The Legal News.

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In the case of *Ulrich* v. *The Hudson River R.R. Co.*, the Court of Common Pleas of New York has made a distinction of some interest between ordinary cars and drawing room cars where the passenger is travelling on a pass. Mr. Ulrich, Commissioner of Emigration, had a pass which entitled him to ride in one of the ordinary cars of the company. The pass contains a stipulation that the person using it shall relinquish his right to compensation for injuries. But Ulrich wished for better accommodation and paid the sum exacted for transportation in one of the drawing room cars forming part of the train. The court held that this changed the contract and made the railroad company responsible. "If the free pass gave him the right to travel on the train, it gave him no right to travel in that car, and it is evident that the rights and relations of the parties were changed by the sale to him of the ticket to the drawing room car. As a passenger for hire, who, in bargaining for transportation in the drawing room car had made no contract that relieved the company from its liability for damages if he were injured through its negligence, the plaintiff had the rights that the law gives to ordinary passengers, and having paid for the ticket he is not to be considered as one who, in consideration of a free passage, has agreed not to hold the company liable for injuries. The defendant voluntarily made a new contract, and cannot now ignore it and insist that the rights of the parties shall be measured by a contract that was intended to operate upon a condition of affairs that it has seen fit to change." The defence that the Wagner Drawing Room Car Company was liable for the damages was held to be untenable, as that company could not run its cars on the road without the consent of the railway company.

The County Court, Cook Co., Ill., has decided, *Re Dong Tong*, that a white male infant cannot legally be adopted by a Chinese family, even with the consent of the mother of the child. Prendergast, J., said :—"While satisfied that the petitioners are reputable people, I am nevertheless of opinion that there is a barrier against such an adoption of a child who is unable to consent for itself. The fact that the mother of this child, who alone has the sole legal custody of the child, consents, is not sufficient. In every judicial inquiry for the determination of the custody of a minor in which the court has the power and the duty of disposition, the controlling question or consideration is the welfare of the child. All other questions are subordinate to this. Among some of the continental nations of Europe legal adoption of children has been recognized for some time; but in the United States it has been supposed that the common law did not recognize the practice, and made no provision therefor. In this State, as in others, the legal adoption of children is a purely statutory proceeding, and our statute expressly provides that before the court enters the decree of adoption, it must be satisfied, among other things, that the petitioner is of sufficient ability to bring up the child, and furnish suitable nurture and education, and that it is fit and proper that such adoption should be made.' The petitioning husband cannot by our law, become a citizen; hence he will probably be, though in the country, not of it. And that being so, it is probable that the home lessons and influences, which are so important to be impressed on the character of the child in the formative period, to fit him for American citizenship will be wanting."

NOTES OF CASES.

SUPERIOR COURT.

MONTREAL, March 7, 1885.

Before JETTÉ, J.

KNAPP v. THE CITY OF LONDON INS. CO.

Evidence—Privileged Communication.

Held, that letters, communications, and correspondence between an Insurance Company and its Inspector or Adjuster, relating to the preliminary investigation which the company makes in connection with the loss, are privileged communications.

At the Enquête in this cause the plaintiff's

attorney asked Mr. Oswald, who was the defendant's agent, the following question:—"Will you produce and file in this cause the originals or copies of all correspondence, authorizations, and reports which passed between yourself as agent of the defendants and Israel Wood of Sherbrooke, as their adjuster in this matter?

W. E. Dickson, for defendants, objected to the question, inasmuch as all communications between the company, defendant, and its special adjuster with reference to the preliminary investigation in this matter were privileged communications, and could not be brought into question as being privileged communications between principal and agent. The defendants had no objection to the production of all documents received from the plaintiff or any outside party and not confidential.

PER CURIAM. La Cour maintient l'objection attendu que la correspondence demandée est relative aux renseignements que la compagnie défenderesse a été forcée de prendre au sujet de la réclamation qui fait l'objet du présent litige.

F. W. Terrill for Plaintiff.

Trenholme, Taylor & Dickson for Defendants.

(W. E. D.)

SUPERIOR COURT.

MONTREAL, Dec. 27, 1881.

