imperial Act 18 & 19 Vict., cap. 3, sec. 1, or otherwise.

The precise provisions of that Article will be seen by reference to the Convention. Its general result is as follows:

1. American fishermen may fish, "in common with the subjects of Her Britannic Majesty," in certain specified parts of Newfoundland and Labrador, and on the shores of the Magdalen Islands, with liberty to dry and cure fish on the shores of[^] the unsettled—or with the consent of the inhabitants of the settled bays, harbours, and creeks of Newfoundland and Labrador.

2. Except within the above limits American fishermen are not to take, dry, or cure fish on or within three miles of the coasts, bays, creeks, and harbours of British North America. But they may enter such bays and harbours for certain specified purposes under such restrictions as may be necessary to prevent abuse by fishing or otherwise.

* Copy annexed.

† Imperial, 59 Geo. III, c. 38. Nova Scotian Revised Statutes (3rd Series), c. 94, ss. 1—18. New Brunswick, 16 Vict., c. 69, ss. 1—18. Prince Edward Island, 6 Vict., c. 14, declared to contain the Fishery Regulations by Order in Council of 3rd September, 1844. (Copies annexed.)

I. With regard to Newfoundland and Labrador, the Convention does but continue within certain geographical limits, and subject to a qualification in respect to the curing of fish, the privileges which have hitherto been exercised under the Reciprocity Treaty. It does not, therefore, call for much observation. It is only requisite to say that although the privilege of drying and curing fish on the Magdalen Islands is not expressly given to American fishermen, Her Majesty's Government have no desire at present to exclude them from it, nor to impose any narrow construction on the word "unsettled." A bay containing a few isolated houses is not to be considered as "settled" for the purpose of this clause of the Convention.

On the other hand, naval officers should be aware that Americans who exercise their right of fishing in Colonial waters in common with subjects of Her Majesty, are also bound, in common with those subjects, to obey the law of the country, including such Colonial laws as have been passed to insure the peaceable and profitable enjoyment of the fisheries by all persons entitled thereto.

The enforcement of the Colonial laws must be left, as far as the exercise of rights on shore is concerned, to the Colonial authorities, by whom Her Majesty's Government desire they shall be enforced with great forbearance, especially during the present season. In all cases they must be enforced with much forbearance and consideration, and they must not be enforced at all by Imperial officers if they appear calculated to place the Americans at a disadvantage in comparison with British fishermen in the waters which, by the Treaty of 1818, are opened to vessels of the United States. On the contrary, their unequal operation should, in this case, be reported to their Lordships, a copy of the report being at the same time sent to the Governor of the Colony.

II. Fuller explanation is necessary respecting that part of the Convention by which the United States renounce the right of fishing, except within the permitted limits—"on or within three miles of any of the coasts, bays, creeks, or harbours" of British North America, and are forbidden to enter such bays or harbours, except for certain defined purposes.

The Act of Parliament (59 Geo. III, cap. 38), already mentioned, subjects to forfeiture any foreign vessel which is found fishing, or having fished, or preparing to fish, within the prohibited limits, and authorizes the enforcement of this forfeiture by the like means and in the same Courts as may be resorted to under any Act of Parliament in the case of any offence against the laws relating to Customs, or the laws of trade and navigation.

The statutory mode of enforcing the law against Customs' offences committed in the Colonies will be found in the Act 16 and 17 Vict., cap. 107, and particularly in the 2nd, 183rd, 186th, and 223rd clauses. But as it would probably be held under this Act that a vessel could only be seized safely by a naval officer "duly employed for the prevention of smuggling" (section 223), it will be probably more convenient for naval officers to take advantage of the procedure authorized by the 103rd clause of the Merchant Shipping Act, which is a law relating to "trade and navigation."

Under that clause* (of which a copy is annexed) any commissioned officer on full pay in the military or naval service of Her Majesty may seize any ship subject to forfeiture, and bring her for adjudication before any Court having Admiralty jurisdiction in Her Majesty's dominions.

It will probably be advisable, as a general rule, that officers of the navy should proceed against vessels engaged in unlawful fishing under the Act of Geo. III and the Merchant Shipping Act, which extend to all the closed waters of British North America, and do not require the officer's authority to be fortified by any Colonial commission or appointment. But more extended powers are conferred by the above-mentioned local Acts of Nova Scotia, New Brunswick, and Prince Edward Island, on persons commissioned by the Lieutenant-Governors of these Colonies, and any officer who is permanently charged with the protection of the fisheries in the waters of any of these Colonies may find it useful to obtain such a commission.

It will invest him with a special authority in the waters of the Colony to which it relates, to bring into port any foreign vessel which continues within these waters for twenty-four hours after notice to

* 17 and 18 Vict., c. 104, s. 103.

quit them, and, in case she shall have been engaged in fishing, to prosecute her to condemnation. It will also enable him to prosecute the forfeiture of the vessel, if it shall be found to have prohibited goods on board. But this power it would be undesirable to exercise, as Her Majesty's Government do not at present desire officers of the navy to concern themselves with the prevention of smuggling.

These being the powers legally exercisable by officers of Her Majesty's Navy, it follows to consider within what limits and under what conditions they should be exercised.

Her Majesty's Government are clearly of opinion, that by the Convention of 1818, the United States have renounced the right of fishing, not only within three miles of the Colonial shores, but within three miles of a line drawn across the mouth of any British bay or creek. But the question what is a British bay or creek is one which has been the occasion of difficulty in former times.

