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THE
Newfoundland Fishery Dispute,

—OR—

The "French Shore" Question.

—BY—

REV. HAROLD F. WILSON, D.C.L.



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PREFACE.

I had opportunities during a residence of nearly eight years in Newfoundland of noticing how the Colonists were affected by the "French Shore" Question before the signing of the convention of April 8th, 1904. I have also derived assistance in the preparation of these Articles from the letters of personal friends. The following is a list of the chief authorities consulted :

"Correspondence respecting the Newfoundland Fisheries, 1884-1890 (c. 6, 044);

"Further correspondence respecting the Newfoundland Fisheries," 1890-1891 (c. 6, 256);

"Further correspondence respecting the Newfoundland Fisheries," 1891 (c. 6, 334);

"Correspondence with the Newfoundland Delegates respecting proposed imperial legislation for carrying out the Treaties with France" 1891 (c. 6, 365);

"The Newfoundland Treaties Act", 1891 (c. 7, 215);

"French Treaty Rights in Newfoundland"—The case for the colony stated by the People's Delegates (London June 18th);

"A Treatise on International Law"—Hall;

"La Grande Encyclopédie" art. "Terre-Neuve";

"Encyclopædia Britannica" articles "Fisheries";

"Newfoundland", "crustacea";

"Foreign Policy of Europe" 1891-Appleton;

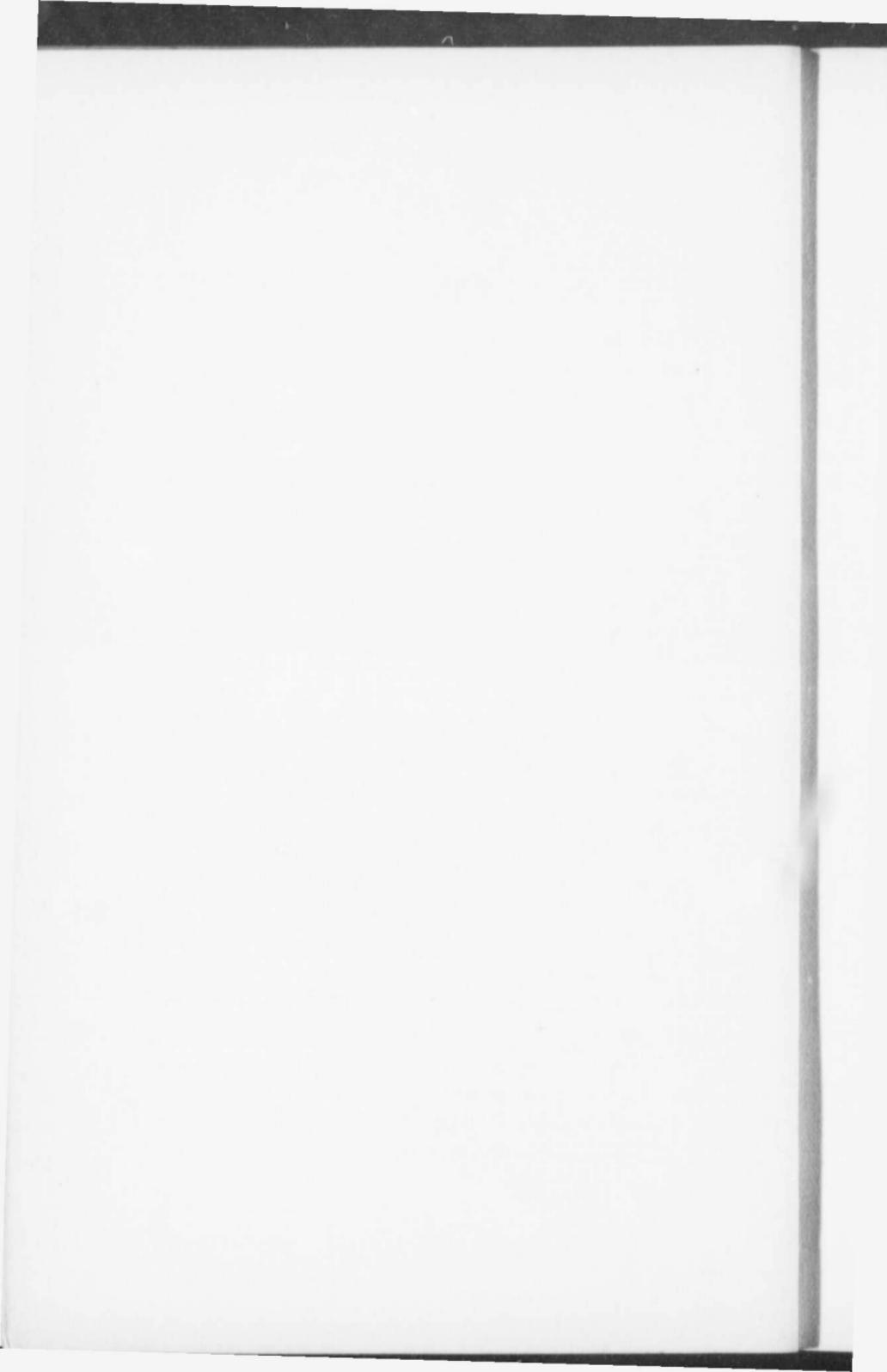
"The History of Newfoundland"—Pudley, 1863.

"A History of Newfoundland"—Prowse, 1895.

Various newspaper articles.

Article in 'Fortnightly Review,' by P. T. McGrath.

April 26th, 1904.



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THE
Newfoundland Fishery Dispute,
OR THE
"French-Shore" Question.

CHAPTER I.

THE SOVEREIGNTY OF NEWFOUNDLAND.

The sovereignty of the Island from the first belonged to Great Britain

It will be most helpful in the consideration of this difficult subject if we can first satisfactorily determine to which nation the ancient Sovereignty of Newfoundland rightly belonged. For, it need scarcely be said, our French friends are so far from taking the view which, correctly, as we think, assigns it to England, that up to the present they have strenuously and frequently asserted their Treaty rights represent but a small fraction of a former dominion sufficiently great to be called 'Sovereignty'. If it be necessary to shew by quotations that such a claim is actually made, attention may be drawn to the statements of

the French Ambassador, M. Waddington, in a communication to the Marquis of Salisbury, dated December 12th, 1888 :—

"Mon Gouvernement était donc fondé à croire, d'après ce qu précède et en conséquence de cette série d'engagements, que le droit de la France sur la côte de l'île de Terre-Neuve réservée à ses pêcheurs n'est autre chose qu'une partie de son ancienne souveraineté sur l'île qu'elle a retenue, en cédant le sol à l'Angleterre, mais qu'elle n'a jamais ni infirmé ni aliéné. Si le droit concédé aux pêcheurs Français a été quelquefois discuté, il l'a été dans la forme, jamais dans le fond."

"My Government was therefore justified in believing, after what precedes and in consequence of this series of engagements, that the right reserved for the fishermen of France on the Island of Newfoundland, is nothing else than a part of her old sovereignty on the island which she has retained, in giving the soil to England, but which she has neither invalidated nor alienated. If the right given to the French fishermen has been sometimes debated, it has been so merely in form, never thoroughly."

Needless to say this claim has been vigorously contested by British statesmen. Lord Salisbury replied enclosing a memorandum to which he called the French Ambassador's attention as containing "indisputable evidence that the Sovereignty of Newfoundland has from the earliest times belonged to the British crown, and that the interests of France were limited to the possession of Placentia and the temporary occupying by conquest or settlement of certain portions of the adjacent coast."

There can be no doubt that our rivals' demand for *exclusive* rights on the coast assigned to them would be materially strengthened if they could establish as a fact their former sovereignty of the Island. In this case they might very fitly say that by the treaties they "reserved and did not receive their rights," and, if it were once admitted they "reserved" them they would be in a better position to enforce their own interpretation of what the Treaties actually meant; for it will probably be agreed that the *grantor* can with more justice demand permission to explain what he intended to give, than the *grantee*. Some such idea must certainly have prompted the reiteration of the French claim to the ancient Sovereignty of Newfoundland, and very naturally for the same reason British diplomatists felt compelled to demur.

A very brief historical investigation will be quite sufficient to decide the question. The evidence which is available points unmistakably to John Cabot as the discoverer of the Islands. However slight his claim to be called an Englishman might be, he was undoubtedly an English agent, and acted under a direct commission from Henry VII. The Colony's chief historian, Judge Prowse, has very ably put the case, both for identifying Cape Bonavista with Cabot's Landfall in the New World, and for the subsequent uninterrupted occupation of the Island by the British as a fishing ground. Admitting a certain

ambiguity in the early application of the name "Newfoundland," it will hardly be disputed that *most at least* of the ancient papers from which he cites *do refer* to voyages to the Island. In this connection we must note Sir Humphrey Gilbert, on August 5th, 1583, took formal possession of the country, "acting under a commission from the Queen of England;" and also that there is evidence to show that from 1583 to 1713 England exercised continued acts of dominion; grants of land were made, commissions were issued, and regulations drawn up for the government of the country. When we notice that in 1698 the British Parliament passed a bill (10 and 11, Wm. III., cap. 25) which had reference to the *whole country*, the seas and Islands adjacent, and which was principally a formal sanction of the customs and regulations which had existed previously, there seems very little room for further doubt.

If the references to British Sovereignty during the earlier period of its history seem somewhat scanty we must remember the "New Land" was not likely to claim a large share of public attention. The age was not a reading one, and while the men of letters were occupied with events of greater moment, such as the Reformation and Court affairs, it was not probable much allusion would be made to a distant isle, the sole interest of which lay in its fishing possibilities.

Judge Prowse, it seems to us, does not fail in securing evidence from State Papers and old Acts of Parliament that "England governed Newfoundland and participated in her fishery continuously from the earliest period," and a perusal of the first pages of his work will convince most readers of the soundness of the case.

Thus, by the fulfilment of two chief conditions, (1) discovery, and (2) continuous use of its products, British Sovereignty in Newfoundland, has, from the earliest possible time, been maintained; and England can present the strongest case if this assertion is called in question.

II.—*The French claim to Sovereignty is not supported by the history of the Island.*

But the assertions of France must not be dismissed without due consideration. The statement of M. Waddington, already quoted, is but one instance of the manner in which territorial sovereignty in Newfoundland has been claimed by French politicians. Wherever—and the instances are not few—they speak of their Treaty rights as "*reserved*," the claim is implied. As they would say France ceded to England the chief sovereignty of the Island, and merely "*reserved*," but did "*reserve*," rights on the "French Shore." But what are the facts? It is

nowhere seriously asserted that the French claim can rest on the *title of discovery*; for though the voyages of Jacques Cartier in 1534, 1535 and 1536 very probably included a visit to Newfoundland, these were made long after Cabot's celebrated discovery. There is no reason to dispute the use of the coast by French fishermen from a time very soon *after* its discovery, but attention must be called to the unmistakable indication of Great Britain's supremacy to be found in the State papers, where it is said that until 1632 they were not formally authorized to resort there for fishing; the inference being that the practice was, until then, carried on in an illicit manner. And, further, there is no doubt *the British exacted a five per cent. tribute from foreign fishermen resorting to the coasts of Newfoundland between 1635 and 1675*; a tribute which was only remitted to the French by the generosity of Charles II. If the claim of France to sovereignty could seem to be justified in any period of Newfoundland history, it would certainly be in that immediately after the Restoration. Then Placentia was fortified, and if we are to trust Hatton & Harvey's record, they established their dominion over two hundred miles of territory. But even this temporary exercise of sovereignty, limited to Placentia and the adjacent coast, was ended by Article XIII. of the Treaty at the Breda, 1667; and if a further contention for dominion be founded on their success-

ful assaults on St. John's in 1696, 1708, and 1762, the fact that the conquests were incomplete—very soon after each surrender the British flag was again raised—prevents any of these from being an adequate basis on which to rest the claim. Remembering that *in 1698 the British Parliament legislated for the whole of Newfoundland, and absolutely forbade aliens to fish or trade there*, we are brought to a period sufficiently near the date of the Treaty of Utrecht (1713) to warrant the statement that an appeal to the Island's history can hardly lead to a decision adverse to the British claim for sovereignty. It results from this that the desire of the French to interpret the language of the Treaties, and define their rights cannot be justified; and when their position on the Treaty Coast is spoken of in the exaggerated manner in which M. le Ministre de la Marine referred to it:—

“ Nous jouissons d'un droit souverain qui s'exerce dans la souveraineté d'autrui, et pour assurer l'exercice de ce droit, nous sommes obligés d'avoir recours à l'intervention de ceux-là mêmes qui le contestent.”

“ We enjoy a sovereign right which is exercised in the sovereignty of others, and to make sure that this privilege be exercised, we are obliged to have recourse to the intervention of those very persons who contest it.” The extravagance of the assertion (*Plenum dominium* as M. Bozerain called it later) is its own refutation.

CHAPTER II.

The earlier attitude of English statesmen was on the whole adverse to permanent colonization.

(I.) Now, though there is so strong a case to prove that British supremacy was enforced from its discovery, we can hardly speak so confidently of the English intention to settle and colonize Newfoundland. Indeed the data collected seem to prove that, with the exception of some few and widely separated permissions—issued chiefly to individuals—the policy of the home-country tended rather to keep the Island uninhabited. In this policy the statesmen of the time may have been influenced by a belief that the severity of the climate and barrenness of the soil rendered the country unfit for occupation—this is hinted at in the reports of at least one official—but on the whole, other considerations had more weight. These resulted from the repeated attempts made by the West Country merchants to preserve Newfoundland for a fishing station and exclusively for their own benefit.

It was shrewdly foreseen by these traders that any settlement of a permanent nature must in the long

run (by introducing a competition with which they could hardly hope to cope) prove prejudicial to their interests. The very frequent representations made to the Government were usually successful in *retarding*, if not in actually preventing the development of the Island. As early as the reign of Elizabeth direct and definite influence was exerted to secure its continuance in the position of a *fishing station*, and nothing more. When Guy, in 1610, had obtained a charter, and attempted to form a permanent settlement, his little colony was most strenuously resisted. In this instance the hostile attitude of the Western Adventurers led them to the exercise of force in order to wreck the settlement and nip the endeavour in the bud.

Even when a strong representation was addressed to Charles I. by Vaughan, urging the development and colonization of the country, it was apparently made in vain. It is true that in 1630 a commission was issued by the King, "For the well-governing of his subjects inhabiting Newfoundland, or trafficking in bays, creeks, fish-rivers there;" but since the preamble states as a reason for issuing the measure, that some who had established themselves permanently seemed to think they could not be impeached in England for their malpractices there, and the result of this notion was all manner of excesses "To the great hindrance

of the voyage and common damage of this realm," it seems the enactment was intended rather to protect the property of the floating summer population than to materially aid the well-being of the "planters" or permanent residents. In this reign courtiers from Devonshire, possessed of great influence and interested in the fishery, made special efforts to keep the Island as a mere fishing station. Others, as Judge Prowse tells us, pursued the same policy, and its effect can be easily traced for fully two hundred years subsequently. Instances are found in the positive instructions issued to ship-masters in 1663, that they should carry no settlers to Newfoundland, and in the almost startling order of the 5th of May, 1675: "His Majesty in Council thought fit, for the several considerations in the said report mentioned, to order the Commander of his Convoy, bound to Newfoundland, to admonish the inhabitants either to return home to England, or to betake themselves to others of his plantations, and to direct that letters be prepared unto the several Governors of the said Plantations, that in case any of the said inhabitants of Newfoundland should arrive within their respective governments that they be received with favour, and that all convenient help and assistance towards their settlement be afforded unto them." [Report of the Lords Commissioners for Trade and Plantations to His Majesty relating to the Newfoundland Trade and Fishery, dated 19 Dec'r., 1718.]

Perhaps the suggestion of Major Elford for keeping the country uninhabited, if the most ludicrous, would have proved the most effective :

“ That they allow no women to land in the Island, and that means should be adopted to remove those that were there.”

(II.) The tardy and imperfect organization of courts of justice is at once an indication and a result of this adverse influence. The first instance of a formal and authorized tribunal occurs in 1615, when Sir Richard Whitbourne was sent out to hold courts of Vice-Admiralty. That the system so established was primitive and non-effective, was proved by the breaking out of former disorders soon after his courts had been held. The notorious “ Fishing Admiral” system was first legally authorized in the reign of Charles I, (1633).

By this system the master of the first fishing vessel entering a harbour was constituted its admiral and arbitrary judge for the season, while the master of that which entered next became its vice-admiral. This most anomalous system of judicature was manifestly detrimental to the interests of the permanent settlers, and judging from the manner in which it is still spoken of by the “ planters,” it has been handed down to memory as meriting hatred similar to that which attaches to the Cromwellian occupation of Ireland.

