

# Technical and Bibliographic Notes / Notes techniques et bibliographiques

The Institute has attempted to obtain the best original copy available for filming. Features of this copy which may be bibliographically unique, which may alter any of the images in the reproduction, or which may significantly change the usual method of filming are checked below.

- Coloured covers / Couverture de couleur
- Covers damaged / Couverture endommagée
- Covers restored and/or laminated / Couverture restaurée et/ou pelliculée
- Cover title missing / Le titre de couverture manque
- Coloured maps / Cartes géographiques en couleur
- Coloured ink (i.e. other than blue or black) / Encre de couleur (i.e. autre que bleue ou noire)
- Coloured plates and/or illustrations / Planches et/ou illustrations en couleur
- Bound with other material / Relié avec d'autres documents
- Only edition available / Seule édition disponible
- Tight binding may cause shadows or distortion along interior margin / La reliure serrée peut causer de l'ombre ou de la distorsion le long de la marge intérieure.
- Blank leaves added during restorations may appear within the text. Whenever possible, these have been omitted from filming / Il se peut que certaines pages blanches ajoutées lors d'une restauration apparaissent dans le texte, mais, lorsque cela était possible, ces pages n'ont pas été filmées.

- Additional comments / Commentaires supplémentaires: **Cover title page is bound in as last page in book but filmed as first page on fiche.**

L'Institut a microfilmé le meilleur exemplaire qu'il lui a été possible de se procurer. Les détails de cet exemplaire qui sont peut-être uniques du point de vue bibliographique, qui peuvent modifier une image reproduite, ou qui peuvent exiger une modification dans la méthode normale de filmage sont indiqués ci-dessous.

- Coloured pages / Pages de couleur
- Pages damaged / Pages endommagées
- Pages restored and/or laminated / Pages restaurées et/ou pelliculées
- Pages discoloured, stained or foxed / Pages décolorées, tachetées ou piquées
- Pages detached / Pages détachées
- Showthrough / Transparence
- Quality of print varies / Qualité inégale de l'impression
- Includes supplementary material / Comprend du matériel supplémentaire
- Pages wholly or partially obscured by errata slips, tissues, etc., have been refilmed to ensure the best possible image / Les pages totalement ou partiellement obscurcies par un feuillet d'errata, une pelure, etc., ont été filmées à nouveau de façon à obtenir la meilleure image possible.
- Opposing pages with varying colouration or discolourations are filmed twice to ensure the best possible image / Les pages s'opposant ayant des colorations variables ou des décolorations sont filmées deux fois afin d'obtenir la meilleure image possible.

This item is filmed at the reduction ratio checked below / Ce document est filmé au taux de réduction indiqué ci-dessous.

10x	14x	18x	22x	26x	30x
<input type="checkbox"/>	<input checked="" type="checkbox"/>				
12x	16x	20x	24x	28x	32x

CONFIDENTIAL.

MEMORANDUM on the Rights of Fishing  
on the Coast of Newfoundland acquired  
by the United States under the Treaty  
of Washington.

---

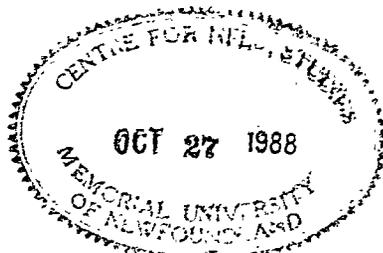
*Foreign Office,*  
*November 30, 1878.*

50

739.  
NLS  
GFL  
1878

CONFIDENTIAL.

(3788.)



*Memorandum on the Rights of Fishing on  
the Coast of Newfoundland acquired by  
the United States under the Treaty of  
Washington.*

ARTICLE XVIII of the Treaty of Wash-  
ington provides:—

“It is agreed by the High Contracting Parties that in addition to the liberty secured to the United States’ fishermen by the Convention between Great Britain and the United States, signed at London on the 20th day of October, 1818, of taking, curing, and drying fish on certain coasts of the British North American Colonies therein defined, the inhabitants of the United States shall have in common with the subjects of Her Britannic Majesty, the liberty, for the term of years mentioned in Article XXXIII of this Treaty, to take fish of every kind, except shell fish, on the sea-coasts and shores, and in the bays, harbours, and creeks of the Provinces of Quebec, Nova Scotia, and New Brunswick, and the Colony of Prince Edward Island, and of the several islands thereunto adjacent, without being restricted to any distance from the shore, with permission to land upon the said coasts, and shores, and islands, and also upon the Magdalen Islands, for the purpose of drying their nets and curing their fish; provided that in so doing they do not interfere with the rights of private property, or with British fishermen in the peaceable use of any part of the said coasts, in their occupancy for the same purpose.

