the part of the U.S. any addition was

acceptable, and it was not their busi-

ness to look a gift horse in the mouth.

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# The Fishery Question.

## Light From History on the Dispute--Important Letter From W. G. Gosling, Esq.

Labrador in ever increasing numbers, until in 1809 it was stated that 1,500 ways pursued the same route, going plaints were made of their aggresscoast also they are continually complained of, but in regard to Newfoundland there is complete silence.

fishermen, nor do United States auland waters by their fishery vessels. Petitions from the merchants of Newfoundland in 1812, and from the Legislature of Nova Scotia in 1816, make no complaint in regard to any fishery carried on by U.S. fishermen in Newfoundland. A witness before a House of Commons Committee in 1817 stated that prior to 1812 U. S. vessels were always kept by English cruisers at a suitable distance off the coast of

Newfoundland. It is therefore indisputably the fac that U. S. fishermen recognized thei restricted rights in regard to !he coasts of Newfoundland. Chief Justice Rees, of Newfoundland, writing a few years after the Treaty of 1783, says "That revolution has made ar alteration in the value and import ance of Newfoundland, which seems to me never to have been sufficiently considered. It appears to me that since the peace of 1783. Newfoundland has been more completely her own that it has been a more genuine Bri tish fishery and of more value to the Mother Country than it was ever be fore. There is no longer the compe tition and interloping trade of the New Englanders so much complained of heretofore by the merchants."

The war of 1812 terminated all fishery operations by U. S. fishermen in

British-American waters, and when After peace was thus declared, the peace was proclaimed and negotifisheries were prosecuted in accord- ations for a treaty entered into, Great ance with the provisions of the treaty. Britain held that it had also termin-United States fishermen flocked to the ated all liberties of fishing, which would on no account be renewed. On the part of the United States it was vessels visited that coast. They al- also equally firmly declared that their fishing rights were inalienable and through the Gut of Canso, round by should not be brought into the dis-Bay Chaleur to the Magdalen Islands cussion. They held that the Treaty and to Labrador. They nearly suc- of 1783 was a partition of mutually ceeded in crowding British fishermen owned property, and that their title off that coast, and numerous com- to the fisheries was the same as their title to New York; a contention which ive conduct. On the Nova Scotia has always been ridiculed by English | the fisheries were carried on close lawvers.

The Treaty of Ghent, 1814, does not therefore refer to the fisheries. Im-The fishery reports of English naval | mediately afterward U. S. fishermen captains contain no reference to U.S. began to invade British-American waters and were as promptly seized thorities claim any use of Newfound- | by British cruisers. It was soon realized that if peace was to be maintained some compromise must be a rived at. Negotiations for a new

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of London, 1818. During the negotiations, 1816-1818, temporary liberty to

The experiences of past years are again evidenced in the Treaty. The Legislature of Nova Scotia had proested so loudly against the use of and a clause was inserted whereby the U.S. agreed to abstain from fishing within three miles of the coasts, bays, harbors and creeks of British America not otherwise specified. This to the codfishery and whale fishery. clause was inserted at the instance of the U.S. negotiators who wished their agreement to abstain put on record as evidence of their contention that they had rights to be relinquished. They were particularly willing to forego any privileges on these coasts of 1818." because, as was afterwards disclosed. evidence had been furnished to them to the effect that the important cod fisheries were at some distance from the coast.

In regard to the Labrador, remem bering the enormous fishery carried on by them before the war, and the above mentioned evidence having also impressed upon them the fact that along shore on the Labrador, they sought and obtained full rights of taking and curing fish on the coasts, bays, harbors and creeks, from Mount Joli in the Gulf of St. Lawrence, through the Straits of Belle Isle, and

thence northward indefinitely. The restricted privileges in regard to the "coast" of Newfoundland were renewed, with the following changes: treaty were therefore begun and Instead of its being the British section as in 1783, it was now confined to the disputed French Shore, with the addition of that portion of the south coast from Ramea Islands to Cape Ray, and upon this latter section they were also given the privilege of entering unoccupied bays, harbors and creeks and landing to dry and cure fish. The American plenipoten tiaries had been again furnished with a careful letter of instruction containing a "sine qua non." During the negotiations this was revealed. They said they were forbidden "to assent to any article which did not secure to the inhabitants of the United States the liberty of taking and curing fish of every kind on the southern coast of Newfoundland, from Cape Ray to the Ramea Islands, and on the coasts bays, harbors and creeks of Labra dor.." It will be seen that they had not asked for any rights on New foundland coasts except on a very small section, and the question may be asked, why the west coast of New foundland was thrown in as a make weight? No account of the negotiations furnishes us with any further evidence on the point, but the reason

