

See also affidavits of the United States' Captains.

6. That, in consequence of this violence, all the vessels abandoned the fishing grounds, some without cargoes, some with very small cargoes, purchased from the natives, and their voyages were a loss to their owners.

7. That the seining was conducted at a distance from any land or fishing privilege, or the occupation of any British subject. (See affidavits of Willard G. Rode, Charles Doyle, and Michael B. Murray.)

8. That none of the United States' vessels made any further attempts to fish, but three or four, which were delayed in the neighbourhood, purchased small supplies of herring. (See British depositions of John Saunders and Silas Fudge, wherein is stated that the United States' vessels only remained a few days, and that after January 6th no fish came into the harbour.) All the United States' affidavits show that the United States' vessels were afraid to use their seines after this, and that they left almost immediately, most of them coming home in ballast.

The provisions of the Treaty of Washington (1871), by which the right to prosecute this fishery was secured to the citizens of the United States, are very simple and very explicit.

The language of the Treaty is as follows:—

“XVIII. It is agreed by the High Contracting Parties that in addition to the liberties secured to the United States' fishermen by the Convention between the United States and Great Britain, signed at London on the 20th day of October, 1818, of taking, curing, and drying fish on certain coasts of the British North American Colonies, therein defined, the inhabitants of the United States shall have, in common with the subjects of Her Britannic Majesty, the liberty, for the term of years mentioned in Article XXXIII of this Treaty, to take fish of every kind, except shell-fish, on the sea-coast and shores, and in the bays, harbours, and creeks of the provinces of Quebec, &c.”

“XXXII. It is further agreed that the provisions and stipulations of Articles XVIII to XXV of this Treaty, inclusive, shall extend to the Colony of Newfoundland, so far as they are applicable.”

Title 27, chapter 102 of the Consolidated Acts of Newfoundland provides:—

Section 1. That no person shall take herring on the coast of Newfoundland, by a seine or other such contrivance, at any time between the 20th day of October and the 12th day of April in any year, or at any time use a seine except by way of shooting and forthwith hauling the same.

Sec. 2. That no person shall, at any time between the 20th day of December and the 1st day of April in any year, catch or take herring with seine of less than 2½ inches mesh, &c.

Sec. 4. No person shall, between the 20th day of April and the 20th day of October in any year, haul, catch, or take herring or other bait, for exportation, within one mile measured by the shore or across the water of any settlement situate between Cape Chapeau Rouge and Point Emajer, near Cape Ray.

The Act of 1876 provides that “no person shall, between the hours of 12 o'clock on Saturday night and 12 o'clock on Sunday night, haul or take any herring, caplin, or squid with net, seine, bunts, or any such contrivance for the purpose of such hauling or taking.”

It seems scarcely necessary to do more than place the provisions of the Treaty and the provisions of these laws in contrast, and apply the principle, so precisely and justly announced by Lord Salisbury as self-evident, “That British sovereignty, as regards these waters, is limited in its scope by the engagements of the Treaty of Washington, which cannot be modified or affected by any municipal legislation.” For it will not be denied that the Treaty privilege of “taking fish of every kind, except shell-fish, on the sea coast and shores, in the bays, harbours, and creeks” of Newfoundland is both seriously “modified” and injuriously affected by “municipal legislation,” which closes such fishery absolutely for seven months of the year, prescribes a special method of exercise, forbids exportation for five months, and, in certain localities, absolutely limits the three-mile area which it was the express purpose of the Treaty to open.

But this is not all. When the Treaty of 1871 was negotiated, the British Government contended that the privilege extended to United States' fishermen of free fishing within the three-mile territorial limit was so much more valuable than the equivalent offered in the Treaty that a money compensation should be added to equalize the exchange. The Halifax Commission was appointed for the special purpose of determining that compensation, and, in order to do so, instituted an exhaustive