“It is understood that the above-mentioned liberty applies solely to the sea-fishery, and that the salmon and shad fisheries, and all other fisheries in rivers and the mouths of rivers are hereby reserved exclusively for British fishermen.”

Article XXXII of the same Treaty provides :

“It is further agreed that the provisions and stipulations of Article XVIII to XXV of this Treaty inclusive, shall extend to the Colony of Newfoundland, so far as they are applicable. But if the Imperial Parliament, the Legislature of Newfoundland, or the Congress of the United States, shall not embrace the Colony of Newfoundland in their laws enacted for carrying the foregoing Articles into effect, then this Article shall be of no effect.”

As soon, therefore, as the necessary Acts relating to Newfoundland should have been passed, United States' citizens would acquire—

1. The right to take fish of every kind, except shell-fish, salmon, and shad on the Coast of Newfoundland for a term of twelve years (the period stipulated in the Treaty) *in common* with British subjects.

2. The right to land *for the purpose of drying their nets and curing their fish* ; provided that they did not interfere with the rights of private property or with British fishermen.

With regard to the first of these privileges, the words *in common with British subjects* seem to imply, as the intention of the Article, that United States' citizens were only to enjoy such privileges as were then enjoyed by British subjects.

The Law Officers, who were requested to report on this point in 1873, say—

“We submit, for your Lordship's consideration, that the words ‘in common with the subjects of Her Britannic Majesty,’ which occur in Article XVIII, in fair construction mean that the American and British fishermen shall be upon an equality, and that if a close time is to apply to British fishermen, and the necessity of the case seem to require that, the same restriction shall apply to American fishermen.”

J. D. Coleridge.  
G. Jessel.  
J. P. Deane.  
July 19, 1873.

The Consolidated Statutes of Newfoundland, 1872, show under what restrictions British subjects were allowed to prosecute the fisheries of that

island prior to the acceptance of the Fishery Articles of the Treaty of Washington by the United States, which, so far as they relate to Newfoundland, took place in 1874.

Chapter 102 of the Consolidated Statutes, 1872 (see Appendix A), contains the Statutes applicable to the Coast fisheries. Sections 1, 2, 3, 4, and 18 are those which apply to the present question.

By Section 1 fishermen were allowed to use ordinary nets set in the customary manner for taking herrings, between the 20th October and the 12th April; but were prohibited from using a *seine* for this purpose during that period of the year. They were further prohibited from using a *seine* at any time, except by way of shooting and forthwith hauling it; the object of which provision is to prevent herring from being *barred*.

This is a practice which is speedily ruinous to the herring fishery; and consists in setting a large *seine*, either attached with both ends to the shore, or paid out in a circular form in the sea and provided with a bottom (a purse *seine*), so that whole schools of herring may be inclosed for an indefinite time, and then scooped out when wanted: the result being that an enormous quantity of fish die, and are eventually turned out into the water, there to rot and poison the fishing grounds.

By Section 2 provision is made as to the proper size of the mesh of nets to be used between the 20th December and 1st April, in order to allow the escape of undersized or immature herring.

Section 3 is a pure measure of police, to prevent the interference of one fisherman with another.

Section 4 provides that no herring or other bait shall be taken *for exportation* within one mile of the shore between Cape Chapeau Rouge and Point Enragée, between the 20th April and the 20th October.

This is no doubt aimed at the French, who are supplied by Newfoundland fishermen with very large quantities of bait for the Grand Bank Fisheries; and who possess the Islands of St. Pierre and Miquelon, situated opposite to the extent of coast named, which covers about 200 miles of the south coast of Newfoundland, and comprises Fortune Bay.

It would not be likely that the Newfoundland

Government could contemplate applying this to the United States' fishermen.

Section 18 provides that "nothing in this chapter shall affect the rights and privileges granted by Treaty to the subjects of any State or Power in amity with Her Majesty."

Subject to the above restrictions, which apply solely to the herring and bait fisheries, British fishermen enjoyed perfect liberty of fishing in any manner all the year round, except as regards estuaries, salmon fishing, &c., which, not being included in the Treaty of Washington, need not be considered. If, therefore, United States' citizens acquired only the right to fish *in common* with British subjects, these were the privileges so acquired under the terms of the Treaty.

With regard to the second privilege, viz., that of *landing*, United States' fishermen enjoyed the privilege of access to the shores under the 1st Article of the Convention of 1818, for the purpose of *purchasing wood* and of *obtaining water, and for no other purpose whatever*. The Treaty of Washington subsequently superadded to the rights thus enjoyed under the Convention of 1818, the privilege of using the shore for two other specified purposes, viz., *for drying their nets and curing their fish*.