Before RAINVILLE, J.

THAYER v. ROSS.

Bill of costs—Counsel at enquête.

The case was inscribed on the roll for *enquête* and merits. The plaintiff failing to proceed, his action was dismissed with costs. In the bill of defendant's attorneys, taxed against plaintiff, was an item of $10 for counsel fee at enquête.

The plaintiff moved to revise the taxation, objecting to the item on the ground that no enquête having been made, a counsel fee could not be taxed against him.

Held, maintaining the taxation, that the case having been inscribed upon the roll, the fee was properly taxable.

Geoffrion, Rinfret & Dorion for plaintiff.

Kerr & Carter for defendant.

JURISPRUDENCE FRANÇAISE.

Bail à loyer—Réparations—Reconstruction de la façade—Arrêté du maire—Péril imminent—Faute du propriétaire—Responsabilité.

La clause d'un bail de maison, par laquelle le locataire s'engage à supporter, sans indemnité, toutes les réparations ou constructions, grosses ou petites, ne comprend point l'hypothèse de la reconstruction totale de la façade de la maison louée.

Toutefois, si la démolition de la dite façade a été ordonnée par l'autorité municipale pour cause de péril imminent, il y a là un cas de force majeure, faisant obstacle à l'action en indemnité, à moins qu'il ne soit établi que par des réparations convenables et faites à temps, ce dernier aurait pu conjurer le mal.

(16 *juin* 1884; *Besançon, Cour d'Appel; Gaz. Pal.* 21 *janv.* 1885).

Lettre de change — Acceptation — Signature — Radiation—Remise.

Le tiré n'est lié envers le porteur que par la remise effective de la lettre de change, revêtue de son acceptation.

En conséquence, le tiré peut valablement biffer jusqu'à cette remise, l'acceptation qu'il aurait tout d'abord signée.

(11 *déc.* 1884. *Trib. de Com. de la Seine. Gaz. Pal.* 22 *janv.* 1885).

Billet à ordre—Signatures de commerçants et de non commerçants—Commercialité du billet—Compétence du tribunal de commerce.

Le billet à ordre, quoique souscrit par un non commerçant, revêt le caractère de commercialité, lorsqu'il porte la signature d'individus commerçants. Par suite, le tribunal de commerce est compétent, alors même que la poursuite n'est dirigée que contre le souscripteur non commerçant.

(26 *nov.* 1884. *Cour d'Appel de Lyon. Gaz. Pal.* 22 *janv.* 1885).

Privilège— Médecin— Maladie chronique—Appréciation—Pouvoir du juge.

Lorsque la maladie, dont est mort le débiteur, est une maladie chronique d'une certaine durée, le privilège accordé au médecin par l'article 2101 du Code Civil ne s'étend

pas à la période entière pendant laquelle il a donné ses soins, mais seulement au temps où la maladie a pris un caractère assez grave pour faire redouter une issue funeste; il y a là, du reste, une question de fait, dont l'appréciation est réservée aux tribunaux.

(27 *nov.* 1884. *Montidier Gaz. Pal.* 24 *janv.* 1885).

Obligation alimentaire—Etablissement des enfants—Caractères—Personnes tenues de cette obligation.

Si le père de famille est obligé de nourrir son enfant, il n'est point tenu de lui fournir une dot ou un établissement, et il n'est pas permis à l'enfant de dissimuler la demande d'une dot sous l'apparence d'une demande alimentaire, de même qu'il n'est pas permis au père d'éluder l'obligation alimentaire qui lui incombe en soutenant qu'il s'agit d'une demande aux fins d'un établissement.

Ce qui différencie essentiellement l'action alimentaire de l'action aux fins d'un établissement, c'est le besoin de l'enfant qui réclame; l'obligation alimentaire comprend d'ailleurs, outre la nourriture, l'entretien, le logement, le vêtement et les secours médicaux.

Les personnes soumises à l'obligation alimentaire n'en sont point tenues concurremment: cette obligation pèse d'abord sur le conjoint, ensuite seulement sur l'ascendant.

