

And in the recapitulation at the close of the "Answer," the United States maintain that the various incidental and reciprocal advantages of the Treaty, such as the privileges of trafficking and purchasing bait and other supplies, are not a subject of compensation, because the Treaty of Washington confers no such rights on the inhabitants of the United States, who now enjoy them merely by sufferance, and who can at any time be deprived of them by the enforcement of existing laws or the re-enactment of former oppressive statutes." We say first, that you have no jurisdiction over such matters as a subject of compensation, because the Treaty confers none upon you and nothing of the kind is denominated in the bond. We say secondly, that we have no vested rights under the Treaty, regarding commercial intercourse of this description; and that as regards such intercourse, the inhabitants of the United States stand in the same relation to the subjects of Her Majesty as they did before this Treaty was negotiated. These two points though running somewhat together are nevertheless distinct. And we base our contention upon the plain language of the Treaty, in which not one word can be found relating to the right to buy or sell to traffic or transfer cargoes:—the whole language is limited to the privilege of the inshore fisheries, both in Article 18, where the privileges are conferred and in Article 22, which provides for the appointment of this Commission. Of course, it is not necessary for me to call your attention to the fact that Commissioners, arbitrators, referees and every other description of tribunals, are limited in their powers by the terms of the instrument under which they act; and that if they include in any award, a thing upon which they are not authorized to decide, the entire award is thereby vitiated; and their whole action becomes *ultra vires*, and void. I cannot anticipate that there will be any denial of this plain proposition.

Now, the Commissioners will be pleased to observe, and our friends on the other side to take notice, that the United States utterly repudiate any obligation either to make compensation or pay damages for any of these matters; that they maintain, as they have from the first, that the question submitted here is solely and exclusively the adjustment of equivalents relating to the inshore fisheries; and that the United States will not be under the slightest obligation to submit to an award including anything more than these things. Turning to the Treaty again, we find that there are commercial articles in it, but these are not articles with which this tribunal is concerned. From Article 26th to the 31st, inclusive, various commercial privileges are given to the citizens of the two countries. These articles relate to the navigation of the lakes, rivers and canals, to the conveyance of goods transhipped in bond free of duty, to the carrying trade; and as to them the Treaty of Washington is a Reciprocity Treaty; as to these matters that which is conceded on the one side is an equivalent for that which is conceded on the other; and the mutual concessions are the sole equivalents for each other. Indeed, who ever heard of a treaty of commercial reciprocity where a money payment, to be ascertained by arbitration, was to balance concessions granted by the one side to the other. It is enough to say that in these commercial clauses of the Treaty, as in all other commercial arrangements that have ever been made between the two countries, there is no stipulation for compensation. It may be well to enquire on what footing the commercial relations between the United States and Great Britain do rest. How have they stood for more than a generation past—for nearly a hundred years? My friend Mr. Trescot has investigated the Treaties, and the result, as I understand, it is this—that the Commercial Convention of 1815, originally entered into for four years, was extended during ten years more by the Convention of 1818, and extended again indefinitely in 1827. The last clause of the second Article of the Convention of 1815, after providing as to the duties to be levied on the products of each country, &c., and as to commercial intercourse between the United States and Her Majesty's subjects in Europe, states:—

"The intercourse between the United States and His Britannic Majesty's possessions in the West Indies, and on the Continent of North America, shall not be affected by any of the provisions of this article, but each party shall remain in the complete possession of its rights, with respect to such an intercourse."

Thus the commercial intercourse between the two countries is provided for by the Treaty of 1815, which as I understand it, under its various extensions, is in force to-day. It refers back to former and pre-existing rights, to find which it is necessary to go still further back—to the Treaty of 1794 commonly known as Jay's Treaty. Turning to that we find that the third Article deals with the special relations between the United States and the British North American Colonies. It might be supposed,—and the argument perhaps might be correct, though I do not say, whether this would be the case or not—that the war of 1812 abrogated the provisions of the Treaty of 1794. Were it not that the Commercial Convention of 1815 referring to previous existing rights, quite manifestly, I think, treats as still in force the provisions of this article of the Treaty of 1794. I will not read the whole article, but it stipulates "that all goods and merchandise whose importation into His Majesty's said territories in America, shall not be entirely prohibited, may freely and for the purposes of Commerce be carried into the same in the manner aforesaid by the citizens of the United States, and that such goods and merchandise shall be subject to no higher or other duties than are payable by His Majesty's subjects, on importing the same into the said territories; and in like manner, that the goods and merchandise whose importation into the United States shall not be wholly prohibited, may freely for the purposes of Commerce be carried into the same by His Majesty's subjects, and that such goods and merchandise shall be subject to no higher or other duties than are payable by the citizens of the United States on importing the same in American vessels into the Atlantic ports of the said States;"—and, mark this, "that all goods not prohibited from being exported from the said territories respectively, may in like manner, be carried out of the same by the two parties respectively, on paying duty as aforesaid," that is to say, as I understand it, the inhabitants of each country going for the purposes of Commerce to the other country, may export its goods, so long as their exportation is not wholly prohibited, upon the same terms as to export duties as would be imposed on Her Majesty's subjects. Then the article after some other paragraphs closes thus:—"As this article is intended to render, in a great degree, the local advantages of each party, common to both, and thereby to promote a disposition favorable to friendship and good neighborhood, it is agreed that the respective Governments will mutually promote this amicable intercourse, by causing speedy and impartial justice to be done, and necessary protection to be extended to all who may be concerned therein."

Gentlemen,—Such I understand to be the footing on which commercial intercourse stands between the two countries to-day, if there is any Treaty that governs commerce between the British North American Provinces and the United States. And if this is not the case, the relations between the two countries stand upon that comity and commercial freedom which exist between all civilized countries. The effect of these provisions, to employ an illustration, is this:—If the Government of Newfoundland chooses to prohibit its own people from exporting fish for bait, in which export, it is testified, they carry on a trade of £40,000 or £50,000 annually with St. Pierre, it can also, by the same law, prohibit United States citizens from carrying away such articles, but not otherwise. As I understand the effect of this commercial clause, whatever may be exported from the British Provinces by anybody—by their own citizens, by Frenchmen, or by citizens of other nations at peace with them, may also be exported by citizens of the United States on the same terms as to export duty, that apply to the rest of the world. If, then, Newfoundland sees fit to conclude that the sale of bait fish—caplin, or herring, or squid, and ice, is injurious to its interests, and therefore forbid its export altogether, that prohibition may extend to the citizens of the United States; but the citizens of the United States have there the same privileges with the rest