

"I know not, indeed, any treaty, nor any article of a treaty, whatever may have been the subject to which it related, of the terms in which it was expressed, that has survived a war between the parties, without being specially renewed, by reference or recital in the succeeding treaty of peace. I cannot, indeed, conceive the possibility of such a treaty, or of such an article; for, however clear and strong the stipulations for perpetuity might be, these stipulations themselves would follow the fate of ordinary unexecuted engagements, and require, after a war, the declared assent of the parties for their revival."

(Idem, p. 75.)

"I have in this view of the subject been led to conclude that the treaty of 1783, in relation to the fishing liberty, is abrogated by the war, and that this liberty is totally destitute of support from prescription, and, consequently, that we are left without any title to it whatsoever."

(Idem p. 77.)

"Considering, therefore, the fishing liberty to be entirely at an end, without a new stipulation for its revival; and believing that we are entirely free to discuss the terms and conditions of such a stipulation, I did not object to the article proposed by us, because any article on the subject was unnecessary, or contrary to our instructions, but I objected specially to that article, because, by conceding in it, to Great Britain, the free navigation of the Mississippi, we not only directly violated our instructions, but we offered, in my estimation, a price much above its value, and which could not justly be given."

(Idem p. 87.)

"I have always been willing to make any sacrifice for the fishing privilege, which its nature, or comparative importance could justify, but I conscientiously believe that the free navigation of the Mississippi, and the access to it which we expressly offered, were pregnant with too much mischief to be offered, directly, under our construction of the treaty; or, indirectly, as they were in fact offered, as a new equivalent for the liberty of taking and drying fish within British jurisdiction."*

Mr. Russell was supported by Henry Clay in these views.

Our learned friend, Mr. Dana, mentioned the circumstances under which England was carrying on the negotiations at Ghent. She was engaged in a continental war, with the most illustrious warrior of modern times, and the Americans were more or less exacting according to her embarrassments. We have this described at p. 233 of Mr. J. Q. Adams' Correspondence, as follows:

"Subsequently, however, the overthrow of Napoleon having left us to contend single-handed with the undivided power of Great Britain, our government thought proper to change the terms offered to the British Government, and accordingly sent additional instructions to Ghent, directing our commissioners to make a peace if practicable, upon the simple condition, that each party should be placed in the same situation in which the war found them.

"At the commencement of the war, the British had a right, by treaty, not only to navigate the Mississippi, but to trade with all our Western Indians. Of course our commissioners were instructed to consent to the continuance of this right, if no better terms could be procured. Under these instructions a proposition relative to the Mississippi and the fisheries, similar to that which had been rejected, was again presented, adopted, and sent to the British commissioners. But it did not restore the right to navigate the Mississippi in as full a manner as the British Government desired, and on that account, we presume, was rejected."

The following dates will explain the meaning of the paragraph referring to Napoleon. The mission to Ghent had met before the disasters to French arms which resulted in the abdication of Napoleon on the 4th of April, 1814. Napoleon was conveyed to Elba in May following. With the slow communications of the time, the Americans learned only in June of the victories of England, which seem to have given a certain tone of firmness to her negotiations at Ghent. The treaty was signed on the 24th Dec., 1814. On the 1st March, 1815, Napoleon escaped from Elba and landed at Frejus. Americans regretted having precipitated their negotiations, and not being in a position to avail themselves of the renewal of war on the Continent to insist on better terms, many expressed their grief in unmeasured tones; but it was too late.

Each of the contracting parties persisting in their views, the subject of the fisheries was excluded from the Treaty of Ghent; but the United States soon learned that England was right, and they had to resort to the *ultima ratio* of another war to enforce their opinions, not only against Great Britain, but also against the universal sense of other nations. We read in the same book p. 240, that in the summer of 1815, British armed cruisers warned off all American fishing vessels on the Coast of Nova Scotia, to a distance of sixty miles from the shores, and thereby says our writer, the British Government proved significantly what they had meant by their side of the argument. On this, the Americans solicited and obtained the Convention of 1818. The first article of that treaty explains the circumstances under which it was come to:

"Whereas differences have arisen respecting the liberty claimed by the United States for the inhabitants thereof to take, dry, and cure fish on certain coasts, bays, harbours and creeks of His Britannic Majesty's dominions in America, it is agreed, between the High Contracting Parties, that the inhabitants of the said United States shall have, forever, in common with the subjects of His Britannic Majesty, the liberty to take fish of every kind on that part of the southern coast of Newfoundland, which extends from Cape Ray to the Rameau Islands, on the western and northern coast of Newfoundland, from the said Cape Ray to the Quirpon Islands, on the shore, of Magdalen Islands, and also on the coasts, bays, harbours, and creeks, from Mount Joly, on the southern coast of Labrador, to and through the Straits of Belle Isles, and hence northwardly indefinitely along the coast, without prejudice however to any of the exclusive rights of the Hudson Bay Company; and that the American fishermen shall also have liberty, forever, to dry and cure fish in any of the unsettled bays, harbours, and creeks of the southern coast of Newfoundland; here above described, and of the coast of Labrador; but so soon as the same or any portion thereof, shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such portion so settled, without previous agreement for such purpose with the inhabitants, proprietors, or possessors of the ground. 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 harbours, of His Britannic Majesty's dominions in America not included within the above mentioned limits. Provided, however that the American fishermen shall be admitted to enter such bays or harbours, for the purpose of shelter, and of repairing damages therein, of purchasing wood and of obtaining water, and for no other purpose whatever. But they shall be under such restrictions as shall be necessary to prevent their taking, drying or curing fish therein, or in any other manner whatever abusing the privileges hereby reserved to them."

The difference between this Convention and the Treaty of 1783 consists in the exclusion of the Americans from the shore and bay fisheries which they enjoyed under the Treaty of 1783. This was more than sufficient to mark the abandonment by the Americans of the position assumed at Ghent, that war had not abrogated their fishing liberties under that treaty. It is, in fact, owing to that important difference that I have at this moment the honor of addressing myself to this distinguished tribunal.

Six years after the adoption of this Convention, in 1824, differences grew out of the three miles limit, though it does not appear to have arisen from the headland question, or fishing in bays.

Mr. Brent (as quoted at p. 8 of U. S. Brief) speaks of American citizens who have been interrupted "during the present season, in their accustomed and lawful employment of taking and curing fish in the Bay of Fundy and upon the Grand Banks, by the British armed brig 'Dotterel,' &c.

Mr. Addington answers (p. 8 and 9 of U. S. Brief), that the complainants are not entitled to reparation for