

# THE CONCEPTION-BAY MAN

FROM THE LAST OF THE ABORIGINES.

The day once more is on the wane,  
Bravura gazes on the plain;  
And far beyond, from mountain's crest,  
Perceives the boundless ocean's breast;  
And resting there an hour alone,  
The scene, the season, all his own—  
Thinks o'er the past with anguish deep,  
And for the first time faint would weep:  
Just such an hour have thousands passed,  
Whose days have dwindled to the last,  
They could not know, nor care'd to tell,  
It was the scene, it was the hour,  
To yield to memory's fancy's power;  
And mingling upon by-gone days,  
The phantoms of the past to raise,—  
To hear, or dream you hear, around,  
From fairy plot, or haunted ground,  
A lullaby of childhood's time  
Or plaintive strain of youthful prime.  
Descending now the mountain's side,  
And fast approaching ocean's tide,  
Bravura swiftly onward press'd,  
Reliev'd by action more than rest.  
He gains at length the home, he thought,  
The same from whence the child was brought,  
With Indian freedom opens the door,  
Reveals, by signs, that distant moor  
Conceal'd the child they long had wept,  
And he would shew them where it slept;  
Alas! for him, those men had bound  
Themselves by oath, wherever found,  
An Indian red, beneath the sky,  
That one or more, if there, should die.—

## DEATH SONG.

The spirit of life's early morn'  
Now heralds forth the coming night;  
In misty shroud my father's form  
Descends—as in his hour of might—  
The foeman to defy!  
He breathes upon my burning brow,  
I hear his war-cry even now,  
To teach me how to die:  
For the departed best can tell  
The anguish of life's last farewell!

Oh! were it but on battle plain,  
Where warrior true may strike a blow;  
And, ere he perish'd, bravely gain  
One trophy from the dastard foe:—  
Then freely would he yield  
The life that had been his full long;  
But not for him the battle song,  
The glory of the field:  
Unknown, unhonor'd, he must die;  
By Christians slain, with coward's lie.

But let me, ere my final fall,  
On early scene a moment dwell,  
The dim and distant past recall,  
When thou, my father, fought and fell;  
All lonely did'st thou go,  
A fierce marauding band to brave,  
Thy captive wife to shield or save,  
From slavery and woe,—  
With battle blade and tow in hand,  
And harmless branch alone in hand.

Emblem of peace, display'd in vain,  
And scot'd at in an evil hour:  
For foemen press'd the icy plain,  
Who yielded not to pity's power  
Tho' thou did'st reason mild;  
And plead with pathos wild and high,  
That they would let the father die,  
And mother join her child,—  
The treacherous answer thou did'st feel—  
Not hear—the base assassin's steel!

Yes! there, upon that frozen lake,  
The sanguinary contest dire,  
Was witness'd by the wife, whose fate  
Depended on one hero's fire,—  
Nor seem'd the struggle vain;  
Ere rais'd on high thy battle brand,  
The women fell beneath thy hand,  
And strew'd the gelid plain,—  
Until they sped the fatal ball,  
Heroic chief, thou didst not fall!

And thine, since then, yon misty form,  
Which tading on the captive's view,  
Now mingles with the rusting storm,  
And beckons that he may pursue,  
And with thy spirit dwell;  
Even so,—the murderers wait around,  
The wolf's, the ravens' cries resound;  
Then life and love, farewell!  
Now let your direct vengeance flow;  
Christians, I'm ready,—strike the blow!

Bravura ceas'd,— he died and they  
Destroy'd their infant's chance that day.  
Oh! if I knew where sleeps that brave  
And faithful Indian, o'er his grave  
A stone of adamant should tell  
To latest ages how he fell:  
"That from deep forest, dang'rous wild,  
"Or from an unknown early grave,  
"Indian would save a Christian child,  
"And Christians slew who wish'd to save!"

\* The particulars of this dreadful contest were taken (almost verbatim) from a published account of the capture of Mary Merch, by an eye witness.

From the Times.

The Committee (of the Commercial Society) requested Mr. Robinson to read to them his opinions *in extenso*, on the Newfoundland fishery question, and having heard the same, they desired that 300 copies of it should be forthwith printed and circulated throughout the Colony and sent to England. They also expressed the opinion that a copy should without delay be transmitted to the Secretary of State, accompanied by a letter from the Chamber of Commerce declaring that the Trade did not concur in the view that the French had any exclusive right whatever to other than a concurrent property in cod.

The opinion of Mr. ROBINSON on this vitally important point is as follows, and will no doubt be received as one of the plainest expositions of our fishing relations with French subjects that has yet appeared most conclusively fixing the property of the British subjects in Newfoundland in an undisturbable position, if adopted by the home government:—

I am of opinion that the only fishing rights the subjects of France are legally entitled to in Newfoundland are (1) the liberty to fish for Cod in common, or concurrently with British subjects on that part of the coast between Cape Ray and Cape John, in the enjoyment of which privilege they are not to be interrupted by the competition of—or, as the word is subsequently explained—by "being molested by," British subjects;—(2) the liberty of drying such fish within the limits aforesaid;—(3) the right to build scaffolds, stages and huts "necessary and usual for drying fish," and to repair their fishing vessels.