It was decidedly adverse to the development of the Island that in the year 1698 this system was again recognized. And "the entire control of the colony, including the administration of justice," was placed in the hands "of a set of ignorant skippers who were so illiterate that out of the whole body of these marine justiciaries only four could be found able to sign their names." Some of the prerogatives of the "Fishing Admirals" seem to have been taken away by the Naval Governors about 1711, but the system, save for this slight check made in the interest of the settlers, continued with its mischievous results till 1729, in which year the Island was divided into six districts for the administration of justice, and magistrates were appointed.

(III) The length of time which elapsed before the appointment of a governor is another indication of the policy of the times. Certain powers for district-government were granted to Gilbert, Mason, Hayman, Wynne, Kirke, and to the commissioners appointed by Cromwell, but in none of these cases does it seem to have been intended to establish a precedent for the regular appointment of a governor of the whole island.

For a period the commander of the garrison at Fort William seems to have exercised some of the powers of a governor, but in 1708 the authority was

apparently transferred to the superior Naval officer on the Newfoundland station. In spite of many applications and representations, the Home Government would commission no governor in the modern sense until the appointment of Captain Henry Osborne in 1728.

CHAPTER III.

The former policy being opposed to colonization accounts for the ease with which France acquired Treaty rights.

It seems quite clear from the positive discouragement shown to permanent settlers, the tardy organization of courts of justice, and the long delay before the appointment of a governor, that up to the time of the signing of the Treaty of Utrecht (1713) the policy of British statesmen was adverse to settlement in Newfoundland; to such an extent had the influence of the West Country merchants prevailed that the Island was regarded as a fishing station, and fit for nothing more. This attitude accounts for the ease with which the French secured certain fishing rights at the time of the Treaty. Not even strong representations from those who had hitherto so easily moulded the Government's policy towards Newfoundland, could secure the freedom of the coast from foreign competition. It was a natural result of the attitude they had laboured to produce, that statesmen readily granted fishery privileges to France. As the country was always to be a mere fishing station hav-

ing only a summer population, why should extraordinary diligence be exercised to retain the whole shore? The opportunity of making what seemed a satisfactory agreement could not be missed owing to the desire of some merchants to retain sole use of a distant and barren Island. These considerations seem to have prevailed in framing the Treaties, and they offer the best explanation of the admission of French fishermen to that immense stretch of coast-line indicated in the thirteenth article of the Treaty of Utrecht (1713):—

Art. 13,—“The Island called Newfoundland, with the adjacent islands, shall from this time forward be long of right wholly to Great Britain; and to that end the town and fortress of Placentia, and whatever other places in the said Island are in the possession of the French, shall be yielded and given up within seven months from the exchange of the ratifications of this Treaty, or sooner, if possible, by the most Christian King, to those who have a commission from the Queen of Great Britain for that purpose. Nor shall the most Christian King, his heirs and successors or any of their subjects at any time hereafter, lay claim to any right to the said Island and Islands or to any part of it or them. Moreover it shall not be lawful for the subjects of France to fortify any place in the said Island of Newfoundland, or to erect any build-

ings there, besides stages made of boards, and huts necessary and usual for drying of fish, or to resort to the said Island beyond the time necessary for fishing and drying of fish.

"But it shall be allowed to the subjects of France, to catch fish and to dry them on land, in that part only, and in no other besides that, of the said Island of Newfoundland, which stretches from the place called Cape Bonavista to the Northern point of the said Island and from thence running down by the Western side, reaches as far as the place called Point Riche. But the island called Cape Breton, as also all others, both in the mouth of the river St. Lawrence, and in the Gulph of the same name, shall hereafter belong of right to the French, and the most Christian King shall have all manner of liberty to fortify any place or places there."

The privileges of fishing on the Newfoundland coast granted to the French by this article were confirmed by the 5th Article of the Treaty of Paris, 1763.

"The subjects of France shall have the liberty of fishing and drying on a part of the coasts of the Island of Newfoundland, such as it is specified in the 13th article of the Treaty of Utrecht, which article is renewed and confirmed by the present Treaty,

(except what relates to the Island of Cape Breton as well as to the other islands and coasts in the mouth and in the Gulph of St. Lawrence.”

In addition to this renewal of former rights the 6th Article added :—

Art. 6,—“ The King of Great Britain cedes the Islands of St. Pierre and Miquelon in full right to His Most Christian Majesty to serve as a shelter to the French fishermen; and His said Most Christian Majesty engages not to fortify the said Islands; to erect no building upon them but merely for the convenience of the fishery, and to keep upon them a guard of fifty men only for the police.”

But the Treaty of Versailles 1783, and the Declaration attached to it must be considered the source of nearly all the difficulties and disputes connected with the French Shore Question. An important change was made in the coast line on which the French rights of fishery should be exercised. A sturdy British population had sprung up round the shores of Bonavista Bay, and to avoid disputes between these settlers and the foreign fishermen it was decided France must give up its rights between Cape Bonavista and Cape S. John, and receive in exchange access to an equivalent extent of coast on the Western side of the Island. It was by the text of this Treaty also that France obtained unrestricted sovereignty

(though limited by the Declarations of both Kings) to the Islands of S. Pierre and Miquelon. The Articles dealing with the Newfoundland question are:—

Art. 4.—“ His Majesty the King of Great Britain is maintained in his right to the Island of Newfoundland and to the adjacent Islands, as the whole were assured to him by the Thirteenth Article of the Treaty of Utrecht, *excepting the Islands of S. Pierre and Miquelon, which are ceded in full right by the present Treaty to His Most Christian Majesty.*”

Art. 5.—“ His Majesty the Most Christian King, in order to prevent the quarrels which have hitherto arisen between the two nations of England and France, consents to renounce the right of fishing which belongs to him in virtue of the aforesaid Article of the Treaty of Utrecht from Cape Bonavista to Cape S. John, situated on the Eastern coast of Newfoundland in fifty degrees North latitude; and His Majesty the King of Great Britain consents on his part that the fishery assigned to the subjects of His Most Christian Majesty, beginning at the said Cape John passing to the North and descending by the Western Coast of the Island of Newfoundland shall extend to the place called Cape Ray, situated in forty-seven degrees, fifty minutes latitude. The French fishermen shall enjoy the fishery which is assigned to them by the present article, as they had the right to enjoy

that which was assigned to them by the Treaty of Utrecht."

We notice this article very distinctly refers to the 13th article of the Treaty of Utrecht as the measure of the privileges to be renewed. Hence so far as the language of the Treaties is concerned, the French acquired *liberty to fish* and nothing more. The only basis on which they could by any pretence rest their claim to exclusive rights is contained in the Declaration which was appended to this Treaty. As the Declaration has played a most important part in the controversies of the following century we will quote the full text, and also that of the French King's counter Declaration :—

DECLARATION OF HIS BRITANNIC MAJESTY.

"The King having entirely agreed with His Most Christian Majesty upon the Articles of the definitive Treaty, will seek every means which shall not only insure the execution thereof with his accustomed good faith and punctuality, and will besides give, on his part, all possible efficacy to the principles which shall prevent even the least foundation of dispute for the future."

"To this end, and in order that the fishermen of the two nations may not give cause for daily quarrels, His Britannic Majesty will take the most positive measures for preventing his subjects from interrupting in any manner by their competition, the fishery of the French, during the temporary exercise of it which is granted to them upon the coasts of the

Island of Newfoundland ; but he will for this purpose cause the fixed settlements which shall be formed there to be removed. His Britannic Majesty will give orders that the French fishermen be not incommoded in cutting the wood necessary for the repair of their scaffolds, huts and fishing vessels."

"The Thirteenth Article of the Treaty of Utrecht, and the method of carrying on the fishery, which has at all times been acknowledged, shall be the plan upon which the fishery shall be carried on there ; it shall not be deviated from by either party ; the French fishermen building only their scaffolds, confining themselves to the repair of their fishing vessels and not wintering there ; the subjects of His Britannic Majesty, on their part, not molesting in any manner the French fishermen during their fishing, nor injuring their scaffolds during their absence."

"The King of Great Britain in ceding the Islands of St. Pierre and Miquelon to France, regards them as ceded for the purpose of serving as a real shelter to the French fishermen, and in full confidence that these possessions will not become an object of jealousy between the two nations ; and that the fishery between the said Islands and that of Newfoundland, shall be limited to the middle of the Channel."

Given at Versailles, the 3rd September, 1783.

(L. S.) "MANCHESTER."

Attention is specially drawn to the words "from interrupting in any manner by their competition the fishery of the French." In a letter to the Marquis of Salisbury, dated March 3rd, 1888, M. Waddington called attention to the rather remarkable fact that

" *The Declaration of the 3rd September, 1783, was only drawn up in one language, the French; and the original text, signed by the Duke of Manchester, states that:—*

" Sa Majesté Britannique prendre les mesures les plus positives pour prévenir que ses sujets ne troublent en aucune maniere, par leur concurrence la pêche des Français !"

His Britannic Majesty must take the strictest measures to prevent his people from troubling in any way, by their concurrence, the fishery of the French.

The French Ambassador argued that since when this Declaration was *translated* on the 23rd of September of the same year, the word in the translation "interrupt" was *not* used to express the French word "interrompre," but a more general expression "*troubler*," the prohibition could not be limited to acts sufficiently serious "to constitute an interruption properly so-called," and that, consequently, it was an infringement of the Declaration when British fishermen placed nets in such positions that they apparently prevented the "Cod fish doubling the capes and going along the French Shore" and so were alleged to decrease the French catch.

It is worthy of note that in the reply of the French King this Declaration *is coupled with the Treaty itself* as sufficiently defining the respective rights of the nations :—

COUNTER DECLARATION OF HIS MOST
CHRISTIAN MAJESTY.

- “The principles which have guided the King in the whole course of the negotiations which preceded the re-establishment of peace, must have convinced the King of Great Britain that His Majesty has had no other design than to render it solid and lasting by preventing, as much as possible, in the four quarters of the world, every subject of discussion and quarrel.
- “The King of Great Britain undoubtedly places too much confidence in the uprightness of His Majesty’s intentions not to rely upon his constant attentions to prevent the islands of St. Pierre and Miquelon from becoming an object of jealousy between the two nations.
- “As to the fishery on the coasts of Newfoundland, which has been the object of the new arrangements settled by the two sovereigns, upon this matter it is sufficiently ascertained by the 5th article of the Treaty of Peace signed this day, and by the Declaration likewise delivered to-day by His Britannic Majesty’s Ambassador Extraordinary and Plenipotentiary; and His Majesty declares that he is fully satisfied on this head.
- “In regard to the fishery between the Island of Newfoundland and those of St. Pierre and Miquelon, it is not to be carried on by either party but to the middle of the Channel; and His Majesty will give the most positive orders that the French fishermen shall not go beyond this line. His Majesty is firmly persuaded that the King of Great Britain will give like orders to the English fishermen.”

Given at Versailles, the 3rd Sept., 1783.

(L. S.)

“GRAVIER DE VERGENNES.”

The Treaties of Paris dated 1814 and 1815, merely restored things to the condition in which they were in 1792.

It is impossible to procure reliable data shewing in what manner the Declaration of 1783 was then interpreted; probably the disturbed state of European affairs prevented much thought being bestowed on Newfoundland.

TREATY OF PARIS—1814.

Art. 8.—“His Britannic Majesty, stipulating for himself and his Allies, engages to restore to His Most Christian Majesty, within the term which shall be hereafter fixed, the Colonies, Fisheries, Factories and Establishments of every kind, which were possessed by France on the 1st January, 1792, in the seas, on the Continents of America, Africa and Asia, with exception, however, of the Islands of Tobago and St. Lucia and the Isle of France and its Dependencies, especially Rod-rigues and Les Sechelles, which several Colonies and Possessions His Most Christian Majesty cedes in full right and sovereignty to His Britannic Majesty, and also the portion of St. Domingo ceded to France by the Treaty of Basle, and which His Most Christian Majesty restores in full right and Sovereignty to His Catholic Majesty.

Art. —“The French right of fishery upon the Great Bank of Newfoundland, upon the coasts of the Island of that name and of the adjacent Islands in the Gulph of St. Lawrence shall be replaced upon the footing in which it stood in 1792.”

TREATY OF PARIS—1815.

Art. 11.—“The Treaty of Paris of the Thirtieth of May, One Thousand Eight Hundred and Fourteen, and the final Act of the

Congress of Vienna of the Ninth of June, One Thousand Eight Hundred and Fifteen, are confirmed and shall be maintained in all such of their enactments which shall not have been modified by the Articles of the present Treaty."

A consideration of such evidence as is attainable convinces us that at the period of making the Treaties our statesmen were adverse to the coming of permanent settlers to Newfoundland, and that this attitude was induced by the Court influence of those Devonshire merchants who were interested in the fishery. The text of the Treaties shews how easily the Home Government permitted the use of an extensive and valuable coast line to be acquired by another nation; very probably because it was supposed the country would never develop beyond the status of a temporary fishing station, and that therefore the rights and desires of its *possible* inhabitants needed little or no consideration.

Had it been otherwise can we think that even corrupt statesmen would have ventured to permit the signing of a treaty which gave 'liberty' to foreign competitors to profit by the colony's chief resource?

Still less would they have been bold enough to add, even by means of a scarcely official Declaration, the obligation that British subjects might not compete on the coast of their own Island with transitory visitors from another and distant country.

There can be no doubt, as was stated to the Colonial office by Mr. Harvey in 1890, that the greater part of the complications and disputes which have since arisen are not so much due to the Treaties as to this Declaration. The gift of a right of 'User' on the colony's shores would to-day be a sufficient hardship to the people, and it can hardly be supposed that even were the Declaration out of the question the Colonial Government would have silently acquiesced in the concurrent rights so established. Would the people of Great Britain be quite satisfied if they were compelled to submit to the annual visit of a foreign fishing fleet, and consequently diminished possibilities for their own fishermen? But suppose England did not possess so many resources, but were practically dependent on the very industry in which foreigners had been permitted to compete with the English, can we think such a state of affairs would be tolerated for a day? What wonder then if the privileges given by the Treaties would cause discontent even when considered by themselves and involving only concurrent rights. Such competition in their own waters from a foreign race would seem a sufficient cause of dissension, and especially so when it is remembered that France has a much better opportunity of working up European markets than Newfoundland, and by its "*bounty-system*" is actually

driving all other competition from the field. But in addition to these fishing privileges France acquired in full right the adjacent Islands, St. Pierre and Miquelon, which contrary to the intention of the first Treaties they have colonized in a permanent manner. A frequent charge brought against the French Government is that these Islands have been notorious as refuges for smugglers, and it certainly has not tended to soothe the feelings of the colonial statesmen that no British representative whatever has ever been permitted to reside in St. Pierre.

But when the Declaration and its modern interpretation were attached to the Treaties, what could result save intensified bitterness? It is alleged with a fair amount of evidence that this declaration embodied *privately* a concession which even at that time (1783) could not be ventured upon publicly. To have inserted it in the Treaties would necessarily have aroused some indignation; at least this is generally believed by the educated colonists.

Then there was the question of its force up to the present time. What authority had it? Though so closely connected with the Treaty, it is manifestly not an integral part of it. Indeed in a memorial from the people of the West Coast in 1889, it was alleged with reference to the prohibitive words of the Declaration, "That these words are not in the Trea-

ty. They are not embodied in the International act binding the two nations, though afterwards embodied in act of Parliament, but are an afterthought, a purely personal declaration of good-will and good faith on the part of His Britannic Majesty towards His Most Christian Majesty, Louis XIV, King of France, who on his part made a counter Declaration to the King of England. It was a gratuitous and mutual interchange of diplomatic courtesies, binding the individuals themselves in honour to carry out the Treaties honestly and efficiently by such means as they deemed necessary, but by no means obliging the successors or the nation to such action, which events have proved to be altogether unnecessary." There is much to be said for the above way of looking at it, but on the whole it was perhaps safer from a moral point of view to carry out the regulations of the Declaration as though they were integral parts of the Treaty.

There was, however, a further difficulty. It seems an accepted ruling amongst students of International law that a former treaty is voided by one subsequent. But here there was an additional complication because the Treaty of Paris, 1814, while it did not expressly renew the provisions of the Treaty of Versailles which concerned Newfoundland, did restore whatever legitimate rights the French had exercised under it in 1792. "His Britannic Majesty stipulating for himself

and his allies, engages to restore to His Most Christian Majesty, within the term which shall be hereafter fixed, the colonies, fisheries, factories and establishments of every kind which were possessed by France on the First of January, 1792 in the seas and Continent of America."

"The French right of fishing upon the Great Bank of Newfoundland, upon the coasts of the Island of that name and the adjacent Islands in the Gulph of S. Lawrence, shall be replaced on the footing on which it stood in 1792."

The confirming Treaty of Paris, 1815, left this clause in the same condition. It is most important, therefore, to determine as far as possible what was the footing on which the French fishery was exercised in 1792. The records on this point are not very full, but perhaps sufficient evidence may be gleaned to make at least a *probable* case; and with this intent we will refer to a few facts collected from the years nearly before and after 1792.

