

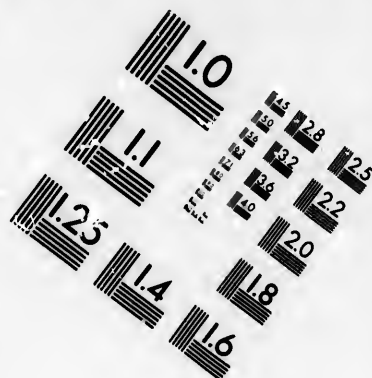
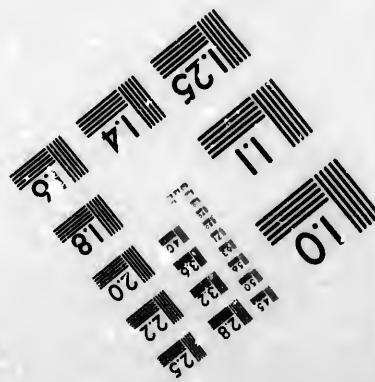
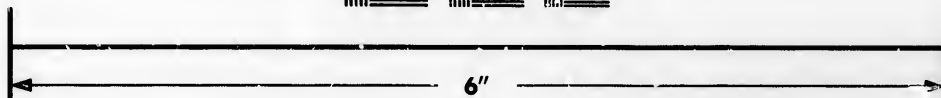
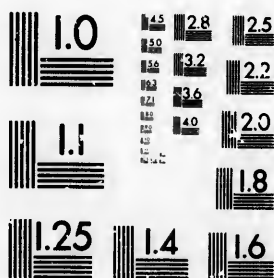


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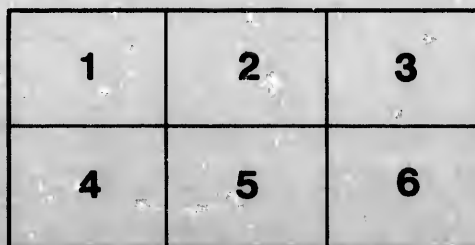
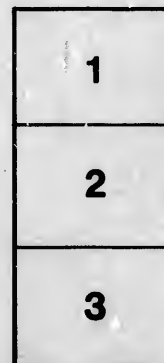
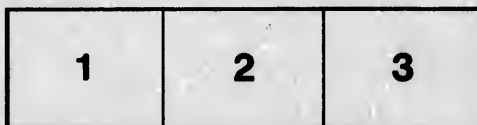
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Review of President
Grant's recent
message ...

R. Bell

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REVIEW
OF
PRESIDENT GRANT'S RECENT MESSAGE
TO THE
UNITED STATES' CONGRESS,
RELATIVE TO THE
**CANADIAN FISHERIES AND THE NAVIGATION OF THE
ST. LAWRENCE RIVER.**

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REVIEW
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PRESIDENT GRANT'S RECENT MESSAGE
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RELATIVE TO THE
CANADIAN FISHERIES AND THE NAVIGATION OF THE
ST. LAWRENCE RIVER.

That portion of the last Message of the President of the United States, to the Senate and House of Representatives, which animadverts on the conduct of the Canadian Government, with regard to the protection of the British Fisheries and the navigation of River St. Lawrence, has been severely criticised by all the leading organs of public opinion in Canada. That fact alone ought to convince the citizens of the United States that the action of Canada cannot have been so indefensible as the President has represented it to be. While perfect unanimity prevails in Canada regarding the question in controversy with the United States, it is gratifying to find that many influential American journals are indisposed to concur either in the policy of non-intercourse which has been threatened by the President, or admit the existence of the wrong to which he refers.

It may be hoped that a dispassionate review of the points in dispute between Great Britain and the United States, with regard to the interpretation of the Treaty of 1818, will strengthen the hands of those who desire their amicable solution, and the continuance and extension of these friendly relations which have hitherto existed between the people of the United States and Canada.