(15 *déc.* 1884. *Cour d'Appel de Toulouse. Gaz. Pal.* 25-26 *janv.* 1885).

Exécution des jugements ou arrêts—Séparation de corps—Garde des enfants—Modifications—Compétence.

Les mesures prescrites par un jugement de séparation de corps, quant à la garde et à l'éducation des enfants issus du mariage, sont, de leur nature, provisoires, révocables et susceptibles de recevoir des modifications suivant les circonstances et l'intérêt même des enfants.

Les dites mesures étant d'ailleurs essentiellement comprises dans l'exécution du jugement de séparation de corps lui-même, c'est au tribunal seul, qui les a ainsi prononcées, qu'il appartient de les modifier, alors même que depuis la séparation l'époux contre lequel des modifications sont requises aurait transporté son domicile hors du ressort du dit tribunal.

Peu importe, d'ailleurs, si ce tribunal a fait ou non, dans son jugement, des réserves expresses à l'égard de l'exercice de ce droit, qu'il tient de la loi.

(8 *janv.* 1885. *Cour d'Appel d'Orléans. Gaz. Pal.* 25-26 *janv.* 1885).

Enfant naturel—Succession—Frères et sœurs—Défaut de reconnaissance—Possession d'état conforme à l'acte de naissance—Recherche judiciaire de la maternité—Droit attaché à la personne de l'enfant.

1o. La succession d'un enfant naturel ne ne peut être dévolue à ses frères et sœurs, qu'autant que tous ont été reconnus dans les formes légales par leur auteur commun.

2o. La possession d'état, même conforme à l'acte de naissance, ne suffit pas pour établir la filiation naturelle.

3o. La recherche judiciaire de la maternité, constituant l'exercice d'un droit exclusivement attaché à la personne de l'enfant naturel, ne peut être intenté que par l'enfant lui-même et n'est pas transmissible à ses héritiers, quand il ne l'a pas exercé de son vivant.

(26 *nov.* 1884. *Lyon, Gaz. Pal.* 28 *janv.* 1885).

TREATIES AFFECTING THE BOUNDARIES AND FISHERIES OF CANADA.

[Continued from p. 88.]

Another matter of boundary was settled, of less consequence at that time, for there were no troubles there then, and yet it was again one where Lord Ashburton yielded every mile of country in dispute. By the treaty of Ghent in 1814 Commissioners were to trace the boundary as described in the treaty of Paris of 1783 from Lake Superior to the Lake of the Woods. They met; they disagreed. The British claimed that the line should start from the extreme west end of Lake Superior, at Fond du Lac, now Duluth, and so up to the Lake of the Woods. The Americans claimed the line by the portages. From 1826, when the Commissioners were on the ground, until Lord Ashburton came to Washington, the matter was unsettled. He settled it. He gave away the whole, and there is the boundary on the map, following the through portage route to the North West, and not far from our Pacific Railway. Such was his treaty.

Yet Lord Ashburton was, to judge by his letters in Croker's books, rather pleased with his own exploits and charmed with Webster. He had no resentment towards the man who had deceived him. He was too good-natured. On the contrary, he sent him his portrait, and was pleased to have Mr. Webster name one of his children after him.

Before leaving the Ashburton treaty we must note that the line of 49°, which, as we have seen, was under Jay's treaty the boundary from Lake of the Woods to the Mississippi was now continued as the boundary to the Rocky Mountains.

The Ashburton treaty was somewhat encouraging for further demands by the United States, and without delay they came. From Maine the dispute was transferred to Oregon. As already stated the line had been defined at the line of 49° to the Rocky Mountains. Beyond it was not defined. The country was in great part wilderness. There were British settlements at Vancouver Island. All down the Columbia and through Northern Oregon were posts of the Hudson's Bay Co. But not long before this time, the United States had bought from Spain, California, and then claimed the whole of the west coast of America as under this Spanish purchase regardless of British occupation. Emboldened by previous success they claimed it loudly. Russian America came by Treaty of 1828 down the coast to 54°-40, and immediately the demand of the Californians was made in alliterative form, "54. 40 *or fight.*" The Americans had no occupation in Northern Oregon,—while England had—but that was of no consequence. The cry was "54. 40 *or fight.*" England proposed to divide and to take the line of the Columbia to the sea, but the American answer was "No. 54. 40 *or fight.*"

