

of the clandestine introduction of prohibited goods into the British Colonies, by American vessels ostensibly engaged in the fishing trade to the great injury of the British revenue." And in suggesting a "modified renewal" of the fishery privileges, he added: "But Great Britain can only offer the concession in a way which shall effectually protect her own subjects from such obstructions to their lawful enterprises, as they too frequently experienced immediately previous to the late war, and which are, from their very nature, calculated to produce collision and disunion between the two states."

Another contention of the Minister was that fishermen had, by common and universal usage, been "entitled to a more than ordinary share of protection, and that it was usual to spare and exempt them even from the most exasperated conflicts of national hostility." And he objected that the original grant should be ascribed to "the improvident grant of an unrequited privilege, or to a concession extorted from the humiliating compliance of necessity."⁹

Lord Bathurst declined to admit that the claim of the American fishermen to fish within British waters, and to use British territory for purposes connected with their fishery, "was analogous to the indulgence which had been granted to an enemy's subjects engaged in fishing on the high seas."¹⁰

Lord Stowell, in a judgment delivered by him in 1798, had declared what was the law of Great Britain on this question: "In former wars it had not been usual to make captures of those small fishing vessels. But this rule was a rule of comity only, and not of legal decision. In the present war there has, I presume, been sufficient reason for changing this mode of treatment. They fall under the character and description of ships constantly, and exclusively, employed in the enemy's trade."¹¹

⁹Ibid., page 353. Congress had originally made the fisheries one of the points in its ultimatum for peace; but in June, 1781, it directed its Commissioners that "a desire of terminating the war has induced us not to make the acquisition of the North American fisheries an ultimatum on the present occasion." Secret Journals of Congress, vol. 2, page 228.

¹⁰American State Papers, Foreign Relations, vol. 4, page 356.

¹¹The Young Jacob and Johanna, 1 C. Robinson, 20.