(1) Palliser was appointed Governor in 1764. One of his first acts was to issue a proclamation in which he treated the French rights as *concurrent*.

"The Harbor Admirals and all officers were to take care that the said subjects of France be permitted and allowed *in common with the King's subjects to*

choose their stations during the fishery season according as they shall respectively arrive in the harbors."

(2) When Commodore Duff was Governor, he issued a proclamation in 1775 by which he emphatically asserted the sovereignty of Great Britain and decidedly denied the French had any right to *police* the Treaty Shore. The subjects of France, while exercising the fishery on the Newfoundland Coast, were "under the protection of H. Brittanick Majesty only;" and he further stated, "I cannot permit any officer with a commission from His Most Christian Majesty and with an armed force to resort to or exercise any authority within any part of H. Majesty's dominions under my Government."

(3) All the available proofs seem to indicate that between 1713 and 1783 the fishery rights of the French were exercised as concurrent ones. From 1769 onwards the French made frequent complaints urging that their fishermen were practically ousted from the liberty conceded to them by the fixed establishments of the British. M. de Guines, the French Ambassador in England, made a proposal for *exclusive* rights, but the British Government feeling compelled to refuse such a suggestion instructed Lord Stormont in 1776 to discuss the matter with Comte de Vergennes. The latter 'frankly admitted that to claim exclusive rights would be to strain the

language of the Treaty of Utrecht, but he urged that the language dealing with French rights should be interpreted liberally. The English Ambassador, after pointing out that it would be impossible to order the removal of the British fixed establishments which had "existed prior to the Treaty," and that the source of much trouble lay in the French *bounty-system*, at the same time transmitted to the Governor of the Island instructions to prevent British subjects taking exclusive possession of land or forming fixed settlements which might be prejudicial to the interests of French fishermen on the Treaty Shore.

(4). It is important to notice some points in the negotiations of Versailles, 1782 :

- (a) M. de Vergennes on 6th of October, 1782, stated that the French King would give up the Treaty rights between Cape Bonavista and Cape S. John "à condition que ses sujets pecheront seuls à l'exclusion des Anglais, depuis le cap Saint Jean en passant par le Nord et le Cap Ray."

On condition that Her subjects shall fish alone to the exclusion of the English, passing from Cape S. John round by the North to Cape Ray.

On the 24th of the same month the British authorities refused the exclusive rights.

- (b) When it was proposed to insert in the Preliminaries of Peace an article which might be construed to mean an exclusive fishery the English Government objected and only agreed to the following :—

Art. Vth "Les pescheurs François jouiront de la pesche qui leur est assignée par l'article précédent comme ils ont droit d'en jouir en vertu du Traite d'Utrecht."

The French fishermen will have the possession of the fishery which is given by the above article, as they have the right to possess it by virtue of the Treaty of Utrecht.

(c) While however, the British negotiations were firm on this point, Mr. Fitzherbert delivered to the French authorities a note practically containing the Declaration of 1783, to which, at the instance of M. de Vergennes, the words "par leur concurrence" were subsequently added.

(d) The English representative sent to London on June 18th, 1783, a draft of the French Counter-Declaration. As this draft spoke of the French rights as "*la peche exclusive*" the Duke of Manchester was instructed either to obtain the omission of the word "exclusive" or to make another Declaration, "*protesting that the King of England did not mean to grant exclusive fishery any otherwise than by ordering his subjects not to molest by concurrence.*"

The Duke obtained the omission of the word "exclusive" so that another Declaration became unnecessary.

(5.) In 1801 France earnestly pressed for fuller rights in Newfoundland. Indeed, at Amiens, M. J. Buonaparte desired the cession of a portion of Newfoundland in full sovereignty to France, but this was decidedly refused, and on Feb. 13th, 1802, Lord Cornwallis stated in a letter to Lord Hawkesbury, "The French Plenipotentiary seems determined to

press for some further indulgences at Newfoundland, but I am too well apprised of the importance of those fisheries to make the smallest concessions without His Majesty's commands".

(6.) M. Bozerain, as reported in the "Matin" of May 8th, 1890, asserted that Admiral Cochrane had in 1828 recognized the French fishery rights as exclusive :

" C'est une Proclamation de l'Amiral Cochrane Gouverneur de Terre-Neuve et Commandant les forces militaires de l'île à ses administrés datant du 8 Juin 1828.

La teneur de cette pièce est la suivante :—

" Attendu que des plaintes ont été faites devant moi depuis plusieurs années, portant que différentes personnes mal intentionnées employées dans les pêcheries Anglaises, en se rendant aux pêcheries du Nord et du Labrador, ont mouillé avec leurs bateaux et schooners dans des ports et havres de cette parti de l'île communément appelée "French Shore," qui est réservée aux sujets Français pour y exercer la pêche, et y ont commis de nombreux méfaits sur la propriété des pêcheurs Français ;

" Moi, Gouverneur, en conséquence, je préviens toutes personnes mal intentionnées qu'en cas de renouvellement de pareils actes de violence, j'appliquerai les procédés les plus rigoureux que la loi permet d'employer contre les auteurs de pareils méfaits, et pour pouvoir plus efficacement les amener devant la justice, les autorités Françaises recevront des instructions pour appréhender et envoyer à Saint-John's, af in

d'y être jugée toute personne qui commettrait de pareils méfaits."

De semblables paroles dans la bouche d'un Représentant autorisé du Gouvernement Britannique jugent la question de droit. *Habemus confitentem reum*. Les conditions depuis 1828, n'ont pas change', et il me semblait que cet aveu formel méritait d'être relevé à la tribune du Parlement Français".

The following is a proclamation of Admiral Cochrane, Governor of Newfoundland and Commander of the military forces of that Island, to his ministers, dating from June 8th, 1828. The tenor of this proclamation is as follows :—

"Whereas complaints have been made before me during several years to the effect that different evil-meaning people, employed in the English fisheries, going to the Northern and Labrador fisheries, have anchored their boats and schooners in harbours and bays of that part of the Island commonly called "French Shore," which is reserved to French subjects to carry on their fishery there, and have there committed numerous misdeeds upon the property of the French fishermen ;

Consequently I, Governor, warn all evil-minded people that in the event of the reoccurrence of such acts of violence, I shall use the strictest measures which it is lawfully permissible to put into force against the authors of such misdeeds ; and in order to be able more effectually to bring them to justice, the French authorities will receive instructions to arrest and send to St. John's, to be judged there, every person who shall commit such misdeeds. Analogous words from the mouth of an authorized Representative of the English Government judge the question of the right "*Habemus confitentem reum*." The conditions since 1828 have not

been changed, and it seemed to me that this formal confession deserved to be brought before the tribune of the French Parliament."

But a reference to the original of the proclamation made by Admiral Cochrane, shews (a) that it was issued on the 8th of June, 1827 not 1828 and (b) that the words on which M. Bozerain laid special stress "*réservée, aux sujets Français*" do not occur in the original.

(7) In a note addressed by Lord Palmerston to Count Sebastiani bearing date July 10th, 1838, he draws attention to

(a) That if the claim of the French for an exclusive fishery is to be supported it must be proved they enjoyed exclusive rights in 1792, but no evidence shewing such was the case could possibly be adduced.

(b) That exclusive rights were not permitted by England in 1801.

(c) That as exclusive rights from their very nature are likely to be contested "when negotiators have intended to grant exclusive rights, it has been their invariable practice to convey such rights in direct, unqualified and comprehensive terms so as to prevent the possibility of future dispute or doubt."

In the present case, however, such forms of expression are entirely wanting, and the claim put forward on the part of France is founded simply upon inference and upon an assumed interpretation of words.

The above evidence certainly shews that it is far

more probable the French fishery was considered a *concurrent* one in 1792 than an exclusive one; and the knowledge of all this could not tend to allay the indignation of the colonists when they were confronted by the modern assertion of French rights. Insisting on the very comprehensive meaning of the word "*troubler*" which occurs in the Declaration, it was alleged that British fishermen might *in no way* hinder them by their competition. Moreover it was contended that even the presence of the British on the French Shore was a contravention of the Treaties. As to the settlements, they were to be considered purely as on sufferance, and when troublesome to French fishermen might be removed without injustice. Thus the claim was exaggerated so as to mean not merely exclusive fishing rights, but virtually, to use the words of a French statesman, "*plenum dominium*" over the whole Treaty coast. It is not surprising that such assertions have appeared to the Colonists little less than intolerable.

CHAPTER IV.

The French Bounty System led to the Bait Act of 1887.

It appears that for many years past the English Government while actually giving French fishermen a first claim on the Treaty Shore, has never admitted that the privileges they possessed were exclusive ones. As a matter of course, though their right to do so was often disputed, the colonists resort there in large numbers at the beginning of the season. The British fishermen have been placed at a very serious disadvantage because the French Government has for a long period had a *system of bounties* to encourage the development of its fisheries, and these bounties during the last few decades have become a most alarming factor aiding the competition of the French.

Judge Prowse tells us (p. 280) that during the administration of Palliser (1768) the master of a French ship, the "Bon Ami," admitted he had received an extra bounty from his government to fish at a place to which the French did not usually resort, Twillingate, for the purpose of annoying the British and driving them away. While it would not be fair to

quote this instance as shewing the chief motive for the institution of the bounties it indicates at any rate that a spirit less than that of friendly competition prompted their inauguration. According to a special report on the subject by a committee of the Newfoundland Legislature in 1886, the bounty amounts to about ten francs for every 112 lbs. exported to foreign countries from S. Pierre. The effect has been the threatened closing of many European markets to the Newfoundland product, e.g., Leghorn, Genoa, Valencia, Alicante, Naples, Malaga. An extreme instance of the unfavorable position in which French bounties placed the Colonial fishermen is a case quoted from the correspondence of E. H. B. Hartwell, the British Consul at Naples: "As a proof of the utter impossibility of competition with French fish, it will suffice to mention the fact that French "skippers" have actually offered and sold fish to Spain for *nothing* in Bordeaux, and Spanish buyers, therefore, have actually obtained it for the cost of carriage and Spanish duties, while the French "skippers" were satisfied with the bounty which they received from their government. This being the case the complete destruction of the Newfoundland trade with Spain is of course only a question of time."

The following figures shew the effect of the bounty in decreasing the sale of the British catch:—

- (a) NAPLES. The imports of fish into this port for 1885 show :

	cwts.
Newfoundland	35,000
French	5,300
	<hr/>
	40,300

But in 1886

Newfoundland	25,000
French	18,800
	<hr/>
	44,400

- (b) VALENCIA—Fish imported in 1885 :—

Newfoundland	35,000
French.....	none

But in 1886 :

Newfoundland	22,000
French.....	20,000

- (c) GENOA—Figures showing increase in imports of *French* fish.

	cwts.
In 1885.....	25,991
In 1886.....	45,885

No one conscious of these facts could fail to realize there was a very real danger to Newfoundland trade in the bounty system. Not only did France claim a first choice on a large extent of the coast, but by this system was actually closing European markets to the very country which extended hospitality to its dangerous competitors. Very naturally the colonial statesmen searched for means to obviate the impending

ruin of their Country's trade; and because no other way of increasing the demand for Newfoundland fish seemed practicable, they strove to defend their own fishermen from the effects of the bounties by passing the Bait Act. The gradual depletion of Cod on the shore to which they had access had caused the French to send only a few ships for the 'stationary' or Shore fishery. The Grand Bank had become their main fishing ground. Everyone acquainted with the Newfoundland fishery is well aware that for a successful voyage on the Banks a supply of fresh bait is absolutely essential. The French usually required about fifty-four thousand barrels, and prior to the enactment of the Bait Bill they had their requirements supplied in Fortune Bay. In 1886 the first Bait Act was passed. Its main provisions enabled the Executive "To prohibit the capture in our waters for exportation or sale, of bait fishes, except under special license to be issued by the Receiver General under the authority of the Governor in Council."

As might have been expected the Bait Act was strongly opposed by the French, and even settlers on the coast which supplied bait murmured because their own immediate interests seemed to be affected, for which they cared more than for the advantage of their country. When Canada also objected it seemed as if the protective measure would not receive im-

perial sanction. Indeed, in 1887, the Governor had to inform the Legislature that the Bill could not be permitted. But the St. John's Government could not let so useful a bill drop and a second Bait Act was immediately passed. Special delegates were appointed to convey this, together with addresses from the Governor and House of Assembly, to the Home Government. Such an urgent appeal from the oldest colony could not be lightly dismissed, and when Canadian opposition was overcome by the assurance their fishermen would be placed on the same footing as those of Newfoundland, a reluctant assent was given; with the proviso, however, that the Bill was not to come into operation until the next season.

It has been doubted whether the measure proved so great a check to the French as had been anticipated by its promoters. Lieutenant Gray reporting to Captain Walker May 20th, 1890, speaks of it thus: "it seems certain the French have got all the bait they want without visiting Fortune Bay in any great numbers like they used to do, and thus the majority of the fishermen are deprived of their former means of support, though some have found employment in the lobster fishing, several new factories having been erected lately. All seem to agree that since the passing of the Bait Acts the prosperity of the place has departed; many of the younger people are leaving for other

countries and altogether a feeling of discontent seems to prevail that might lead to serious disturbances at any time." But we should note that this statement was probably based on such knowledge as might be gleaned in a hasty visit to a harbour which had formerly supplied much bait to French ships, and that very naturally the inhabitants, considering their own loss rather than the welfare of the colony would be inclined to give a naval officer the gloomiest view of the circumstances. The statement of the S. Pierre "Petit Journal," dated less than a year previously, July 15th, 1889, gives the French aspect: "Our colony is very severely tried this year; the cod fishery which constitutes its principal—we might say its only industry, has up to this date given deplorable results. The schooners from S. Pierre are obliged to go to the East coast on the French Shore of Newfoundland in search of bait which means a month's fishing lost."

Add to this the testimony of the journal "Le Progres" of June 2nd, which says of the bait supply: "The law forbidding its sale was thus a great blow for them . . . Thus the Bait Bill entailed both loss of time and money to the French, and they found their fishing much less productive than before." Indeed, immediately the measure was known France shewed the intensity of its feeling by deciding to

- (1.) Confiscate the instruments of fishery of such "foreigners" (presumably British subjects) as might be on the Treaty Coast.
- (2.) Protest against the buildings erected by the settlers there.
- (3.) Assert French rights to salmon and lobster 'fisheries', and generally take strict precautions to secure Treaty rights to the full.

The French certainly felt some apprehension on the passing of this Bill, and the statistics of the S. Pierre fishery exports from the year 1887, when the Act was passed, to the year 1888, which gives time for its effect to be noted, shew that their apprehension was well grounded.

The exports from S. Pierre were :—

1887.....	754,770	quintals of	112 lbs. each
1888.....	594,529	"	"

In these years the exports from Newfoundland were :—

1887.....	1,080,024	quintals.
1888.....	1,175,720	"

Thus while the exports of S. Pierre had increased from 374,017 qtls. in 1881 to 908,300 in 1886, in the two years, 1887, 1888, they decreased 313,771 or 34 per cent. of the export in 1886. The export from

Newfoundland decreased in these years 168,360' only 12½ per cent. of the export of 1886 as against the 34 per cent. in the case of S. Pierre. "And while the decrease of exports from the latter in 1887 was followed by a still larger decrease in 1888, the decrease of exports from Newfoundland in 1887 was followed by an increase in 1888. (cf. "The Case for the Colony," p.p. 60-61).

It seems then that the agitation which the Bait Bill caused amongst French politicians as witnessed by the retaliatory instructions given to their Naval officers by M. de Freycinet and the statements of "Le petit Journal," when combined with the statistics of 1887 and 1888, must lead us to discount a statement made by M. Flurens, that the measure, thanks to the resources of French fishermen, had proved ineffective. The Bill was undoubtedly the only means the Colonial Government possessed of restraining the competition of their bounty-aided rivals, and taking everything into consideration it appears the measure was not without effect.

CHAPTER V.

The Bait Act influenced French statesmen to encourage lobster-catching, and this proved the source of many disputes.

As a necessary result of the Bait Act the French Government felt compelled to consider how a supply might be procured from other quarters. It was obviously impracticable to successfully transport from France every year sufficient or suitable bait for the season's fishery. The most feasible method was to obtain it on that portion of the coast on which they had rights : but a large part of this, owing to the fixed settlements of the British and their competition in taking bait, did not afford a very promising prospect. This consideration accounts for the policy attempted in the instructions of M. de Freycinet of reserving strictly all the Treaty Coast, a policy which the British Government certainly could not admit. It was quite clear to all cognizant with the circumstances that French ships must lose much time, and that at the very best season of the year, if they were obliged to search for bait for themselves. The first season

the act came into operation, not being prepared for such a contingency, their brigs had to take this course and as we have seen from the allusions of the S. Pierre and Miquelon Journal, quite a month was lost thereby, the result being most prejudicial to their catch.

To avoid this in the future it was deemed advisable to have some fishermen stationed on the coast who might, as opportunity offered, catch and store bait for sale to the schooners.

