

MA. MOTT,

In case the Letters published in your paper of last Saturday, should be directed to be re-published in your next, you will subjoin the copy of the Letter herewith sent to you, but not otherwise, as the authors of it conceive it to be highly improper, that any of these Letters should have been made public, while the subject matter of them is depending before the Judicial authority of the Country.—For the Letters alluded to, See first page.

PORTLAND, 20th JUNE, 1803.

Gentlemen,

WE were at one time preparing an answer to your Letter of the 12th inst. but reasons of a prudential nature induced us to desist. You have since, under the title of "Public Information," favored the City and Public at large, with copies of the Letters which passed between you and the Gentlemen who are our Counsel in the Prosecutions lately commenced, which may in the opinion of some render it necessary for us to resume the subject.

You "interfere" (you say) in behalf of "the Freemen and Inhabitants of this City," and you do so "in order to put for ever to sleep, the disputed question of FISHERY." Will you permit us to ask you in the first place for your authority? Have you got it from the Common Council of the City? Are you authorized by a majority of the Freemen and Inhabitants? Are you empowered by any, and what number of them? Or is your "interference" entirely voluntary? Although it is not a matter of much consequence to us, yet the public may think it of some to yourselves, that you should account for your conduct, particularly when they are informed that since the date of your last Letter, you have taken Depositions and signed Warrants to arrest us for our "interference" in opposition to those whom the public are now informed you support.

The public will be furnished with those examinations and Warrants and other information from which they will be able to form a correct judgment of the late proceedings.—They will find that a deliberate plan of approach and attack has been formed—the whole regularly organized—two Aldermen at the head—two Directors of the Fishery to lead on—and a certain number prepared to seize upon our rights and bear down all before them. That all this took place before your first Letter of the 9th inst. and then, and not till then, was the plausible proposal made—"so short" and "so plain," that you are surprized it should have been misunderstood. We assure you, it was not misunderstood, neither has the answer given by our Counsel, been misunderstood.—You meant to have an amicable Suit instituted, to determine in the first place, whether we have the exclusive right to take Fish upon our own Land; and in the next, whether the City has any Right of Fishery upon the North Shore; we said, that "being fully confident of our Right to the Fishery upon that Shore, two Suits had been commenced by our Tenants," &c. and we said further, that "if it was (as from your Letter it appeared to be) the only wish of the Citizens to have a direct decision of the question of Right, you would, we trusted, join us in our proposal." Your answer, we are compelled to say, is an unfair evasion. You pretend that it will be impossible to foresee what will be the issue in those actions; that you have reason to suppose it cannot be such as will finally settle the question which your proposal is calculated to effect.—Will any unprejudiced person say, that our answer could have been misunderstood? It is impossible that any person could have supposed we did not mean to try the Right of Fishery in those actions. You must have had some private reason to doubt our sincerity; there is certainly nothing in the Letter to create suspicion, for the whole tenor of it runs upon Right of Fishery: Why then did you not take the trouble to make some further enquiry? Before you closed with our proposal it would have been a very easy matter to have had an explanation, and confined us to the Trial of the Right.—We were bound by our Counsel's Letter to put that in issue, and we had no intention or wish to deceive you; but if we had, you could have prevented it before the bargain should have been closed. If you had taken the trouble to examine the files in the Clerk's office of the Supreme Court, you would there have found that the Right to the Fishery is relied upon in the affidavits upon which the Judge's orders are made to hold to bail in those two Suits.

In short, Gentlemen, what is the language of your last Letter? Is it any thing more than this? "If we could confide in your sincerity, we should close with your proposal, for the result will be the same, whether your or our proposal be adopted, as far as concerns the Right."

But this is not what you wish; we disappointed you in your expectations. Your wishes are to be found in the close of your "short and plain proposition."—"Let those who are supported by us and your Tenants, divide the Fishery between them for this year, without paying rent."—This we did not, and do not think proper to accede to, "after the two (late) decisions of the Supreme Court of this Province." The latter of which was upon cases stated, by consent of Mr. Alderman YOUNGHUSBAND, for the purpose of putting "for ever to sleep, the disputed question of Fishery." The decision was against his party, and the question was put to sleep for one year!—A new proposal is now made after the most formidable attempts to frighten us, with the prospect of the total loss of the Fishery, for the present season: And that proposal turns out to be nothing more than a wish to get rid of the present prosecutions for Trespasses, and to divide the profits of our Fishery with us until the question of Right is amicably determined, at a great expence to us.

We now come to a part of your Letter which really creates abashment in us.—You say, "It is a notorious fact, that no decision of the Supreme Court has ever yet been had upon the question of the Right of Fishery, nor could have been had, as no case has ever arisen where that point was in issue."—Mr. Younghusband was a party in the two decisions which have been had, and we have a better opinion of his understanding, than to believe that he did not know what was in issue. Mr. Johnston was not a party, and it is possible he, with many others, may be ignorant of

the fact. We beg leave therefore to remind you, that in the last application to the Court for a Mandamus to the Mayor, to put a certain question (relating to the Fishery upon the North Shore) to vote in the Common Council, the very point in issue, was, whether or not the City had a Right of Fishery upon that Shore, and upon solemn argument it was decided, that the City had no Right, and the rule upon the Mayor to shew cause, was therefore discharged with Costs.