It is not to be supposed that any considerable number of people in the United States would demand the abrogation of a solemn Treaty which was the result of protracted negotiations, during which both nations conceded extreme pretensions for the sake of peace; much less can we believe that Treaty rights would be disregarded, such as would clearly be the case if the measures of non-intercourse, indicated in the Message, were carried out.

If the measures, to which we have referred, are aimed at as a means of retaliation upon Canadians for either real or fanciful wrongs, it becomes doubly the duty of all dispassionate and right-thinking men, of all real lovers of their country, whether on this side of the border or the other, to examine the grounds upon which such grievances are supposed to exist; and if such do exist, then to adopt such peaceful means as will secure their removal. It may be safely affirmed that neither the Imperial, nor the Dominion Government, desire to strain the Treaty beyond the plain and obvious meaning of its text. If its language should be deemed ambiguous, or susceptible of more than one interpretation, then the obvious mode of solving the difficulty is by arbitration, and not by hostile threats or retaliatory legislation, which, if realized, cannot be otherwise than injurious to both peoples.

There are, unfortunately, individuals in the United States, who do not hesitate to recommend the adoption of a menacing attitude towards Great Britain. We have no apprehension that their counsels will prevail, but it is quite probable, that acting on imaginary grievances—on premises which have no foundation in fact—or referring to imaginary wrongs on the part of Canadians towards their fishermen, by the raising of an anti-British cry, that the people of the United States may endeavour to bring pressure to bear on Canada by a so-called retaliatory policy, which, most assuredly, will injure its own citizens even more than the Canadians.

In the message referred to there are many subjects dealt with which possess but little interest for our people. It need concern us but little as to what may be the opinions of President Grant about the Franco-Prussian war—the recognition of the French Republic—the negotiations with Spain, or the action of the Cuban insurgents,—but, while referring to these and other subjects of general importance, he reiterates the celebrated “Munro doctrine,” with which former Presidential messages and the sentiments of many American statesmen have made us familiar; and states that, “The time is most probably not far distant when, in the natural course of events, the European political connection with this continent will cease,” and advises that the policy of the United States should be shaped so as to accord with that coveted event. Such a contingency,

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doubtless, has inspired the policy of the United States in their treatment of the Alabama claims, and we cannot find in the President's statements any evidence of "sincerity" when he expresses his desire for a settlement of that question "consistent with the honor and dignity of both nations." We would, however, refer to that portion of this extraordinary document which still more immediately affects ourselves.

The President states, "That the course pursued by the Canadian authorities towards the fishermen of the United States, during the past season, has not been marked by a friendly feeling." He refers to the rights that United States citizens have in common with British subjects under the Treaty of 1818,—and also to those in the waters not included in the limits named in the Convention within three miles of the coast.

He also states, "That it has been the custom for many years, to give intending fishermen of the United States a reasonable warning of their violation of the technical rights of Great Britain." He further adds, "That the Imperial Government is understood to have delegated the whole, or a share of its jurisdiction or control of its inshore fisheries to the Colonial authority known as the Dominion of Canada, and that this *semi-independent, but irresponsible agent* has exercised its delegated powers in an unfriendly way; vessels have been seized without notice or warning, in violation of the custom previously prevailing, and have been taken into the Colonial Ports, their voyages broken up, and the vessels condemned." He further states, "That there is reason to believe, that this unfriendly and vexatious treatment was designed to bear harshly upon the hardy fishermen of the United States, with a view to political effect upon this Government." "That the Statutes of the Dominion of Canada, assume a still broader and more untenable jurisdiction over the vessels of the United States," by preventing them from "hovering within three marine miles of the coasts, bays, creeks, or harbours of Canada," and by inflicting a penalty, if, on examination of masters, true answers are not given, or if such vessel "is found preparing to fish within three marine miles of any of the coasts, bays, creeks, or harbours, without a licence, or after the expiration of the period named in the last license granted to it," and that they provide forfeiture of the vessel. The President intimates, that should the authorities of Canada attempt to enforce this Act, it will become his duty to take such steps as may be necessary to protect the rights of the citizens of the United States.