I do not think the French are entitled to an exclusive right to the Cod-fishery within those limits, nor to any right whatever to carry on, or interfere with, Salmon, Herring, Seal net, Mackerel or other fishery than Codfishery, for the following reasons—

The language of the Treaties between England and France under which alone the rights of the latter nation are derived does, on any or purpose to convey, any exclusive right, the term "exclusive" or any synonyme is not used. The sovereignty of the Island being in England, she concedes to France "the liberty to fish, and dry that fish on the shore; promising not to interrupt French subjects in the enjoyment of such permissive rights, but stipulating that the method of carrying on the 'fishery' which had at all times been acknowledged and used shall not be deviated from by either party thereby providing for the presence of both parties in the prosecution of a common pursuit.

Vattel lays it down that "rights ceded by the proprietor of anything are considered as ceded without prejudice to the other rights that belong to him, and only so far as they are consistent with these latter, unless an express declaration, or the nature of the right, determine it otherwise." "I, as proprietor, have an essential right over the river itself, you have only a right to make use of it, a right which is merely accessory to, and dependant on, mine." (Vattel p. 126) And Chief Justice Eyre declares that "Treaties are to be construed by the same rules that apply to any contract in private life." (Mariot vs. Wilson 1 B. & P. 436)

SIR JOHN DODSON, SIR JOHN CAMPBELL now Lord Chief Justice of England, and Sir R. ROLF now Lord Chancellor of England gave their official opinion, as the law advisers of the Crown, in 1837, respecting French pretensions, that "if there be really good room, within the limits of the district in question, for the fishermen of both nations to fish, without interfering with each other, we do not think that this country would be bound to prevent her subjects fishing there."

Lord PALMERSTON in his note to Count SEBASTIANI under date 10th July, 1833, declares that "the British Government had never understood the declaration of 1733 (accompanying the Treaty of Versailles) to have had for its object to deprive British subjects of the right to participate with the French in taking fish at sea off that shore provided they did so without interrupting the French cod-fishery," and that in no public document, Act of Parliament, Admiralty Instructions, or Colonial Proclamation, is the right of French subjects to an exclusive fishery recognized; that "if an exclusive right had been intended, the terms used for defining such right would assuredly have been more ample and specific; for in no other similar instrument which has ever come under the knowledge of the British Government, is so important a concession as an exclusive privilege of this description announced in terms so loose and indefinite; adding—"that when negotiators have intended to grant exclusive rights, it has been the inviolable practice to convey such rights in direct, unequivocal and comprehensive terms, so as to prevent the possibility of future disputes."

The Earl of DERBY and the Earl of ABERDEEN in 1843, both enunciated similar opinions, and instructed the Governor of Newfoundland to conform himself thereto.

Although British Subjects have of late years found it more convenient to fish uninterruptedly on Labrador, and have therefore discontinued the enjoyment of their said concurrent right in some parts of the so-called French shore, they do not thereby lose such right for it is laid down that "the right of common fishery is one of those

rights to which we have an inprescriptible title, that it is not lost by discontinuance, and can be exercised whenever we please."—(Vattel)

The usage under the Treaties—or, as the law designates it—the "*contemporanea expositio*" which is an important element in ascertaining the true construction of any document strongly supports my view, since from the earliest Treaty between England and France on the subject of the Newfoundland fisheries down to the present period, great numbers of British subjects have carried on, and still do prosecute, Cod, Salmon, Herring and Seal fisheries on the French Shore; their fishing posts and settlements have descended from father to son, for many generations, and have been, and are, the objects of purchase and sale and bequest in the same manner as any other lands or property in the Colony.

Secondly—The grounds upon which I rely for sustaining the opinion that the French concurrent rights is confined to the *Cod Fishery*, and that they have no privilege to carry on or interfere with, any others are, in my judgment, equally conclusive; although, some of them, being derived from the local meaning which the terms used in the Treaty bear, are possibly, not known to Lawyers in England, and therefore would not receive from them due consideration. Such words are, nevertheless, all-important, because every contract of Treaty is to be understood *secundum subjectam materiam*, and the language used is to be received in the sense which common usage has affixed to it. Now in Newfoundland the terms "fish" and "the fishery," possess a local and technical meaning, so universally understood that every one in the Colony knows them to apply solely to "codfish."