It is, therefore, at present, the wish of Her Majesty's Government neither to concede, nor, for the present, to enforce, any rights in this respect which are in their nature open to any serious question. Even before the conclusion of the Reciprocity Treaty, Her Majesty's Government had consented to forego the exercise of its strict right to exclude American fishermen from the Bay of Fundy; and they are of opinion that during the present season that right should not be exercised in the body of the Bay of Fundy, and that American fishermen ~~may~~ not be interfered with either by notice or otherwise, unless they are found within three miles of the shore or within three miles of a line drawn across the mouth of a bay or creek which is less than ten geographical miles in width, in conformity with the arrangement made with France in 1839.* American vessels found within these limits should be warned that by engaging or preparing to engage in fishing they will be liable to forfeiture, and should receive the notice to depart which is contemplated by the laws of Nova Scotia, New Brunswick, and Prince Edward Island, if within the waters of one

should

* Hertslet, vol. v, p. 89; Convention of August 2, 1839, Arts. IX and X.

of these Colonies under circumstances of suspicion. But they should not be carried into port except after wilful and persevering neglect of the warnings which they may have received; and in case it should become necessary to proceed to forfeiture, cases should, if possible, be selected for that extreme step in which the offence of fishing has been committed within three miles of land.

Her Majesty's Government do not desire that the prohibition to enter British bays should be generally insisted on, except when there is reason to apprehend some substantial invasion of British rights. And in particular, they do not desire American vessels to be prevented from navigating the Gut of Canso (from which Her Majesty's Government are advised they might be lawfully excluded), unless it shall appear that this permission is used to the injury of Colonial fishermen, or for other improper objects.

I have it in command to make this communication to your Lordships as conveying the decision of Her Majesty's Government on this subject.

I have &c

(S^d) *Edward Cadwall.*

Appendices.

No. 1.

ARTICLE I of Convention between His Britannic Majesty and the United States of America. Signed at London, October 20, 1818.

Article I. WHEREAS differences have arisen respecting the liberty claimed by the United States for the inhabitants thereof to take, dry, and cure fish, on certain coasts, bays, harbours, and creeks of His Britannic Majesty's dominions in America, it is agreed between the High Contracting Parties that the inhabitants of the said United States shall have, for ever, in common with the subjects of His Britannic Majesty, 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 coasts of Newfoundland, from the said Cape Ray to the Quirpon Islands, on the shores of the Magdalen Islands, and also on the coasts, bays, harbours and creeks from Mount Joly, on the southern coast of Labrador, to and through the Straits of Belleisle, and thence northwardly indefinitely along the coast, without prejudice, however, to any of the exclusive rights of the Hudson's Bay Company. 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 of the coast of Labrador; but so soon as the same, or any portion thereof, shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such portion so settled without previous agreement for such purpose with the inhabitants, proprietors, or possessors of the ground. And the United States hereby renounce for ever any liberty heretofore enjoyed or claimed by the inhabitants thereof, to take, dry, or cure fish on or within three marine miles of any of the coasts, bays, creeks, or harbours of His Britannic Majesty's dominions in America, not included within the above-mentioned limits: Provided, however, that the American fishermen shall be admitted to enter such bays or harbours for the purpose of shelter and of repairing damages therein, of purchasing wood, and of obtaining water, and for no other purpose whatever. But they shall be under such restrictions as may be necessary to prevent their taking, drying, or curing fish therein, or in any other manner whatever abusing the privileges hereby reserved to them.

No. 2.

59 Geo. III, Cap. 38.

AN ACT to enable His Majesty to make Regulations with respect to the taking and curing Fish on certain parts of the Coasts of Newfoundland, Labrador, and His Majesty's other Possessions in North America, according to a Convention made between His Majesty and the United States of America.

[14th June, 1819.]

WHEREAS a Convention between His Majesty and the United States of America was made and signed at London on the 20th day of October, 1818; and by the 1st Article of the said Convention, reciting that differences had arisen respecting the liberty claimed by the United States for the inhabitants thereof to take, dry, and cure fish in certain coasts, bays, harbours, and creeks of His Britannic Majesty's dominions in America, it is agreed that the inhabitants of the said United States shall have for ever, in common with the subjects of His Britannic Majesty, 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 coasts of Newfoundland, from the said Cape Ray to the Quirpon Islands, on the shores of the Magdalen Islands, and also on the coasts, bays, harbours, and creeks from Mount Joly on the southern coast of Labrador, to and through the Straits of Belleisle, and thence northwardly indefinitely along the coast, without prejudice, however, to any of the exclusive rights of the Hudson's Bay Company; and it was also by the said Article of the said Convention agreed, that the American fishermen should 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 above described, and of the coast of Labrador, but that so soon as the same, or any portion thereof, should be settled, it should not be lawful for the said fishermen to dry or cure fish at such portion so settled,

Convention, dated
October 20, 1818.

without previous agreement for such purpose with the inhabitants, proprietors, or possessors of the ground: And whereas it is expedient that His Majesty should be enabled to carry into execution so much of the said Convention as is above recited, and to make Regulations for that purpose: Be it therefore enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that from and after the passing of this Act, it shall and may be lawful that His Majesty, by and with the advice of His Majesty's Privy Council, to be from time to time made for that purpose, to make such regulations, and to give such directions, orders, and instructions to the Governor of Newfoundland, or to any officer or officers on that station, or to any other person or persons whomsoever, as shall or may be from time to time deemed proper or necessary for the carrying into effect the purposes of the said Convention, with relation to the taking, drying, and curing of fish by inhabitants of the United States of America, in common with British subjects, within the limits set forth in the said Article of the said Convention, and hereinbefore recited; any Act or Acts of Parliament, or any law, custom, or usage to the contrary in anywise notwithstanding.

His Majesty in Council may make Regulations for carrying the Convention into effect.

Foreign vessels not to fish within a certain distance of any British harbour in America not included in the limits prescribed by the Convention; under penalty of confiscation.