He further alleges that:—"It has been claimed by Her Majesty's Officers that the fishing vessels of the United States have no right to enter the open

"ports of the British Possessions in North America, except for the purposes of shelter and repairing damages, of purchasing wood, and obtaining water; that they have no right to enter at the British Custom Houses, or to trade, except for the purchase of wood and water, and that they must depart after twenty-four hours' notice to leave."

He further states that:—"So far as the claim is founded on alleged construction of the Convention of 1818, it cannot be acquiesced in by the United States;" and that "It is hoped that it will not be insisted upon by Her Majesty's Government." He maintains that that principle was contended for at the conferences preceding the Convention of 1818, by the British Commissioners, and, on its rejection by the American Commissioners, was abandoned by the British; and that Article I., as it stands in the Convention, was substituted.

He further observes that, "If this claim is founded on Provincial or Colonial Statutes, and not upon the Convention, this Government cannot but regard them as unfriendly, and in contravention of the spirit if not the letter of the Treaty, for the faithful execution of which the Imperial Government is alone responsible."

Such are the statements of President Grant; and if he believes that he has truly stated the case, in relation to the fisheries, then he is much mistaken. Now what are the facts? To ascertain them, we must go back to a period anterior to the Treaty of 1783, when as British subjects, the inhabitants of the old American Colonies, after Canada and Nova Scotia were wrested from the Kingdom of France, enjoyed, with the inhabitants of the other British Colonies, a common use of the fisheries along the whole North American Atlantic Coast, with certain exceptions on the coast of Labrador and a portion of the Gulf of St. Lawrence, and the coast of what is now known as New Brunswick.

In the discussions and negotiations which preceded the peace of 1783, an effort was made by the American Commissioners to claim a right to the fisheries on the coasts on which they had prosecuted them while still British subjects. They claimed that, at the time they were British subjects, they had assisted to wrest Nova Scotia and Cape Breton from France, and that, by right of conquest, they should participate and enjoy, in common with British subjects, the privileges of these fisheries. The British Commissioners, on the other hand, contended that the conquest was achieved by Great Britain, and that though the subjects of Her Majesty in the old Colonies had aided as they were bound, as part of the Empire, to do, in securing victory to the British arms, that the acquisition of Nova Scotia and the other Territories wrested from France, with

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all their privileges and the fisheries in the vicinity of their coasts, inured to the benefit of the Empire, and that the old Colonies in seceding (though entitled to the fisheries off their own coasts, as a territorial incident of their country), ceased to have a right in fisheries off the coasts of Provinces which remained loyal to the Empire, and which incident inured to the benefit of British subjects alone. The American commissioners felt it to be of vital interest to their young nation to obtain some recognized status on these fishing grounds, and, by perseverance and persistence, succeeded, through the tendency of British Statesmen to give way for peace sake, in securing the third Article in the Treaty of 1783, which is as follows:—

“ART. III.—It is agreed, that the people of the United States shall continue to “enjoy unmolested the right to take fish of every kind on the Grand Bank and on all “the other banks of Newfoundland: also in the Gulf of St. Lawrence, and at all other “places in the sea, where the inhabitants of both countries used at any time heretofore to “fish. And also that the inhabitants of the United States shall have liberty to take fish “of every kind on such part of the coast of Newfoundland, as British fishermen shall use “(but not to dry or cure the same on that Island) and also on the coasts, bays, and creeks “of all other of His Britannic Majesty’s dominions in America; and that the American “fishermen shall have liberty to dry and cure fish in any of the unsettled bays, harbors, “and creeks of Nova Scotia, Magdalen Islands, and Labrador, so long as the same shall “remain unsettled; but so soon as the same, or either of them, shall be settled, it shall “not be lawful for the said fishermen to dry or cure fish at such settlement, without a “previous agreement for that purpose with the inhabitants, proprietors, or possessors of “the ground.”