At the Halifax Commission the United States' Agent, with a view of minimizing the compensation due to Great Britain for the privileges accorded by the Treaty of Washington, expressly disclaimed the right of using the shore for any but the specified purposes. Consequently, any regulations affecting the use of the shore for any other purposes than those of obtaining wood and water, of drying nets, and of curing fish, could not in any way contravene the provisions of the Treaty: and even independently of any regulations, United States' citizens clearly have no right to use the strand for the purpose of *barring* herrings from the shore.

The foregoing will show what were the rights of fishing on the coast of Newfoundland which it may be presumed the framers of the Treaty of Washington intended to grant to United States' citizens. The Treaty having, however, been ratified, it became

necessary, before its provisions could come into operation with regard to Newfoundland, that the Acts alluded to in Article 32 should be passed.

The Legislature of Newfoundland, therefore, passed an Act on the 5th May, 1873 (Appendix B) which enacted that all laws which might prevent the Fishery Articles of the Treaty from taking full effect, should be suspended, "provided that such laws, rules, and regulations relating to the time and manner of prosecuting the fisheries on the coasts of this island, shall not be in any way affected by such suspension."

J. D. Coleridge.  
G. Jessel.  
J. P. Deane.  
June 7, 1873.

The Law Officers were consulted as to whether this Act complied with the terms of the Treaty, and they reported that in their opinion it did so; and that any Protocol to be signed with the United States for the purpose of bringing the Treaty into operation in respect to Newfoundland, "should contain a clause following as nearly as possible the proviso at the end of the 1st Article of the Newfoundland Act."

Sir Edward Thornton was consequently instructed to submit a copy of it to Mr. Fish, with a view to a Proclamation being issued by the President of the United States, so as to include Newfoundland in the Treaty stipulations.

Sir E. Thornton, No. 284;  
June 30, 1873.

Mr. Fish, however, objected on the part of the United States to the proviso contained in the above-mentioned Act, on the ground that it contemplated a restriction in point of time of the herring fisheries on the coast of the island, although the Treaty placed no limitation of time. And notwithstanding the representations of the Government of Newfoundland, who sent Mr. Carter, subsequently Premier of the Colony, to confer with Mr. Fish on the subject, the United States' Government persisted in maintaining this objection.

The Legislature of Newfoundland eventually passed an Act on the 28th March, 1874 (Appendix C) by which the Governor was empowered to proclaim that the Fishery Articles should come into full force, operation, and effect, and should continue so during the term mentioned in the Treaty, "any law of this Colony to the contrary notwithstanding." His Excellency subsequently issued his Proclamation in exact conformity with the wording of the new Act.

An Act was afterwards passed on the 29th April, 1874, repealing the Act of 1873. (Appendix D.)

The necessary Acts being further passed by the President of the United States, and by the Imperial Parliament, the Fishery Articles of the Treaty of Washington, with respect to Newfoundland, came consequently into effect.

On the 26th April, 1876, however, a new Act was passed by the Newfoundland Legislature (Appendix E), to amend cap. 102 of the Consolidated Statutes of 1872, which extended the time during which the use of a seine was prohibited, from the 12th April to the 25th April; prohibited the taking of squid *with a seine* at any time; and prohibited any taking of herring, caplin, or squids between 12 o'clock on Saturday night and 12 o'clock on Sunday night.

It was principally in consequence of the contravention by United States' fishermen of this latter prohibition, that the occurrences in Fortune Bay in January 1878 took place.

The correspondence which has taken place on this matter seems in the first place to raise the question, whether United States' fishermen are bound by restrictions as to modes and times of fishing on the coast of Newfoundland which were imposed, for the purpose of preserving the fisheries, on British subjects antecedent to the time at which the Fishery Articles of the Treaty of Washington came into effect, viz., March 1874, and in the second place, whether they are bound by any restrictions imposed subsequent to that date.

With regard to the first point Sir E. Thornton states that neither the Act of Congress of March 1, 1873, nor the President's Proclamation with regard to the fisheries on the coasts of Canada and Prince Edward Island, nor his Proclamation with regard to the Newfoundland fisheries contain any mention of restrictions with regard to the right of British fishermen to fish on that part of the coast of the United States thrown open to British fishermen under Article XIX of the Treaty, and this fact, coupled with Mr. Fish's objection to the Act first passed in 1873, by the Newfoundland Legislature, points

No. 296;  
November 4, 1878.

pretty clearly to what were the views of the United States' Government. The words, moreover, of Section 18, cap. 102, of the Consolidated Statutes of Newfoundland, 1872, and of the Act eventually passed by the Newfoundland Legislature in 1874, seem to acquiesce in the principle that the right to impose local restrictions was not to apply to United States' fishermen.