But bait catching did not in itself promise a sufficiently remunerative employment, and if they were not to incur loss it would be necessary to couple some other industry with it. Now an effort had been made in 1886 to establish a French lobster-factory at a place called Port-au-choix. Lieutenant Browne, of H.M.S. "Mallard" called at the harbour on June 22nd of that year and found a factory *substantially built*, roofed with corrugated iron and employing sixty persons, of whom fifty-five were French. When this was brought to the notice of the French Government, M. Waddington, their ambassador, wrote on the 25th of August to the Earl of Iddesleigh, and practically admitted that the erection of such solid permanent buildings was in contravention of the Treaties. He stated that M. M. Lemoine and Dameron had been warned to desist and remove their factories. Now while this action of the French au-

thorities was made the basis of a request to the English Government to deal similarly with those who had erected British factories at Port-au-Port, really no very vigorous attempt was made to suppress the French ones. Next year. (August 9th, 1887) we find Captain Hammond reporting to the Vice-Admiral :—

“ I would call attention to the fact that the French lobster-factories set up last year are working this year ; one worked by Captain Huit at Port-au-choix in his fishing shed, the other Captain Dameron had set up ashore at Barred Bay, St. John Island, having removed this season from old Port-au-choix. With the difference that the position of the last mentioned factory is changed, these are the same factories which the French Foreign Office in their correspondence last year stated had been suppressed and on which fact they founded their claim that certain English factories should be removed.”

From this we see that before the Bait Act was sanctioned the attention of the French had been drawn to the remunerative lobster-industry. When the Act was passed and they felt called on to act with decision and promptness, a methodical investigation was made of the different harbours on the Treaty Shore which seemed suitable for bait catching, and the practicability of supplying it without

pecuniary loss was fully considered. Two things were apparent, (a) that Frenchmen must find bait for the French ships if the voyage was to be successfully prosecuted and (b) that, as has already been intimated, to locate men on the shore whose sole occupation would be procuring bait, must prove a serious expense.

These considerations influenced the officials to examine carefully the statistics of the Colonial lobster factories—an industry to which they had already been attracted—and struck by the splendid profits derivable, they decided to combine bait-catching with lobster-packing. Thus, it seemed, they would maintain the success of their fishery unimpaired and with a minimum of outlay. It was no easy matter to induce French capitalists to embark on so novel and doubtful an enterprise—doubtful because it was questionable whether Treaty rights would permit them to put up factories and catch lobsters. At length a M. Thube with his partners undertook the combined industry, the government guaranteeing to do everything possible to make the enterprise a success.

The locality selected was Hauling Point in White Bay; but already two British subjects, Messrs Murphy and Andrews, had chosen this place to build a factory, and were preparing to put up their building. When the French warship "Drac" arrived there on

the 24th of June, 1888, Murphy and his partner were forbidden to proceed, as the place had been reserved by the French Government for M. Thube. The British packers found it necessary to desist and adopted the only possible means of obtaining redress—appeal to the Home Government.

In the correspondence which ensued it became apparent that Murphy and Andrews could not make out a good title to the land on which they had intended to build, and so they were unable to get compensation.

Thus the immediate result of the Bait Act was the establishing of French lobster-factories.

Now we must consider what had taken place, a development of the French customary rights in three ways :

- (1.) In catching bait on the Treaty coast *for sale* ;
- (2) In establishing lobster factories along the shore ;
- (3.) In taking lobsters as well as codfish.

With regard to (1.) while there is no question the French had the right to catch bait on the Treaty coast for use *there*, it is asserted by the colonists that to catch bait for sale was a distinct infringement of the various Treaties. Certainly the Treaty of Utrecht gives permission to catch "*fish*" but as the word "*fish*" is used in Newfoundland it signifies *cod and*

nothing else. Every resident in the country is aware of this, and presumably at the time of the Treaties the use was similar. But in any case the Treaties nowhere expressly give liberty to take bait and offer it for sale. The Treaty of Paris, 1814, confirms to the French the right of carrying on the fishery as it was customary in 1792. There seems no proof it was customary in 1792 to catch bait for sale. It may be rejoined that this is a trivial objection, but it is one which is made in all seriousness; and if the French policy has been insistently developing their Treaty rights it might not be amiss to check them with the literal meaning of the language used. The Colonial position is, that the French had *no right* to catch bait on the Treaty Shore for use in the Bank fisheries; to do so was in manifest contravention of the Treaties and to some extent rendered inoperative the effect of the Bait Act, which had been passed to protect the people from the dangerous competition of their rivals.

But (2) this was a more decisive breach of the stipulations. We have already noticed that the French themselves ordered Captain Dameron to remove his factory, a *substantial* structure with corrugated iron roof and quite inadmissible. A little later, however, they actually induced M. Thube and his partners to commence a factory. They contended, however, that the buildings erected with their Government's

sanction were of a purely temporary character, and that this was proved by placing on them light and movable canvas roofs. But in some instances at least these structures have been solid and durable. Now the Treaties are on this point quite explicit. No buildings, save those temporary erections for the prosecution of the fishery during the temporary season allotted to them, could be allowed. Lobster-factories are erections which were not contemplated by the Treaties and are incompatible with them.

With regard to (3) lobster-catching, it is strongly affirmed that the French had no right under the Treaties to enter on this industry. In making this contention the colonists rely on the fact that a lobster is *not a fish* but a *crustacean*. This may be considered too subtle a distinction for practical politics to consider, and the French have always given it very scornful attention. The "Journal Officiel" reports a reference made to this argument by M. Le Ministre des affaires etrangeres :—

"Quant à la peche du homard, on n' a guère songé à y recourir qu' en 1885 à la suite de la diminution momentanée de la morue, à cette date, sur la côte ouest. Nos pecheurs et nos armateurs cherchèrent très lègitimement dans l'exercice de la pêche du homard la source de nouveaux profits. Mais l'initiative intelligente et hardie qu'ils prirent à cet égard fut également, il ne faut pas se le dissimuler, l'origine et la source des difficultés nouvelles que

M. Flourens vous a spirituellement fait connaître. Nos concurrents ont prétendu au droit de distinguer entre la morue, qui serait un poisson et le homard, qui serait un crustacé. (Rires sur divers bancs).

A. Droite.—Qui est ! qui est !

M. le Ministre.—Messieurs le Traité d'Utrecht, entre autres avantages, a celui de ne pas distinguer, entre poissons et crustacés. Je crois que ceux qui l'ont rédigé, que les savants même qui s'occupaient de ces matières à cette époque, ne distinguaient pas entre les différentes espèces vivant au fond de la mer. Dans notre opinion cette distinction n'a jamais été faite par les Traités qui établissent nos droits, et tous les Ministres des Affaires Etrangères se sont prononcés dans ce sens. Exprimée au Sénat en 1887, par l'honorable M. Flourens, et en 1888 par mon honorable prédécesseur M. Goblet, cette opinion est toujours la nôtre et je la reprends aujourd'hui avec la même netteté et la même conviction ; le droit reconnu à la France est absolu sans aucune restriction ; ce droit de pêche doit s'entendre du homard comme de la morue, comme de toutes les espèces vivant au fond de la mer, et nous avons le devoir de protéger ceux de nos marins qui exercent ce droit, sans s'occuper des distinctions que l'on essaye d'établir. (Très bien ! très bien ! sur divers bancs.)

As for the lobster fishery its pursuit was scarcely thought of except in 1885, after the temporary scarcity of cod at that date on the West Coast. Our suppliers and fishermen sought most legitimately, in the practice of the lobster fishery a fresh source of profit, but the bold and intelligent initiative which they showed in regard to this was equally, for it must not be disguised, the source and the origin of fresh difficulties, of which M. Flourens has

intelligently informed you. Our competitors claimed to distinguish between the cod, which is a fish, and the lobster which is a crustacean." (Laughter on several benches.)

"Right—What is it? What is it?"

M. le Ministre.—"Gentlemen, the Treaty of Utrecht, among other advantages, has that of not distinguishing between fish and crustaceans. I suppose that those who drew it up, even the clerks who were engaged on the matter at that time made no distinction between any of the different species living at the bottom of the sea. In our opinion this distinction has never been made by the Treaties which establish our right, and all the Ministers of Foreign Affairs have attached this meaning to it. Explained to the Senate in 1887 by the Honourable M. Flourens and in 1888 by my honourable predecessor, M. Goblet, this opinion is always ours, and I repeat it to-day with the same clearness and the same conviction; the recognized right of France is absolute, without any restriction; this right of fishing should include the lobster as well as the cod, and all species of living things in the sea; and it is our duty to protect those of our sailors who exercise this right without troubling about those distinctions which it is attempted to establish." ("Very good! very good!" on several benches.)

This quotation suffices to show how easily the distinction was set aside and we notice the same tone in a speech of M. Bozerain, who quoted the translation of an article which appeared in the "Harbour Grace Standard" of February 19th, 1886:—

“Voici un extrait d'un Article paru dans le journal le "Harbor Grace Standard" du 19 Février 1886. L'auteur est publiciste Terre-Neuvien. Je ne sais pas s'il est membre de l'Académie de Terre Neuve. Voici comment il s'explique:—

“La presse de Londres. . . .” ce que je lis est une traduction, mais je suis sûr qu'elle est fidèle—“La presse du Londres attache une grande importance à ce débat”—celui des pêcheries de Terre Neuve,—“et elle est unanime à refuser le droit aux Français”—de quoi faire ?—“de pêcher l'homard.”

C'est un Terre-Neuvien qui parle, et il n'y a pas d'erreur possible dans la traduction, car il se sert de ces termes : “to fish the lobster.” (“Journal Officiel,” May 17, 1890.)

“Here is an extract from an article which appeared in the newspaper “Harbor Grace Standard,” of February 19th, 1886. The author is a Newfoundland politician ; I do not know whether he is a member of the ‘Academie’ of Newfoundland. This is how he puts the matter:—

“The London press what I read is a translation, but I am sure it is correct The London press attaches great importance to this debate—that on the fisheries of Newfoundland—and it is unanimous in refusing the right to the French to do what? To fish for lobsters.”

It is a Newfoundlander who speaks, and there is no possible mistake in the translation, for it is put in these terms:—“To fish for lobster.”

In answer to these somewhat feeble criticisms it is only necessary to note that French diplomatists are fully aware people are accustomed to speak of the “whale fishery,” but it is not likely they would contend a whale is a fish. If the Treaty by the use of the word ‘fish’ intended all marine creatures, surely the French would have the right to start a whaling en-

terprise also. But as Sir T. O'Brien pointed out to the Home Government (February 17th, 1890) the old records of the Colony shew whaling by French fishermen was not considered at all in accordance with Treaty rights.

An incident which occurred during Palliser's government is a proof of this. The French had procured a whale on the Treaty coast and were proceeding to cut it up. Palliser decided this right had not been given them by the Treaties, and apparently the whale was surrendered without remonstrance.

In the rather lengthy correspondence on the subject it is *reiterated* that "*a lobster is not a fish*," and if we mention the point here, it is because there seems at least as much evidence to shew that being a crustacean it was not included in the word '*fish*' as that as a marine animal it was. It is possible, of course that had French fishermen been found taking lobsters in 1792 they would not have been prohibited to do so, but this might as justly be ascribed to carelessness or contempt as to a belief that the language of the Treaties would support such an action.

We have already referred to the use of the word 'fish' by the old "Planters." It is an argument which may be used in this connection also. With them 'fish' means and means only *codfish*. Any

other marine denizen is called by its own or another name, and, with the exception of salmon, other kinds are spoken of with contempt as beneath the consideration of a true fisherman. We would again suggest this local use of the word 'fish' may be a survival of its use at the time when the Treaties were made and accordingly a clue to their interpretation. If this suggestion be accepted it would be an additional argument for denying that the language of the Treaties give liberty to take salmon and lobsters.

But even if this argument were abandoned there are others which tend to prove French Treaty rights did not include lobster packing, and that their attempts to establish factories were violations of International law. Factories necessitated buildings of a nature not permissible by the Treaties: everyone who peruses the articles which deal with the question will find the 'buildings' permitted are limited to "stages made of boards and huts necessary and usual for drying fish." In the Declaration of 1783 it was clearly stated the plan on which the fishery should be carried on ought not to be deviated from by either party, "the French fishermen building only their scaffolds." At that time lobster-packing was unknown; the lobster was not contemplated as a fish; trapping and canning lobsters are quite modern industries and require quite different methods. "Stages" are not so necessary for lobster-canning as 'factories.'

It may be said, however, that this applies to the British also, and that they have deviated from the manner of conducting the fishery by establishing lobster-factories. The reply is that lobster-packing was not dealt with in the Treaties. It was not spoken of, and, therefore, the colonists have liberty to utilize it, as they have liberty to fell timber and cut grass on the Treaty shore. But as France was not granted the right of packing lobsters, to do so was to deviate from the custom of their fishery which was a concurrent right to catch cod.

The French endeavoured to justify the existence of their factories by asserting that the words in the Treaties, "scaffolds," "huts," "drying," should be interpreted according to a principle and not narrowly. They contended they were only prohibited from erecting such buildings or fortifications as might give them a *footing in the country*, and this principle they said was not infringed by their factories. Indeed they spoke of these as *movable sheds* which usually disappeared at the end of the season and were therefore no more infractions of the Treaty stipulations than were their fishing stages. But this contention was hardly borne out by the facts. Their lobster-factories have been of a much more substantial character than the above description would lead one to suppose. When in 1888, the French warship "Drac"

prevented Murphy and Andrews from building a factory at Hauling Point in White Bay, the French Company immediately "proceeded to erect an establishment of a permanent character over 300 feet in length, in which they intended to carry on a factory and general trading establishment." Such an enterprise certainly could not have been anticipated in 1783.

The divergent views of the two nations led to protests from both sides. Curiously enough France having protested against the erection of British factories shortly afterwards proceeded to sanction its own; and England, at first doubtful of the rights of the colonists to establish factories, had no hesitation in deciding France exceeded its privileges in doing so.

On June 21st, 1886, the French Ambassador informed Lord Roseberry his Government had decided to adopt a very strict policy on the Treaty shore; and, consistently with this statement, he very soon afterwards reported the establishment of two British lobster-factories at Port-au-Port, a place on the Treaty coast. After stating Commander Le Clerc had been instructed to prevent their owners from "fishing" he intimated the British Government would be expected to aid in their suppression.

Almost immediately (July 24th 1886) Lord Rose-

berry protested against the position assumed by the French authorities and emphatically declared the rights of the colonists to fish "on their own coasts".

He said of the French attitude :—

"Such a claim has no precedent in history and would be not only repugnant to reason but opposed to the practice of years, and to the actual terms of the Declaration of Versailles which provides that the old methods of fishery "shall not be deviated from by either party" shewing conclusively that the French right to the fishery is not an exclusive one".

France made an additional effort on the 20th of September, 1886, when Count D'Aubigny informed the Earl of Iddesleigh that seven British factories were in operation on the Treaty Coast and he characterized them as "infractions" of the stipulations.

On the other hand the Earl of Iddesleigh in a letter dated November 24th, 1886, acquainted M. Waddington that while he acknowledged with satisfaction the course taken by the French Government in reference to their factory at Port-au-choix, it was, however, reported at the time of writing that a citizen of the Republic purposed erecting a factory at Woods or Harbour Island; and he expressed the hope that French Naval Officers would notify the projectors that such a course was not allowed by the

Treaties and must be discontinued. With reference to British factories at Port-au-Port he reminded M. Waddington how Commodore Devarenne had in 1881 admitted to Captain Kennedy, R.N., "that these factories, which appear to have been erected with the full consent of the French Consul did not obstruct or in any way interfere with French fishery pursuits".

But here we must notice a slight weakness in the British case. At the instance of the Marquis of Salisbury, Sir H. J. Holland stated (July 4th, 1887) to the Administrator of Newfoundland that the Home Government regarded English lobster factories *not* as a breach of the Treaty of Utrecht, but of the Declaration attached to the Treaty of Versailles, 1783.

If this admission could be justified there can be no doubt the French requests for the removal of the British factories might be defended, but we have the testimony of Commodore Devarenne quoted above that some British factories at any rate did not obstruct the French fishery. Judging from the line of action taken by our naval officers, it would seem that the principle on which they dealt with the complaints made to them was that British factories should be removed if it could be shewn—and only if it could be shewn—they interfered with the French Cod-fishery. Thus the case for each factory had to be dealt with

separately, and serious interference with the French would be the cause deciding its removal.

A perusal of the correspondence which took place concerning such questions shews this principle was usually applied in determining the difficulties which arose.

A typical instance is afforded by the Shearer case.

On the 2nd of September, 1888, M. Waddington reported to Lord Salisbury that a factory belonging to a Mr. Shearer was situated at Ingarnachois on the Treaty Shore.

It had been established in 1884 and the Ambassador made a strong protest on the grounds:—

(1). That the lobster-traps prevented the French fishermefi casting their seines ;

(2). That the 'gear' and contrivances used by Shearer drove away the caplin (a small bait fish.)