The question in this case, refused to be put by the Mayor, was upon the following resolution, moved by Mr. Alderman Younghusband:—"That the Freemen and Inhabitants of the City of Saint John, under the direction of the Directors of the Fishery, be supported in their claim to the Right of Fishery, along the North Shore of the harbour of Saint John, so called, against all claims of Messrs. Hazen, Simonds, and White, or any person claiming by, from, or under them." And the Court decided not only that the City had no Right of Fishery there, but that the supporting of the Citizens in their claim of Right to Fish there, out of the City Funds, would be an oppressive act of maintenance. Can it be less an act of maintenance in you, Gentlemen, to afford this support, than it would have been in the Common Council?—"Maintenance," as we are informed, is defined in the Law to be, "an officious intermeddling, in a Suit that no way belongs to one, by maintaining or assisting either party, with money or otherwise, to prosecute or defend it." This is an offence against public justice, as it keeps alive strife and contention and perverts the remedial process of the Law into an engine of oppression; and all offenders of this kind are not only "liable to an action of maintenance at the Suit of the party grieved, but also to be indicted as offenders against public justice."

After the above decision of the Supreme Court, which was in May, 1801; it was contended that the Fishery was a Common Fishery, still an attempt was made in the same year by several of the Citizens to occupy it. In the struggle, offences were committed against the Law, for regulating the Fisheries; convictions were had on both sides; all of which being removed to the Supreme Court, the before mentioned cases were stated, and the Court, by their decision, determined that the Right of Setting Nets, under the regulations provided by that Law, was attached to the Shore; that is to say, that the tier of Nets permitted to be set, must be as near the Water's edge as may be.

As the City is bounded on that Shore, by Low Water mark, this decision also determined the question as to the Right of the City; for as the Citizens (as such) have no Right to go above Low Water mark, their Right was in issue, upon that occasion, and fully decided. Thus you see that the Right of the City has been twice in issue, and twice decided against them; and yet the proposal now made by you, is in behalf of the Freemen and Inhabitants "of the same City."

The City claim having been thus disposed of, there remained the other which was by the public at large, as a common Fishery, and in order to put that to sleep, by removing all doubts, upon application made to the Governor and Council, directly after the last decision, a Licence of occupation was granted to us. This step was immediately made public, and had the wished for effect for one year.—The disputes have been now revived, and by the conduct of the persons acting under your auspices, both claims are again set up; for they do not confine themselves within the City bounds, but occupy the shore between High and Low Water mark; and began their career with casting on shore the Nets set by Mr. Simond's Tenants, from the latter.

If it was your only wish to have the question of Right decided, was it necessary to take the violent measures which have been adopted? Was it right to hold out to the Fishermen, encouragement to Fish there, and that they should find protection in so doing? Is not this the direct way to "make wretched the poor men and their families?" If the Fishery belonged to us, can you in justice expect or wish to divide the profits with us? Surely you ought not; why then do you make such a proposal? We have convinced you of our serious determination to defend, by all legal means, that property which we know we have a just and equitable claim to. Our Tenants have commenced two actions, and after the receipt of your last Letter, we went upon the Shore, and peaceably warned the people to remove their Nets from off the Land, upon their refusal so to do, their Nets were cast off.

This step, we supposed, would forever put a stop to your saying, it was our wish "to keep the question out of fight;" for our conduct was justifiable upon no other principle than the Right to the Fishery being in us, otherwise we were Trespassers. We expected Suits would have been commenced, and we call upon you in that case to point out by what means it would have been possible for us to have kept the question out of fight.

Your neglecting this favorable opportunity offered you on purpose, is in our minds a convincing proof that you are conscious that those people were Trespassers, and that you are not sincere in wishing to try the Right, unless at our expence, for you must know that our claim is well founded both in Law and Equity.

We are, Gentlemen,
Your humble servants,

WM. HAZEN,
J. SIMONDS,
J. WHITE.

(Signed)

To Hugh Johnston, and
George Younghusband, Esqrs.

MR. MOTT,

By inserting the following Letter, in answer to Messrs. HAZEN, SIMONDS, and WHITE's, of the 20th inst. you will oblige
Yours, &c.

SAINT JOHN, 22d JUNE, 1803.