II. And be it further enacted, that from and after the passing of this Act it shall not be lawful for any person or persons, not being a natural-born subject of His Majesty, in any foreign ship, vessel, or boat, nor for any person in any ship, vessel, or boat, other than such as shall be navigated according to the laws of the United Kingdom of Great Britain and Ireland, to fish for, or take, dry, or cure any fish of any kind whatever, within three marine miles of any coasts, bays, creeks, or harbours whatever, in any part of His Majesty's dominions in America, not included within the limits specified and described in the 1st Article of the said Convention, and hereinbefore recited; and that if any such foreign ship, vessel, or boat, or any persons on board thereof, shall be found fishing, or to have been fishing, or preparing to fish within such distance of such coasts, bays, creeks, or harbours, within such parts of His Majesty's dominions in America out of the said limits as aforesaid, all such ships, vessels, and boats, together with their cargoes, and all guns, ammunition, tackle, apparel, furniture, and stores, shall be forfeited, and shall and may be seized, taken, sued for, prosecuted, recovered, and condemned by such and the like ways, means, and methods, and in the same courts, as ships, vessels, or boats may be forfeited, seized, prosecuted, and condemned for any offence against any laws relating to the revenue of Customs, or the laws of trade and navigation, under any Act or Acts of the Parliament of Great Britain, or of the United Kingdom of Great Britain and Ireland; Provided that nothing in this Act contained shall apply or be construed to apply to the ships or subjects of any Prince, Power, or State in amity with His Majesty, who are entitled by Treaty with His Majesty to any privilege of taking, drying, or curing fish on the coasts, bays, creeks, or harbours, or within the limits in this Act described.

Not to extend to vessels of any Power entitled thereto by Treaty.

American fishermen may enter such harbours for the purposes of repairing or watering, subject to such regulations as may be issued to prevent the abuse of the Treaty.

III. Provided always, and be it enacted, that it shall and may be lawful for any fisherman of the said United States to enter into any such bays or harbours of His Britannic Majesty's dominions in America as are last mentioned, for the purpose of shelter and repairing damages therein, and of purchasing wood, and of obtaining water, and for no other purpose whatever; subject, nevertheless, to such restrictions as may be necessary to prevent such fishermen of the said United States from taking, drying, or curing fish in the said bays or harbours, or in any other manner whatever abusing the said privileges by the said Treaty and this Act reserved to them, and as shall for that purpose be imposed by any Order or Orders to be from time to time made by His Majesty in Council under the authority of this Act, and by any Regulations which shall be issued by the Governor or person exercising the office of Governor in any such parts of His Majesty's dominions in America, under or in pursuance of any such Order in Council as aforesaid.

Penalty on persons refusing to remove, or disobeying orders, 200l.

IV. And be it further enacted, that if any person or persons, upon requisition made by the Governor of Newfoundland, or the person exercising the office of Governor, or by any Governor, or person exercising the office of Governor, in any other parts of His Majesty's dominions in America as aforesaid, or by any officer or officers acting under such Governor, or person exercising the office of Governor, in the execution of any orders or instructions from His Majesty in Council, shall refuse to depart from such bays or harbours; or if any person or persons shall refuse or neglect to conform to any regulation or directions which shall be made or given for the execution of any of the purposes of this Act: every such person so refusing or otherwise offending against this Act shall forfeit the sum of two hundred pounds, to be recovered in the Superior Court of Judicature of the Island of Newfoundland, or in the Superior Court of Judicature of the Colony or Settlement within or near to which such offence shall be committed, or by bill, plaint, or information in any of His Majesty's Courts of Record at Westminster; one moiety of such penalty to belong to His Majesty, his heirs and successors, and the other moiety to such person or persons as shall sue or prosecute for the same: Provided always, that any such suit or prosecution, if the same be commenced in Newfoundland, or in any other Colony or Settlement, shall be commenced within three calendar months; and, if commenced in any of His Majesty's Courts at Westminster, within twelve calendar months from the time of the commission of such offence.

No. 3.

NOVA SCOTIA ACT, REVISED STATUTES, 3RD SERIES, TIT. 25, CHAP. XCIV.

OF THE COAST AND DEEP SEA FISHERIES.

I. OFFICERS of the colonial revenue, sheriffs, magistrates, and any other person duly commissioned for that purpose, may go on board any vessel or boat within any harbour in the province, or hovering within three marine miles of any of the coasts or harbours thereof, and stay on board so long as she may remain within such place or distance.

Revenue officers may board vessels hovering within three miles of the coast.

II. If such vessel or boat be bound elsewhere, and shall continue within such harbour or so hovering for twenty-four hours after the master shall have been required to depart, any one of the officers above mentioned may bring such vessel or boat into port and search her cargo, and also examine the master upon oath touching the cargo and voyage; and if the master or person in command shall not truly answer the questions demanded of him in such examination he shall forfeit four hundred dollars; and if there be any prohibited goods on board, then such vessel or boat, and the cargo thereof, shall be forfeited.

Proceedings where the Master bound elsewhere refuses on notice to depart.

III. If the vessel or boat shall be foreign, and not navigated according to the laws of Great Britain and Ireland, and shall have been found fishing, or preparing to fish, or to have been fishing, within three marine miles of such coasts or harbours, such vessel or boat and the cargo shall be forfeited.

Foreign vessels fishing or preparing to fish, and their cargoes, forfeited.

IV. All goods, vessels, and boats liable to forfeiture may be seized and secured by any of such officers or persons so commissioned; and every person opposing them, or any one aiding such opposition, shall forfeit eight hundred dollars.

Vessels and goods forfeited liable to seizure; penalty for obstructing officers.