(3). That by the Declaration of 1783 British subjects were in no way to interrupt ("troublers") by their competition the fishery of the French.

Lord Salisbury in his reply informed M. Waddington that Captain Hamond had taken sufficient precautions to prevent Shearer's factory disturbing French fishermen, and further France had no right to assume the prerogative of interpreting what action by

British settlers would constitute an interruption in the sense of the word "troubler;" that both Governments *had an equal right in this respect.*

As a result of the Shearer case Lord Knutsford pointed out to Sir T. O'Brien, the Governor of the Colony, that the Imperial Government could not insist on the removal of French factories while British ones remained, and on the other hand the French could not expect our factories to be demolished and their own left untouched. He added that the Government would suggest as a solution of the difficulties, that French and English factories should be allowed in places and under conditions to be approved by the Naval Commanders of both countries, and a cause of much bitterness would be obviated if Shearer's factory were removed to some place where it could not interfere with the French. (March 28th, 1889.)

Sir T. O'Brien sent a despatch to Lord Knutsford on June 20th, 1889, in which he said that owing to a joint address which had been forwarded to England by the S. John's Legislature, the proposed solution could not be accepted. This joint address seems to have been caused by the French Government's action in connection with Messrs Murphy and Andrews; and also because it was alleged *they had granted their own citizens a monopoly of the lobster trade at Hauling Point for five years.* The Colonial Statesmen

were thoroughly roused, and in their address to the Queen the arguments showing that French lobster-canning was illegal were very forcibly put. Briefly they were as follows :—

(1) Because it was declared by the Treaty of Utrecht that it should be unlawful for the French to erect buildings, except those "necessary and usual for the drying of fish."

(2) Because the Treaty of Paris (1763) restricted the liberty to "fishing and drying."

(3) Because the Treaty of Versailles (1783) speaks of "the fishery assigned to them by the Treaty of Utrecht."

(4) Because the Declaration speaks of "the fishery" and the mode of carrying on the fishery, which has at all times been acknowledged, shall be the plan upon which the fishery shall be carried on there.

(5) Because the French King's Counter-Declaration speaks of "the fishery on the coasts of Newfoundland which has been the object of the new arrangements."

(6) Because the Treaty of Paris (1814) declares that the French right of fishery "shall be replaced upon the footing on which it stood in 1792."

(7) Because there was no such industry as a lob-

ster fishery in Newfoundland at any of these periods, and no such industry was heard of until within a few years past, and the language used to describe "the fishery" which the French were entitled to pursue is utterly inapplicable to lobster-catching or to the erection of factories for taking or canning lobsters.

CHAPTER VI.

A settlement of the disputes connected with the lobster factories was attempted by the "Modus Vivendi."

Protests continued to pour in, and there seemed no possibility the difficulties would of themselves subside. Indeed matters had reached such a stage that it would be extremely hard for the fishermen of either nation to prosecute the voyage without becoming liable to charges of infringing the Treaties. While things were unsettled in this way, the Secretary of the French embassy called (January 21st, 1890) at the Foreign office and drew attention to the slight prospect there was that the proposal which had been made to submit the question to arbitration would be effective before the commencement of the fishing season. He then suggested lines on which, pending the settlement of the question, a temporary "Modus Vivendi" might be adopted. His suggestion was :

"The question of principle and of respective rights being entirely reserved on both sides, the maintenance of the status quo might be agreed upon on the following bases :—

Without France demanding at once a new examination of the legality of the installation of British lobster-factories on the "French Shore" it shall be understood that there shall be no modification in the positions occupied by these establishments on the 1st July, 1889.

Whenever any case of competition may arise in respect of lobster fishery between the French and British fishermen, the Commanders of the two naval stations shall proceed on the spot to a provisional delimitation of the lobster fishery grounds, having regard to the situations acquired by the two parties.

N. B.—It is well understood that this arrangement is quite provisional, and shall only hold good for the fishing season which is about to open.

After the details of this proposal had been communicated to the Governor and he had conferred with his ministers, he was permitted to acquaint Lord Knutsford (February 13th, 1890) that while the French claims for lobster-catching were strongly contested, still being desirous to further the wishes of Her Majesty's Government the Colonial Legislature would consent to the proposed arrangement, but for the ensuing year only.

At the same time a desire was expressed that the date for recognizing factories should be extended to

January 1st, 1890, because some factories, started after July 1st, 1889, were in process of completion and if they should not be allowed much hardship would result.

The Home Government while favouring the amendment could not of course guarantee its acceptance by the French. However a draft of a *Modus Vivendi* containing the following clause was, on February 14th, 1890, communicated to M. Jusserand :

“British lobster factories which may have been established between the 1st of July, 1889, and the 1st of January, 1890, shall not be molested. But it shall be open to French fishermen to establish fresh lobster-fisheries to a corresponding extent.”

On February 20th, 1890, M. Jusserand explained to the Colonial office that the amended draft would give undue advantage to British fishermen, who being on the spot, would select the best places, and there was no possibility of discovering to what extent advantage had already been taken of this priority of choice. After matters had again been discussed another draft of the *Modus Vivendi* was prepared, which was practically as follows :—

“The questions of principle and of respective rights being entirely reserved on both sides, the British and French Governments agree that the status

quo shall be maintained during the ensuing season on the following bases:—

“Without France or Great Britain demanding at once a new examination of the legality of the installation of British or French lobster-factories on the coasts of Newfoundland where the French enjoy rights of fishing conferred by the Treaties, it is understood that there shall be no modification in the positions (“emplacements”) occupied by the establishments of the subjects of either country on the 1st July, 1889, except that a subject of either nation may remove any such establishment to any spot on which the Commanders of the two naval stations shall have previously agreed.

“No lobster fisheries which were not in operation on the 1st of July, 1889, shall be permitted unless by the joint consent of the Commanders of the British and French naval stations.

In consideration of each new lobster fishery so permitted it shall be open to the fishermen of the other country to establish a new lobster-fishery on some spot to be similarly settled by joint agreement between the said naval Commanders.

Whenever any case of competition in respect of lobster-fishery arises between the fishermen of either country, the Commanders of the two naval stations

shall proceed on the spot to a provisional delimitation of the lobster fishery grounds having regard to the situations acquired by the two parties.

N. B.—It is well understood that this arrangement is quite provisional and shall only hold good for the fishing season which is about to open."

On March 10th Lord Salisbury transmitted to M. Waddington the amended draft, stating the British Government were prepared to accept it, and enquiring if the French Ambassador was prepared to give assent on behalf of his government. M. Waddington allowed no time to be lost, but on the very next day replied in the affirmative and said in conclusion, "The agreement of the two Governments being thus completed by your Lordship's communication and by the present note the draft *Modus Vivendi* thereby enters into force for the coming season and its provisions will, for that period, be binding on the parties as regards the lobster-fisheries in Newfoundland."

Thus it is clear the final draft of the Modus Vivendi was drawn up and accepted without being submitted to the Colonial Legislature.

When, therefore, it had been communicated to the S. John's Houses (March 14th, 1890) they were unanimous in rejecting it because,

(1) It was "contrary to the assurances of Her Ma-

jesty's Government that rights of fishing should not be interfered with without consent of the Colonial Legislature" (M. Labouchere's despatch to Governor Darling, March 26th, 1857.)

(2) It seemed to admit to the French concurrent rights to the lobster industry.

That there was much popular indignation was evinced by a great public meeting held in Bannerman Park (March 26th) at which resolutions were passed condemning the *Modus Vivendi*. Similar meetings were held in other parts of the colony, Little Bay, Bay of Islands, Carbonear, King's Cove and Western Bay. The feeling did not subside immediately. A petition strongly adverse to the *Modus Vivendi*, signed by 12,000 inhabitants, was sent in May to the Queen. A public meeting was held at Sandy Point, Bay S. George, at which, because the French were alleged to have interfered with the people's nets, a resolution was passed that no taxes or duties should be paid to the Colonial Government; and a "*a revolutionary movement and an embryo Republic*" were set on foot (i). The French were charged, but incorrectly, with having landed armed marines to obstruct the setting of herring nets: consequently the excitement on the Treaty Shore was intense.

(i) A letter from Magistrate, St. George's Bay, to Attorney General of Newfoundland, May 29th, 1890.

Nor were the French perfectly satisfied. The "Journal Officiel," in its issue of March 26th, 1890, reports M. Le Amiral Veron as saying :—

" Mais, Messieurs, c'est le renversement des rôles ! Ce sont les Anglais qui sont chez nous contre tout droit, et qui encore entendent n'y pas être gênés par nous ! n'aurions plus le droit de nous établir dans les baies où ils sont parce qu'ils y étaient au 1er Juillet, 1889.

Et voilà qu'ils nous parlent maintenant d'indemnités à leur payer en cas de gêne ! (sourires) . . . M. le Comte de Tréveneuc, "Ce Modus Vivendi est outrageant".

M. Le Marquis de l' Angle-Beumanoir " Il consacre l' usurpation !"

" But, gentlemen, this is a reversal of roles ! It is the English who are in our dominions, and who give us to understand that they will not be troubled by us there ! We are not to have the right of establishing ourselves in the bays where they are because they were there on the 1st July, 1889. And they talk to us now of indemnities to be paid to them in case of any inconvenience." (Smiles).

M. le Comte de Tréveneuc—"This Modus Vivendi is outrageous."

M. le Marquis de l' Angle-Beumanoir—"It sanctions usurpation".

Other statements condemning the arrangement followed, but the above are sufficient to indicate that even in France the Modus Vivendi was not received with complete satisfaction.

In a message dated April 17th, 1890, the Gover-

nor suggested to Lord Knutsford that if the arrangement explained on February 8th of the same year could be reverted to, the Colonial Legislature would concur in the Modus Vivendi thus interpreted. This arrangement would have been :

(1.) That the Modus Vivendi should recognize for the ensuing season only the lobster factories of both countries as they existed on July 1st 1889;

(2) That factories might be transferred to other localities if approved by the naval officers of both nations ;

(3) That no new concessions for lobster catching should be granted in 1890 by either Government, it being also understood that the whole arrangement should be strictly provisional and only for the ensuing season.

It will be noticed that by these terms no provision was made for the erection of new factories on either side and so by preventing the French from starting other factories would not recognize their claim to catch and can lobsters.

When this suggestion was put before the French authorities, although they professed to prefer the status quo of July 1st, 1889, they said they could not assent to any change because the terms of the Modus Vivendi had already been published and fishing

vessels had started. *Thus the amended draft of the Modus Vivendi remained in force though without the colony's consent* and Sir T. O'Brien was informed the suggested alteration could not be made.

As the arrangement had not received colonial sanction it might have been expected some serious difficulties would arise in carrying it out and so it happened. Mr. James Baird, of St. John's, had a factory in operation on the Treaty Shore which had been established *after July 1st. 1889*, and which was under the management of a Mr. Leroux.

Captain B. Walker, after a conference with the French Naval commander, ordered this factory to cease operations. Leroux, however, acting under instructions said to have been given by Baird, declined to close the factory. The English Commander knowing his action was being watched by the people of the coast, determined to proceed with the utmost caution and decision. Weakness, he thought would be fatal. Before resorting to force he suggested to Leroux two courses :

(1) To close the factory without opposition, promising in that event to do his best to procure compensation for him.

(2) To re-open his factory at a place called Sandy Point.

As Leroux would take neither of these courses Captain Walker, on the 25th of June, proceeded to Fishel's Brook and took possession of the factory, placing a serjeant and two marines in charge.!

The owner, Baird, at once instituted legal proceedings against the English officer, and the Supreme Court of the colony decided for the plaintiff,

It seemed most incongruous that an officer should be placed in such a position for carrying out the terms of a convention agreed on by the Home Government, and an appeal was made to the Privy Council. But as the old acts for carrying out the Treaties and Declaration for 1783 had ceased to be operative, Lord Herschell in delivering the judgment of the Privy Council was compelled to uphold that of the Colonial court.

CHAPTER VII.

It was intended the Modus Vivendi should continue only till the difficulties might be settled by Arbitration.

As the Modus Vivendi was only a temporary expedient designed to smooth difficulties until the question could be finally settled by arbitration, we ought at this stage to notice the attitude of the colonists towards such a solution. A commission of arbitration was naturally hoped for, but since the difficulties connected with the lobster factories had played the chief part in producing the Modus Vivendi, it was to be anticipated the Home Government would think chiefly of these in the preliminary negotiations. Accordingly when the proposal was made from London it was known in the colony to be designed chiefly to discuss and settle the differences on this one point. But the colonists felt such procedure could not be satisfactory. They desired the whole question of the Treaty rights to be dealt with and the French to be bought out. It was for this reason, and not because they were opposed to arbitration in principle, that the

suggestion for this solution was at first rejected.

Besides it was felt that to ask the French to consent to such a decision of the lobster-disputes would be a tacit admission they had a right to participate in the industry. This explains why on April 29th, 1890, Lord Knutsford received a message from the Governor saying :—

“ Ministers and public feeling against arbitration as they consider the French have not a shadow of any claim for the lobster fishery.”

It was thought any commission which would not deal with the whole question must prove either injurious or useless.

This opinion was strongly emphasised in the address from both Houses of the Colonial Legislature, referred to above :

“After a careful perusal of the Treaties bearing on this matter we find that there is certainly no case for arbitration.”

“With respect to the lobster-industry this colony will be satisfied with nothing short of the immediate removal of every French lobster- factory from the shores of Newfoundland, and all our efforts will be directed to the accomplishment of this object.”

On August 2nd, 1890, a memorandum was transmitted to the French Office shewing what arrangement the colony could concur in.

The lines suggested were :—

That all matters in difference as regards the construction and true meaning of the Treaties, and what breaches thereof have been committed by the people of either nation, and all matters in difference in relation thereto be submitted to the arbitrament of five Arbitrators, one to be named by Her Majesty's Government, one by the Newfoundland Government, two by the French Government, and one by———

The award of a majority to be binding, that upon the true position being clearly ascertained, and the full rights of each nation defined, the same Arbitrators proceed to a valuation of the rights of the French as regards the fisheries and upon the coast between Cape Raye and Cape St. John, and determine the compensation to be made to the French for a surrender of those rights, which surrender, upon the one hand and compensation upon the other, be carried out. That the same Arbitrators determine as regards the abrogation or reduction of the bounties by the French, and the concession of the privilege of purchasing bait fishes on the coast of Newfoundland on an equitable basis, with a view to the prosecution of the fisheries without injury or prejudice to the people of either nation.

(July 21, 1890.)

The Home Government regarding this as an indication the colony would accept arbitration, made a proposal through the usual channels to the French Government that an arbitration dealing with the following points should be agreed on:—

1. Whether Great Britain, in virtue of her sovereignty over Newfoundland, possesses on that part of the coast rights of fishery concurrent with those of France and equal to them; or only rights which must be so exercised as not to disturb the fishery of France or no rights of fishery at all.

2. Whether Great Britain, by granting to France the right of drying fish and cutting wood along this part of the shore, and by promising the removal of "établissements sédentaires", has engaged to prohibit her subjects from erecting any kind of building on that part of the shore, or only those buildings which are concerned with the fishery; and, if so, whether lobster factories are included in the prohibition.

3. To what depth inland do the prohibitions against building on the part of British subjects, whatever they may be, extend?

4. Do the words "permis de pecher et de secher le poisson" apply to all kinds of animals found in the sea; if not, to which kinds is the application limited?

5. Do the Treaties, by prohibiting French subjects from any construction on the shore beyond "échafauds et cabanes nécessaires et usites pour secher le poisson," prohibit them from erecting lobster factories?

The French authorities were also acquainted that the Colonial Government shewed anxiety to either :

(1) Offer France in exchange for her Treaty rights the liberty of purchasing bait or

(2.) Have a reasonable money payment made for the interests surrendered.

A few days later, however, (September 26 1890) Lord Lytton reported to the Marquis of Salisbury that M. Ribot on learning the colonial desires in the matter, said both were impossible. About a month afterwards, having meanwhile consulted his Government, he again rejected the proposals as made, but intimated France would be quite prepared to consider others which on broader lines, might lead to arbitration. At the instance of the Colonial Legislature the rejected offers were made again though slightly altered *and asking now for the abolition of French bounties.* These proposals were refused and M. Waddington wrote of them on November 29th 1890 :

"I did not conceal from your Lordship that they certainly could not constitute the basis of negotiations

which both parties are endeavouring to arrive at".

This reply was anticipated, and Lord Knutsford cabled the Governor (November 27th) earnestly pressing him to procure the legislation necessary to make the renewal of the *Modus Vivendi* effective, because the negotiations preparatory to a settlement of the differences by arbitration must necessarily be lengthy. The reply was made on December 5th, and was to the effect that the Colonial Government would concur in the proposal for arbitration provided such arbitration were to be on the lines laid before Lord Salisbury in the preceding July. As to the *Modus Vivendi* they definitely refused to pass any legislation to sanction it.

