

HALIFAX FISHERY COMMISSION.

CLOSING ARGUMENT OF MR. DOUTRE,

ON BEHALF OF HER BRITANNIC MAJESTY.

FRIDAY, NOV. 16, 1877.

The Conference met.

Mr. DOUTRE addressed the Commission as follows :

With the permission of your Excellency and your Honors, I will lay before this Tribunal, in support of Her Majesty's claim, some observations, which I will make as brief as the nature of the case admits, and in order that these remarks may be intelligible, without reference to many voluminous documents, I solicit your indulgence while going once more over grounds familiar to the Commission.

As soon as the war, resulting in the independence of the confederated colonies, came to an end, the United States sought for a recognition of their new existence from Great Britain and the Treaty of Paris of 1783 was agreed to. As an incident to the main object of that Treaty, Art. 3 states: "The people of the United States shall continue to enjoy unmolested the right to take fish of every kind on the Grand Bank and on all 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 the inhabitants of the United States shall have liberty to take fish of every kind on such part of the coast of Newfoundland as British fishermen shall use (but not to dry or cure the same on that island), and also on the coast, bays and creeks of all other of His Britannic Majesty's Dominions in America; and the American fishermen shall have the liberty to dry and cure fish in any of the unsettled bays, harbors and creeks of Nova Scotia, Magdalen Islands, and Labrador, so long as the same shall remain unsettled; but so soon as the same, or either of them, shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such Settlement without a previous agreement for that purpose with the inhabitants, proprietors, or possessors of the ground."

We have heard from counsel representing the United States very extraordinary assumptions, both historical and political, concerning the circumstances under which this Treaty was adopted. At the distance of nearly a century, fancy can suggest much to literary or romantic speakers, especially when it concerns a subject on which they are not called upon to give any evidence,—on which they can build an interesting record of their own opinions, before this Commission. We had to deal with a very complex matter of business,—one which probably has never engaged the research of a judicial tribunal,—and we thought this was enough for the efforts of humble men of business, such as we claim to be. Our friends on the American side treated us with a poetical account of the capture of the Golden Fleece at Louisburg, by Massachusetts heroes, in order to show how their statesmen of a previous generation had misconceived the nature of their primitive, conquered and indisputable right to our fisheries, without indemnity in any shape. British historians, statesmen or orators would probably have little weight with our friends in their estimate of Treaty negotiations. With the hope of obtaining a hearing from our opponents let us speak through the mouth of American diplomatists or statesmen.

It will strike every one that in the concessions contained in our Treaty of 1783, Great Britain did not extend to American fishermen all the rights belonging to her own subjects in these fisheries,—a fact sufficient in itself to preserve to Great Britain her sovereignty in that part of her dominions.

When the war of 1812 was brought to an end, the United States had not lived long enough, as an independent nation, to create that pleiad of eminent jurists, publicists and Secretaries of State, who have since brought them up to the standard of the oldest constituted States of Europe. The characteristic elation of the nation who had but recently conquered their national existence, marked the conduct of the United States government during the negotiations of the Treaty of Ghent in 1814. They persistently refused to recognize a rule of international law, which no one would now dispute, and which was, however, fully admitted by some of the United States representatives at Ghent, that war abrogates all treaties between belligerents.

Henry Clay, one of those representatives, at Ghent, answered in the following manner, the proposition of the British Plenipotentiaries, who desired to include the Fisheries in that Treaty as appears in the Duplicate Letters: The Fisheries and the Mississippi. By J. Q. Adams. P. 14 *in fine*:—

"In answer to the declaration made by the British Plenipotentiaries respecting the fisheries, the undersigned (U. S. Representatives) referring to what passed in the Conference of the 9th of August, can only state that they are not authorized to bring into discussion any of the rights or liberties which the United States have heretofore enjoyed in relation thereto. From their nature and from the peculiar character of the Treaty of 1783, by which they were recognized, no further stipulation has been deemed necessary by the government of the United States, to entitle them to the full enjoyment of all of them."

In order to fully understand the views entertained by the British and American plenipotentiaries, a few extracts from the correspondence between American diplomatists, published from 1814 to 1822, and contained in the book of Mr. Adams, will show the course adopted at Ghent, by himself and his colleagues.

(Extract from Protocol of Conference held 1st Dec., 1814, at Ghent, p. 45.)

"The American plenipotentiaries also proposed the following amendment to Article 8th, viz.: 'The inhabitants of the United States shall continue to enjoy the liberty to take, dry, and cure fish, in places *within the exclusive jurisdiction of Great Britain*, as secured by the former treaty of peace; and the navigation of the river Mississippi, within the exclusive jurisdiction of the United States, shall remain free and open to the subjects of Great Britain, in the manner secured by the said treaty.'