V. Goods, vessels, and boats seized as liable to forfeiture under this chapter shall be forthwith delivered into the custody of the officers of the colonial revenue next to the place where seized, to be secured and kept as other vessels, boats, and goods seized, are directed to be secured and kept by law.

Custody of vessels and goods seized.

VI. All goods, vessels, and boats condemned as forfeited under this chapter shall, by direction of the principal officer of the colonial revenue where the seizure shall have been secured, be sold at public auction, and the proceeds of such sale shall be applied as follows: the amount chargeable for the custody of the property seized shall first be deducted and paid over for that service; one-half of the remainder shall be paid to the officer or person seizing the same without deduction; and the other half, after first deducting therefrom all costs incurred, shall be paid into the Treasury of the province; but the Board of Revenue may nevertheless direct that any vessel, boat, or goods seized and forfeited shall be destroyed or reserved for the public service.

Condemned vessels and goods, how disposed of, and the proceeds, how applied.

VII. All penalties or forfeitures hereunder shall be prosecuted and recovered in the Court of Vice-Admiralty.

Penalties and forfeitures, how prosecuted.

VIII. If any goods, vessel, or boat shall be seized as forfeited under this chapter, the Judge of the Vice-Admiralty, with the consent of the person seizing the same, may order re-delivery thereof, on security by bond to be made by the party, with two sureties to the use of Her Majesty. In case the property shall be condemned, the value thereof shall be paid into the Court and distributed as above directed.

Vessels and goods to be re-delivered on security.

IX. All suits for the recovery of penalties or forfeitures shall be in the name of Her Majesty, and shall be prosecuted by the Advocate-General, or in case of his absence by the Solicitor-General. If a dispute arise whether any person is authorized to seize under this chapter, oral evidence may be heard thereupon.

Suits, how brought and prosecuted; oral evidence admissible as authority of seizing officers.

X. If any seizure take place under this chapter and a dispute arise, the proof touching the illegality thereof shall be upon the owner or claimant.

Burden of proof in cases of seizure to rest with claimant.

XI. No claim to anything seized under this chapter and returned into the Court of Vice-Admiralty for adjudication shall be admitted unless the claim be entered under oath, with the name of the owner, his residence and occupation, and the description of the property claimed; which oath shall be made by the owner, his attorney or agent, and to the best of his knowledge and belief.

Claims of property seized to be under oath.

XII. No person shall enter a claim to anything seized under this chapter until security shall have been given in a penalty not exceeding two hundred and forty dollars to answer and pay costs occasioned by such claim; and in default of such security the things seized shall be adjudged forfeited and shall be condemned.

Security to be given before claim entered.

XIII. No writ shall be sued out against any officer or other person authorized to seize under this chapter for anything done thereunder until one month after notice in writing, delivered to him or left at his usual place of abode by the person intending to sue out such writ, his attorney or agent; in which notice shall be contained the cause of action, the name and place of abode of the person who is to bring the action, and of his attorney or agent; and no evidence of any cause of action shall be produced except such as shall be contained in such notice.

Month's notice to officer before action.

XIV. Every such action shall be brought within three months after the cause thereof has arisen.

Limitation of action against seizing officers.

XV. If on any information or suit brought to trial under this chapter on account of any seizure, judgment shall be given for the claimant, and the Judge or Court shall certify on the record that there was probable cause of seizure, the claimant shall not recover costs, nor shall the person who made the seizure be liable to any indictment or suit on account thereof. And if any suit or prosecution be brought against any person on account of such seizure, and judgment shall be given against him, and the Judge or Court shall certify that

Certificate of probable cause of seizure shall prevent the recovery of costs.

there was probable cause for the seizure, then the plaintiff, besides the thing seized or its value, shall not recover more than three and a-half cents damages nor any costs of suit, nor shall the defendant be fined more than twenty cents.

XVI. The seizing officer may within one month after notice of action received, tender amends to the party complaining, or his attorney or agent, and plead such tender.

XVII. All actions for the recovery of penalties or forfeitures imposed by this chapter must be commenced within three years after the offence committed.

XVIII. No appeal shall be prosecuted from any decree or sentence of any Court in this province, touching any penalty or forfeiture imposed hereby, unless the inhibition be applied for and decreed within twelve months from the decree or sentence being pronounced.

Amends may be tendered within one month.
Limitation of actions for penalties, &c.

Appeals, within what time to be prosecuted.

No. 4.

NEW BRUNSWICK ACT, 16 VICTORIA, CAP. 69.

AN ACT relating to the Coast Fisheries, and for the Prevention of Illicit Trade.

Be it enacted, &c., as follows:—

I. Officers of the Provincial Treasury, and any other person duly appointed by the Lieutenant-Governor in Council for that purpose, may go on board any vessel or boat within any harbour in this province, or hovering within three marine miles of any of the coasts or harbours thereof, and stay on board so long as she may remain within such place or distance.

II. If such vessel or boat be bound elsewhere, and shall continue within such harbour or so hovering for twenty-four hours after the master shall have been required to depart, any one of the officers or persons above-mentioned may bring such vessel or boat into port, and search her cargo, and also examine the master upon oath; and if the master or person in command shall not truly answer the questions demanded of him in such examination, he shall forfeit one hundred pounds; and if there be any prohibited goods on board, then such vessel or boat, and the cargo thereof, shall be forfeited.

III. If the vessel or boat shall be foreign, and not navigated according to the laws of Great Britain and Ireland, and shall be found fishing, or to have been fishing, or preparing to fish, within three marine miles of such coasts or harbours, such vessel or boat, and the cargo, shall be forfeited.

IV. All goods, vessels, and boats liable to forfeiture may be seized and secured by any of such officers or persons so appointed; and every person opposing them, or any one aiding such opposition, shall forfeit two hundred pounds.