Matters had come to an awkward crisis. The Newfoundland Government desiring an arbitration which would cover the whole position of the French on the Treaty Shore, and would have as its aim their removal by purchase or other equitable arrangement, declined to assent to any commission which confined itself to adjudication of the lobster disputes alone. The *Modus Vivendi* which they conceived had been decided in opposition to their desires and in flagrant breach of the famous Labouchere despatch, they would in no way sanction. What could the Home Government do? The case of Baird vs. Walker shewed that till some statutory authority in New-

foundland could be given to the *Modus Vivendi* it would be useless to renew it.

The natural result was the decision to revive, or employ as a model for a new act. George X., Cap. 55, which would enable naval officers to enforce observance of Treaty rights independently of the Colonial Legislature. In a letter of January 16th, 1891, the following paragraph which very clearly shews the trend of home opinion occurs :

“ Lord Salisbury considers that Her Majesty's Government must take the shortest and plainest method of ascertaining what our international engagements in this matter are, and of carrying those engagements into effect. It appears to him that no time should be lost in making proposals to the French Government which may lead to arbitration upon, at all events, the most urgent of the matters which are in contest between them. It is hardly to be hoped that this process can be complete before the ensuing fishing season commences. It may be therefore necessary to conclude some intermediate arrangement, which probably would follow the lines of the arrangement made last year, omitting those portions of it which have become inapplicable through the lapse of time. It will be necessary to apply to Parliament to obtain the powers for giving effect to any such arrangement ; as it appears from the course of

legal proceedings that there is at least doubt whether our officers, in taking steps for that purpose, would be adequately protected against an action at law. The Statute of the fifth year of George IV's reign, which unfortunately was allowed to lapse, will probably furnish the best model for legislation upon this point as it only aims at securing the performance of international obligations, and does not interfere with the internal affairs of the island."

Lord Knutsford replied on the 19th of the same month fully assenting to the need of arbitration and also of some legislation to render a *Modus Vivendi* practicable without rendering the naval officers liable to a legal action in the discharge of their duty. Accordingly Sir T. O'Brien was informed that arbitration proposals would be proceeded with; and again on March 7th that arbitration on the lobster disputes would shortly take place and therefore it would be desirable that a member of the legal profession in Newfoundland should be among the British Representatives.

The reply from the colony was a reiteration of its refusals to consent to arbitration on *part* of the question only, and declared the colony could not be bound by arbitration in which it declined to share.

In spite, however, of this decision the agreement for arbitration was signed on the 11th of March 1891.

Agreement begins:—The Government of Her Britannic Majesty and the Government of the French Republic having resolved to submit to a Commission of Arbitration the solution of certain difficulties which have arisen on the portion of the coasts of Newfoundland comprised between Cape St. John and Cape Ray, passing by the north, have agreed upon the following provisions:—

(1.) The Commission of Arbitration shall judge and decide all the questions of principle which shall be submitted to it by either Government or by their Delegates concerning the catching and preparation of lobsters on the above-mentioned portion of the coasts of Newfoundland.

(2.) The two Governments engage in so far as each may be concerned, to execute the decisions of the Commission of Arbitration.

(3.) The *Modus Vivendi* of 1890, relative to the catching and preparation of lobsters is renewed purely and simply for the fishery season of 1891.

(4.) As soon as the questions relative to the catching and preparation of lobsters shall have been decided by the Commission it may take cognizance of other subsidiary questions relative to the fisheries on the above mentioned portion of the coasts of Newfoundland, and upon the text of which the two Governments shall have previously come to an agreement.

(5.) The Commission of Arbitration shall be composed (1) of three specialists or jurisconsults designated by common consent by the two Governments ; (2) of two Delegates of each country, who shall be the authorized channels of communication between the two Governments and the other Arbitrators.

(6) The Commission of Arbitration thus formed of seven members shall decide by majority of votes and without appeal.

(7) It shall meet as soon as possible. *Agreement ends.*

Eight days later Lord Knutsford read a Bill in the House of Lords which in effect revived the provisions of the Act. 5 George IV. Chapter 51, though containing a clause which empowered the Queen by order of the Privy Council to suspend the operation of the Act if the Newfoundland Legislature should pass a measure making sufficient provision for carrying out fishery engagements with France, including any temporary arrangements made either before or after the passing of the Act for adjusting differences.

These measures caused both indignation and alarm in Newfoundland, and it was decided to petition the Home Government to delay the proposed legislation until the case for the colony might be laid before the

House of Lords by delegates to be sent immediately for that purpose.

On the 24th of March another strong protest was made in reference to the arbitration agreed upon and the Colonial Government again asserted its unwillingness to take any part in it.

The petition was successful and the second reading of the obnoxious bill was deferred until the delegates should appear to make their protest. When Sir W. Whiteway and the other delegates were admitted to state the colony's objections in the House of Lords (April 23rd) the Newfoundland Premier reviewed the whole situation and made a powerful appeal to stay the Bill before the House.

The chief objections urged were :

(1.) Because contrary to the Labouchere despatch it had been introduced without consulting the colony.

(2.) Because the Act would revive provisions suitable only for circumstances which had changed. When the Act was passed the colony had no legislature and very few people were resident on the "French Shore."

(3.) Because the powers given would be employed in carrying out Treaties the meaning of which was disputed, and further these powers would be in the

hands of Naval officers, who, although English statesmen had frequently declared French rights were only concurrent, had acted "as though British subjects had no right at all on the Treaty Shore."

(4.) Because the Bill ignoring the Newfoundland courts gave powers of adjudication to Naval officers unfitted by training to decide legal issues.

(5.) Because the Bill was intended to enforce a Modus Vivendi decided without the concurrence of the colony.

(6.) Because it provided for the enforcement of an arbitration award dealing with one issue only—the lobster fishery—and not with the whole position of the French on the Treaty Shore. The French occupation of S. Pierre and Miquelon being apparently excluded.

(7.) Because the Bill provided for the removal of property and made no provision for the compensation of those who might suffer loss thereby.

This speech had an influence on the House, but though several most important points were raised in subsequent correspondence, no material change of the arbitration proposal could be obtained. At length being convinced that unless it were done the Bill would be proceeded with, the delegates forwarded to Lord Knutsford (May 13th, 1891) a copy of a resolution

passed by both Houses of the Newfoundland Parliament the previous Saturday night :

“ *Resolved*,—That this Legislature will adopt such legislation as may be necessary to carry into effect the proposals made to the Imperial Government and Parliament by the Delegates.”

Thus the withdrawal of the coercive legislation was secured and the following statutory authority was given by the Colonial Government for carrying out the *Modus Vivendi* and the decision of the Arbitration Commission :—

(1.)—“ In case Her Majesty, Her heirs and successors, by advice of Her or their Council, shall give orders or instructions to the Governor of Newfoundland, or to any officer or officers on that station, which she or they deem necessary and proper to fulfil the purposes of the said treaties, declarations and agreements, and to that end shall give orders and instructions to the Governor or officer or officers aforesaid, to remove or cause to be removed any stages, flakes, train fats or other works whatever, for the purpose of carrying on the fishery, erected by Her Majesty's subjects on that part of the coast of Newfoundland which lies between Cape St. John, passing to the north, and descending to the western coast of the said island, to the place called Cape Raye, and also all ships, vessels and boats belonging to Her Majesty's subjects which shall be found within the limits aforesaid ; and, also, in case of refusal, to depart from within the limits aforesaid ; to compel any of Her Majesty's subjects to depart from thence, any law, custom or usage to the contrary notwithstanding. Any acts done by the said Governor or officer or officers in pursuance of such orders or instructions as aforesaid, shall be lawful, and no

action, suit or other proceeding shall be brought or maintained in respect of the same.

(2.)—In case Her Majesty, Her heirs and successors, by advice of Her or their Council, shall give orders or instructions to the said Governor or officer, or officers, which she or they deem necessary for the purpose of carrying out or enforcing the said *Modus Vivendi* during the fishery season of 1891, or any continuation thereof, pending the arbitration aforesaid, and for the purpose of giving effect to the decision in said arbitration, any acts done by the said Governor or officer, or officers, in pursuance of such orders or instructions, shall be lawful, and no action, suit or other proceeding shall be maintained in respect of the same.

(3.)—If any person shall refuse, upon requisition made by the said Governor or officers, lawfully acting in pursuance of such orders or instructions as aforesaid, to conform to such requisition and directions as the said Governor or officers shall lawfully make or give, for the purpose aforesaid, such person so offending shall forfeit the sum of two hundred dollars; provided always, that every such suit or prosecution shall be commenced within one year from the commission of such offence.

(4.)—This Act may be cited as the "Newfoundland French Treaties Act," and shall continue in force only until the end of 1893, and no longer.

MAY 30th, 1891.

The renewal of this temporary expedient has been a feature of the political life of each succeeding year, the last renewal being recorded in the *Weekly Times* of February 12th, 1904.

“The Newfoundland Government undertakes to renew the French shore Modus Vivendi for the current year, filling vacancies in the upper House to ensure the passage of the measure which was carried last year by the President's casting vote.”

CHAPTER VIII.

The condition of affairs on the Treaty Shore which resulted from these complicated influences.

We must now consider the effect these varied purposes have had on the Treaty Shore up to the present. In the first place it must be noted that the French, since the Treaty of Versailles 1783, have had access to all the coast from Cape S. John to Cape Ray—*nearly seven hundred miles in extent*. Some of the leading English newspapers commenting on the relative importance of the various sections of the recent Anglo-French convention have treated the Newfoundland settlement as of little importance.

But it can hardly be a trifling matter to deal with so extensive a stretch of territory and the welfare of nearly twelve-thousand British subjects. The Treaties did not affect the Shore alone; the development of the interior was also retarded; agricultural, building, and mining enterprises all suffered.

Moreover the districts affected by the Treaties include some of the most valuable portions of Newfoundland territory.

(1).—*Farming.* It is true that in some extensive parts of the French Shore there is not much possibility of farming on a large scale. In most places, however, those settlers who are willing to combine farming with fishing derive a very comfortable livelihood. At Bay of Islands, for instance, there is good agricultural land and every fisherman can keep cows and sheep. The land when cleared is most productive. Crops of hay are, as a rule, excellent and potatoes grow well.

Among the places where farming of a more extensive character may be found are Bay St. George, Port-au-Port, and particularly Stephenville. As to the Codroy Valley it is already famous in the colony as one of the best districts in the country. Without desiring to leave the impression that this shore from a farming point of view has any possibility of competing with the Canadian North-west, we are quite justified in stating that on most parts of the coast, farming combined with fishing, will afford a sufficient livelihood for thousands; and in some parts, the Codroy valley for example, the settlers may obtain the chief part of their livelihood from the soil alone.

Now, how has the development of these districts been affected by the Treaties? It is not, perhaps, generally known in England that until 1882 the Colonial Government was not permitted to issue

grants for land on this coast, and when in that year the Administrator was enabled to announce "The Imperial authorities had at length authorized the local Government to make land grants and issue mining licenses on that part of the coast on which the French have Treaty privileges"—so gladly was the boon received that he went on to state: "It is a virtual settlement of the vexed French Shore question and a removal of a serious and long-standing grievance."

But this concession was more than adequately described by the phrase "virtual settlement." It was soon found all such grants must be made "subject to French Treaty rights," and the exact value of a grant of land and its permanence necessarily remained hypothetical. It would be valid as against other settlers, but might be quite useless in the face of any new development of the Treaty Rights.

But it may be alleged this limiting clause could be no great hardship to the settlers or the colony, because the agricultural prospects are not sufficiently great to cause an influx of outside capital even were the Treaty Rights non-existent. While this was to some extent the case with reference to farming, it was quite otherwise where mining interests were concerned.

(2.)—*Mining prospects.*—The shore is, apparently, rich in mineral resources. At least two or three copper mines are in operation, and that despite the difficulties caused by the Treaties. One at York Harbour with which a friend of the writer is acquainted, yields twenty per cent. of copper. The Manager stated it is an extremely valuable mine, and he quite expected that in a few years the place in which it is being worked will become the largest settlement on the Western Shore. Then there are here and there along the coast iron mines, slate quarries, and petroleum wells. The oil-wells, which seem valuable, are situate at Parson's Pond, near a point called Cow Head.

French Treaty rights have proved a great obstacle to the opening up of mines and consequent development of the country. "The French claim and are conceded a right over the shore for half-a-mile inland from high-water mark, within which sacred area no colonist may build a house, shed, wharf, or structure of any kind." (P. T. McGrath in *Fortnightly Review*, January, 1900). When colonists did build it was, as it were, on sufferance. It will be easily understood how prejudicial this half mile claim has been to mining enterprise.

Access to the water-side for shipping ore is absolutely essential; but every mining grant had to be

made subject to French Treaty rights, and they, in theory at any rate, would not permit a rail or tramway to be laid over the strand, so that it might be quite impossible to ship the products.

At York Harbour, where the mine referred to above is situate, the Humber Consolidated Mining Company finding it necessary for the success of their operations to have a wharf, erected one in the winter of 1902, and before the French warships arrived. It was quite expected the French would protest, but so far as we know they allowed the matter to pass.

However, it was alleged that had the wharf not been finished by the time of the warships arrival it would have been destroyed. Of course, under such circumstances, foreign capitalists have been discouraged. Business men were not likely to take up a project so hazardous as mining "subject to French Treaty rights." All along the shore such works were carried on with a feeling of restraint, and so to speak, surreptitiously. As Newfoundland is on the whole a poor country, the mainstay of which is the fishery, one can readily realize how serious a disadvantage to its increasing population this discouragement of foreign capitalists has proved.

(3.)—*Population*.—Like everything else on the "French Shore" the settlements have sprung up sub-

ject to Treaty rights ; and it says much for the attractiveness of the coast that though the colony has only about two hundred-thousand inhabitants, nearly twelve thousand of these are settled there. It is difficult to trace the history of this population ; we have however, an account by M. Flourens from the French point of view. After stating that in 1713, in 1783, in 1814, and in 1815 the Treaty shore was almost completely uninhabited he goes on :

“ Neanmoins, peu à peu, les habitants de Terre-Neuve sont venus, et en quantité considérable, s' établir sur le “ French Shore ;” ils s'y sont introduits et glissés sous le couvert des services qu'ils rendaient à nos marins. Ils se sont fait tolérer en se chargeant de garder, pendant la morte.saison de pêche, le materiel et les approvisionnements que nos armateurs avaient intérêt à ne pas transporter chaque année de France à Terre-Neuve et de Terre-Neuve en France ; ils se sont fait accepter aussi en se chargeant d'aller chercher dans l'île les bois qui devaient servir à la construction des ateliers provisoires où se prépare et sèche la morue ; mais ils se sont fait agréer surtout en se chargeant de pêcher, pour nos marins et nos amateurs, les different scrustacés et poissons qui servent d'appât pour amorcer l'hameçon à l'aide duquel on prend la morue.

Ainsi petit à petit, les habitants de Terre-Neuve se sont introduits et installés sur le “ French Shore ” comme auxiliaires de nos marins, sous le prétexte des services qu'ils rendaient à nos pêcheurs. Aujourd, hui, ils sont en grand nombre et ils ne parlent de riens moins que de chasser et d'expulser tous les Français.”

(“ Journal Officiel,”
January 20th, 1890.)

“ Nevertheless, little by little the inhabitants of Newfoundland have come and in considerable numbers, to establish themselves on the “ French Shore.” They have introduced themselves and slipped in under cover of services rendered to our fishermen. They have obtained toleration by promising to look after, during the close season of the fishery, the material and the stores which it was not to the interest of our ship-owners to transport every year from France to Newfoundland and from Newfoundland to France ; they have also made themselves acceptable by engaging to obtain in the island the wood which must be used for building the temporary sheds where the cod is prepared and dried ; but they have made themselves agreeable above all by engaging to catch for our fishermen and ship-owners the various crustaceans and fish which are used for baiting the hook with which the cod is caught.

“ Thus little by little the inhabitants of Newfoundland have introduced and installed themselves on the “ French Shore ” as auxiliaries to our fishermen, under the pretext of services which they render to them. To-day they are there in great numbers, and they talk of nothing less than driving out and expelling all the French.”

Except for the fact that this account seems so decidedly to question the British right to settle on the coast (probably on the basis of the Declaration of 1783) it may be accepted as a fairly accurate statement of the case.

It is, however, said by British authorities that the main source of the population was immigration from

England, Cape Breton and Nova Scotia, and that the number of these settlers was only *augmented* by removals from other parts of the colony. In any case the population soon increased, and, with the exception of some protests from the French, its growth was acquiesced in. But until 1881 it was in a doubtful and altogether anomalous position. There was no decision as to the extent of the settlers' rights or how far they were liable to the ordinary duties of British subjects. There were no revenue laws applicable to that part of the country: properly established courts of justice did not exist; neither magistrates nor police were appointed. The people were not represented in the colonial legislature and were really outside the limits of ordinary jurisdiction.