After much correspondence Mr. Packenham, the British embassador at Washington, was authorised to treat, and he did so on the plan of Lord Ashburton,—to give all away. He first took the pains to ascertain—for he was a sportsman—that while the Columbia was full of salmon, those fish of the west were so absurd in their habits as to decline to be caught in the true sportsmanlike way—they absolutely refused to rise to the gaudy fly. *Ergo*, the salmon were worth little, the river nothing, and the whole ridiculous country less, and the sooner given away the better. The Americans offered, as in Maine, to yield something. "We will take the line of 49° from the mountains to the sea, and, to show our good nature, we will not mind about the tip of Vancouver Island, which that line would cut off. You may have that." With profound thanks Mr. Packenham accepted the concession and concluded the Oregon treaty of 1846.

After this treaty the boundary along the line of 49°, from the Pacific to the summit of the Rocky Mountains, was laid down by boundary marks.

Now, one would have thought that all the boundaries were settled. But no, from the Oregon treaty came the San Juan dispute. The treaty declared that the boundary after reaching the sea in 49° should go through the middle of the channel between mainland and Vancouver Island out to sea. There is a group of islands in this arm of the sea, Fuca's Straits, the main one San Juan. Besides several minor channels it turned out there were two main channels, the Haro and the Rosario. The Haro further out and thus giving the islands to the United States and bringing the line near the British town of Victoria on Vancouver,—the Rosario nearer mainland. The United States claimed the Haro and the British the Rosario, as the true channel meant by the treaty. While correspondence was going on, a fire-eating general of the United States, Harney by name, took possession of the Island of San Juan. British war ships were sent out to attend to the matter which had at once a dark look. Again General Scott, for a second time a peacemaker, appeared and arranged pending the settlement for a joint occupation of the Island by troops of each side. This continued until this dispute was, with many others, settled by the treaty of Washington of 1871, and within our own time. It was referred to the Emperor of Germany as arbitrator. He decided for the Haro channel and for the United States, and again the United States got the better of England and has a boundary within sight of Victoria. None can, however, find fault with the decision of the Emperor. England agreed to accept his decision, and he gave it, and at once England withdrew her garrison. Where the English Envoys at Washington erred—but then they followed the previous disputes—was in allowing the question to turn on this: whether the Haro or Rosario was the true channel; for there was a third, intermediate, the Douglas, which more than either had claim to be most fair to both sides and to suit the requirements of the Oregon treaty.

By the treaty of Washington it was provided that the boundary from the Lake of the Woods to the Rocky Mountains should be marked out by a joint commission, and this was soon after done along the line of 49°, and brought into prominent notice on the maps the curious notch in British territory which the possession of the United States to the N.W. angle of the Lake of Woods, as defined by former surveys, gives them.

Thus ends our hasty review of the boundary questions under the various treaties. The retrospect is not a pleasant one. With regard to each treaty the Canadian feeling has been that on each England was too yielding; the value of the territory was not appreciated;

and her diplomatists were outmanœuvred on every occasion. But all is past and the situation must be accepted. The boundary from Atlantic to Pacific is conclusively settled and at least no source of trouble can now arise on that ground.

Let us pass to what is still an open question, and to the other branch of our subject for to-night.

The Fisheries.

Before discussing the Canadian fisheries in relation to the treaties, it will be proper to take a glance at the nature of those fisheries themselves. The main fishery of America is of course the cod fishery of the banks of Newfoundland. This, as well as all open sea fishing, is free to all nations. It is not our exclusive property, nor is the fishing generally over the Gulf of St. Lawrence, nor, in fact, anywhere except within three miles of shore,—which is, by the law of nations, the territorial possession of each people. Within that distance no foreigner can come to fish unless by treaty right or license from the nation of the shore. This is universal law.

