

"It is essential to remark that the fisheries belong, and have always belonged, to the Crown of Great Britain, and that it was as subjects of the Crown the Americans enjoyed them—consequently, from the moment when they shook off the English yoke and declared themselves independent, they broke the community which existed between them and the metropolis; and voluntarily relinquished all the advantages which they derived from that community, just as they despoiled England of all the advantages she derived from their union with her." * * *

"It should therefore, be well established that from the moment when the colonies published their Declaration of Independence they have ceased to own a share in the fisheries, because they have forfeited by their own act the qualification which entitled them to such a share; that consequently they can offer to the court of London neither title nor actual possession; from this comes another result, viz., that the Americans having no right to the fishing we can give them no guarantee on that head." (*III de Circourt*, pp. 276, 277).

Lord Bathurst's language to Mr. Adams was: "when the Americans by their separation from Great Britain became released from the duties, they became excluded also from the privileges of British subjects."

So late as February 5th, 1887, Mr. Manning, Secretary to the Treasury, said, in reference even to the right to enter the bays and harbors of Canada for shelter and to make repairs, to purchase wood and to obtain water: "As colonists we had those rights, but as colonists we lost them by just rebellion." *49th Congress, 2nd Session, No. 4087.*

The fisheries on the banks of Newfoundland and elsewhere in the open sea, were the common property of all, and were so treated by those who negotiated the Treaty by which independence was recognized. The Treaty of 1783 treats that as a "right," as contradistinguished from a "liberty." Notwithstanding that no such right could be claimed on behalf of the United States in respect of the coast fisheries, Article III of the Treaty conceded the "liberty" of taking fish there as previously.

The whole article is as follows:—

"It is agreed that the people of the United States shall continue to enjoy unmolested the *right* to take fish of every kind on the Grand Bank and all the other banks of Newfoundland, also in the Gulf of St. Lawrence, and at all other places in the sea, where the inhabitants of both countries used at any time heretofore to fish.

"And also that the inhabitants of the United States shall have *liberty* to take fish of every kind on such part of the coast of Newfoundland as British fishermen shall use, (but not to dry or cure the same on that island), and also on the coasts, bays, and creeks of all other of His Britannic Majesty's dominions in America; and that the American fishermen shall have *liberty* to dry and cure fish in any of the unsettled bays, harbors, and creeks of Nova Scotia, Magdalen Islands, and Labrador, so long as the same shall remain unsettled; but so soon as the same or either of them shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such settlements without a previous agreement for that purpose with the inhabitants, proprietors, or possessors of the land."

It may be important to bear in mind the principle on which the people of the United States ceased to have a right to the enjoyment of the coast fisheries and also the fact that that enjoyment was, in 1783, conceded to them as a liberty; for it is frequently claimed, on the part of the United States, that this article of the Treaty was simply a recognition of a pre-existing right, and one which the people of the States retained when they passed from their former colonial condition; Mr. John Quincy Adams maintained that the Treaty was simply a *partition*