

MR. THOMSON—I will show you before I am through that these American fishermen can by no possibility whatever come into our waters, without incurring the risk of forfeiture, if Mr. Foster's reading of this Treaty be accepted as correct. This would be the result of his argument: if you confine them to the very terms of the bond, to use the language of Mr. Foster, then it is clear that if they land for the purpose of giving a barrel of flour in exchange for fish, or of purchasing fish, at that moment their vessels are liable to forfeiture. This is a strange construction to put upon the Treaty, and these are the strange results which will necessarily follow if this tribunal adopt the view presented by the American Agent.

But there is another matter to be considered, and it is this:—In 1854 the Reciprocity Treaty was passed, and under that Treaty the Americans came in to fish on our coasts generally. They exercised the same rights as they do now, and no person then ever complained of them for buying bait under the terms of that Treaty, though it did not in express terms authorize their purchase of bait or their getting supplies of any kind on our shores; still they did so. By a kind of common consensus of opinion, it was understood that they had a right to do so, and no person complained of it. And in view of the course which then was pursued, this Treaty was framed. Mr. Foster has put this case: Suppose that when the Joint High Commissioners were sitting, the British representative had proposed that the value of the rights of trans-shipment, and of buying bait, and of having commercial intercourse with our people, should be taken into consideration by this Tribunal,—then, had this been the case, it would have been met by a well-bred shrug from the Earl of Ripon, and Prof. Bernard. This may possibly be so; but I can say, I think it would have been very strange indeed if our Commissioners had said to the American Commissioners:—Under the Treaty which we propose you shall have the right to fish in our waters on equal terms with our fishermen, and have the right to land and cure your fish, and the right also to dry your nets on the land, but the moment that you take one step farther,—the moment that you buy a pound of ice, and the moment that you presume to buy a single fish for the purpose of bait in our waters, and the moment you attempt to exercise any commercial privilege whatever, and above all, the moment you undertake to trans-ship one single cargo, that moment your vessel will be forfeited, and the cargo as well, I think that if this had been stated, there would have been something more perhaps than a well-bred shrug from the American Commissioners. I think, therefore, it may fairly be contended, in view of the wording of the two Treaties, that these are privileges, which, it was intended, that this Commission should take into consideration, when they came to adjudicate respecting the value of our fisheries:—and after all, is not the value of our fisheries to these people, enhanced by the way in which they use them, and in which they generally have been using them—by coming into our harbors to purchase bait and ice. Because it takes a long time to catch the bait for themselves, and they save time, and money therefore—time and money being in such case equivalent terms—by buying their bait. And why is this not to all intents and purposes a privilege under this Treaty? I fail to see that it is not. Why when it is necessary to preserve bait in ice, and as has been shewn by all the witnesses that the Americans cannot procure bait and ice except on our shores,—should this not be considered an incidental right? It appears to me that this view must be taken. The argument put forward on behalf of the United States demanding a contrary construction is almost suicidal. Moreover I think I can establish that this latter view is not taken by the Americans on this subject. On page 467 of Mr. Sabine's report, the following language is used:—“It is argued that if the liberty of landing on the shores of the Magdalen Islands”—Your Excellency and your Honors will recollect that while the Americans have the right to fish around the Magdalen Islands, they have no right to land on these shores, though our evidence has shown that, as a rule, they have landed on these Islands, both before and since the negotiation of this Treaty, and have dragged their nets on the shore, and fished for bait in this way. Mr. Sabine states:—

“It is argued that, ‘if the liberty of landing on the shores of the Magdalen islands had been intended to be conceded such an important concession would have been the subject of express stipulation,’ &c., it may not be amiss to consider the suggestion. And I reply that, if ‘a description of the inland extent of the shore over which’ we may use nets and seines in catching the herring if necessary it is equally necessary to define our rights of drying and curing the cod elsewhere, and as stipulated in the convention. Both are *shore* rights, and both are left without condition or limitation as to the quantity of beach and upland that may be appropriated by our fishermen. It was proclaimed in the House of Commons, more than two centuries ago, by Coke—that giant of the law—that ‘FREE FISHING’ included ‘ALL ITS INCIDENTS.’ The thought may be useful to the Queen's advocate and Her Majesty's attorney general when next they transmit an opinion across the Atlantic which is to affect their own reputation and the reputation of their country. The right to take fish ‘on the shores of the Magdalen Islands,’ without conditions annexed to the grant, whatever these profoundly ignorant advisers of the crown of England may say to the contrary, includes, by its very nature and necessity, all the ‘incidents’ of a ‘free fishery,’ and all the privileges in use by and common among fishermen, and all the facilities and accommodations on the land and on the sea, which conduce to the safety of the men employed in the fishery, and to an economical and advantageous prosecution of it.”

Now, it may be said that this is not the opinion of a person entitled to weight, but, at all events, it had sufficient weight to induce the Legislature of the United States to republish this report in a volume, which contains the sessional papers of the House of Representatives of the 42nd Congress, second session. The Legislature of the United States, therefore, thought it proper and of sufficient importance to publish it; and I believe that the report was published more than once. At all events, it is from their own state papers that I quote it. The language employed is very forcible. It is very often the case, when our friends across the border are arguing matters that nearly or closely affect them, they couch their arguments in strong and uncomplimentary language to those who differ from them; and so, of course, when Mr. Sabine writes, “that it would be well for those profoundly ignorant law-officers to govern themselves in future as to their opinions,” &c., we can understand that language as being used, perhaps, in the American sense of the term, and certainly not in the offensive sense in which such words would be construed here or in England.

MR. FOSTER:—It is used in the Pickwickian sense.

MR. THOMSON:—I was about to say so. I trust that it was employed in that sense. Here is a construction which the American nation can put forward as the true construction of this Treaty for the purpose of obtaining the right to land on the Magdalen Islands, and the moment the shoe pinches on the other side, they want to have the strict letter of the law, and nothing else,—they then do not wish to go a single step beyond that, though the moment when it becomes necessary to extend their rights, they want to obtain a liberal construction of its terms. I do not think myself that the United States can always claim to come before any tribunal and say that they have, where it suits their purpose to do so, been very liberal in their construction of treaties. In regard to this very treaty itself, your Excellency and your Honors are aware, that it certainly was an extraordinary construction on the part of the United States Government when a duty was by then placed on the tin packages in which free fish entered into the United States. I wish to shew what necessarily would be the result, if the United States' contention in this matter were right, but before doing so, it may be proper for me to notice an argument, which Mr. Foster drew from the Convention of 1815, to which he called your attention, and part of which he read. He says, that inasmuch as the Convention referred to previous privileges, which the United States had abandoned as against Great Britain, and as those privileges must have been granted by the Treaty of 1794—that therefore the war of 1812 did not abrogate those privileges, and that this was a distinct admission on the part of Great Britain that the Treaty mentioned was not abrogated, and that the privilege conferred by that Treaty had been in no way interfered with. I altogether deny the conclusion he thus draws; but it is not now necessary for the purpose of my argu-