

lightly by my hon. friend the leader of the House and was followed up by the Secretary of State and then dealt with very strongly and very fully yesterday by the hon. gentleman from Halifax. The ground taken was this, that we lost at the time the treaty of Washington was agreed to very important rights which we had there, as my hon. friend from Halifax put it, through the want of information on the part of the gentleman who represented Canada at Washington in 1871. My hon. friend from Halifax read a provision from the treaty of St. Petersburg, the one negotiated in 1825, in which very wide privileges were given to British subjects and which were not reciprocal. Whether going from the interior to the coast or from the ocean to the interior British subjects had the free use of all the rivers flowing through that strip of country for all purposes.

Hon. Mr. SCOTT—As freely as the Russians had.

Hon. Mr. FERGUSON—They had the right to use them freely. When my hon. friend read that treaty he appeared to have forgotten that a very serious war broke out between Great Britain and Russia in the fifties, the Crimean war, and surely hon. gentlemen know that whenever a state of war exists between two countries all existing treaties are abrogated.

Hon. Mr. MILLS—No.

Hon. Mr. FERGUSON—My hon. friend the leader of the House shakes his head. If my hon. friend will take the trouble of looking at the treaty of 1859, he will find that that position is acknowledged from the fact that the provision in the treaty of 1825 is revived and I think the diplomats who negotiated the treaty of 1859 for Great Britain and Russia would not have gone to the trouble of renewing it as they did in order to get back on the old position as far as it was possible, if these treaties had not been abrogated by the war.

Hon. Mr. MILLS—My hon. friend, if he will allow me, will find this to be the case, that while treaties are abrogated by war, treaties settling international rights, treaties of boundaries, treaties of cession of territory, treaties giving absolute right of navigation

—the rights so defined are not affected by war, are not so even affected by the abrogation of the treaty.

Hon. Mr. FERGUSON—That is my hon. friend's view.

Hon. Mr. MILLS—That is the rule of law.

Hon. Mr. FERGUSON—I am not a lawyer, but lawyers themselves will have to settle such questions as this by reference to precedent. It is not a matter of law merely, it is a matter of precedent and constitutional law; and before I leave the question I will say that my hon. friend may read a little more upon this question, and he may perhaps be satisfied before he has done with it that the rule of law is not at all so firm as he puts it before this House. I know my hon. friend is an authority on these questions, but we know that the best of doctors will err, and patients will die; and this is a subject upon which my hon. friend may, before he is through, find that he is not altogether on so solid ground as he thinks he is. In 1859 it would seem to be settled at all events by the diplomats who represented Great Britain and Russia, that the treaty of 1825 did cease with a state of war, for if not, what was the necessity of their getting together and solemnly re-enacting this provision at that time?

Hon. Mr. MILLS—It is not.

Hon. Mr. FERGUSON—My hon. friend says it is not; and his opinion is entitled to more weight than mine, but I will undertake to say that his opinion is not of greater weight than that of the diplomats who settled this matter in 1859, and the fact that they found it necessary to revive the provision of that old treaty by solemn treaty again at St. Petersburg, shows that they held to my contention, that the state of war between two countries did abrogate that treaty. Now, I have the clause in the treaty of Washington here, and my hon. friend from Halifax said that Sir John Macdonald, the British commissioner, did not know of the existence of these provisions in the two treaties of St. Petersburg in 1825 and 1859. If they will turn to protocol 26 of the negotiations which