V. Goods, vessels, and boats seized as liable to forfeiture under this Act, shall be forthwith delivered into the custody of the officers of the Provincial Revenue next to the place where seized, to be secured and kept as other vessels, boats, and goods seized are directed to be secured and kept by law.

VI. All goods, vessels, and boats condemned as forfeited under this Act shall, by direction of the principal officer of the Provincial Revenue where the seizure shall have been secured, be sold at public auction, and the produce of such sale shall be applied as follows: the amount chargeable for the custody of the property seized shall first be deducted, and paid over for that service; one-half of the remainder shall be paid to the officer or person seizing the same, without deduction; and the other half, after first deducting therefrom all costs incurred, shall be paid into the Treasury of this Province; but the Lieutenant-Governor in Council may nevertheless direct that any vessel, boat, or goods seized and forfeited shall be reserved for the public service or destroyed.

VII. All penalties and forfeitures imposed by this Act shall be prosecuted and recovered in the Supreme Court.

VIII. If any goods, vessel, or boat shall be seized as forfeited under this Act, the Judge of the said Court, with the consent of the persons seizing the same, may order redelivery thereof, on security by bond to Her Majesty, to be made by the party claiming the same with two sureties. In case the property is condemned, the value thereof shall be paid into the Court, and distributed as above directed.

IX. All suits for recovery of penalties or forfeitures shall be in the name of Her Majesty, and shall be prosecuted by the Attorney-General, or, in his absence, by the Solicitor-General. If a dispute arise whether any person is authorized to seize under this Act, oral evidence may be heard thereupon.

X. If any seizure take place under this Act, and a dispute arise, the proof touching the illegality shall be upon the owner or claimant.

XI. No claim to anything seized under this Act, and returned into the said Court for adjudication, shall be admitted unless the claim be entered under oath, with the name of the owner, his residence and occupation, and the description of the property claimed, which oath shall be made by the owner, his attorney, or agent, and to the best of his knowledge and belief, before any Justice of the Peace.

XII. No person shall enter a claim to anything seized under this Act, until security shall have been given in a penalty not exceeding sixty pounds, to answer and pay costs occasioned by such claim, and in default of such security the things seized shall be adjudged forfeited, and shall be condemned.

XIII. No writ shall be sued out against any officer or other person authorized to seize

Vessels hovering within three miles of the coast may be boarded.

Proceedings when Master refuses to depart.

Foreign vessels fishing or preparing to fish, and their cargoes, forfeited.

Vessels and goods may be seized. Penalty for obstructing officers.

Custody of vessels and goods seized.

Proceeds of condemned vessels and goods, how applied and distributed.

Penalties and forfeitures, how prosecuted.
Vessels and goods delivered on security.

Suits, how brought and prosecuted. Oral evidence as to seizing officer.

Burden of proof to rest with claimant.

Claim for property seized to be under oath.

Security to be given before claim entered.

Month's notice to officer before action.

under this Act, for anything done thereunder, until one month after notice in writing delivered to him or left at his usual place of abode by the person intending to sue out such writ, his attorney or agent; in which notice shall be contained the cause of action, the name and place of abode of the person who is to bring the action, and of his attorney or agent; and no evidence of any cause of action shall be admitted, except such as shall be contained in the notice.

XIV. Every such action shall be brought within three months after the cause thereof has arisen.

Limitation of action against seizing officer.

XV. If on any information or suit brought to trial under this Act, on account of any seizure, judgment shall be given for the claimant, and the Judge or Court shall certify on the record that there was probable cause of seizure, the claimant shall not recover costs, and the person who made the seizure shall not be liable to any indictment or suit on account thereof. And if any suit or prosecution be brought against any person on account of such seizure, and judgment shall be given against him, and the Judge or Court shall certify there was probable cause for the seizure, then the plaintiff, besides the thing seized or its value, shall not recover more than two pence damages, and no costs of suit; and the defendant shall not be fined more than one shilling.

If Judge certifies probable cause for seizure, no costs allowed.

XVI. The seizing officer may, within one month after notice of action received, tender amends to the party complaining, or his attorney or agent, and plead such tender.

Amends may be tendered within one month.

XVII. All actions for the recovery of penalties or forfeitures imposed by this Act must be commenced within three years after the offence committed.

Limitation of actions for penalties.

XVIII. No appeal shall be prosecuted from any decree or sentence of any Court in this province, touching any penalty or forfeiture hereby imposed, unless the inhibition be applied for, and decreed, within twelve months from the decree or sentence being pronounced.

Appeals, within what time to be prosecuted.

No. 5.

PRINCE EDWARD ISLAND ACT, 6 VICTORIA, CAP. 14.

AN ACT relating to the Fisheries, and for the Prevention of Illicit Trade in Prince Edward Island, and the Coasts and Harbours thereof.