It may, however, on the other hand be said that it could hardly have been contemplated by the framers of the Treaty of Washington that United States' fishermen were to be admitted to greater privileges than were then enjoyed by British subjects; a view which was taken by the Law Officers in their Report of 19th July, 1873, mentioned above.

The fact of the United States' Government imposing no restrictions on British subjects fishing on the United States' coast may very readily be accounted for, since it is certain that no British subjects ever do fish there at all. And Mr. Fish even admitted to Sir E. Thornton in 1873 "that in both cases the fishermen of both countries would have to observe the laws enacted by the country within whose jurisdiction they might be fishing."

Sir E. Thornton, No. 274;  
June 23, 1873.

With regard to the second point, viz., whether United States' fishermen are bound by any regulations passed subsequently to the date at which the Treaty came into operation, the matter seems to stand on an altogether different footing.

Whilst in the case of regulations in force before the signature of the Treaty, it may be urged with some show of reason, that notwithstanding the words of the Consolidated Statutes, and of the Newfoundland Act of 1874, the terms of Article XVIII, "in common with British subjects," only granted to United States' Citizens, the same rights as were then enjoyed by British subjects, the same cannot be said for regulations passed subsequent to the date at which the Treaty came into effect. It would be obviously unfair if the United States, having paid a large indemnity, of which Newfoundland will receive 1,000,000 dollars, could have any or all of their privileges taken from them by arbitrary local Statutes.

The extension of the close time for *seining* herrings from April 12 to April 25 seems not very material, as fishermen could still take them with fair appliances during the whole year, and this probably would not of itself have given rise to complaint on the part of the United States. It has, however, formed the subject of correspondence between the French and English Governments; and the measure being defended by the Colonial Authorities as absolutely necessary for the preservation of the herring, the French Government were informed by Lord Derby that "Her Majesty's Government feel that they would not be justified in urging upon the Newfoundland Government the non-enforcement of the provisions of this law, which is framed as much in the interest of French as of British fishermen."

To Marquis d'Harcourt;  
February 15, 1878.

(See Correspondence on "French Shore" Question.)

With reference to this reply to the French Government, it must be noted, however, that French rights on the south coast of Newfoundland do not stand on the same footing as those acquired by the United States under the Treaty of Washington.

The restriction from fishing at all on Sundays is a much more serious matter, and is, I think, oppressive to United States' fishermen, as compared with the British.

The latter fish on the spot, mostly in open boats, and it can matter but little to them whether they take their herring bait on Saturday evening or Monday morning. The former come in large schooners of 40 to 150 tons, from long distances, to get their herring bait inshore; and it may be a matter of great importance to them to fill up at once, and catch a fair wind to return to their fishing on the Grand Banks, without being compelled to wait twenty-four hours before they can commence taking bait.

It may, however, be mentioned in defence of this regulation, that many practical authorities on sea-fishing are of opinion that one day a-week undisturbed is necessary to preserve the fishing grounds.

It is difficult to say what regulations are necessary, in order that British subjects and United States' fishermen may—in the words of the Treaty—enjoy the right of fishing *in common*; but com-

mon sense seems to point to the necessity of enforcing ordinary regulations as to what are and what are not fair appliances for fishing at different seasons of the year. Such regulations are, I believe, in force in Canada, and, indeed, more or less, in the fisheries of every civilized country in the world.

It must be borne in mind that the old consolidated Statutes of Newfoundland apply for the most part to regulations of this description, and do not in fact provide, as the United States' Government appear to think, that herring cannot be taken at all between the 20th October and the 12th April. It is only the use of a *seine* at those times in herring catching, which, for the preservation of the herring fry, is forbidden. This period being now extended by the Statute of 1876 to the 25th April.

It is apparent that whilst immunity from such restrictions might possibly serve the United States' fishermen by giving them quicker and larger profits, the permission to disregard them must speedily ruin the fisheries, and take away the very means of subsistence from the fishermen of the coast, who are entirely dependent for a living on an ample supply of bait. The matter, therefore, is one of the most vital importance to the natives of the island.

It may seem strange that although the provisions of the Treaty of Washington have been in force about five years, this question should now arise apparently for the first time. A reference, however, to what took place before the Halifax Commission in 1877, may serve as a clue.

