

of the world: they cannot be excluded from the right to buy and take bait out of the harbors of Newfoundland, unless the rest of the world is also so excluded. However, this is of remote consequence, and perhaps of no consequence, to the subject under discussion.

The material thing is this: Under the Treaty of Washington we cannot prevent such legislation. The Treaty of Washington confers upon us no right whatever to buy anything in Her Majesty's Dominions. The Treaty of Washington is a treaty relating to fishing and to nothing else. I am aware of the ground taken in the reply filed by the British Agent. It is this:—

"Previous to the date of the Treaty of Washington, American fishermen were, by the 1st Article of the Convention of 1818 admitted to enter the bays and harbors of His Britannic Majesty's Dominions in America for the purpose of shelter and of purchasing wood and of obtaining water and for no other purpose whatever."

By the terms of Article 18 of the Treaty of Washington, United States fishermen were granted "permission to land upon the said coasts and shores and islands, and also upon the Magdalen Islands for the purpose of drying their nets and curing their fish."

The words, "*for no other purpose whatever*," are studiously omitted by the framers of the last named Treaty, and the privilege, in common with the subjects of Her Britannic Majesty, to take fish and to land for fishing purposes, clearly includes the liberty to purchase bait and supplies, trans-ship cargoes, etc., for which Her Majesty's Government contend it has a right to claim compensation."

Well, as the quotation stands, to my mind it would be a *non sequitur*, but when you turn to the 1st Article of the Convention of 1818, you find that under it the conclusion quoted is a renunciation accompanied by two provisos:—

"And the United States hereby renounce forever any liberty heretofore enjoyed or claimed by the inhabitants thereof to take, dry or cure fish on or within three marine miles of any of the coasts, bays, creeks or harbors of His Britannic Majesty's dominions in America not included in the above mentioned limits."

This was a renunciation of the right to fish inshore, and it is followed by this further proviso:—

"Provided, however, that the American fishermen shall be admitted to enter such bays or harbors for the purpose of shelter and of repairing damages therein, of purchasing wood, and of obtaining water, and for no other purpose whatever."

This coupled the renunciation of the inshore fishery with the proviso, that there may be resort to British waters for shelter and repairs, and for obtaining wood and water. Then it goes on to say:—

"But they shall be under such restrictions as may be necessary to prevent their taking, drying or curing fish therein, or in any other manner whatever abusing the privileges hereby reserved to them."

Whenever American fishermen seek British ports for shelter, or go there to repair damages to their vessels, or for wood and water, they shall be under restrictions to prevent them from taking or curing fish therein. Now it was to remove those restrictions which prevented them from taking, drying and curing fish, that the language framed in the 18th Article of the Treaty of Washington was adopted, which gives the citizens of the United States liberty to take fish and permission to land upon the said coasts and islands, and also on the Magdalen Islands for the purpose of drying nets and curing fish. You will observe that the United States renounced the right to the inshore fisheries in 1818, but these are regained by the provisions of the 18th Article of the Treaty of Washington. The United States retained the right of resorting to British ports for shelter, repairs and purchasing wood and water, subject to such regulations as would prevent their citizens drying fish on the shore; and the object of this Article is to add to the inshore fisheries the right to dry nets and cure fish on the shore, and this super-added right is limited to parts of the coast where it does not interfere with private property or the similar rights of British fishermen. Now, what argument can be constructed from provisions like these to infer the creation of an affirmative commercial privilege or the right to purchase supplies and trans-ship cargoes, I am at a loss to imagine. It seems to me that if I were required to maintain that under the right conceded to dry nets and cure fish on unoccupied and unowned shores and coasts, taking care not to interfere with British fishermen, couched in language like that, the United States had obtained a right to buy what the policy of the British Government might forbid to be sold, I should not have one word to say for myself. I cannot conceive how a commercial privilege can be founded upon that language, or how you can construct an argument upon that language in support of its existence. But, gentlemen, this is not to be decided by the strict language of the Treaty alone. We know very well what the views of Great Britain on such subjects are, and we know what the policy of Her Majesty's Government was just before this Treaty was entered into. On the 16th of February, 1871, Earl Kimberley wrote to Lord Lisgar as follows:—

"The exclusion of American fishermen from resorting to Canadian ports, except for the purpose of shelter, and of repairing damages therein, purchasing wood and of obtaining water might be warranted by the letter of the Treaty of 1818, and by the terms of the Imperial Act 59, Geo. III., Chap. 38, but Her Majesty's Government feel bound to state, that it seems to them an extreme measure inconsistent with the general policy of the empire, and they are disposed to concede this point to the United States Government under such restrictions as may be necessary to prevent smuggling, and to guard against any substantial invasion of the exclusive rights of fishing, which may be reserved to British subjects."

A month later, on the 17th of March, 1871, another letter from Earl Kimberley to Lord Lisgar gives to the Colonial Authorities this admonition:—

"I think it right however to add, that the responsibility of determining what is the true construction of a Treaty made by Her Majesty with any foreign power, must remain with Her Majesty's Government, and that the degree to which this country would make itself a party to the strict enforcement of Treaty Rights may depend not only on the liberal construction of the Treaty, but on the moderation and reasonableness with which those rights are asserted."

In such a spirit, and with these views of commercial policy, the Treaty of Washington was negotiated; and can one believe that it was intended to have a valuation by arbitration of the mutual privileges of international commerce? Gentlemen, suppose that the Canadian representative on the Joint High Commission, when the 18th Article was under consideration, had proposed to amend it by adding in language something like this:—And the said Commissioners shall further award such compensation as, in their judgment, the United States ought to pay for its citizens being allowed to buy ice, and herring, squid and caplin, of Canadians and Newfoundlanders, and for the further privilege of being allowed to furnish them with flour and kerosene oil and other articles of merchandise in exchange for fish and ice, and for the further privilege of being allowed to sell them small codfish; suppose I say that an amendment in these or similar words, had been suggested to the members of the High Joint Commission; fancy the air of well-bred surprise with which it would have been received by Earl Grey and Professor Bernard and others. Imagine England—free-trade England—which forced commercial intercourse upon China with cannon, asking for an arbitration to determine on what price England, that lives by selling, will trade with the inhabitants of other countries.