WHEREAS by the Convention made between His late Majesty King George the Third and the United States of America, signed at London on the twentieth day of October, in the year of Our Lord one thousand eight hundred and eighteen, and the statute made and passed in the Parliament of Great Britain, in the fifty-ninth year of the reign of His late Majesty King George the Third, all foreign ships, vessels, or boats, or any ship, vessel, or boat, other than such as shall be navigated according to the laws of the United Kingdom of Great Britain and Ireland, found fishing, or to have been fishing, or preparing to fish, within certain distances of any coasts, bays, creeks, or harbours whatever, in any part of His Majesty's dominions in America, not included within the limits specified in the first Article of the said Convention, are liable to seizure: and whereas the United States did, by the said Convention, renounce for ever any liberty enjoyed or claimed by the inhabitants thereof to take, dry, or cure fish on or within three marine miles of any of the coasts, bays, creeks, or harbours of His Britannic Majesty's dominions in America, not included within the above-mentioned limits: provided however that the American fishermen should be admitted to enter such bays or harbours for the purpose of shelter, and of repairing damages therein, of purchasing wood, and of obtaining water, and for no other purposes whatever, but under such restrictions as might be necessary to prevent their taking, drying, or curing fish therein, or in any other manner whatever abusing the privileges thereby reserved to them: and whereas no rules or regulations have been made for such purpose, and the interests of the inhabitants of this Island are materially impaired: and whereas the said Act does not designate the persons who are to make such seizure as aforesaid, and it frequently happens that persons found within the distances of the coasts aforesaid, infringing the Articles of the Convention aforesaid, and the enactments of the statute aforesaid, on being taken possession of, profess to have come within said limits for the purpose of shelter, and repairing damages therein, or to purchase wood and obtain water, by which the law is evaded, and the vessels and cargoes escape confiscation, although the cargoes may be evidently intended to be smuggled into this Island, and the fishery carried on contrary to the said Convention and statute: Be it therefore enacted by the Lieutenant-Governor, Council, and Assembly, that from and after the passing of this Act, it shall be lawful for the officers of Her Majesty's Customs, the officers of Impost and Excise, the Sheriffs and Magistrates throughout this Island, and any person holding a commission for that purpose from his Excellency the Lieutenant-Governor, for the time being, to go on board of any ship, vessel, or boat within any bay, port, creek, or harbour in this Island, and also to go on board any ship, vessel, or boat hovering within three marine miles of any of the coasts, bays, creeks, or harbours thereof, and in either case freely to stay on board such ship, vessel, or boat, as long as she shall remain within such port or distance, and if any such ship, vessel, or boat be bound elsewhere, and shall continue so hovering for the space of twenty-four hours after the master shall have been required to depart, it shall be lawful for any of the above enumerated officers or persons to

For Acts for prevention of illicit trade, &c., see 3 Vic., c. 15, and 10 Vic., c. 8.

Officers of Customs, &c., authorized to board vessels, &c., within three marine miles of this island. Power of such officers, &c.

Prohibited goods on board such vessel to be forfeited, and vessel, &c., if foreign, found fishing within limits, to be forfeited.

bring such ship, vessel, or boat into port, and to search and examine her cargo, and to examine the master upon oath, touching the cargo and voyage; and if there be any goods on board prohibited to be imported into this Island, such ship, vessel, or boat, and the cargo laden on board thereof, shall be forfeited; and if the said ship, vessel, or boat shall be foreign, and not navigated according to the law of Great Britain and Ireland, and shall have been found fishing, or preparing to fish, or to have been fishing, within such distance of such coasts, bays, creeks, or harbours of this Island, such ship, vessel, or boat, and their respective cargoes, shall be forfeited; and if the master or person in command thereof shall not truly answer the questions which shall be demanded of him in such examination, he shall forfeit the sum of one hundred pounds.

Further powers of Officers of Customs, &c.

Penalty on persons molesting or obstructing officers, &c.

Goods, vessels, &c., seized to be delivered to nearest Collector of Customs, who shall secure the same, &c.

Goods, vessels, &c., condemned to be sold at public auction.

Appropriation of proceeds of such sale.

Proviso.

Mode of recovery of penalties.

Judge of Court having jurisdiction in case of goods, vessels, &c., seized, may release the same on security being given therefor.

Bond to be taken for same.

Collectors to distribute amount of bond if goods, vessels, &c., be condemned.

Regulates the mode of prosecuting suits for penalties under this Act.

Onus of proof of illegality of seizure to be on claimant.

No claim to anything seized under this Act to be admitted until certain requisites be complied with.

No claim to be admitted until security be given.

II. And be it further enacted, that all goods, ships, vessels, and boats, liable to forfeiture under this Act, shall and may be seized and secured by any such officer of Her Majesty's Customs, officer of Impost and Excise, Sheriffs, Magistrates, or other person holding such commission as aforesaid, and every person who shall in any way oppose, molest, or obstruct any officer of the Customs, officer of Impost and Excise, Sheriff, Magistrate, or other person so commissioned and employed as aforesaid, in the exercise of his office, or shall in any way oppose, molest, or obstruct any person acting in aid or assistance of such officer of Customs, officer of Impost and Excise, Sheriff, Magistrate, or other person so commissioned and employed as aforesaid, shall, for every such offence, forfeit the sum of two hundred pounds.

III. And be it further enacted, that all goods, ships, vessels and boats, which shall be seized as being liable to forfeiture under this Act, shall be taken forthwith and delivered into the custody of the Collector of Customs, at the Custom-house next to the place where the same were seized, who shall secure and keep the same in such manner as other vessels and goods seized are directed to be secured by the Commissioners of Her Majesty's Customs.

IV. And be it further enacted, that all goods, ships, vessels, boats, or other things, which shall have been condemned as forfeited under this Act, shall, under the direction of the principal officer of the Customs or Excise, where such seizure shall have been secured, be sold by public auction to the best bidder, and the produce of such sale to be applied as follows, that is to say: the amount chargeable for the custody of said goods, ship, vessel, boat, or any other thing so seized as aforesaid, shall be first deducted and paid, and the residue divided into two equal moieties—one of which shall be paid to the officer or other person or persons legally seizing the same, without deduction, and the other moiety to the Government, and paid into the Treasury of this Island—all costs incurred having been first deducted therefrom: provided always, that it shall be lawful for the Lieutenant-Governor in Council to direct that any of such things shall be destroyed, or reserved for the public service.

V. And be it further enacted, that all penalties and forfeitures which may be hereafter incurred under this Act, shall and may be prosecuted, sued for, and recovered, in the Court of Vice-Admiralty having jurisdiction in this Island.