From the English point of view, the French had already set up their claim to the sole right of fishery on the so-called French Shore, a claim which was not very strongly contested at that time, and as the coast therefore was of no particular value to them, they let the Americans have a share in it: then the Americans and the French could fight it out. It would certainly strengthen the British claim to grant rights there to the used all through the long disputes with the French about the coast. It is interesting to trace the negotiations in regard to that position of

the coast from Ramea Islands to Cape Ray. During the preliminary negotiations in 1817. Mr. Bagot, England's representative at Washington, made a tentative offer of this section, which was refused by the U.S. because they said that they could not learn that the coast had ever been used by their ves sels, or was likely ever to be of any value to them. During the final ne gotiations they, however, stipulated for it because, no doubt, of the pre vious offer. So far as I have been able to discover this grant has been of no value to the U.S. They have made little or no use of the right fish on the open coasts; have not at tempted to fish in the bays or creeks and have not dried their fish on the

In past disputes about the Conven tion of 1818 an endeavour has beer made to prove that the words do not mean what they say. For instance that the terms "coasts of Newfound land," "shores of the Magdalen Islands," and "coasts, bays, harbors and creeks of Labrador," all mean exactly the same thing. That a bay is not a hav if it is over 6 miles wide at th mouth, and so on: that the framers of the Treaty did not know what they were talking about, and used words loosely and without consideration There could be no greater mistake The plenipotentiaries on both sides were some of the most able men of the day, and on the American side at least, they were furnished with abundance of evidence as to what was wanted. When they said coasts, they meant coasts, and when they stipulat ed for bays, harbors and creeks, it was their intention to get all the inshore waters as well. One general prin ciple underlies both treaties-a prin ciple which explains many of their peculiarities, and the overlooking o which has occasioned many of the dis

They were purely codfish treaties At that period no other fishery was their coasts, which were becoming prosecuted in distant waters. This rapidly settled, that the English ne- position was put very clearly by Mr gotiators succeeded in freeing them, Dwight Foster, Consul for the U. S at Halifax in 1878. He said: "There was no mackeral fishery then (1818) This controversy (prior to 1818) was in reference to the ocean fisheries, to

"We relinquished this right (to the inshore fisheries of Nova Scotia) because our fishing at that time was entirely a deep sea fishing."

"The cod fisheries were all the par ties had in mind in making the Treaty We got all that was then though

useful in the times of codfishery." Precisely. And most of the disputes which have since occurred have been occasioned by the United States endeavouring to make this codfish treaty

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not altogether unimaginable. On suit the exigencies of other fisheries which have arisen, particularly the mackeral and herring fisheries, cf which there was no conception in

> This fact will have to be taken into consideration over and over again during the arbitration at the Hague. The conduct of the fisheries in the first years succeeding the Treaty is most interesting and important, throwing light on both the past and

United States fishermen hastened arst of all to their favourite fishing grounds on the coast of Labrador. Freed again from interference, with full rights to the inshore fisheries and with the privilege of landing and curing their fish anywhere, for Labrador was almost entirely unsettled. they went there in hundreds. The listory of their fishery upon that coast is told fully in my book on Labador and need not be repeated here. As to Newfoundland, the Governors

of that Colony reported year after ear that the U.S. fishermen had nade no use of their privilege of dryng fish on the south coast and that none of their vessels had been seen upon that coast. Labrador was obviously more attractive.

On the west or northwest coast a ew U. S. vessels had put in an anpearance but were immediately drivn off by French cruisers Represenations were at once made by the American Government to France, and

considerable correspondence enred. The position was held by the Inited States that the French had nly a concurrent right with the Engish, and the French as strongly mainained that theirs was an exclusive ight. Sir Chas. Hamilton, Governor of Newfoundland, gave it as his opinon that the open coast fisheries were s much the common right of all as he Grand Banks, but that the French should not be interfered with inshore. and pointed out that it was immateriil to the United States which posessed much greater privileges on the outh coast of Newfoundland and in he virgin fishing grounds of Labralor. Here the matter seems to have ested. The French never abandoned heir claim to exclusive rights, and protested systematically against Briish fishermen on the coast, and to the Americans, on the rare occasions when they intruded. In Goode's "Amrican Fisheries" it is stated that when there was a French fishing station foreign vessels were not pernitted to fish," and instances a U. S

of fishing on the west coast, any rights that they had under the Treaty of 1783 being on the south and east coasts; they therefore had no occason to be particular as to the wording hem by the Treaty of 1818 on that

From that time until after the Reciaccount of a United States fishery on ither the south or west coast of Nfld. a careful search of the records has 'ailed to reveal any trace of a regular or even spasmodic use of the Nfld. coast by U. S. vessels. While this is true of the coasts it is doubly true of the bays, harbors and creeks. This may not be found, but one swallow loes not make a summer, nor one noacher a fishery.

