

continued until peace was proclaimed, and efforts were made at the making of the Treaty of Ghent to establish what were henceforth to be the rights which each nation was entitled to enjoy.

During the negotiations preceding that Treaty many difficulties arose,—the American Plenipotentiaries claimed all the rights which they enjoyed previous to the declaration of Independence. While the British Ministers asserted that as the extensive rights claimed by the Americans depended solely on the Treaty of 1783, and that the war of 1812 had put an end to that Treaty, just as the right of British subjects to navigate the Mississippi from its mouth to its source was by that Treaty granted to British subjects, and was terminated by the war, so also with the fisheries clause, and that both subjects were open to be considered and dealt with—the British, while conceding the *right* of fishing, to which they considered Americans entitled, refused to renew the *liberties* which they conceded to them in the Treaty of 1783. They were willing to accept, as a partial equivalent for certain fishing privileges, the free navigation of the Mississippi, but this offer was declined by the Americans, and the latter refused to renew the Mississippi clause, except upon concessions of fishery privileges as an equivalent, which the British Commissioners would not consent to. The American Commissioners subsequently declined to renew the clause of the Treaty of 1783, which would have given the free navigation of the Mississippi to British subjects, and the result was that the fisheries were omitted from the Treaty, as they were also from an arrangement of trade and commerce subsequently made between Commissioners of the two nations, signed at London in 1815.

It may be here stated, that Mr. Russell, one of the American Commissioners, differed with his colleagues in reference to the fisheries, and practically, upon that important point, sustained the view taken by the British Commissioners. See Senate State Papers.

The Treaty of Peace having been thus settled, without the Commissioners of the two countries having been able to arrange conditions in relation to the *fisheries*, and as the war abrogated the Treaty of 1783, which gave certain privileges to Americans, the rights of the two countries in relation to these fisheries, as laid down in the law of nations, hereafter quoted, may be briefly stated thus—that each nation possessed those rights which, from their geographical position, the law of nations accorded under such circumstances. Thus, it may be stated, that each nation possessed a common right of fishing at sea; next, that, as attaching territorially to them the Americans possessed, or were entitled to claim all the fisheries within three miles of their *coasts, bays, and creeks*, from the eastern boundary of what is now the State of Maine to the southern boundary