It was proved in evidence before the Commission that, up to that date, United States' fishermen had been in the habit of procuring their bait on the Newfoundland coast almost exclusively by one of two methods; either they bought it of native fishermen; or they hired natives, for pay, to catch it for them. It was a very great exception to catch it entirely for themselves. The British Counsel argued, that no matter by what means bait was obtained, compensation ought to be paid for the privilege under the description of a right of fishing. This view, however, being challenged by the United States' Counsel, the Commission decided

that under the terms of the Treaty they could not consider any claim for compensation on account of the *purchase* of bait, but only for such as might be actually *caught* by United States' fishermen. When this decision was given, hints were thrown out that the privilege of buying bait, which had thus been decided not to be granted by the Treaty, might possibly be withheld.

This fact may account for Americans appearing on the coast this year for the first time working seines of their own by themselves without the assistance of the islanders, and the violence of the native population may be easily accounted for when they saw the bait, which they had in previous years been either paid for by, or hired to catch for, the Americans, being taken with unfair appliances under their very eyes.

It is very possible, too, that some of the Gloucester men, who were very angry at the Award, may have sent their Captains with seines this year in order to pay out the British fishermen for the amount awarded against the United States.

It should be mentioned also that the local regulations on the Coast of Newfoundland have never been rigidly enforced, some of the witnesses who made affidavits respecting the Fortune Bay affair even declaring that they never heard of the prohibition to use a seine. The difficulty of communication and wildness of the Coast will easily account for this. Even the Governor himself states that the first he heard of this Fortune Bay affair was by a *telegram from London!*

The question then seems to be resolved very simply into the proposition whether the words of Cap. 102, Sec. 18 of the Newfoundland Consolidated Statutes, and the terms of the Newfoundland Act of 1874, leave to Her Majesty's Government the technical right to claim that regulations in force before the Treaty of Washington came into effect shall be now binding on United States' fishermen; having in view that the privileges were only granted by the Treaty to be enjoyed *in common* with British subjects. If not, then, *à fortiori*, those framed subsequently cannot be binding. And it must not be forgotten, in considering this question, that all the privileges

enjoyed by United States' fishermen under the Treaty of Washington may, by giving two years' notice, be terminated as respects Newfoundland in 1885; so that even if Americans were permitted to fish without any restriction whatever they would only be able to do so for seven years longer, at the expiration of which period Her Majesty's Government would be able to make any arrangements which might be thought desirable.

Sir E. Thornton, No. 296;  
November 4, 1878.

Sir E. Thornton, who is thoroughly familiar with the Fishery question, says, at the conclusion of his despatch No. 296 of the 4th November, 1878, "It is extremely probable that if Her Majesty's Government should consider that the Treaty of 1871 gives full liberty to American fishermen to fish on the Coast of Newfoundland without any restrictions as to time or mode of fishing, and that the Newfoundland Act of the 28th March, 1874, confirms that view of the case, as I confess that they seem to me to do, the American fishermen will, within a short time, contribute considerably to the diminution of the fish on those coasts, and, perhaps, to their almost entire disappearance. In that case it would perhaps be wise to come to some arrangement with the Government of the United States for the mutual establishment of laws and regulations with regard to fishing and for the protection of fish, which both British and American fishermen would be compelled to observe both in British and American waters, and which would conduce to the advantage of both."

"It is not unlikely that the United States' Government, in order to be able to regulate the fisheries on its own Coast of New England, would agree, without much difficulty, to reasonable laws and regulations for the government of the fisheries on the Canadian and Newfoundland Coasts, in the same way as a mutual arrangement has recently been come to with regard to the regulations for the transit of dutiable goods through Canada and the United States respectively."

Mr. Evarts to Mr. Welsh;  
September 28, 1878.

Mr. Evarts, in his despatch to Mr. Welsh of the 28th September last, on the subject of the Fortune Bay affair, hints at the necessity for settling these matters by a Joint Convention, regulating the fisheries, and this, no doubt, would be the best way of preventing future difficulties.

It would, of course, be necessary to consult the Government of Canada, as well as that of Newfoundland, in any new arrangements which might be entered into in this respect.

J. H. G. BERGNE.

*Foreign Office,*

*November 30, 1878.*

---

## APPENDIX (A).

TITLE XXVII. Consolidated Statutes of Newfoundland, 1872.

Cap. CII.—*Of the Coast Fisheries.*

## Section.

1. Herring not to be caught between 20th October and 12th April. Seine, how to be used.
2. Time for use of and size of net.
3. Injuries to nets and seines.
4. Herring not to be hauled for bait between 20th April and 20th October.
5. Spearing or sweeping with nets or seines for salmon above tidal waters unlawful.
6. Stake, seine, or weir unlawful.
7. Mill-dams and other obstructions.
8. Mesh of salmon net.
9. Salmon bought or sold in close time forfeited.