In the text of this article we have two principles clearly laid down—the continuing and concurrent right, by which it was agreed that the people of the United States should continue to enjoy certain fisheries, and also, the liberty of a transitory character, which, under certain circumstances, was conceded to them; in the one case their continuing right was admitted to take fish at “sea,” while in the other, a liberty of a limited character was given in certain territorial possessions of His Britannic Majesty in America.

Each party, by the Treaty of 1783, had certain clear and distinct rights of fishing at sea, and which were recognized and admitted by the other as founded upon the law of nations, while in and around the coasts of each nation, with certain exceptions named in the Treaty, the exclusive right and jurisdiction over three miles from the coast was conceded, as a right existing by the law of nations, and attaching territorially to each country.

The war of 1812 suspended and abrogated the Treaty of 1783. It became inconsistent with the existence of hostilities that concurrent privileges should be exercised in relation to the fisheries, and the Americans practically relinquished a liberty which a state of war prevented them from enjoying. Thus matters

continued until peace was proclaimed, and efforts were made at the making of the Treaty of Ghent to establish what were henceforth to be the rights which each nation was entitled to enjoy.

During the negotiations preceding that Treaty many difficulties arose,—the American Plenipotentiaries claimed all the rights which they enjoyed previous to the declaration of Independence. While the British Ministers asserted that as the extensive rights claimed by the Americans depended solely on the Treaty of 1783, and that the war of 1812 had put an end to that Treaty, just as the right of British subjects to navigate the Mississippi from its mouth to its source was by that Treaty granted to British subjects, and was terminated by the war, so also with the fisheries clause, and that both subjects were open to be considered and dealt with—the British, while conceding the *right* of fishing, to which they considered Americans entitled, refused to renew the *liberties* which they conceded to them in the Treaty of 1783. They were willing to accept, as a partial equivalent for certain fishing privileges, the free navigation of the Mississippi, but this offer was declined by the Americans, and the latter refused to renew the Mississippi clause, except upon concessions of fishery privileges as an equivalent, which the British Commissioners would not consent to. The American Commissioners subsequently declined to renew the clause of the Treaty of 1783, which would have given the free navigation of the Mississippi to British subjects, and the result was that the fisheries were omitted from the Treaty, as they were also from an arrangement of trade and commerce subsequently made between Commissioners of the two nations, signed at London in 1815.

It may be here stated, that Mr. Russell, one of the American Commissioners, differed with his colleagues in reference to the fisheries, and practically, upon that important point, sustained the view taken by the British Commissioners. See Senate State Papers.

The Treaty of Peace having been thus settled, without the Commissioners of the two countries having been able to arrange conditions in relation to the *fisheries*, and as the war abrogated the Treaty of 1783, which gave certain privileges to Americans, the rights of the two countries in relation to these fisheries, as laid down in the law of nations, hereafter quoted, may be briefly stated thus—that each nation possessed those rights which, from their geographical position, the law of nations accorded under such circumstances. Thus, it may be stated, that each nation possessed a common right of fishing at sea; next, that, as attaching territorially to them the Americans possessed, or were entitled to claim all the fisheries within three miles of their *coasts, bays, and creeks*, from the eastern boundary of what is now the State of Maine to the southern boundary

of their States; and they would have resisted any claim which Great Britain might have put forward to participation therein; but the British were equally entitled to claim the same exclusive right to the fisheries within three miles of the coasts, bays, and creeks of her remaining possessions, from the eastern boundary of Maine, along the shore of her territory, and the islands adjacent thereto, and extending northerly to Labrador, and to the most northerly extent of her possessions. Such, under ordinary interpretation, would be the rights of each. The American Commissioners professed to claim that the Treaty of 1783 was not to be governed by the *ordinary law of nations*, and that a state of war did not abrogate its provisions, but, as this claim could not be supported by authority or precedent, and was diametrically opposed to the law and customs which governed civilized nations, as well as reason, practice, and common sense, the British Commissioners refused to recognize any such assumption. Thus the matter stood at the commencement of the fishery season of 1815.