Now for the deep sea fishing with any profit, there are required two things. The *first* is the ability to get fresh bait. The bait used consists mainly of a small fish called caplin, of squid and some others. It should be fresh. Fishing schooners from France or the United States cannot bring bait with them which will be of use. These bait fishes are in-shore fish, and it may be said generally that they are only found within the three-mile limit. Thus fishing vessels coming to the banks must first go in-shore to catch or buy a stock of fresh bait, and this must be obtained not too far from the bank fishing grounds. Without the right to get bait in-shore, the bank fishery, which is, as stated, open to all, is nearly valueless. The *second* thing required for successful bank fishing, is the liberty to cure the fish on shore, and pack them for transport to the vessel's home. At sea, naturally, the process of drying and curing cannot be carried on. The fish are merely split and cleaned and salted to preserve them. What is required is that the vessel should go in-shore, land her fish, which are spread upon frames to dry. It has been found that the climate of the coasts of Newfoundland and the Gulf is more favorable than any other for the successful open-air drying of fish. Thus, in order to make her catch useful, a vessel must have the privilege of going in-shore to dry her fish on land, else she might almost as well have remained at home. Again the bankers, as cod fishing vessels of the banks are called, often require to run in-shore to refit damages, get water, and buy stores, salt and provisions. For these reasons the privilege of coming within the three-mile limit and of going ashore is invaluable to the foreign cod fishers, and yet by our *rights*, we are entitled to exclude them and to preserve these privileges for our own hardy fishermen.

In addition, it must be noted that the waters of the three-mile limit teem with fish which frequent, not the deep waters, but those shallower and warmer limits. Here are the halibut, and, oftener than elsewhere, the mackerel and herring, and many others in abundance.

The right to fish within the three-mile limit is thus itself a valuable right belonging to the people of the shore. Now while all the world has the right to fish upon the banks and open sea, the use of the three-mile limit is practically limited, outside our own people, to the fishermen of France and the United States, because these are the only nations with whom we have treaties permitting the use of the inshore fisheries and of the shore itself. A large part of the fish catch goes to Spain and Roman Catholic countries, and yet no Spanish or other vessels come; for, while they could use the open sea, they have not the needed privileges of the shore.

Although France and her rights are not strictly within the limits of my subject, it seems yet proper to say some words on those rights, which were granted long ago, and have an indirect connection with the matter in hand. These rights resulted in great troubles in Newfoundland. Besides producing constant quarrels between the fishermen, they cause a large part of the coast to be absolutely shut out from development by British energy. This extent of coast is that known as the "French Shore."

The rights arose in the following way:— The treaty of Utrecht was made in 1713. France had been in possession of Newfoundland, but some of her forts had been taken by England during the recent war. By the treaty France ceded the island to England, but retained Canada. France pressed, in the interests of her hardy fishermen, who had frequented the banks for a century or more, for a continuance of a share of the fishery privileges of the island, and England conceded them to this extent; the inshore fishery in common with British fishermen was granted on all the coast from Cape Bonavista on the east, round the north of the island to Cape Riche on the west, and the right to land and dry fish on that shore was given *exclusively* to the French. The English, to avoid quarrels, which were common, restricting themselves to the other parts of the coast. It must be remembered that at this time, and until 1763, Canada and Cape Breton still belonged to France.

Thus matters stood till 1783, when by the treaty of peace made then (about the same time as the treaty with the U.S.) the French

rights were modified, but merely in this, the limits were made from Cape St. John, on the eastward, round by the north to Cape Ray on the west. That is the "French Shore" of to-day. England, however, undertook to remove such settlements as had been made on that coast and to prevent any new ones, and to leave the shore to the exclusive use of the French fishermen for drying fish, their nets and other such uses. This right has been retained in all subsequent treaties, and the French hold and exercise it to-day, much to the detriment of a large part of the Newfoundland coast. No mining can be done there: no fishing hamlets dot the coast. If a vessel goes ashore there when the fishermen have returned to France, she goes upon an uninhabited land.

Such are the French rights. Now let us consider those of the Americans.