## Section.

10. Distance between salmon nets.
11. Time for taking salmon.
12. Penalties.
13. Weir, &c., erected contrary to law, may be destroyed.
14. Forfeitures and penalties, how recovered.
15. Appropriation of same.
16. Convictions not to be quashed for want of form.
17. Governor may appoint superintendent of fishery and fishery wardens.
18. Reservation of Treaty rights.

1. NO person shall haul, catch, or take herrings by, or in a seine or other such contrivance on or near any part of the coast of this Colony or of its dependencies, or in any of the bays, harbours, or other places therein, at any time between the 20th day of October and the 12th day of April in any year, or at any time use a seine or other contrivance for the catching and taking of herrings, except by way of shooting and forthwith hauling the same: Provided that nothing herein contained shall prevent the taking of herrings by nets set in the usual and customary manner, and not used for in-barring or inclosing herrings in a cove, inlet, or other place.

2. No person shall, at any time between the 20th day of December and the 1st day of April in any year, use any net to haul, catch, or take herrings on or near the coasts of this Colony or of its dependencies, or in any bays, harbours, or other places therein, having the mokes, meshes, or scales of such net less than two inches and three-eighths of an inch at least, or having any false or double bottom of any description; nor shall any person put any net, though of legal size mesh, upon or behind any other net not of such size mesh, for the purpose of catching or taking such herring or herring fry passing a single net of legal size mesh.

3. No person shall wilfully remove, destroy, or injure any lawful net or seine, the property of another, set or floating on or near the coast of this colony or its dependencies, or any of the bays, harbours, or other places therein, or remove, let loose, or take any fish from such seine or net.

4. No person shall, between the 20th day of April and the 20th day of October in any year, haul, catch, or take herrings or other bait for exportation, within one mile, measured by the shore or across the water, of any settlement situate between Cape Chapeau Rouge and Point Enragee, near Cape Ray; and any person so hauling, catching, or taking within the said limits, may be examined on oath by a Justice, officer of Customs, or person commissioned for the purpose as to whether the herrings or other bait are intended for exportation or otherwise, and on refusal to answer, or answering untruly, such person shall, on conviction, be subject to the provisions of the twelfth section of this chapter.

5. No person shall, by spearing or sweeping with nets or seines, take or attempt to take, any salmon, grilse, par, or trout in any bay, river, stream, cove, or watercourse, above where the tide usually rises and falls, or in any pond or lake.

6. No stake, seine, weir, or other contrivance for taking salmon, except nets set or placed across, shall be set or placed in any river, stream, cove, lake, or watercourse. No net shall extend more than one-third of the distance in a straight line across, and all nets shall be set only on one side of such river, stream, cove, lake, or watercourse.

7. No person shall construct any mill-dam, weir, rack, frame, train-gate, or other erection or barrier in or across any river, stream, cove, lake, or watercourse, so as to obstruct the free passage of salmon, grilse, par, trout, or other fish resorting thereto for the purpose of spawning; and all mill-dams or other erections placed on, over, or across any watercourse, river, or stream resorted to by fish for the purpose of spawning, shall have a waste gate opening, or slope sufficient to constitute a proper and sufficient fish way, which shall be kept in repair by the owner. No person shall permit any sawdust or mill rubbish to be cast into any such river, stream, cove, lake, or watercourse.

8. No person shall use any net for taking salmon, the mokes, meshes, or scales of which are less than four inches and a half inch.

9. No person shall buy or sell or have in his possession salmon, knowing the same to have been taken contrary to the provisions of this chapter, and every salmon so taken, bought, or sold, shall be declared forfeited to the complainant by any Justice.

10. No net shall be moored or set in any harbour, cove, creek, or estuary, or on or near any part of the coast of this Colony, or its dependencies, for the purpose of taking salmon, nearer to any other net moored or set for a like purpose than one hundred yards for a single net, and three hundred yards for a double net or fleet of nets.

11. No salmon shall be taken before the first day of May or after the tenth day of September in any year: Provided that if the time limited in this section shall be found to operate injuriously in any part of this island, the Governor in Council may appoint any other time or times, and such time or times shall be as binding on all persons as if specially mentioned herein.

12. Any person who shall violate any of the provisions of this chapter shall be subject to a penalty not exceeding fifty dollars, and all seines, nets, and other contrivances used contrary to the provisions of this chapter shall be forfeited, and may be seized and detained until the trial of the offender by any Justice, sub-Collector of Customs, Preventive officer, fishery warden, or constable, on view, or by virtue of a warrant issued by such Justice, sub-Collector, or Preventive officer, upon complaint made on oath to be administered by either of them, and, upon conviction, the same may be declared forfeited and ordered to be sold at public auction.

