

decisions of the two countries would be determined, by the interpretation my hon. friend should put on the treaty.

Mr. DAVIES (P.E.I.) I wish to call the attention of the Minister of Finance to the fact that the same rule does not apply to the construction of a treaty as to the construction of an Act of Parliament. In the case of an Act of Parliament, the courts do not refer to any expression of opinion given by any of the members who voted for it, in deciding what the meaning of the Act is; but in the case of a treaty it is not so. It is an agreement between two contracting parties, and the words of one of those parties are very often receivable as the very highest evidence of what the meaning of the parties was at the time. I would give the hon. gentleman a historical and memorable instance of that. The hon. gentleman will remember the difference of opinion that arose as to the construction of the Treaty of 1818. A contention was put forward by the United States that their fishermen had a right to purchase bait notwithstanding that according to the treaty they could only enter our ports for the four purposes of purchasing wood and water, for shelter, and for repairs; and when the contention was put forward that within the words of the treaty they could also enter for the purchase of bait, what was the reply of the hon. Minister of Justice? It was, that cannot possibly be the construction of the treaty, and I will give you the very best evidence in the world of it. When the contracting parties sat down to make that treaty, the commissioners, on behalf of the United States, proposed to introduce into the treaty the very word "bait," but it was rejected, and it is not now open to you to say that the treaty includes it.

Sir CHARLES TUPPER. The hon. gentleman quite misapprehends me. I did not discuss the question as to what would be shown by the proceedings and protocols. That is not an *ex post facto* expression of opinion by one of the commissioners; it is a something of an entirely different character.

Mr. DAVIES (P. E. I.) The hon. gentleman is perfectly right, and he will recollect that when we were pressing him this afternoon for his opinion as to the construction of the treaty, we did not ask what his opinion as a lawyer was now on the construction of these words, but what was intended by the contracting parties at the time they drew that clause; and I maintain that the intention of the parties is the best evidence in the world as to what the meaning of the treaty is.

Sir CHARLES TUPPER. That is good evidence.

Mr. DAVIES (P.E.I.) But the hon. gentleman this afternoon denounced me in right good set terms for having ventured to say, not that such was the construction of the treaty, but that it was open to such a construction; and after he had denounced me for saying that I had no doubt that would be contended for by the United States, what does he say to-night? I have no doubt, he says, that construed in accordance with the broad comity of nations, the word "outfit" will include the word "bait"—just what I was contending this afternoon when I pointed out that it was important that we should know exactly what the meaning of the treaty was before it passed. The hon. gentleman says that by this clause, the American fishermen may load, unload, transship or sell, if transshipment, unloading or selling are incidental to repairs consequent on stress of weather or casualty. We do not differ on that point, but the difficulty was in applying a practical construction to the clause. If a man reports that under stress of weather he has been driven into a harbor, and contends that it is necessary to make repairs and to transship, there is nobody who can control him, and it is therefore a matter open to endless litigation, difficulties and disputes. The hon. gentleman was right enough in

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calling our attention to the fact that under article 11 of the treaty, special provision is made enabling the American fishermen to purchase provisions, bait, ice, seines, lines and all other supplies and outfit, under a certain state of facts recited in that clause, and the hon. gentleman said that provision having been made in that article for the purchase of supplies and outfit, it is perfectly plain those articles cannot be purchased under the 6th section of this Bill. But the hon. gentleman is wrong, because while these may be purchased under the 11th article of the treaty when the contingency which brings it into operation arises, they may also be purchased under the 6th section. He admits that they may be driven in by stress of weather, and it is necessary, as incidental to repairs, that they shall purchase an outfit.

Sir CHARLES TUPPER. Yes.

Mr. DAVIES (P.E.I.) The hon. gentleman says no doubt they can, irrespective of the 11th article, altogether.

Sir CHARLES TUPPER. They are two different cases.

Mr. DAVIES (P.E.I.) The hon. gentleman states the argument which I barely suggested, and for the suggestion of which he denounced me.

Sir CHARLES TUPPER. No.

Mr. DAVIES (P.E.I.) Yes, the hon. gentleman did, but I am not going to bandy words any longer. I am satisfied I was right in calling the attention of the House to the true meaning of these two important clauses of the treaty, and I am satisfied that the suggestion I made as to the possible construction of those two sections has received the endorsement of the hon. gentleman himself, and, so far as my remarks this afternoon were concerned, instead of denouncing me as he did in the extreme language he used, I deserved his approbation.

Mr. MILLS (Bothwell). Before we leave these two sections I would just say a few words. I do not think my hon. friend was open to the animadversions of the hon. the Minister of Finance when my hon. friend called the hon. gentleman's attention to the possible construction that might be put by the opposite party upon the provisions contained in these two sections. Nor do I think that because we have no power to amend the provisions of the treaty, we ought, therefore, not to discuss them or seek to ascertain precisely what they mean. It is quite true, as the hon. gentleman has said, that we have no power to alter a single line or word of the treaty. There is no doubt of that, but we are called upon to ratify the treaty; and being called upon to ratify it, although we have voted once on the second reading, the very object of going into committee and taking another reading of the Bill, which the hon. gentleman proposes to ratify the treaty, is to give the House an opportunity of reconsidering that which is done; and if, upon examination, it is found that these provisions of the treaty were not what we for the moment supposed they were, but were of a different character and conceded more than we were willing to concede, this House would be altogether remiss in its duty if it did not avail itself of the opportunity afforded it, at the different stages of the Bill, to reconsider what it had already done. I do not think that the Minister was called upon to commit himself to anything when he was asked to state what was the intent of these sections. We did not ask the hon. gentleman, as a lawyer, to state his views; we did not call upon him, as we might have called upon the Minister of Justice, to state his views. But the hon. gentleman was a party to these negotiations; he knows what propositions or counter-propositions were made; he knows what the protocols contained and the arguments accompanying them; and that being the case, what we supposed the hon. gentleman would do would be to put upon record his view of what was right, and of what was most favorable, if at all defensible, to this country. That, I think, was a legitimate demand,