Before the war of independence all British colonists enjoyed equal privileges in fishing, but at the close of that war, it became a question how far such privileges should be restored to those who had separated from the British Crown. The matter was very fully discussed in the negotiations which preceded the treaty of Paris of 1783, and though Great Britain did not deny the right of Americans to fish on the banks, or in the Gulf of St. Lawrence, or elsewhere in the open sea, she denied their right to fish in British waters, i. e, the three miles from shore, or to land on British territory, for the purpose of drying or curing the fish. A compromise was at length arrived at, and it was agreed that United States' fishermen should be at liberty to fish on the coast of Newfoundland, but *not* to dry or cure their fish on that island; and they were also to be allowed to fish on the coasts of the other British possessions, *and* to dry and cure their fish in any of the unsettled bays of Nova Scotia, the Magdalen Islands, and Labrador, so long as they should remain unsettled; *but* so soon as any of them should become settled, the Americans were not to use them without agreement with the inhabitants.

It will, however, be observed that the rights conceded to the American fishermen, under this treaty were by no means so great as those which, as British subjects, they had enjoyed previous to the war of independence, for they were not to be allowed to land to dry and cure their fish on any part of Newfoundland, and only in those parts of Nova Scotia, the Magdalen Islands, and Labrador, where no British settlements were found.

So matters stood until the war of 1812, when, naturally, the right of Americans to fish in British waters, and to dry and cure their fish on British territory, terminated. In the negotiations which preceded the peace of 1814, at Ghent, this question was revived, and an alleged right of Americans to fish and cure fish within British jurisdiction was fully discussed. At that time, however, the circumstances had very considerably changed since the treaty of 1783. The British possessions had become more thickly populated, and there were fewer unsettled bays in Nova Scotia than formerly. There was, consequently, greater risk of collision between British and American interests; and the colonists and English merchants engaged in the fisheries petitioned strongly against a renewal of the privileges granted by the treaty of 1783, to the American fishermen.

At Ghent, the British Government stated that "they did not intend to grant the United States, *gratuitously*, the privileges formerly conceded to them by treaty of fishing within the limits of British territory, or of using the shores of the British territories for purposes connected with the fisheries." They contended that the claim advanced by the United States of immemorial and prescriptive right, was quite untenable, inasmuch as the Americans had, until the revolution, been British subjects, and that the rights which they possessed formerly, as such, could not be continued to them after they had become citizens of an independent state. Accordingly it was agreed to omit all mention of this question from the treaty.

Orders was now sent out that, while not interfering with American fishermen engaged in fishing on the banks, in the Gulf of Saint Lawrence or on the high seas, they were to be prevented from using British territory for purposes connected with the fisheries, and to be excluded from the bays and coasts of all the colonies. The result was the capture of several American fishing vessels for trespassing within British waters. Then the United States in 1818 proposed that negotiations should be opened for the purpose of settling the disputed points which had arisen in connection with the fisheries. Commissioners were accordingly appointed by both parties to meet in London, and the convention of 20th October, 1818, was eventually signed.

Article I of this convention is, with slightly curtailed expressions, as follows:—

Whereas differences have arisen respecting the liberty claimed by the United States for the inhabitants thereof, to take, dry and cure fish on certain coasts, bays, &c., of His Majesty's dominions in America:—*It is agreed that* the inhabitants of the said United States, shall have *forever*, in common with the subjects of His Majesty, the liberty to take fish of every kind on that part of the southern coast of Newfoundland, which extends from Cape Ray to the Rameau Islands; on the western and northern coast of Newfoundland, from the said Cape Ray to the Quirpon Islands (these are at the northern end); on the shores of the Magdalen Islands, and also on Labrador from Mount Joly, through the Straits of Belle

Isle, and thence northwardly; *and that* the American fishermen shall also have liberty, forever, to dry and cure fish in any of the unsettled bays, &c., of the said southward part of the coast of Newfoundland, i.e., Cape Ray to Rameau Islands, *and* of the coast of Labrador; but, so soon as the same, &c., shall be settled, the right to cease. *And* the United States hereby *renounce* forever any liberty heretofore enjoyed or claimed by the inhabitants thereof, to take, dry or cure fish on or within three marine miles of any of the coasts, bays, &c., of any of His Majesty's dominions not included within the above-mentioned limits. *Provided*, however, that the American fishermen shall be admitted to enter such bays, or harbours for the purpose of shelter, and of repairing damages therein, of purchasing wood, and of obtaining water, and for no other purpose whatever. *But* they shall be under such restrictions as shall be necessary to prevent their taking, drying, or curing fish therein, or in any other manner whatever, abusing the privileges hereby reserved to them.