The Americans hoped that by a bold assertion of right, and acting up to it in practice, and counting upon the forbearance of British statesmen, and their reluctance to resort to extreme measures, that their fishermen would be permitted to continue to enjoy the same privileges as before the war. This the British Government were firm in resisting. See the Earl of Bathurst's despatch, under date 17th June, 1815, marked A in the appendix annexed. This forced the consideration of the subject upon the United States, and the Honorable John Quincy Adams, American Minister at the Court of St. James, addressed an able letter on the 15th October, 1815, to Her Majesty's Government, which was the foundation of new negotiations, which, after three years, resulted in the Treaty of 1818. In this letter, Mr. Adams very ably stated the case of the United States—he contended for the original right of his countrymen, to both the *rights* as well as the "*liberties*" that were conceded by the Treaty of 1783—he held that their claim rested on the original discovery, as well as from participation in the conquest from the French—he further held that the war of 1812 did not abrogate the Treaty of 1783; but, while claiming these fisheries as a matter of right, he appealed also to the "*benevolence*" and "*humanity*" of the British nation to allow the recognition of those "*liberties*" which were contained in the previous Treaty, and concluded his very able paper, by saying: "In repeating with earnestness all these suggestions, it is with the hope that from *some* or *all* of them His Majesty's Government will conclude the justice and expediency of leaving the North American Fisheries in the state in which they have heretofore constantly existed, and the fishermen of the United States unmolested in their '*liberties*.'"

To this Earl Bathurst replied, on the 30th of the same month, on behalf of His Majesty's Government, and he informed Mr. Adams, in speaking of the claims which he had set up, "That a pretension of the kind was certainly intimated on a former occasion, but in a manner so obscure that His Majesty's Government were not enabled even to conjecture the grounds upon which it could be supported."

He further informs Mr. Adams, that—

"His Majesty's Government have not failed to give to the arguments a candid and deliberate consideration, and although they are compelled to resist the claim of the United States when thus brought forward as a question of 'right,' they feel every disposition to afford to the citizens of those States all the liberties and privileges connected with the fisheries which can consist with the just rights and interests of Great Britain, and secure His Majesty's subjects from those undue molestations in their fishery which they formerly experienced from the citizens of the United States." He further observed, "The Minister of the United States appears to be well aware that Great Britain has always considered the liberty formerly enjoyed by the United States of fishing within British limits, and using British territory, as derived from the 3rd article of the Treaty of 1783, and from that alone, and that the claim of an independent State to occupy and use at its discretion any portion of the territory of another, without compensation or corresponding indulgence, cannot rest on any other than conventional stipulations."

Earl Bathurst answered the different points in Mr. Adams' despatch most ably, and at considerable length. He showed that the "*liberties*," as distinct from "*rights*," which Americans urged, were wholly derivable from the Treaty, and refuted the position assumed by Mr. Adams, that the 3rd article of the Treaty was still in force, but intimated a disposition to "*concede a modified renewal of the liberties in question*," not as a matter of right, but from a conciliatory desire on the part of His Majesty's Government to meet the wishes of the United States. We have thought it desirable to insert in the appendix marked H this very able paper, in which Earl Bathurst so fully and ably refutes the positions assumed by the United States through Mr. Adams, and so clearly maintains the absolute right as claimed by His Majesty's Government.