Gentlemen,

YOUR lengthy Letter we have received; it contains not what we had a right to expect, it would contain, a direct answer to our proposals. It does more credit to the abilities, the art, and the ingenuity of your Counsel in our

humble opinion, than it will tend to convince the Public of the justice of your cause, we have the same opinion, since the receipt of your second Letter, which we entertain on reading your first, that you have a fixed determination to avoid the question of right, as long as possible, and in the mean time, to hold by a strong hand, that, which if your's in reality, you should rejoice at an opportunity of having confirmed by establishing a legal title thereto. The proposals made by us, were in as few words as possible, and required but few words in answer. You have filled ten folio pages. We had no idea of being drawn into a Newspaper correspondence. Your unfair evasions and the violent conduct adopted, immediately after receipt of our last Letter, were the cause of our sending to the press.—The former part of our correspondence, and before we proceed further, to answer this, we have to inform you, that here will end the correspondence on our part, we have neither leisure or inclination to answer your very lengthy epistles; but as you have condescended to make a personal attack on us, we shall reply to such parts of your Letter, as we judge worth our attention, and then leave you to fill News-Papers, if you please, on the subject. With respect to your unhandsome sarcastic question for our authority, we are a little surprized, to find a demand of this nature, at the present stage of the business.—It should have made a part of your first Letter: Why did you commence the correspondence without ascertaining our powers? However, whenever you will make it necessary for us to produce our authority, by acceding to our proposition, we shall be able to give you every satisfaction: In the mean time, we hope you will be as well able to satisfy yourselves, on serious reflection, of the propriety of your conduct in being the sole authors of so much ill blood and contention as in the disputed questions concerning the Fishery, has taken place in this part of the Province, since the first establishment.—As we can account to the Public for our conduct, in making proposals for an amicable adjustment of the present unfortunate differences, and at which you appear so much irritated and distressed.—You assert "that a deliberate plan of approach and attack had been formed—the whole regularly organized—two Aldermen at the head—two Directors of the Fishery to lead on, and a certain number prepared to seize upon your rights, and bear down all before them, that all this took place before our first Letter of the 9th; and then, and not till then, was the plausible proposal made," &c. This sentence wants nothing but truth for its foundation to make it perfect.—That you know it to be totally devoid of truth, we will not presume to say, but that all the facts are absolutely false we directly assert. And on the contrary we have every reason to believe, if the matter shall ever come to an investigation, it will be found, that all the violence of which you complain so loudly and of which you seem to consider us the authors, may be entirely imputable to yourselves, for your imprudent conduct on the Monday, in attempting by force to do yourselves that right, which you decline committing to the decision of a Court of Justice.—And that only about two hours after the receipt of our last Letter.—You thereby set a bad example to the persons whom you attacked, to prevent them from copying it, was out of our power, and the conduct of a few of the Fishermen, (many of whose Nets you had the day before cut a drift by force, and that immediately after the amicable proposition which had been made to you,) going to place their Nets in the same situation from which you had cast them.—You term the deliberate plan of attack, regularly organized, two Aldermen at the head, two Directors to lead on, and a certain number prepared to seize on your rights, and bear down all before them.

We never supposed you could really misunderstand our proposition, we considered, as we still do continue to consider, your first Letter as an evasion, especially as you attempted, and still persevere, to impose on the Public by asserting that the question in dispute, has been already twice decided in the Supreme Court.—This although you hold it out, you must be convinced is not correct.

The case you allude to, as stated by the consent of one of us, was solely on the construction of the Acts of the General Assembly, for regulating the Fisheries in this Province, viz. Where the line running parallel as near as may be with the shore, should be ascertained.—Upon that question two of the Judges (only three being present, and the Chief Justice contra) were of opinion that the line of the shore, at high water mark, was the line contemplated in those Acts of the Legislature, and the question of right to set Nets on that line, never once emerged, nor was in any manner relied on by your Counsel. The other was the case of the Mandamus, and was quite as irrelevant as the last.—This arose on a motion to put a question in the Common Council as stated by you; but whether you had the exclusive right to Fish that shore from high to low water mark, whether it was a common right, or whether the Inhabitants of the City possessed that right, never came before the Court, nor could it so come, unless it was taken up extrajudicially "and it would be paying but a bad compliment to the Judges of the Supreme Court" to presume that they would decide a question of such importance, either incidentally or extrajudicially.—That question was whether the Mayor was justifiable in refusing to put the question stated. The Court determined he was justifiable, but not because the Inhabitants of the City, had not any right of Fishery, but because the right of Fishing, if any, did not belong to the Corporation, as a Corporate right, but to the Freemen and Inhabitants, and consequently it would be a species of maintenance in them to appropriate the funds of the Corporation to support the rights of the Freemen and Inhabitants, as Freemen and Inhabitants or as part of the Public, and further because the motion was so worded as to extend generally to the right of Fishing, as well above as below low water mark, and consequently partly without the City bounds. These were the grounds of the two late decisions in the Supreme Court, which you term so clearly decisive of the right of Fishery, and in consequence of which you fear giving offence by submitting any other question for determination; on the other had, convinced as we are, of the anxious regard of the Judges for the peace and quiet of every part of the Province, we feel disposed to believe