Under this convention arose what is known as "the headland question," which has been the subject of lengthy dispute. England, following the contentions of the United States, insisted that, under the convention, the three mile limit, in the case of large bays, extends from "headland to headland," and does *not* follow the sinuosities of the shore. England claims thus that the whole Bay of Fundy, the Baie des Chaleurs, and Miramichi Bay are excluded from American rights. I must own that, if the matter stood alone, I am not impressed with the British view, which appears to rest on very fine verbal criticism of the convention, but it is fairly contended that the convention must be construed as regards British bays, as the United States at the time contended and still contend in respect to their bays. Now they have constantly contended that the great bays of Massachusetts (Cape Cod to Cape Anne) Delaware and Chesapeake are *domestic* bays, as they call them, and not open to foreign fishing. Our neighbors cannot, while they hold this view, dispute the British position on the Nova Scotia bays.

During this period American vessels were occasionally captured for fishing in our large bays, and much diplomatic correspondence and international friction ensued on this headland question. This was the state of affairs until 1847, when negotiations were opened between the two Governments for the establishment of reciprocal free trade between Canada and the United States, coupled with the concession of some fishing privileges to the United States' fishermen. Much correspondence passed on the subject, but, owing to difficulties connected with the question of tariff, the United States appeared anxious to have the fisheries question dealt with separately, but to this the British Government would not assent.

At last in 1854, Lord Elgin, when in Washington, negotiated a treaty. This is known as the Reciprocity treaty of the 5th June, 1854. Its main provisions were as follows:—British waters on the east coast of North America were thrown open to United States' fishermen, and United States' waters north of the 36th degree were thrown open to British fishermen; excepting always the salmon and shad fisheries, (which were reserved to the subjects of each country);—certain articles of produce of the British colonies and of the United States were admitted to each country, respectively, free of duty. The treaty was to remain in force for ten years, and further for twelve months after either party should have given notice to the other of its wish to terminate the same.

From 1854 until 1865 the Reciprocity treaty continued in force, and no further difficulties appear to have arisen on questions connected with the fisheries; but in that year, 1865, the United States informed the British Government that at the expiration of twelve months the Reciprocity treaty was to terminate.

Efforts were made by England towards a renewal of the treaty, but these, from various reasons, proving unsuccessful, the treaty came to an end ou the 17th of March, 1866; and as a consequence the American privileges under it lapsed, and reverted to those of the convention of 1818.

In the meantime a notice had been issued by the Canadian Government warning the American fishermen that their right to fish in British waters would cease on the above date, and it became necessary to consider what measures should be adopted for the protection of British rights.

Eventually it was decided that American fishermen should be allowed during the year 1866, to fish in all Canadian waters upon the payment of a nominal license fee, to be exacted as a formal recognition of right. This system, after being maintained for four years, was discontinued, owing to the neglect of American fishermen to provide themselves with licenses, and in 1870 it became necessary to take strict measures for the enforcement of British rights.

The result of these measures was the capture and forfeiture of several American vessels for infringing the provisions of the convention of 1818, both by fishing within British waters, and by frequenting Canadian ports for objects not permitted by the convention.

The difficulties caused by these events subsequently led to the re-opening of negotiations for the settlement of questions connected with the fisheries, and they formed

part of the matters decided by the treaty of Washington of 1871.