If you ask a fisherman if he have any fish, he will say no, he has only a few salmon, or herring; if you inquire of a merchant whether he will ship any fish he will say no, but will ship herrings or salmon; and conformable to this universal understanding a solemn decision of the supreme Court has been given, ruling that the word "fish" in a Policy of Insurance in Newfoundland applies to codfish, and excludes salmon, herring, or other fish except cod. The term "fish" in this country is a technical term, known as such to French and British, and it is to be construed in these Treaties by the well defined rule of law applicable to the case. Then, in the Treaties the privilege of the French to land is solely for the purpose of "drying" the fish they catch and as a general rule no fish in this Colony is cured by drying except codfish. It must not be overlooked that "the fishery" is in the singular not plural number; and the article used is the definite one. Again, the fishery is to be carried on according to the method acknowledged in 1713, at which period it is alleged that whilst the codfishery was concurrently exercised, neither salmon, seal, herring, or mackerel, were taken here by the French. Again; Great Britain entered into a Fishery Treaty respecting Newfoundland, with the United States, in 1783, the very year, and contemporaneously with that made with France at Versailles, and whilst the latter had only liberty to "take and dry fish" conceded to her, America had the "liberty of taking fish of every kind, in such parts of the coast as British fishermen shall use," granted to it. So, in 1818 England, again using similar language, conferred upon the Americans the liberty to take fish of every kind between Cape Ray and Quirpon (being part of the so-called French Shore); This language deliberately used in two Treaties with America, is surely too marked to have been accidental, and shews what words would have been used in the Treaty with France if it had been intended that that Nation should enjoy equal privileges with those granted to America.

And the fact of Great Britain granting to America, and America exercising the right of fishery along part of the French Shore furnishes almost conclusive evidence that England possessed the privileges she conceded, and therefore had not previously conveyed all her rights therein to the French.

And finally, in 1852, M. DEBON, the commissioner authorized by France to make proposals to England for the settlement of the conflicting rights of British and French fishermen on the coasts of Newfoundland, speaking of this French right to "fish and cure fish," uses the word "*morue*" alone, which signifies nothing but codfish.

On this part of the case the usage, or *contemporanea expositio*, is equally strong as on the other, for until the last 15 or 20 years, no pretensions were set up by the French to any right whatever to take salmon, herring, mackerel or seal, whilst those fisheries were at all times prosecuted by British subjects along the said French Shore.

In conclusion I would observe, as applicable to both points of the argument, that Lord LOUGHBOROUGH was of opinion that the "Sovereign of England does not possess the legal power, without Parliament, to cede any part of the dominions of the Crown, lawfully in the possession of subjects under the allegiance and peace of the King."—"The Crown cannot take away the personal rights or property of a natural born subject, or deprive him of privileges which by common law he has a right to enjoy." (2 ch. Op. 448.) The crown, therefore, could no more

give to the French the right of disturbing the concurrent fishery in the enjoyment of his subjects in England in the enjoyment of his jurisdictional domain.

As the maxims of law are—"That the Queen can do no wrong," and that "*omnia presumuntur rite acta*," the inference is that the interpretation given by those who take the French view of the Treaties, and which would involve a violation of law, is incorrect.

RYAN ROBINSON.

St. John's Newfoundland }  
17th April, 1857.

## TREATY OF UTRECHT, 1713—ARTICLE 13.

"The Island called Newfoundland, with the adjacent Islands, from this time being of right wholly to Great Britain."—"Nor shall the Most Christian King, His Heirs and Successors, or any of their subjects at any time hereafter, lay claim to any right to the said Island and islands, or to any part of them."—"Moreover it shall not be lawful for the subjects of France to erect any Buildings there, besides Stages made of board and Huts necessary and usual for drying Fish; but it shall be allowed to the subjects of France to catch Fish and dry them on land, in that part only, and in no other besides that of the said Island of Newfoundland, from Cape Bonavista round a Point Riche."

## TREATY OF PARIS, 1763—ARTICLE 5.

"The subjects of France shall have the liberty of fishing and drying fish on the part of the Coast of Newfoundland such as is specified in the 13th Art. of the Treaty of Utrecht." "Great Britain cedes St. Pierre and Miquelon to France to serve as shelter."

## TREATY OF VERSAILLES, 1763.

"The French fishermen shall enjoy the Fishery which is assigned to them by the Treaty of Utrecht," except that the limits are varied and made to be from "Cape John to Cape Ray."

## DECLARATION OF HIS BRITANNIC MAJESTY ACCOMPANYING TREATY 1763.

"His Britannic Majesty will take the most positive measures for preventing His subjects from interrupting in any manner, by their competition, the Fishery of the French during the temporary exercise of it which is granted to them upon the Coast of the Island of Newfoundland; and he will, for this purpose, cause the fixed settlements which shall be formed here to be removed. His Britannic Majesty will give orders that the French fishermen be not accommodated in cutting the wood necessary for the repair of their Scaffolds, Huts and Fishing Vessels."

"The 13th Art. of the Treaty of Utrecht, and the method of carrying on the Fishery which has at all times been acknowledged, shall be the plan upon which the Fishery shall be carried on there; it shall not be deviated from by either party—the French fishermen building their Scaffolds—confining themselves to the repair of their Fishing Vessels—and not wintering there. The subjects of His Britannic Majesty at their part, not molesting in any manner the French fishermen during their fishery nor injuring their Scaffolds during their absence."

## TREATY OF PARIS, 1814—ARTICLE 13.

"The French right of fishery upon the Great Bank of Newfoundland, and upon the Coast on the Island of that name, shall be replaced upon the footing in which it stood in 1792."

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