

clause? They were unable to do this, it seems to me, because the British Government, having already contracted not to allow competition with the French on the Western and Northern Coasts by British subjects, had no power to allow it to the inhabitants of the United States. They could give the right of fishing on the open coast, but could not grant it in the bays, harbours and creeks where the French exercised their fishing, and where the fishery area being limited they would certainly have been interfering with the French, who claimed and exercised with the consent of the British Government a monopoly of the fishing therein. I have seen in one of the leading London reviews that an able writer has declared that but for a map which was put in by the Newfoundland Government, during the proceedings of the Halifax Conference in 1876, my reading of the Treaty might, perhaps, have stood. My answer to that is, that if the Treaty of 1818 was expressly worded so as to exclude the Americans from the bays, harbours and creeks of the West Coast, no implied admission by the Newfoundland Government at the Halifax Commission would have any effect, but the treaty would have to be rigidly construed in relation to the French rights. Viewed historically, it seems to me that the Americans were intentionally excluded from the bays, harbours and creeks of the West Coast, and that they never had any rights of fishing in either Bonne Bay, Bay of Islands, or Bay of St. George.

In order to discover what the rights of United States citizens, under the Treaty of 1818, are, it may be useful to have reference to anterior records. Before the Revolution the inhabitants of all the British Colonies in North America possessed, as a common right, the right of fishing on all the coasts in British North America. At the end of the Revolution and by the Treaty of Peace of 1783, which adjusted the boundaries between the Dominions of the two Powers, it was agreed that the people of the United States shall continue to enjoy unmolested the right to take fish of every kind on the Grand Banks and on all the other Banks of Newfoundland; also in the Gulf of St. Lawrence, and at all other places in the sea where the inhabitants of both countries used at any time heretofore to fish, and also that the inhabitants of the United States shall have the liberty to take fish of every kind on such part of the Coast of Newfoundland as British fish-

ermen shall use (but not to dry or cure the same on that Island), and also on the coasts, bays, harbours and creeks on all other of His Britannic Majesty's Dominions in America." (See Article 3.) From 1783 until the war of 1812, between the two countries, citizens of the United States continued to enjoy the rights secured to them by the Article which I have quoted. At the close of the war of 1812-15 the British Government took the position that in consequence of the war the fishery privileges granted to citizens of the United States, by Article 3 of the Treaty of 1783, had become abrogated and that the citizens of the United States had therefore no longer the right to fish in any of the British North American waters. This led to the conclusion of the Treaty of the 20th of October, 1818, Article 1 of which defines the present fishing privileges of the citizens of the United States in the waters of this Colony. The intent and meaning of that Article may be gathered from the instruction which issue to the American negotiators of it.

On the 20th of July, 1818, Mr. Adams, Secretary of State for the United States, instructed Mr. Ruch and Mr. Gallatin, the American negotiators, as follows:—

"The President authorises you to agree to an Article whereby the United States will desist from the liberty of fishing, and curing, and drying fish **within the British jurisdiction generally**, upon the condition that it shall be secured as a permanent right, not liable to be impaired by any future war, **from Cape Ray to Rameau Islands and from Mount Joly on the Labrador Coast, through the Straits of Belle Isle, and indefinitely North along the coast;** the right to extend as well to curing and drying the fish as to fishing."

This instruction, I submit, clearly sets forth the demand of the United States, and leaves no room whatever for doubt but that the Treaty of 1818 was intended to conform to it and to the principles involved in it. If this is admitted, then the construction that I have placed upon Article One of the Treaty is the correct one.

I have seen an attempt made to argue that the terms of the Washington Treaty and the Treaty of 1818 were identical, and that the contentions and admissions of the British Counsel acting on the Halifax Commission of 1877 must have an important bearing on the construction