The year mentioned, 1881, marks an epoch in the history of the French Shore. Since then the population has been formally recognized by representation in the local parliament; other privileges of a civilized country have been extended to the settlers and the corresponding duties imposed. The chief mark of their curious position continued in the grants of land and mining locations which were still issued "subject to French Treaty rights."

The existence of this rapidly increasing population, at first permitted and then recognized, rendered the

stipulations and their interpretation still more intolerable.

Year by year the growth of the settlements was becoming still more a cumulative argument for a reconsideration of the whole position of affairs. The wording of Treaties entered into when statesmen never seriously contemplated the permanent settlement of the country as a whole, had become sufficiently anomalous when responsible government was granted in 1832; but when in 1881 recognition was necessarily given to the settlers on the Treaty Coast itself the stipulations had become bitter grievances. Had an appeal been made to International law surely it would have been decided that while a breach of Treaty stipulations would be contrary to its principles it would be equally contrary to them for the favoured nation to keep so large an extent of country a wilderness. While the high contracting parties might justly emphasise Fenelon's first point as concerns the keeping of Treaties.

"*Tout traité de paix juré entre deux princes est inviolable à leur égard, et doit toujours être pris simplement dans son sens le plus naturel, et interprété par l'exécution immédiate.*"

"*Every treaty of peace sworn to between two princes is inviolable by either, and should always be taken simply in its most natural sense, and interpreted by immediate execution.*"

The settlers on the disputed shore might, at any rate in 1881, claim the benefit of the second :

"Toute possession paisible et non-interrompue depuis le temps que la jurisprudence demande pour les prescriptions les moins favorables, doit acquérir une propriété certaine at legitime à celui qui a cette possession, quelque vice qu'elle ait pu avoir dans son origine."—(Œuvres vi. 319 ed. 1810.

"Every possession which has been held in peace and without molestation from the time that jurisprudence has demanded the least favourable prescriptive—right must give an absolute and legitimate proprietorship to him who has the possession, whatever fault it may have had at its origin."

(IV.)—*The Modus Vivendi in operation.*

In May each year when the time for the spring herring-fishing arrived British and French warships used to assemble at Bay St. George to see the rights of each nation were secured. It was customary for the British naval officer to summon a meeting of the fishermen in the district and explain to them the Treaty rights. So far as he could, during the ensuing season, he took care they were not infringed by British settlers. It seems French officers had a similar custom as concerned their fishermen and complaints from either side were speedily enquired into. During the lobster season the warships patrolled the coast and every precaution was taken to secure observance of the *Modus Vivendi*. As an instance of this, in 1897 the British Commodore seized a large quantity of canned-lobster from an illicit cannery, and "piles of the partially cured product lay till the following year rotting in the court-house at Sandy Point."

Very frequently the warships made raids on illicit factories and in such cases usually confiscated the packers' apparatus.

British warships could by no means be accused of favouritism to the settlers. They kept a very strict watch over the proceedings of Newfoundland fishermen; so much so that the writer has heard fishermen express the opinion that their own (British) warships were harder on them than the foreigners. It should be said, however, the suppression of illicit lobster-packing was not always effected in the interests of the French. Very often it was undertaken to secure the rights of British packers as against intruders, and in many instances was the result of complaints made by colonists against colonists. This explains why there has been very little ill-feeling against the French owing to these raids, and as they were carried out by British sailors there was little or no friction between the two nations on this account.

One grievance of some importance was mentioned in the *Fortnightly Review* of January 1900. *It was stated on the authority of Dr. Neil McNeil, Roman Catholic Bishop of West Newfoundland, that the people of the coast were not allowed to land herring for themselves or sell to others until they had first sold to the French schooners at whatever price the Frenchmen choose to fix.* As an instance of this it

was said that in the spring of 1897 when American and Newfoundland schooners were in the harbour of S. George offering a dollar a barrel for bait, the settlers were not permitted by the warships to deal with them until the French were first baited at thirty cents a barrel! On one occasion a person named Cutler tried to first sell herring to a Newfoundland schooner, but the British warship seized him and his boat. He and his crew were reprimanded and the cargo of herring was destroyed. No compensation could be received in such cases and the statutory authority of the *Modus Vivendi* gave immunity to the officers who resorted to these measures.

(V.)—French Influence.

As the fishing season is quite short it could hardly be expected the influence of the foreign sailors would have much permanent effect on the settlers. As a rule the French kept strictly to themselves. A naval officer who had seen much service on the coast told the writer that really they benefitted the poor settlers by giving employment in cutting wood, taking care of their property during the winter, and perhaps in catching lobsters.

But a clergyman who has lived some years on the coast is of a different opinion. He is inclined to think their coming did not benefit any settlement because

they were, as a rule, poor themselves and brought no trade. While no decided moral lapse seemed traceable to their visits, they usually brought with them large quantities of rum and brandy, which the more lawless ones sold to the settlers and thus afforded ground for the charges of smuggling.

Complaints were sometimes made that French fishermen cut nets adrift and even appropriated them. If such cases did occur the settlers might have easily obtained redress if they could have proved their case before the British officers. But to quote an extreme instance :—

“ In 1889 as sworn testimony before Justice Pinsent of our Supreme Court proved they cut up herring seines in S. George's Bay and let 1,800 barrels of the fish free to the great loss of the settlers there.” (P. T. McGrath in *Fortnightly Review*.)

It was sometimes considered unfair that the French monopolized the best fishing grounds, but possibly the Declaration of 1783 would be their excuse for this. Considering everything, the attitude of the settlers to their visitors was not *personally* antagonistic. They had been accustomed from childhood to the anomalous state of affairs, and as a rule the French were quiet and well-behaved.

(VI.)—*St. Pierre and Miquelon.*

With reference to S. Pierre we learn from Judge Prowse's History, although the name of the Island is found at a very early date in the French form *Pierre* (San Sebastian) and is mentioned by Cartier it does not seem that France asserted formal possession of the island until Placentia was occupied in 1662.

But it is alleged that it was fortified and garrisoned as early as 1670 (cf. Colonial Papers, Newfoundland). There is a record of a fortification being destroyed by Captain Leake, R.N. in 1702, and very probably this little fort represented all the warlike munitions there. From the time of the Treaty of Utrecht, 1713, to the Treaty of Paris 1763, S. Pierre and Miquelon remained in British hands. By the Treaty of Paris, 1763, both Islands were ceded to France as a shelter for its fishermen; the French King engaging they should not be fortified nor any buildings erected and that only fifty men should be kept there as a guard for the purpose of police.

It was probably to prevent any dispute concerning sovereignty that the British Government stipulated in 1763, that S. Pierre should not be fortified in future.

One of the conditions on which the Island was to be ceded plainly stated an English commissary

should be allowed to reside there and that the Commander of the British warship on the Newfoundland station should have liberty to visit the Island and see the conditions carried out. The French undertook to use the force allowed them to prevent so far as possible foreign vessels sheltering there. With this understanding, in July 1763, Baron de l'Esperance received possession of the Islands on behalf of France but the undertaking to keep foreign vessels away was not very strictly regarded, for Sir H. Palliser, who was appointed Governor of Newfoundland in 1764, discovered S. Pierre had already become a resort for smugglers.

His ships captured both English and American smugglers, and in a letter dated July 8th, 1765, there is a reference to three New England schooners which had been seized by Lieutenant Dickson.

When the American war broke out in 1778 the Governor of Newfoundland took possession of the Islands and sent over nineteen hundred inhabitants back to France; but by the Treaty of Versailles, 1783, the Islands were ceded "IN FULL RIGHT;" although in the Declaration attached, it was explained they were ceded as a shelter for French fishermen and in confidence that they would not become "*an object of jealousy between the two nations.*" In the French king's counter-declaration a statement was.

made to the effect that he would give constant attention to prevent the islands becoming "an object of jealousy between the two nations."

During the years immediately succeeding the Treaty of Versailles the French returned in great numbers and S. Pierre once more became a French colony. At the time of the Revolution it followed so far as its puny resources would allow the methods of the mother country, and there was an "Assembly of the commune" to regulate its affairs. The miniature republic had but a short regime, for in May, 1793, the Governor of Newfoundland, Vice-Admiral King, took possession the Island which surrendered without resistance, and sent the population away. By the Peace of Amiens S. Pierre, in 1802, was again ceded to France, but during the war of the following year it was occupied by the British and was not finally made over till 1816.

Certainly if the Declarations attached to the Treaty of Versailles have force as concerns the relations of the two nations in fishery operations they must also have force when they state S. Pierre and Miquelon are not to become "an object of jealousy between the two nations." In a communication to the Colonial office (July 24th 1890) Hon. A. W. Harvey said the principal object for which these Islands had been ceded to France had become of relatively little import-

ance; that they were used in every way to make them an object of jealousy and were proving most injurious to the interests of British subjects; that if a breach of the conditions on which they were ceded justified the revocation of the cession they should long since have been reclaimed and repossessed by Great Britain; that the present use of them (i.e. 1890) is such a breach of Treaty stipulations that they should be immediately restored.

The reasons alleged why in case of Arbitration the French position on these Islands should be fully considered were :—

(1.)—Their misuse; affording shelter to smugglers &c.

(2.)—That they have become a place of general trade, instead of a mere harbour for French fishermen.

(3.)—That a British Consul cannot obtain recognition at S. Pierre.

In view of the Convention signed April 8th, 1904, it is important to remember that it was stated to the Foreign Office (April 2nd, 1890) that these reasons had considerable force, and also, " Lord Knutsford is of opinion that if the meaning of the Declarations is ever submitted to arbitration the purposes to which

the French are in the habit of putting S. Pierre and Miquelon should be brought out."

The Newfoundland Government has very keenly felt the consistent refusal which has barred all attempts to place a British representative at S. Pierre. We cannot say why the French authorities should object to the presence of an English consul, but it is not surprising an explanation became current in S. John's that a consul was refused in case he should put a stop to smuggling enterprises. Colonial writers do not hesitate to say S. Pierre has been a nuisance as a smuggling depot to all British North America.

The French officials take great care their own regulations shall not be infringed. One of these rules forbids the introduction of foreign fishery products and enjoins the confiscation of any which may be landed or offered for landing in S. Pierre. In July 1890 a fish-lading schooner put in the roadstead and the "Skipper" who had some cod-roes of his own attempted to barter them for liquor. Under the law mentioned the fish was confiscated and sold and the schooner destroyed. The "Skipper" owned neither fish nor schooner, but the innocent owners had to suffer.

Why should not the same strictness be exercised to put down smuggling? We only know it is not. It is stated by one writer that in 1864 a Newfound-

land customs officer visited S. Pierre *incognito* and from personal observations and enquiries was enabled to state these little Islands were responsible for a loss to the S. John's revenue of fully \$50,000 per annum! Naturally the Newfoundland colonists have complained of such a state of affairs; for, to quote a report of Lord Knutsford's opinions:

"While the French claim to extend that Declaration as to fixed settlements so as to destroy all enterprise on the West Coast they have no scruple in ignoring their own obligations and in turning the fishery shelter at S. Pierre into a smuggling depot to the direct injury of the Colonial Government."

The above facts account for the earnest demand made by the Colony that any scheme of arbitration dealing with the Treaty rights should include a consideration of the use made of S. Pierre and Miquelon, and have as its purpose the rectification of such abuses.

CHAPTER IX.

Attempts at Settlement.

The circumstances which up to the present rendered the interpretation of the Treaties so very difficult and which caused so many disputes have by no means been of recent origin. On the contrary they existed from the early part of the nineteenth century, but each year has brought them into greater prominence. As the statesmen of both nations have endeavoured at various periods to arrive at a satisfactory solution of the difficulties which have arisen we will briefly consider these attempts.

(I.)—*The Convention of 1857.* After negotiations had been suggested by the French in 1844, Mr. Thomas was appointed British commissioner and Captain Fabvre French representative. On July 30th, 1844, Mr. Thomas made a report to the Governor in which he thought the best solution of the difficulties would be to keep the fishermen of each nation on separate parts of the coast. This report resulted in the negotiations which were held in Paris in

March 1846. The British Commissioner, Sir A. Perrier was authorized to offer in exchange for the French cession of all rights between Cape Ray and Bonne Bay, the following concessions :—

(1.) Admission of French *exclusive* rights of fishery from Bonne Bay to Cape S. John going round by the North.

(2.) Grant of exclusive rights to French to fish, dry, and cure on Belle Isle North.

(3.) Permission for English fishermen to sell bait at S. Pierre.

These points had almost been agreed on in the preliminary conferences held by Mr. Thomas and Captain Fabvre in Newfoundland, but Captain Fabvre wished to obtain also :

(4) Rights of fishing, curing fish, etc., at Cod Roy, Red Island, Port-a-Port, and Lark Harbour.

(5) Concurrent rights of fishing on the Labrador.

The instructions given to the French commissioner did not permit him to negotiate on the proposals made by the British so the conference was ineffective.

In 1854 at the instance of France, negotiations were resumed. Sir A. Perrier acted for Great Britain,

and M. de Bon for France. The French commissioner made the following proposals :

A.—That France should recognize the right of British subjects to inhabit Bay S. George—*i.e.*, give up the claim to exclusive right of fishery in that Bay.

B.—That in return for this concession Great Britain should grant France :

(1.) The unrestricted right to take bait on the South Coast of Newfoundland.

(2.) The right to fish (without curing or drying on shore) on that point of the coast of Labrador between the Isle of Vertes and the Isles St. Modeste, both included.

(3.) The right of fishery at Belle Isle North in the Straits.

These proposals were not considered admissible and the British Commissioner believing the best solution would be to keep the rights of the two nations separate, suggested :

A.—That French Fishermen should have exclusive rights from Cape S. John to the North of Bonne Bay.

B.—That in return they should altogether renounce their rights on the remainder of the coast.

In reply the French Commissioner while willing to accept recognized exclusive rights on part of the shore, desired also :

(2.) Concurrent rights on the part on which exclusive rights would be renounced.

(3.) Concurrent rights on the Labrador, North Belle Isle, and the South Coast bait fishery. These be considered necessary as an equivalent for the admission of the British to free concurrent rights on the lower portion of the Western Coast.

But the British Commissioner proposed :

A.—(1.) That the French fishery should be extended to North Belle Isle.

(2.) That restrictions on the purchase of bait should be removed :

B.— That in return the French should entirely renounce their rights between the North of Bonne Bay and Cape Ray.

The negotiations were continued in 1856 and finally a convention was signed in London on the 17th of January 1857. This convention provided :

A.—(1.) That the French should have *exclusive* rights of fishery and the use of the Strand for fishery purposes from Cape S. John on the East coast to the Quirpon Islands and from the Quirpon Islands on

the North coast to Cape Norman, on the West coast in and upon the following five fishery harbours, namely Port-a-Choix, Small Harbour, Port-au-Port, Red Island and Cod Roy Island, to extend as regarded these five harbours to a radius of three marine miles in all directions from the centre of each such harbour.

(2.) That the French should have the exclusive use of the Strand for fishery purposes from Cape Norman to Rock Point in the Bay of Islands, north of the River Humber, in addition to the Strand of the reserved harbours.

(3.) That the French should have a concurrent right of fishing on the Labrador from Blanc Sablon to Cape Charles and of the North Belle Isle.

B.—That with the exception of the five harbours afore-mentioned British subjects should have a *concurrent* right of fishing with French subjects on other parts of the West Coast!

Review of this Convention.

A reference to the map will shew that by this convention France acquired in addition to the exclusive use of the coast from Cape S. John to Cape Norman the exclusive use of all the principal harbours on the Western shore. It also gained concurrent rights of

fishery on the Labrador from Blanc Sablon to Cape Charles, and on Belle Isle North. And what was given in exchange? Simply that on the remainder of the Treaty Coast—*i.e.* from Cape Norman to Cape Ray—with the exception of the chief harbours the colonists might be permitted to have a "concurrent" right of fishing. It is only necessary to consider the convention in the light of the Treaties to realize what an enormous price British diplomatists engaged to pay for France's recognition that the colonists had on a part of the coast what was really by the Treaties their right on the whole-concurrent fishery! It seems necessary to state again—so surprising are the terms, —this convention was actually signed! But it was a sore test to the Colony: excitement and bitter feeling were so intense that the British flag was hoisted half-mast, and some irritated citizens flew American flags. The Governor was insulted at his residence and the House of Assembly absolutely declined to adhere to the arrangement.

Although the signatures had been attached previously, the British Government could not proceed in the face of such opposition. It was withdrawn notwithstanding French protests) and the addresses from the Colonial Legislature drew from Labouchere the famous letter in which he said, "That the consent of the community of Newfoundland is regarded by Her

Majesty's Government as the essential preliminary to any modification of their territorial or maritime rights."

(II.)—*The Convention of 1885.* Various ineffectual negotiations took place in 1860, 1874, and 1881, the main result of which had been to shew :

A.—That France would resolutely reject any terms which did not recognize its Treaty rights as exclusive, and provide a substantial equivalent for relinquishing them on any part of the coast.