In that general settlement of disputes the American fishermen obtained the use of the inshore fisheries all along the British coasts of Newfoundland, Nova Scotia, New Brunswick, and Quebec, with right to land and cure fish at any place so long as they did not interfere with private rights. The English fishermen obtained the right to fish on the American coast down to the line 39°, i.e. the Delaware,—a barren privilege—and reciprocal free trade in fish and fish oil was agreed to. The latter was a valuable privilege for the Canadian fishermen, as it gave them the American market for the results of their toils. The treaty was for ten years, *plus* two years from notice from either side of desire to cancel. It was, of course, known that the Canadian fisheries, given up for ten years *plus* two, as the minimum time under the treaty, were much more valuable than the rights granted to Canadians, and, as we all remember, the Halifax Commission was appointed to determine upon a sum to be paid by the United States for the surplus value of privileges. After a long examination the arbitrators awarded to Canada the sum of $5,500,000, which, after some shabby demur and shameful charges against the distinguished Belgian ambassador, M. Delfosse, who was the umpire, was ultimately paid.

The treaty, in its fishery clauses, went into operation 1st July, 1873, and continues at present in force. During these years there has been rest. No seizures of interloping American schooners, no disputes on the headland question, and this might have continued, but that the United States, acting on the dictation of the American fishing interests, which desire to keep Canadian fish and oil from their market, have given the notice prescribed by the treaty to terminate it, and it expires on 1st July of this year. Then all the rights granted by the treaty of Washington in 1871 *end*, and the rights of the Americans go back to the restrictions of the convention of 1818, with all its attendant difficulties. The Americans will have no right to fish within the three-mile limit, except on the part of Newfoundland, already described, viz., from the Rameau Islands on the south coast to the Quirpon Islands at the north end, part of Labrador and the Magdalen Islands; and the only place for landing to cure fish will be the small part of Newfoundland coast on the south from Cape Ray to the Rameau Islands, and a part of Labrador. Then revives, of course, the great headland question, which slept during the period of the Reciprocity treaty, as well as that of Washington.

All this will be upon us very soon. July is not far away. Yet it is difficult to prophesy what will occur. A new treaty is in every way desirable, and yet we must see to it that it is not to be a treaty of sacrifice. It will doubtless be found that our government and that in England, are already in correspondence with Washington on the matter; for though our premier has recently spoken strongly against the propriety and possibility of doing anything towards a new reciprocity treaty, in view of the numerous refusals which have been given, that does not preclude some arrangement of the fisheries independent of reciprocity in general, as well as independent of the present reciprocity in the fish and oil trade.

In the opinion of many a new fishery treaty is merely a matter of price. It has been said that the notice to terminate the present treaty has been given by the United States in order to prevent the Halifax award from forming the basis for annual payments beyond the twelve years provided as a fixed term by the treaty. They feared, it is said, that the award of $5,500,000 would be claimed by Canada as the fixed basis of value of twelve years' privileges, and that they would be called upon to pay one-twelfth of that sum per annum for the future. It is well known that the United States have always, wrongly we confidently think, contended that the award was excessive, and in that view a desire to obtain, if possible, a new measure of value, is not unreasonable.

While we cannot predict any particular course, we can feel confident, I think, that the times have greatly changed since the days of Oswald in Paris, in 1783, of Lord Ashburton in 1842, and Mr. Packenham in 1846, at Washington, and that we will hear of no more sacrifices in ignorance of the values of colonial rights. We live in different days, and, within recent years the point of view from which Canada is regarded in England has changed, information is more exact and general, and full value will be had for those possessions,—those valuable possessions, in connection with our fisheries, in which our American neighbours wish so much to share.

GENERAL NOTES.

The following advertisement is mentioned by "Geo. Eliot" as having just appeared in the *Times*:—"To gentlemen, a *converted* medical man, of gentlemanly habits and fond of Scriptural conversation, wishes to meet with a gentleman of Calvinistic views, thirsty after truth, in want of a daily companion. A little temporal aid will be expected in return. Address Verax!"

It is a somewhat unusual thing for a reigning Sovereign to appear in a witness-box at a police court. The other day, however, the King of Italy, from good-natured motives, volunteered his testimony before a magistrate in Rome. A shopkeeper named Maranzoni had unfortunately injured a little girl by riding over her in the street, and King Humbert, who had witnessed the accident, came forward to say that in his opinion Maranzoni had been in no wise to blame, and that, in fact, his horse had run away with him.