

they claim. If they cannot do that and undertake to prove habit, then they must do,—what they have not done,—prove it by an overwhelming majority of witnesses. With equal testimony their proof fails."

There is an enormous quantity of testimony produced, on the part of Her Majesty's Government, to show that the United States fishing fleet constantly, throughout the season, fished within three miles of almost all the shores of the Gulf of St. Lawrence,—on the shores of Nova Scotia, (including all the shores of Cape Breton,) the shores of Prince Edward Island, the west shore of the Gulf, the shores of Bay de Chaleur and Gaspé, both shores of the River St. Lawrence, and the whole north shore to Labrador, the shores of Anticosti, as well as the shores of the Bay of Fundy. The various fleets of United States vessels were very seldom if ever, during the fishing season, out of sight of very large numbers of respectable and intelligent witnesses residing on various parts of the coast, whose sworn evidence has been received by the Commission. Besides, witnesses—too numerous to mention—have given evidence sufficient literally to fill a volume, of having fished in American bottoms; and they testify that the common custom of the various fleets was to fish within three miles of all the shores thrown open by the Treaty of Washington.

In addition to this, a very large number of witnesses have corroborated the views of almost all United States writers and statesmen who have offered the opinion that without the "three mile belt" the Gulf Fishery is useless,—and these latter witnesses, who have been interrogated on the subject, have, without perhaps a single exception, stated that the American shippers and fishermen have invariably admitted that, without the free use and enjoyment of the three mile inshore fisheries, they considered it useless to enter the Bay of St. Lawrence for fishing purposes. Can there be stronger proof of habit? Speaking of the British testimony, says the learned counsel, Mr. Trescott:—"With equal testimony, their proof fails." Perhaps so. Has "equal testimony" been produced by the United States? Is there any testimony whatever to contradict this immense mass of evidence of the "habit" of the United States fishing fleet?

Numbers of fishermen were produced by the United States to show that they themselves had fished at Banks Bradley and Orphan, and other banks and shoals, and at the Magdalen Islands, outside of British waters, who, by the way, nearly all suffered loss, but scarcely any of these witnesses undertook to show *where* the fleet fished. On the contrary, they almost invariably qualified their statements by showing that they spoke only of their own individual fishing.

The learned counsel for the United States implicitly admits that unless there has been produced witnesses contradicting the British evidence as to "habit," the British case is made out. There is a singular absence in the vast number of witnesses and affidavits produced on both sides, for twelve weeks,—there is a singular and marked absence of contradiction, and upon the principle involving "habit," enunciated by Mr. Trescott, the evidence can be relied on with confidence as fully and completely establishing the claim.

The learned agent, Mr. Foster, in his very able speech, contends that the British claim is not made out because there are but a trifling quantity of fish caught by United States vessels within the formerly prohibited limits; but it can be clearly shown that he is entirely mistaken as to the weight and character of the evidence. He says:—

"If the three mile limit off the bend of Prince Edward Island, and down by Margaree, where our fishermen sometimes fish a week or two in the autumn (and those are the two points to which almost all the evidence of inshore fishing in this case relates), if the three mile limit had been buoyed out in those places, and our people could have fished where they had a right to, under the law of nations and the terms of the Treaty, nobody would have heard any complaint."

Again:—

"Almost all the evidence in this case of fishing within three miles of the shore relates to the Bend of Prince Edward Island and to the vicinity of Margaree. As to the bend of the Island it appears in the first place that many of our fishermen regard it as a dangerous place, and shun it on that account, not daring to come as near the shore as within three miles, because in case of a gale blowing on shore their vessels would be likely to be wrecked."

He also says:—

"There is something peculiar about this Prince Edward Island fishery, and its relative proportion to the Nova Scotia fishery. As I said before, I am inclined to believe that the greatest proportion of mackerel caught anywhere inshore, are caught off Margaree late in the Autumn. The United States vessels, on their homeward voyage, make harbor at Port Hood, and lie there one or two weeks; while there they do fish within three miles of Margaree Island; not between Margaree Island and the main land, but within three miles of the island shores; and just there is found water deep enough for vessel-fishing. Look at the chart, which fully explains this fact to my mind. Margaree is a part of Nova Scotia, and Prof. Hind says there is an immense boat-catch all along the outer coast of Nova Scotia, and estimates that of the mackerel catch, Quebec furnishes seven per cent., (he does not say where it comes from), Nova Scotia, 80 per cent., New Brunswick 3 per cent., and Prince Edward Island 10 per cent."

This is also from the learned Agent of the United States:—

"When I called Prof. Hind's attention to that, and remarked to him that I had not heard much about the places where mackerel were caught in Nova Scotia, he said it was because there was an immense boat catch on the coast. If there has been any evidence of United States vessels fishing for mackerel within three miles of the shores, or more than three miles from the shore of the outer coast of Nova Scotia, it has escaped my attention. I call my friends' attention to that point. If there is any considerable evidence, I do not know but I might say any appreciable evidence of United States vessels fishing for mackerel off the coast of Nova Scotia, (I am not now speaking of Margaree, but the coast of Nova Scotia), it has escaped my attention. As to Cape Breton, very little evidence has been given, except in reference to the waters in the neighborhood of Port Hood."

Providing Mr. Foster were correct in the view he has put forward of the evidence, he might with some reason urge the Commission to refuse the award claimed on behalf of Her Majesty's Government.

Nothing could be more unjust and unfair to the character of the Canadian Fisheries, than to adopt the statement of the learned Agent as to P. E. Island and Margaree as the correct result of the facts established by absolutely uncontradicted evidence now before the Commission.

It is true that the main efforts of United States Counsel were exerted to impeach the large array of respectable witnesses who testified to the great wealth of the fishery in the Bend of Prince Edward Island, and the constant use of those grounds by United States fleets. But if Mr. Foster should ever again have occasion closely to examine the whole evidence given in this case on both sides, he will find that, beyond the efforts to depreciate that tract of water between the North Cape and the East Point, and that at Grand Manan, there is scarcely a line of testimony offered by him or his learned associates to shake or contradict the evidence given respecting all the other vast and rich Canadian fishing grounds. The evidence of the value to and use by American fishermen of all the coasts of Nova Scotia from the Bay of Fundy eastward, all around the Island of Cape Breton, the north shores of the coasts and bays of New Brunswick to Gaspé, and the entire coasts of Quebec, within the jurisdiction of the Commission, is almost, if not absolutely, uncontradicted.

This applies as well to the affidavits as to the oral testimony, and it may be stated here of the British affidavits, what cannot be said of those of the United States, that they are strikingly corroborated by the testimony of witnesses both on the direct as well as the cross-examination.

I here produce a number of extracts and references, which are more than sufficient to convince even our learned