(B.)—That the Colonial Government would not accept any scheme of settlement which would infringe on its territorial rights or debar its people from the exercises of at least a concurrent right on the whole Treaty shore.

Another serious attempt to arrive at a settlement was made by the appointment of the "Ford-Pennell" commission 1883. Sir Clare Ford and Mr. E. B. Pennell were selected as British Commissioners to confer with M. Jager-Schmidt and Captain Bigrel. The Commissioners met at Paris and drew up a very comprehensive sketch of agreement which was to be submitted to their respective Governments, and also to the Newfoundland Legislature.

This arrangement, dated April 20th 1884, was in substance:

A.—(1.) That particular care should be exercised in carrying out the Declaration of 1783 ;

(2.) That the French should acquire rights of Police on the Treaty Shore ;

(3.) That out of the fishing season French subjects in the proportion of one family to each fishing establishment might remain for the care of the French "rooms" ;

(4.) That on the Treaty Shore goods might be imported for their own use free of duty, and that they might be freed from light and port dues ;

(5.) That French subjects should have the right to purchase bait up to April 5th in each year.

B.—That in return for the security to be afforded to the French fishery in accordance with the Declaration of 1783 :

(1.) No objection should be raised against the formation of establishments necessary for the development of every industry other than that of the fisheries on those portions of the coast between Cape S. John and Cape Ray tinted red on an annexed map* and which did not appear in a statement also annexed* describing those portions of the coast to which the above provision might not apply.

*L.S.—Annexed to arrangements signed.

(2) That British subjects should not be disturbed in respect of establishments already on those parts of the coast comprised between Cape John and Cape Ray passing by the North, but no new ones should be established in those parts named in the annexed statement referred to above.

When the convention was submitted to the Colonial Parliament, in a minute of proceedings dated July 15th, 1884, these comments were recorded :

(1.) "That on the coast between Bonne Bay and Cat's Arm, in White Bay—a very large part of the Treaty Shore—settlement would in accordance with the arrangement be well nigh impossible, the practicable harbours and landing places being on the "tinted map" and "annexed statement" reserved for the French. That in the vicinity of some of these harbours mineral deposits were believed to exist which could not be worked unless some provision were made for the erection of wharves in such harbours.

(2.) That the position of the French caretakers should be clearly defined so as not to give opportunity for French permanent settlement.

After an interchange of despatches the convention was modified by the insertion of an article providing that in case minerals should be discovered, contiguous to the reserved harbours, a wharf and railroad might

be constructed for shipping the ore at a point to be decided by the naval commanders of both nations, and that while the constructions necessary for the working of the mine, *e.g.* dwelling-houses, should be placed outside the French limit it should be permissible to erect shelters for the provisional storage of mining implements on each side of the railroad on a space not exceeding 15 metres, such space to be inclosed by a hedge or some sort of inclosure.

The article relating to caretakers was worded :

“ The employment of French subjects in the proportion of one guardian with his family to each harbour is authorized for the guardianship of the French establishments out of the fishing season. In the large harbours where the temporary fishing rooms of the French are so distant from each other as to render it impracticable for one guardian to take care of all such establishments the presence of a second guardian with his family shall be authorized.”

The amended convention was signed by the commissioners on the 14th of November, 1885, and Mr. Pennell was instructed to proceed to S. John's with it and to endeavour to obtain its final acceptance. But between the signing of the amended draft and the arrival of Mr. Pennell a general election had taken place in Newfoundland and popular sentiment being

adverse to the convention a change of government resulted. The Governor, Sir W. DesVoeux, was unable by his most zealous efforts to induce the new ministry to sanction the arrangement. Nor could Mr. Pennell who also did his utmost to obtain its acceptance. Very strong objections were urged which may be summed up thus :—

(1.) No clear definition had been given of the clause in the Declaration that British subjects are not to "interrupt in any manner the fishing of the French by their competition" and as the convention provided for the strict enforcement of the Declaration it would be very doubtful what the concurrent rights which Lord Derby had promised in his dispatch (June 12th, 1884) as a result of the convention might mean;

(2.) Because powers of police were given to French cruizers;

(3.) Especially because it contained a clause empowering the French to purchase bait.

The resolutions passed by the committee which had been appointed to consider this convention, show that if it had appeared at all possible the French Government would bind itself to abolish its bounty-system the colonists would have consented to the arrangement. But failing this to accept it would have been to give up that which they realized would

prove a most potent weapon for self-defence, the regulation to a large extent of their rivals' bait supply.

The Bait Act passed in 1886 seems to have been the immediate result of the discussions attendant on this convention.

When the Home Government had refused assent to this bill they were convinced of the seriousness of the colonists by the passing of substantially the same act in 1887.

To this assent was given with the proviso that it should not come into force until the next season.

Review of the Convention.

Its main weakness from a British point of view is set out in the objections urged against it in S. John's. It was evident from the experience of the past France would have insisted on a severe interpretation of the Declaration.

Where then would concurrent rights for the settlers have had scope?

The concurrent rights even in Lord Derby's own explanation were to be subject to not interfering with or molesting French fishermen, words altogether too vague for satisfactory management. If rights of police had been granted to the French, even had they only been valid in the absence of English warships

their territorial sovereignty would *ipso facto* have been recognized. There were some indications that armed resistance might result from any such action by the French; and to give permission to purchase bait while the bounty-system continued seemed ruinous to the colony at large. Most of those who enquire into the circumstances will agree with Sir W. DesVoeux who wrote, "Now that I fully comprehend the present position of the colony, it is to me no longer a matter of wonder that the Legislature has hitherto failed to ratify the proposed arrangement with France, indeed I can scarcely conceive it possible that this arrangement will ever be accepted so long as the Bait Clause remains in it and no security is taken that the export bounties will not be maintained on their present footing."

(III.)—*The Convention of 1904.* The passing of the Bait Act, as has already been said, caused the French in increasing numbers to resort to lobster-catching, in order that by combining this with bait-supplying, a remunerative industry might be established, and their ships provided with bait in time for the fishery. This led to the many disputes which were partially quelled by the *Modus Vivendi* dating from 1890.

But the application of this measure was not wholly satisfactory, especially as many of the Newfoundland

statesmen have been very adverse to it from the first. In the hope of coming to a settlement an arrangement was made in 1891 to submit the lobster disputes to arbitration, but since France required the Colonial Legislature as a preliminary to enact some measure to make the award binding when given, and this could not be done because of the opposition felt towards any arbitration which did not cover the whole question of French Treaty rights, nothing could be effected.

In 1898 Mr. Chamberlain appointed a commission consisting of Sir John Bramston and Admiral Erskine to investigate the whole question.

The members of the commission proceeded to the colony and spent some months visiting the Treaty coast, taking evidence, and consulting with the Local Government as to what might form a basis of settlement and prove agreeable to the Colony.

The Report of this Commission was handed to Mr. Chamberlain in March 1899, but though printed it never has been published.

It is alleged, however, that sufficient of its general nature leaked out to shew that it supported the Colony in most particulars.

One characteristic added to its importance; it was the first absolutely impartial collection of evidence

and locally formed opinion that the British Government ever had placed in its possession. Before receiving this it had to depend on the Reports of naval officers and the Colonial Government, and the former are, rightly or wrongly, said to be too lenient to French assertions, while the members of the latter are naturally biased in the opposite direction. But the Report of 1898 gave impartial testimony, and owing to the pains taken to collect evidence much new light was thrown on the language of the Treaties in its relation to local practice or tradition.

Following this, in 1901, an effort was made to determine the disputes; but adhering to their former policy the colonists absolutely refused to make certain concessions with regard to the sale of bait unless the French would undertake to abandon their bounties or at least largely reduce their operation.

The various attempts made to settle this long drawn out dispute having hitherto proved abortive, and there being other and equally important questions between the two nations, in October 1903 Lord Lansdowne and M. Cambon signed a treaty of arbitration; and in March of the present year, 1904, the public was informed negotiations for the settlement of the various questions at issue were making substantial progress, and of course it was understood the Newfoundland difficulty had a large share of the

negotiators' attention. In deciding a basis of agreement many complicated issues had to be considered : *e.g.* the attitude of the Colonists ; the Canadian interests which might be affected ; the effect on American opinion ; the popular French sentiment which claimed certain territorial rights in Newfoundland. As a result of the negotiations a convention was signed on April 8th, of this year, and the clauses dealing directly with the Treaty shore stipulate :

ARTICLE I.

France renounces the privileges established to her advantage by *Article XIII* of the Treaty of Utrecht and confirmed or modified by subsequent provisions.

ARTICLE II.

France retains for her citizens, on a footing of equality with British subjects, the right of fishing in the territorial waters on that portion of the coast of Newfoundland comprised between Cape St. John and Cape Ray, passing by the north ; this right shall be exercised during the usual fishing season closing for all persons on the 20th October of each year.

The French may therefore fish there for every kind of fish, including bait and also shell fish. They may enter any port or harbour on the said coast, and may there obtain supplies or bait and shelter on the same

conditions as the inhabitants of Newfoundland, but they will remain subject to the local regulations in force; they may also fish at the mouths of the rivers, but without going beyond a straight line drawn between two extremities of the banks, where the river enters the sea.

They shall not make use of stake-nets or fixed engines without permission of the local authorities.

On the above mentioned portion of the coast, British subjects and French citizens shall be subject alike to the laws and Regulations now in force, or which may hereafter be passed for the establishment of a close time in regard to any particular kind of fish, or for the improvement of the fisheries. Notice of any fresh laws or regulations shall be given to the Government of the French Republic three months before.

The policing of the fishing on the above-mentioned portion of the coast, and for prevention of illicit liquor traffic and smuggling of spirits, shall form the subject of Regulations drawn up in agreement by the two Governments.

ARTICLE III.

A pecuniary indemnity shall be awarded by His Britannic Majesty's Government to the French citizens engaged in fishing on the "Treaty Shore," who are obliged, either to abandon the establishments they possess there, or to give up their occupation, in con-

sequence of the modification introduced by the present Convention into the existing state of affairs.

This indemnity cannot be claimed by the parties interested unless they have been engaged in their business prior to the closing of the fishing season of 1903.

Claims for indemnity shall be submitted to an Arbitral Tribunal composed of an officer of each nation, and, in the event of disagreement, of an umpire appointed in accordance with the procedure laid down by Article XXXII of the Hague Convention. The details regulating the constitution of the Tribunal and the conditions of the inquiries to be instituted for the purpose of substantiating the claims, shall form the subject of a special Agreement between the two Governments.

It is not necessary to quote the remainder of the convention save to notice that in article IV it is stated His Majesty's Government recognizes some territorial compensation is due to France in addition to the indemnity referred to and agrees to make certain concessions which are specified in the following articles and may be briefly stated thus :—

(1.) Rectification of the Eastern frontier of Gambia giving France access to the navigable portion of that river ;

(2.) Cession of the Los Islands, opposite to Konakry and important as a strategic base;

(3.) Modification of the boundary fixed between the French and British possessions in Nigeria by the convention of 1898. The new boundary gives France access to a direct route between the French possessions in Nigeria and those in the neighbourhood of Lake Chad.

The convention was signed subject to the approval of the respective Parliaments and by Article IX it is provided the ratifications shall be exchanged in London within eight months or earlier if possible.

Review of this Convention.

For our present purpose it is only necessary to consider the convention so far as it is concerned with Newfoundland. We notice at once a feature which will commend the arrangement to the colonists, viz., the renunciation by the French of their rights of landing on the Treaty shore and of their claim to exclusive fishery there. This will render unnecessary in future the hypothetical form in which land and mining grants have hitherto been made, and materially aid the development of that part of the country. The French, when fishing will be subject to the colonial regulations connected with the fishery, and the rights of the settlers will, presumably, be unquestioned.

But having said this we fear we cannot anticipate it will be received with unmixed satisfaction in the colony.

The French retain a concurrent right of fishing on the Treaty coast and may of course make use of the harbours. It is true their "fishing rooms" must be removed, but for these they will receive full value as may be decided by the arbitral commission.

They positively GAIN the unquestioned right to participate in the lobster industry, the crustacean being classed a "shell fish". It is quite conceivable this can be carried on extensively in floating factories, for instance, in temporary sheds placed on the decks of their brigs; or, possibly, by hiring some shed on the coast with the consent of the local authorities. Thus they can compete with the colonists in this industry quite as much as formerly, and their right to do so must now be unquestioned. Then there is the awkward provision by which they may obtain bait on the same footing as British subjects. We have noticed again and again how strongly the colonists have opposed any concessions in this respect *until the French Bounties are abolished*. By this convention they acquire the right to take or buy bait and nothing whatever is said about abolishing or even modifying the Bounties. Both the fishermen throughout the country and merchants in S. John's feel very

keenly the unequal terms under which they compete with the French while this system continues, and the colony will be very loath to grant liberty to their rivals to take bait and so make the competition still more unequal. If, as seems probable from the wording of the convention it must be submitted for approval to the colonial legislature, it is very possible determined opposition will be made to the retention of this provision, although some statesmen may have thought the concession would, under the circumstances, receive assent. Then nothing further is determined about the French occupation of S. Pierre and Miquelon. We have already noted that these Islands have proved troublesome as smuggling resorts in the past: the only restriction to this now gained is the statement of Article II, "The policing of the fishing on the above-mentioned portion of the coast, and for prevention of illicit liquor traffic and smuggling of spirits shall form the subject of regulations drawn up in agreement by the two Governments."

We must not be surprised if this settlement seem to the Newfoundland Revenue authorities too hypothetical to be pleasing. But does the sentence just quoted imply the French are to acquire any rights of police? It is to be hoped not, for in that case new difficulties must arise and colonial prejudices be again excited. One who had an intimate knowledge of the

proceedings of the 1898 commission and is in a position to speak with some authority on the subject, in a communication to the writer refers to the convention thus:—"Personally I should not think it a great gain for Newfoundland inasmuch as it leaves untouched the question of the Bounty-fed competition of the French Fishery which has always been the Colony's great complaint. Indeed, it has rather accentuated our disadvantage by providing the French shall have the right to be supplied with and to catch bait in our territorial waters practically without restriction, and the Bait Act was our only check upon French competition. Moreover nothing has been done with regard to S. Pierre and Miquelon. What we felt was the bounty and the smuggling. The French Fishery I believe is doomed without Newfoundland bait, and if they value the fishery as they are supposed and believed to do, we ought to have got a more valuable return—*e.g.* a British Consul at S. Pierre and the reduction of the Bounty for the concession of a privilege without which they cannot carry on the fishery at all" (April 21st 1904). There is no doubt France, if it has not obtained more than an equivalent in the Bait concession for all it has renounced has at any rate secured *a most valuable privilege.*

When we consider that it has also acquired the

undisputed right to catch lobsters ; the prospects of an indemnity for "fishing-rooms" which may be removed ; a rectification of the boundary of Gambia ; of Nigeria ; the cession of the Los Islands, certainly it seems as if in this case the British Government has best reason to state it dealt generously with its neighbour. It will be a pity if it has not also secured the approbation of the "scattered few" in Newfoundland ; but we fear that in this respect they are people of deep convictions and remarkable pertinacity, and we will not be surprised if they assert again "the views already so often expressed by them to Her Majesty's Government : that they can assent to no reference (*i.e.* to arbitration) of any one particular point arising under the Fisheries Clauses of the Treaties of Utrecht, Paris Versailles, while other questions involved in these clauses and the declaration appended to the Treaty of Versailles are withheld from the reference."



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St. John's Newfoundland }
Dec. 31, 1904. }

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Customs Circular

No. 15.

WHEN TOURISTS and SPORTSMEN arriving in this Colony bring with them Cameras, Bicycles, Angler's Outfits, Troutng Gear, Fire-arms and Ammunition, Tents, Canoes and Implements, they shall be admitted under the following conditions :—

A deposit equal to the duty shall be taken on such articles as Cameras, Bicycles, Troutng Poles, Fire-arms, Tents, Canoes, and tent equipage. A receipt (No. 1) according to the form attached shall be given for the deposit and the particulars of the articles shall be noted in the receipt as well as in the marginal cheques. Receipt No. 2 if taken at an outport office shall be mailed at once directed to the Assistant Collector, St. John's, if taken in St. John's the Receipt No. 2 shall be sent to the Landing Surveyor.

Upon the departure from the Colony of the Tourist, Angler or Sportsman, he may obtain a refund of the deposit by presenting the articles at the Port of Exit and having them compared with the receipt. The Examining Officer shall initial on the receipt the result of his examination and upon its correctness being ascertained the refund may be made.

No groceries, canned goods, wines, spirits or provisions of any kind will be admitted free and no deposit for a refund may be taken upon such articles.

H. W. LeMESSURIER,
Assistant Collector.

CUSTOM HOUSE,

St. John's, Newfoundland, 22nd June, 1903.

