

examination of the history and value of the Colonial fisheries, including the herring fishery of Newfoundland. Before that Commission the United States' Government contended that the frozen herring fishery in Fortune Bay, Newfoundland, the very fishery now under discussion, was not a fishery but a traffic; that the United States' vessels which went there for herring always took out trading permits from the United States' custom-houses, which no other fishermen did; that the herring were caught by the natives in their nets and sold to the vessels, the captains of which froze the herring after purchase and transported them to market; and that, consequently, this was a trade, a commerce beneficial to the Newfoundlanders, and not to be debited to the United States' account of advantages gained by the Treaty. To this the British Government replied that, whatever the character of the business had been, the Treaty now gave the United States' fishermen the right to catch as well as purchase herring; that the superior character of the United States' vessels, the larger capacity and more efficient instrumentality of the seines used by the United States' fishermen, together with their enterprise and energy, would all induce the United States' fishermen to catch herring for themselves, and thus the Treaty gave certain privileges to the United States' fishermen which inflicted upon the original proprietor a certain amount of loss and damage from this dangerous competition, which, in justice to their interests, required compensation. The exercise of these privileges, therefore, as stated in the British Case, as evidenced in the British testimony, as maintained in the British argument, for which the British Government demanded and received compensation, is the British construction of the extent of the liberty to fish in common, guaranteed by the Treaty.

Mr. Whiteway, then Attorney-General of Newfoundland, and one of the British Counsel before the Commission, said in his argument:—

“And now one word with regard to the winter herring fishery in Fortune Bay. It appears that from forty to fifty United States' vessels proceed there between the months of November and February, taking from thence cargoes of frozen herring of from 500 to 800 or 1,000 barrels. According to the evidence, these herrings have hitherto generally been obtained by purchase. It is hardly possible, then, to conceive that the Americans will continue to buy, possessing, as they now do, the right to catch.”

The British Case states the argument as to the Newfoundland fisheries in the following language:—

“It is asserted, on the part of Her Majesty's Government, that the actual use which may be made of this privilege at the present moment is not so much in question as the actual value of it to those who may, if they will, use it. It is possible, and even probable, that the United States' fishermen may at any moment avail themselves of the privilege of fishing in Newfoundland inshore waters to a much larger extent than they do at present; but even if they should not do so, it would not relieve them from the obligation of making the just payment for a right which they have acquired subject to the condition of making that payment. The case may be not inaptly illustrated by the somewhat analogous one of a tenancy of shooting or fishing privileges; it is not because the tenant fails to exercise the rights, which he has acquired by virtue of his lease, that the proprietor should be debarred from the recovery of his rent.

“There is a marked contrast to the advantage of the United States' citizens between the privilege of access to fisheries the most valuable and productive in the world, and the barren right accorded to the inhabitants of Newfoundland of fishing in the exhausted and preoccupied waters of the United States north of the 39th parallel of north latitude, in which there is no field for lucrative operations, even if British subjects desired to resort to them; and there are strong grounds for believing that year by year, as United States' fishermen resort in greater numbers to the coasts of Newfoundland, for the purpose of procuring bait and supplies, they will become more intimately acquainted with the resources of the inshore fisheries, and their unlimited capacity for extension and development. As a matter of fact, United States' vessels have, since the Washington Treaty came into operation, been successfully engaged in these fisheries; and it is but reasonable to anticipate that, as the advantages to be derived from them become more widely known, larger numbers of United States' fishermen will engage in them.

“A participation by fishermen of the United States in the freedom of these waters must, notwithstanding their wonderfully reproductive capacity, tell materially on the local catch, and while affording to the United States' fishermen a profitable employment, must seriously interfere with local success. The extra amount of bait,