

The following is the answer made by the British Plenipotentiaries:—

(Extract from Protocol of Conference, 10th Dec., 1814, Ghent, p. 46.)

"His Britannic majesty agrees to enter into negotiation with the United States of America respecting the terms, conditions, and regulations, under which the inhabitants of the said United States shall have the liberty of taking fish on certain parts of the coast of Newfoundland, and other his Britannic majesty's dominions in North America, and of drying and curing fish in the unsettled bays, harbors, and creeks, of Nova Scotia, Magdalen Islands, and Labrador, as stipulated in the latter part of the 3d article of the treaty of 1783, in consideration of a fair equivalent, to be agreed upon between his majesty and the said United States, and granted by the said United States for such liberty aforesaid."

The American Plenipotentiaries replied as follows:—

(Extract from American Note after Conference, of 12th Dec., 1814, p. 49.)

"For the purpose of meeting what they believed to be the wishes of the British government, they proposed the insertion of an article which should recognize the right of Great Britain to the navigation of that river, and that of the United States to a liberty in certain fisheries, which the British government considered as abrogated by the war. To such an article, which they viewed as merely declaratory, the undersigned had no objection, and have offered to accede. They do not, however, want any new article on either of those subjects; they have offered to be silent with regard to both."

The British note of the 22nd of Dec. contained the following declaration:—

(Extract from British Note of 22nd Dec., p. 50.)

"[So far as regards the substitution proposed by the undersigned, for the last clause of the 8th article, as it was offered solely with the hope of attaining the object of the amendment tendered by the American plenipotentiaries at the conference of the 1st instant, no difficulty will be made in withdrawing it. The undersigned, referring to the declaration made by them at the conference of the 5th of August, that the privileges of fishing within the limits of the British sovereignty, and of using the British territories for purposes connected with the fisheries, were what Great Britain did not intend to grant without equivalent, are not desirous of introducing any article upon the subject.]"

And the Americans thus replied:—

(Extract from the American Note, 25th Dec., 1814, p. 54, 55.)

"At the first conference on the 8th of August, the British plenipotentiaries had notified to us, that the British government did not intend, henceforth, to allow to the people of the United States, without an equivalent, the liberty to fish, dry and cure fish, within the exclusive British jurisdiction, stipulated in their favor, by the latter part of the third article of the treaty of peace of 1783. And, in their note of the 19th of August, the British plenipotentiaries had demanded a new stipulation to secure to British subjects the right of navigating the Mississippi: a demand which, unless warranted by another article of that same treaty of 1783, we could not perceive that Great Britain had any colorable pretence for making. Our instructions had forbidden us to suffer our right to the fisheries to be brought into discussion, and had not authorized us to make any distinction in the several provisions of the third article of the treaty of 1783, or between that article and any other of the same treaty. We had no equivalent to offer for a new recognition of our right to any part of the fisheries, and we had no power to grant any equivalent which might be asked for it by the British government. We contended that the whole treaty of 1783 must be considered as one entire and permanent compact, not liable, like ordinary treaties, to be abrogated by a subsequent war between the parties to it; as an instrument recognising the rights and liberties enjoyed by the people of the United States as an independent nation, and containing the terms and conditions on which the two parts of one empire had mutually agreed thenceforth to constitute two distinct and separate nations. In consenting, by that treaty, that a part of the North American continent should remain subject to the British jurisdiction, the people of the United States had reserved to themselves the liberty, which they had ever before enjoyed, of fishing upon that part of the coasts, and of drying and curing fish upon the shores; and this reservation had been agreed to by the other contracting party. We saw not why this liberty, then no new grant, but a mere recognition of a prior right, always enjoyed, should be forfeited by a war, any more than any other of the rights of our national independence, or why we should need a new stipulation for its enjoyment more than we needed a new article to declare that the king of Great Britain treated with us as free, sovereign and independent states. We stated this principle, in general terms, to the British plenipotentiaries, in the note which we sent to them with our project of the treaty; and we alleged it as the ground upon which no new stipulation was deemed by our government necessary to secure to the people of the United States all the rights and liberties, stipulated in their favor, by the treaty of 1783. No reply to that part of our note was given by the British plenipotentiaries; but, in returning our project of a treaty, they added a clause to one of the articles, stipulating a right for British subjects to navigate the Mississippi. Without adverting to the ground of prior and immemorial usage, if the principle were just that the treaty of 1783, from its peculiar character, remained in force in all its parts, notwithstanding the war, no new stipulation was necessary to secure to the subjects of Great Britain the right to navigating the Mississippi, as far as that right was secured by the treaty of 1783; as, on the other hand, no stipulation was necessary to secure to the people of the United States the liberty to fish, and to dry and cure fish, within the exclusive jurisdiction of Great Britain. If they asked the navigation of the Mississippi as a new claim, they could not expect we should grant it without an equivalent; if they asked it because it had been granted in 1783, they must recognize the claim of the people of the United States to the liberty to fish and to dry and cure fish, in question. To place both points beyond all future controversy, a majority of us determined to offer to admit an article confirming both rights; or, we offered at the same time to be silent in the treaty upon both, and to leave out altogether the article defining the boundary from the Lake of the Woods westward. They finally agreed to this last proposal, but not until they had proposed an article stipulating for a future negotiation for an equivalent to be given by Great Britain for the navigation of the Mississippi, and by the United States for the liberty as to the fisheries within the British jurisdiction. This article was unnecessary, with respect to its professed object, since both governments had it in their power, without it, to negotiate upon these subjects if they pleased. We rejected it, although its adoption would have secured the boundary of the 49th degree of latitude west of the Lake of the Woods, because it would have been a formal abandonment, on our part, of our claim to the liberty as to the fisheries, recognised by the treaty of 1783.