VI. And be it further enacted, that if any goods, or any ship, vessel, or boat shall be seized, as forfeited under this Act, it shall be lawful for the Judge or Judges of any Court having jurisdiction to try and determine such seizures, with the consent of the person seizing the same, to order the delivery thereof, on security, by bond, with two sufficient sureties, to be first approved by such seizing officer or person, to answer double the value of the same in case of condemnation, and such bond shall be taken to the use of Her Majesty, in the name of the Collector of the Customs, in whose custody the goods, or ship, vessel, or boat may be lodged, and such bond shall be delivered and kept in the custody of such Collector; and in case the goods, or ship, vessel, or boat shall be condemned, the value thereof shall be paid into the hands of such Collector, who shall cancel such bond, and distribute the money paid in such manner as is above directed.

VII. And be it further enacted, that no suit shall be commenced for the recovery of any penalty or forfeiture under this Act, except in the name of Her Majesty, and shall be prosecuted by Her Majesty's Advocate or Attorney-General, or, in his absence, by the Solicitor-General, for this Island; and if any question shall arise, whether any person is an officer of the Customs, Excise, Sheriff, Magistrate, or other person authorized to seize as aforesaid, *viva voce* evidence may be given of such fact, and it shall be deemed legal and sufficient evidence.

VIII. And be it further enacted, that if any goods, ship, vessel, or boat shall be seized for any cause or forfeiture under this Act, and any dispute shall arise whether the same have been lawfully seized, the proof touching the illegality thereof shall be on the owner or claimant of such goods, ship, vessel, or boat, and not on the officer or person who shall seize and stop the same.

IX. And be it further enacted, that no claim to anything seized under this Act and returned into Her Majesty's Court of Vice-Admiralty for adjudication, shall be admitted, unless such claim be entered in the name of the owner, with his residence and occupation, nor unless oath to the property in such thing be made by the owner, or by his attorney or agent, by whom such claim shall be entered, to the best of his knowledge and belief, and every person making a false oath thereto shall be deemed guilty of a misdemeanour, and shall be liable to the pains and penalties to which persons are liable for a misdemeanour.

X. And be it further enacted, that no person shall be admitted to enter a claim to anything seized in pursuance of this Act, and prosecuted in this island, until sufficient

security shall have been given in the Court where such seizure is prosecuted, in a penalty not exceeding sixty pounds, to answer and pay the costs occasioned by such claim, and in default of giving such security, such things shall be adjudged to be forfeited, and shall be condemned.

Amount of security and condition thereof.

XI. And be it further enacted, that no writ shall be sued out against, nor a copy of any process served upon, any officer of the Customs, Excise, Sheriff, Magistrate, or other person authorized to seize as aforesaid, for anything done in the exercise of this office, until one calendar month after notice, in writing, shall have been delivered to him, or left at his usual place of abode, by the attorney or agent of the party who intends to sue out such writ or process, in which notice shall be clearly and explicitly contained the cause of action, and the name and place of abode of the person who is to bring such action, and the name and place of abode of the attorney or agent, and no evidence of the cause of such action shall be produced, except of such as shall be contained in such notice, and no verdict shall be given for the plaintiff unless he shall prove on the trial that such notice was given, and, in default of such proof, the defendant shall receive in such action a verdict and costs, or judgment of nonsuit shall be awarded against the plaintiff, as the Court shall direct.

Defines mode of proceeding against any officer of Customs, Excise, Magistrate, &c., for anything done under this Act.

XII. And be it further enacted, that every such action shall be brought within three calendar months after the cause thereof, and shall be laid and tried in Her Majesty's Supreme Court of Judicature for this island, and the defendant may plead the general issue, and give the special matter in evidence: and if the plaintiff shall become nonsuited, or shall discontinue the action, or if, upon a verdict of demurrer, judgment shall be given against the plaintiff, the defendant shall receive treble costs, and have such remedy for the same as any defendant can have in other cases where costs are given by law.

Limits time for bringing any action against any officer of Customs, &c., for anything done under this Act.

Mode of proceeding in such actions.

XIII. And be it further enacted, that in case any information or suit shall be brought to trial, on account of any seizure made under this Act, and a verdict shall be found for the claimant therefore, and the Judge or Court before whom the cause shall have been tried, shall certify on the record that there was probable cause of seizure, the claimant shall not be entitled to any costs of suit, nor shall the person who made such seizure be liable to any action, indictment, or other suit or prosecution on account of any such seizure; and if any such action, indictment, or other suit or prosecution shall be brought to trial against any person on account of such seizure, wherein a verdict shall be given against the defendant, the plaintiff, besides the things seized or the value thereof, shall be entitled to no more than two pence damages, nor to any costs of suit, nor shall the defendant in such prosecution be fined more than one shilling.

If verdict be found for any claimant on certificate of Judge or Court, &c., no costs to be allowed to claimant, nor seizing officer liable to any action, &c.

XIV. And be it further enacted, that it shall be lawful for any such officer of the Customs, Excise, or Sheriff, or Magistrate, or other person authorized to seize as aforesaid, within one calendar month after such notice, to tender amends to the party complaining, or his agent, and to plead such tender in bar to any action, together with other pleas, and if the jury shall find the amends sufficient, they shall give a verdict for the defendant, and in such case, or in case the plaintiff shall become nonsuit, or shall discontinue his action, or judgment shall be given for the defendant upon demurrer, then such defendant shall be entitled to the like costs as he would have been entitled to in case he had pleaded the general issue only; provided always, that it shall be lawful for such defendant, by leave of the Court where such action shall be brought, at any time before or after issue joined, to pay money into Court as in other actions.

Seizing officer, &c., may tender amends within one month after notice of action, and plead such tender, &c.