13. Any Justice, sub-Collector, Preventive officer, fishery warden, or constable, may, on view, destroy any weir, rack, frame, train-gate, or other erection or barrier, used or erected contrary to the provisions of this chapter, or the same may be destroyed by virtue of a warrant issued by any Justice, sub-Collector, or Preventive officer, upon complaint made on oath to be administered by either of them.

14. All forfeitures and penalties imposed by this chapter shall be recovered, with costs, in a summary manner before any Justice, for which purpose such Justice may summon or arrest the offender, and compel witnesses, by summons or warrant, to appear before him; and upon conviction of the offender, such Justice shall cause all seines, nets, and other contrivances illegally used to be sold by public auction, or where permitted under the provisions of the preceding sections of this chapter, destroyed; and in default of the payment of any penalty imposed, and costs, such Justice shall issue his warrant and cause such offender to be arrested and imprisoned for any period not exceeding twenty days.

15. All penalties and forfeitures imposed by this chapter, and the proceeds thereof, shall be paid to the party informing against and prosecuting the offender to conviction.

16. No proceeding or conviction by any Justice or other officer under this chapter shall be quashed or set aside for any informality, provided the same shall be substantially in accordance with the intent and meaning of this chapter.

17. The Governor in Council may appoint the Collector of Revenue for Labrador, or other person, to be superintendent of the fisheries on the coast of this island and its dependencies, and may also appoint fishery wardens, and prescribe their duties for the purposes of this chapter. The compensation for the services of such officers to be provided by the Legislature.

18. Nothing in this chapter shall affect the rights and privileges granted by Treaty to the subjects of any State or Power in amity with Her Majesty.

---

## APPENDIX (B).

---

ANNO TRICESIMO SEXTO VICTORIÆ REGINÆ.

Cap. III.—*An Act relating to the Treaty of Washington, 1871.*

[Passed 5th May, 1873.]

Section.

1. Suspension of Acts at variance with Articles.  
Proviso.

2. Powers given to Governor in Council.

Section.

3. Act not to come into force until Her Majesty's assent be given, and Proclamation issued.

Preamble.

WHEREAS a Treaty between Her Majesty and the United States of America was signed at Washington on the 8th day of May, 1871, and was duly ratified on the 17th day of June in that year, which, amongst other things, contained the following Article:—

“It is further agreed that the provisions and stipulations of Articles XVIII to XXV of

this Treaty, inclusive, shall extend to the Colony of Newfoundland, so far as they are applicable; but if the Imperial Parliament, the Legislature of Newfoundland, or the Congress of the United States shall not embrace the Colony of Newfoundland in their laws enacted for carrying the foregoing Articles into effect, then this Article shall be of no effect, but the omission to make provision by law to give it effect, by either of the Legislative Bodies aforesaid, shall not in any way impair any other Articles of this Treaty."

And Whereas it is expedient to provide for giving effect, as regards the Island of Newfoundland and its dependencies, to said Articles XVIII to XXV of said Treaty, inclusive, so far as they are applicable to this Colony.

Be it therefore enacted by the Governor, Legislative Council and Assembly, in Legislative Session convened, as follows:—

1. As soon as the law required to carry into operation, on the part of the United States of America, the Articles set out in the Schedule to this Act, has been passed by the Congress of the United States, and come into force, all laws of this Colony which operate to prevent the said Articles from taking full effect shall, so far as they so operate, be suspended and have no effect during the period mentioned in the Article numbered XXXIII in the Schedule to this Act: Provided that such laws, rules, and regulations relating to the time and manner of prosecuting the fisheries on the coasts of this Island shall not be in any way affected by such suspension.

Suspension of Acts at variance with Articles.

2. The Governor in Council, by any order or orders to be made for that purpose, may do anything further, in accordance with the spirit and intention of the Treaty, which shall be found necessary to be done on the part of this Island to give full effect to the Treaty; and any such order shall have the same effect as if the object thereof were expressly provided for by this Act.

Powers given to Governor in Council.

3. This Act shall not come into force until Her Majesty's assent thereto shall have been given, and until the issuing of a Proclamation under provisions of section 2 of the Act of the Imperial Parliament, entitled "The Treaty of Washington Act, 1872," and shall remain in force during the term of years mentioned in Article XXXIII in the Schedule to this Act.

Act not to come into force until Her Majesty's assent be given, and Proclamation issued.

[Here follows a Schedule reciting the Fishery Articles of the Treaty of Washington.]

## APPENDIX (C).

ANNO TRICESIMO SEPTIMO VICTORIÆ REGINÆ.

Cap. II.—*An Act to carry into effect the Provisions of the Treaty of Washington, as far as they relate to this Colony.*

[Passed 28th March, 1874.]