The herring fishery was unknown and not prosecuted by anybody in 1818, nor for a generation and more afterward. The French Shore was almost abandoned by the English, and our latent rights were only gradually enforced as the country became settled. There was therefore no authority on the west coast except British cruisers to note the actions of the Americans, and it is more than probable that they would have supported any such American vessels rather than have obstructed them

It was not until after the Recipro city Treaty of 1854 that we hear of United States vessels in the inshore waters of Newfoundland. In that year the frozen herring trade had its beginning and soon grew to considerable proportions. By that Treaty U. S. fishermen were made free of all British American waters; but again it is a remarkable circumstance that they did not exercise their right of taking herring in the bays, but invariably purchased them from Nfld. fishermen. There were but two exceptions to this rule-in Fortune Bay in 1877, and at Bay of Islands in 1905 on which occasion serious disputes and complications arose.

On the small strip of south coast it will be noted that there are no great bays as in other parts of Newfoundand. So far as history tells us there has never been any codfishery in the narrow inlets which are to be found there, and as the herring fishery was unknown in 1818, the U.S. could have no possible object in asking for liberty to fish in them.

In regard to this strip of coast, therefore, there has been no occasion to this day to raise the question whether the U.S. have or have not a right to fish in the bays, for no such fishery has been exercised, so far as

can be ascertained. The above short historical sketch of British North America fisheries in relation to the treaties of 1783 and

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the obscure or debateable points con- grant. tained in them; but it is naturally impossible to enter upon a lengthy liberty to fish granted to the U.S., or, dreamed of asking for such powers. | words 'bays, harbors and creeks." The liberties granted to the U. S. were exactly similar in nature to the to depend rather upon the comity of liberty granted by one gentleman to | nations than upon language used in another to shoot on his estate.

I think it is clearly proven in the

foregoing that-(1) Newfoundland was viewed by England very differently from the other colonies and was always carefully preserved.

(2) The Treaty of 1818 was framed for the codfishery. (3) The plenipotentiaries of the United States knew exactly what they

wanted. (4) The language used in the Treaty was most carefully chosen to meaning of "coasts of Nfid." (6) and give effect to the meaning of both

parties. When, therefore, liberties were accorded to "inhabitants of the United States" (question 2), Great Britain had as little intention of granting, as the United States had of securing, privileges for any other nation or people. By no species of sophistry can the fishermen of Bay of Islands be transmuted into "inhabitants of the United States."

When the United States bargained so carefully for privileges in the 'bays, harbors and creeks" of Labrador but were satisfied with the coasts" only of Newfoundland (question 6), they knew exactly what the different terms implied. They demanded and secured all they at that time thought would or could be of use

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1818 will, I believe, explain many of to them, which Great Britain would

When they renounced their liberty to fish within three marine miles of of the fishing privileges accorded to discussion in the restricted space of certain other "coasts, bays, harbors this article. I would like, however, and creeks" (question 5), they includto observe on the matter of jurisdic- ed, and were willing to include, every tion raised by question 1 that the Am- bay, whether 6 or 60 miles across the ericans as colonists never had any mouth. "So it is nominated in the controlling or regulatory powers in bond," for the words used, when ex-British North America fisheries, nor tended, are as follows: "Three mareven did the loyal colonists until ine miles of the coasts, three marine long after the Treaty of 1783. It miles of the bays, three marine miles seems therefore absurd to suppose of the creeks, and three marine miles that England would have consented of the harbors." If the word "coasts" to convey any such powers in the included all its indentations, as has been contended by the United States, is not to say that isolated instances in fact, that the U.S. would have there was no necessity to insert the

Questions 3, 4 and 7 would seem

the Treaty. In conclusion it must be stated that each dispute has been occasioned by some new attempt on the part of the United States to exceed their treaty privileges. For instance, the question of bays (5) arose in 1839 when the U. S. fishing vessels essayed to fish for mackerel in the bays of Nova Scotia. The question of regulation (1) arose in 1878, when the U.S. fishermen attempted to take herring on a Sunday in Fortune Bay. That of the "inhabitants of the United States (2) in 1905-6, when the U.S. fishermen

wanted to seine herring at Bay of Islands and to ship as crews the fishermen of that locality. It will be observed that these cir-

cumstances "were not dreamed of in the philosophy" of the framers of the codfish treaty. The Convention of London, 1818.

has long outlasted its usefulness. W. G. GOSLING.

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