The British Cabinet, following up the friendly intimation which they had given Mr. Adams, proposed to Mr. Munro, the then American Secretary of State, through Mr. Bagot, the British Minister at Washington, a district of shore on the Labrador Coast, from Mount Joly to the Bay of Esquimaux, near the Straits of Belle Isle. This Mr. Munro thought insufficient for the purposes of shelter and

of drying and curing their fish. Mr. Bagot then offered a portion of the southern coast of Newfoundland, from Cape Ray eastward, to the Rameau Islands, which Mr. Munro also declined as inadequate to the wants, and he subsequently, in December, 1816, offered the use to American fishermen, in common with the British, of both the districts previously named. This proposition the American Government neither accepted nor rejected, but proposed to postpone the decision to enable them to get further information as to its suitableness. In the month of June, 1817, twenty American vessels were seized at Ragged Island in Nova Scotia, and this again forced the immediate consideration of the subject upon the notice of the American Government, and on the 28th of July, 1818, instructions were given by Mr. Adams, the then Secretary of State of the United States, to Messrs. Rush and Gallatin, which resulted in the following October in obtaining the Treaty of 1818, the terms of which have been already stated.

Determined to maintain the rights of their Colonial subjects, the vessels so seized for trespassing upon the fishing limits of British territorial jurisdiction were prosecuted in the Admiralty Courts of Nova Scotia; and while these courts held that they were illegally in port and violating the Treaty the absence of any Imperial or Provincial statute providing the machinery for enforcing penalties or confiscation enabled them to escape. This decided action on the part of His Britannic Majesty brought matters to an issue, and taught American statesmen the folly of their untenable and exacting attitude during the discussion of the former peace negotiations and propositions were subsequently made, as above stated, to the British Government, which resulted in the Fishery Article of the Convention of 1818:

"ART. 1.—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, harbors, and creeks, of His Britannic Majesty's dominions in America, it is agreed between the high Contracting Parties, that the inhabitants of the said United States shall have, for ever, in common with the subjects of His Britannic Majesty, the liberty to take fish of every kind, on that part of the southern coast of Newfoundland which extends from Cape Ray to the Rameau Islands, on the western and northern coast of Newfoundland, from the said Cape Ray to the Quirpen Islands, on the shores of the Magdalen Islands, and also on the coasts, bays, harbors, and creeks, from Mount Joly, on the southern coast of Labrador, to and through the Straits of Belleisle, and thence northwardly indefinitely along the coast, without prejudice, however, to any of the exclusive rights of the Hudson's Bay Company; and that the American fishermen shall also have liberty, for ever, to dry and cure fish in any of the unsettled bays, harbors and creeks, of the southern part of the coast of Newfoundland hereabove described, and of the coast of Labrador; but so soon as the same, or any portion thereof, shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such portion so settled, without previous agreement for such purpose, with the inhabitants, proprietors, or possessors of the ground.

"And the United States hereby renounce for ever any liberty heretofore enjoyed or claimed by the inhabitants thereof, to take, dry, or cure fish, on or within three marine miles of any of the coasts, bays, creeks or harbors of His Britannic Majesty's dominions

" in America, not included within the above-mentioned limits ; provided, however, that the American fishermen shall be admitted to enter such bays or harbors, 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 may be necessary to prevent their taking, drying, or curing fish therein, or in any other manner whatever abusing the privileges hereby reserved to them."

Here then was the adjustment of the fishery question. The Americans were secured by the Treaty in the rights specially mentioned in the first article of that Convention, and under the limitations therein contained; and further, they distinctly renounced all privileges they had theretofore exercised or claimed, which were not contained in that Treaty. With regard to "fishing in the sea," it left the rights of Americans just as they had existed under the Treaty of 1783, though it curtailed their geographical limits for taking fish, while it gave new facilities for curing the same. Under the former Treaty they could not use the shores of Newfoundland, although they might catch and cure fish on the coasts, bays and creeks of the Magdalen Islands and the mainland, on condition that when settled, the consent of the inhabitants should be obtained for landing and curing. By the Treaty of 1818, they could both take and cure fish on the coasts of certain parts of Newfoundland, and a limited extent of Labrador, subject only to permission for drying and curing when the settlers permitted it on inhabited coasts, but the liberty of fishing and curing fish on the coasts, bays, and harbors of Nova Scotia, and that part of Labrador south-west of Mount Joly, near Natashquan River, and almost opposite to the east end of the Island of Anticosti, was altogether withheld.