Officer, &c., may pay money into Court.

XV. And be it further enacted, that in any such action, if the Judge or Court before whom such action shall be tried, shall certify upon the record that the defendant or defendants in such action acted upon probable cause, then the plaintiff in such action shall not be entitled to more than two pence damages, nor to any costs of suit.

If Judge or Court certifies probable cause of seizure, plaintiff only to be entitled to 2d. damages and to no costs.

XVI. And be it further enacted, that all actions or suits for the recovery of any of the penalties or forfeitures imposed by this Act may be commenced or prosecuted at any time within three years after the offence was committed by reason whereof such penalties or forfeitures shall be incurred, any law, usage, or custom to the contrary notwithstanding.

All penalties or forfeitures under this Act may be recovered within three years after the offence committed or forfeiture incurred.

XVII. And be it further enacted, that no appeal shall be prosecuted from any decree or sentence of any of Her Majesty's Courts in this Island, touching any penalty or forfeiture imposed by this Act, unless the inhibition shall be applied for and decreed within twelve months from the time when such decree or sentence was pronounced,

No appeal allowed from sentence of any Court under this Act, unless applied for within twelve months after.

XVIII. And be it further enacted, that this Act shall not go into force or be of any effect until Her Majesty's assent shall be signified thereto, and an order made by Her Majesty in Council, that the clauses and provisions of this Act shall be the rules, regulations, and restrictions respecting the fisheries on the coasts, bays, creeks, or harbours of the Island of Prince Edward.

Suspending clause.

No. 6.

Order in Council of September 3, 1844.

At the Court at Windsor, the 3rd September, 1844.

Present:

The Queen's Most Excellent Majesty in Council.

WHEREAS by an Act passed by the Lieutenant-Governor, Council, and Assembly of Prince Edward Island, on the 15th of April, 1843, intituled "An Act relating to the Fisheries, and for the Prevention of Illicit Trade in Prince Edward Island, and the Coasts and Harbours thereof," it is amongst other things enacted that the said Act shall not go into force or be of any effect until Her Majesty's assent shall be signified thereto, and an Order be made by Her Majesty in Council that the clauses and provisions of the said Act shall be the rules, regulations, and restrictions respecting the fisheries on the coasts, bays, creeks, or harbours of the Island of Prince Edward: And whereas Her Majesty hath, by an Order in Council, bearing even date therewith, signified her Royal assent to the aforesaid Act, by specially confirming the same: And whereas it is expedient that, in pursuance of the said recited Act, the rules, regulations, and restrictions respecting the fisheries in the said Act mentioned, should be confirmed, and Her Majesty was this day pleased, by and with the advice of Her Privy Council, and in pursuance of the said Act, to declare, and it is hereby accordingly declared, That the clauses and provisions of the aforesaid Act shall be the rules, regulations, and restrictions respecting the fisheries on the coasts, bays, creeks, or harbours of the Island of Prince Edward. Whereof the Governor, Lieutenant-Governor, or Commander-in-chief of Her Majesty's said Island of Prince Edward for the time being, and all other persons whom it may concern, are to take notice and govern themselves accordingly.

(Signed) C. C. GREVILLE.

No. 7.

17 & 18 VICT., CAP. 104, SEC. 103.

Penalties:

For unduly assuming a British character.

For concealment of British assumption of foreign character.

For acquiring ownership if unqualified.

For false declaration of ownership.

103. That the offences hereinafter mentioned shall be punishable as follows (that is to say):—

- (1.) If any person uses the British flag and assumes the British national character on board any ship owned in whole or in part by any persons not entitled by law to own British ships, for the purpose of making such ship appear to be a British ship, such ship shall be forfeited to Her Majesty, unless such assumption has been made for the purpose of escaping capture by an enemy or by a foreign ship of war in exercise of some belligerent right; and in any proceeding for enforcing any such forfeiture the burden of proving a title to use the British flag and assume the British national character shall lie upon the person using and assuming the same:
- (2.) If the master or owner of any British ship does or permits to be done any matter or thing, or carries or permits to be carried any papers or documents, with intent to conceal the British character of such ship from any person entitled by British law to inquire into the same, or to assume a foreign character, or with intent to deceive any such person as lastly hereinbefore mentioned, such ship shall be forfeited to Her Majesty; and the master, if he commits or is privy to the commission of the offence, shall be guilty of a misdemeanour:
- (3.) If any unqualified person, except in the case of such transmitted interests as are hereinbefore mentioned, acquires as owner any interest, either legal or beneficial, in a ship using a British flag and assuming the British character, such interest shall be forfeited to Her Majesty:
- (4.) If any person, on behalf of himself or any other person or body of persons, wilfully makes a false declaration touching the qualification of himself or such other person or body of persons, to own British ships or any shares therein, the declarant shall be guilty of a misdemeanour; and the ship or share in respect of which such declaration is made, if the same has not been forfeited under the foregoing provision, shall, to the extent of the interest therein of the person making the declaration, and, unless it is shown that he had no authority to make the same, of the parties on behalf of whom such declaration is made, be forfeited to Her Majesty:

And in order that the above provisions as to forfeitures may be carried into effect it shall be lawful for any commissioned officer on full pay in the military or naval service of Her Majesty, or any British officer of Customs, or any British Consular officer, to seize and detain any ship which has, either wholly or as to any share therein, become subject to forfeiture as aforesaid, and to bring her for adjudication before the High Court of Admiralty in England or Ireland, or any Court having Admiralty jurisdiction in Her Majesty's dominions; and such Court may thereupon make such order in the case as it may think fit, and may award to the officer bringing in the same for adjudication such portion of the proceeds of the sale of any forfeited ship or share as it may think right.