Section.

1. Power to Governor to declare Articles of Treaty in force.

Section.

2. Governor may make orders, &c.

3. Suspending Clause, and duration of Act.

WHEREAS a Treaty between Great Britain and the United States of America was signed at Washington on the 8th day of May, 1871, and was duly ratified on the 17th day of June in that year, containing the following Articles, viz. :—

Preamble.

"It is further agreed that the provisions and stipulations of Articles XVIII to XXV of this Treaty, inclusive, shall extend to the Colony of Newfoundland, so far as they are applicable; but if the Imperial Parliament, the Legislature of Newfoundland, or the Congress of the United States, shall not embrace the Colony of Newfoundland in their laws enacted for carrying the foregoing Articles into effect, then this Article shall be of no effect; but the omission to make provision by law to give it effect by either of the Legislative Bodies aforesaid shall not in any way impair any other Articles of this Treaty."

Be it therefore enacted, by the Governor, Legislative Council and Assembly, in Legislative Session convened, as follows:—

1. The Governor may, at any time hereafter, by his Proclamation, to be published in the "Royal Gazette" of this Colony, declare that after a time to be therein named the provisions and stipulations of the said Articles XVIII to XXV of the said Treaty, inclusive, as set forth in the Schedule to this Act, shall extend to this Colony of Newfoundland, so far as they are applicable; and after the time so named in such Proclamation the provisions and stipulations of the said Articles shall come into full force, operation, and effect in this Colony, so far as the same are applicable, and shall thenceforth so continue in full force, operation, and effect during the period mentioned in Article XXXIII of the said Treaty, recited in the Schedule to this Act, any law of this Colony to the contrary notwithstanding.

Power to Governor to declare Articles of Treaty in force.

Governor may make orders, &c.

2. The Governor in Council may, by any order or orders to be made for that purpose, do any act or thing in accordance with the spirit and intention of the said Treaty, which shall be found necessary to be done on the part of this Colony, to give full force, operation, and effect to the said Treaty; and any such order shall have the same effect as if the same were expressly enacted in this Act.

Suspending Clause and duration of Act.

3. This Act shall not come into operation until Her Majesty's assent thereto shall have been given; and shall remain in force during the term of years mentioned in Article XXXIII in the Schedule to this Act.

[Here follows a Schedule reciting the Fishery Articles of the Treaty of Washington.]

---

APPENDIX (D).

---

ANNO TRICESIMO SEPTIMO VICTORIÆ REGINÆ.

Cap. X.—*An Act to repeal an Act entitled "An Act relating to the Treaty of Washington 1871."*

[Passed 29th April, 1874.]

SECTION 1. Treaty of Washington Act, 1871, repealed.

Preamble.

WHEREAS it is expedient to repeal the Act entitled "An Act relating to the Treaty of Washington, 1871:"

Be it therefore enacted by the Governor, Legislative Council and Assembly, in Legislative Session convened:—

Treaty of Washington Act, 1871, repealed.

1. The Act passed in the 36th year of the Reign of Her present Majesty, entitled "An Act relating to the Treaty of Washington, 1871," is hereby repealed, and shall be deemed to have been repealed from the 28th day of March last.

---

APPENDIX (E).

---

39TH VICTORIA.

Cap. VI.—*An Act to amend the Law relating to the Coast Fisheries.*

[Passed 26th April, 1876.]

Section.

1. Cap. 102, Sec. 1, Consolidated Statutes, amended.
2. Sec. 4 of Cap. 102, amended.
3. Squids not to be taken with seines, &c.

Section.

4. Herring not to be taken within certain times.
5. Penalty.

BE it enacted by the Governor, Legislative Council and Assembly, in Legislative Session convened, as follows:—

Cap. 102, Sec. 1, Consolidated Statutes amended.

1. The 1st section of Cap. CII of the Consolidated Statutes is hereby amended by substituting the words "25th day of April" for the "12th day of April."

Sec. 4 of Cap. 102, amended.

2. The 4th section of the said Chapter is hereby amended, by substituting the words "10th day of May," for "20th day of April."

Squids not to be taken with seines, &c.

3. No person shall, at any time, haul, catch, or take squids, with, in, or by means of any seine, bunt, or other such contrivance.

Herring not to be taken within certain times.

4. No person shall, between the hours of 12 o'clock on Saturday night and 12 o'clock on Sunday night, haul or take any herring, caplin, or squids, with nets, seines, bunts, or any such contrivance, or set or put out any such net, seine, bunt, or contrivance for the purpose of such hauling or taking.

Penalty.

5. Any person violating the provisions of this Act shall be subject to the same penalties as are provided by section 12 of the said chapter.

---