Mr. Gallatin wrote to the Secretary of State on the 25th of Dec., the day following the signature of the Treaty as follows:—

(Extract from Letter of Mr. Gallatin to Secretary of State, 25th Dec. 1814, p. 58.)

"On the subject of the fisheries, within the jurisdiction of Great Britain, we have certainly done all that could be done. If, according to the construction of the treaty of 1783, which we assumed, the right was not abrogated by the war, it remains entire, since we most explicitly refused to renounce it, either directly or indirectly. In that case it is only an unsettled subject of differences between the two countries. If the right must be considered as abrogated by the war, we cannot regain it without an equivalent. We had none to give but the recognition of their right to navigate the Mississippi, and we offered it. On this last supposition, this right is also lost to them; and in a general point of view, we have certainly lost nothing."

Mr. Russell, who gave rise to all this correspondence, wrote from Paris on the 11th of Feb. 1815, in the following terms to the Secretary of State:—

(Extract from Letter of Mr. Russell to the Secretary of State, 11th Feb., 1815, p. 66.)

"I could not believe that the independence of the United States was derived from the treaty of 1783; that the recognition of that independence by Great Britain, gave to this treaty any peculiar character, or that such character, supposing it existed, would necessarily render this treaty absolutely inseparable in its provisions, and make it one entire and indivisible whole, equally imperishable in all its parts, by any chance which might occur in the relations between the contracting parties.

"The independence of the United States rests upon those fundamental principles set forth and acted on by the American Congress, in the declaration of July, 1776, and not on any British grant in the treaty of 1783, and its era is dated accordingly.

"The treaty of 1783 was merely a treaty of peace, and therefore subject to the same rules of construction as other compacts of this nature. The recognition of the independence of the United States could not well have given it a peculiar character, and excepted it from the operation of these rules. Such a recognition, expressed or implied, is always indispensable on the part of every nation with whom we form a treaty whatsoever."

(Idem, p. 69.)

"It is from this view of the subject that I have been constrained to believe that there was nothing in the treaty of 1783 which could not essentially distinguish it from ordinary treaties, or rescue it on account of any peculiarity of character from the *jura belli*, or from the operation of those events on which the continuance or termination of such treaties depends."