But further, by this Treaty the Americans admitted the rightful act of Great Britain in withholding so much of the liberty for fishing formerly conceded to them as had given rise to "differences," and the United States *voluntarily renounced for ever any freedom, before "enjoyed or claimed," to take, dry, or cure fish on or within three marine miles of any other portions of the coasts, bays, creeks, or harbours of British America.* And, further, they stipulated that their fishing vessels shall have the privilege of entering such bays or harbours for the purpose of "*shelter," and of "repairing damages therein," of "purchasing wood," and "of obtaining water;"* and while stipulating for such privileges they distinctly agree that they shall go in "*for no other purpose whatever.*" "But they shall be under such restrictions as may be necessary to prevent their taking, drying, or curing fish therein, or in any other manner whatever abusing the privileges hereby reserved to them."

The British Government, on the 14th June, 1819, passed the Imperial Act, 59 Geo. III., cap. 38, in the Appendix annexed marked B, which provided the authority of law for enforcing respect to the Treaty within British jurisdiction.

Thus matters stood in 1819.

American fishermen, following out the policy which has ever characterized them, in relation to the British fisheries, at once commenced a practice of trespassing upon our limits, and the British Government promptly sent a fleet to the fishing grounds to maintain the rights of her people, and American fishermen were compelled to respect those rights.

Trespasses would, however, occur as often as American fishermen thought that they could venture with impunity, and between the years 1817 and 1854, several United States fishing vessels were seized by Imperial and Colonial officers for infractions of the Treaty, and violation of the local Statutes regulating the same, which are hereinafter referred to. Many of them were condemned. Among the specific offences, for which numerous seizures and confiscations took place during this period, American fishing vessels were accosted and detained for the following reasons:—

1. Fishing within the prescribed limits;
2. Anchoring or hovering inshore during calm weather without any ostensible cause, having aboard ample supplies of wood and water;
3. Lying at anchor and remaining inside of the bays to clean and pack fish;
4. Purchasing and bartering bait and preparing to fish;
5. Selling goods and buying supplies;
6. Landing and transshipping cargoes of fish.

Reference may be here made to the Imperial Instructions under which, antecedent to the Convention of 1818, American fishing vessels were excluded from British bays and harbors in North America, conformable to the Treaty of 1783. The following Admiralty order, for the governance of officers commanding vessels engaged in the protection of the fisheries and the prevention of illicit trade, signed by Rear-Admiral Milne, bears date the 12th May, 1817, which clearly shows the construction of their rights by the British authorities, and their active enforcement of such rights:—

"On your meeting with any foreign vessel, fishing, or at anchor, in any of the harbors or creeks in His Majesty's North American Provinces, or within our maritime jurisdiction, you will seize and send such vessel so trespassing to Halifax, for adjudication, unless it should clearly appear that they have been obliged to put in there in consequence of distress, acquainting me with the cause of such seizure, and every other particular, to enable me to give all information to the Lords Commissioners of the Admiralty."

Under this instruction numbers of American fishing vessels were seized as previously stated in Ragged Island Harbour, on the 8th of June, 1817, where they pretended to have sought shelter. The seizures were objected to on behalf of the United States Government, on the ground that these vessels entered from a lawful and necessary motive; but, on investigation, it was found that, as explained by His Majesty's Government, they were in the habit of occupying, and at the time of seizure, actually occupied this harbor without any legitimate excuse. The fishing schooners *Nabby* and *Washington* were seized in 1818, and condemned for being at anchor in, and hovering near, a settled British harbor. The *Java*, *Independence*, *Magnolia*, and *Hart*, were detained and confiscated in 1839, for being in harbor without lawful cause, and cleaning fish on deck. In 1840, the fishing vessels *Papineau* and *Mary* were seized and sold for purchasing bait ashore.

The right of excluding American fishing vessels from the Provincial ports, bays, and harbors, except in cases of distress, was thus enforced just before the Convention, and some time after, for similarly resorting to British bays and harbors, except for the specified purposes arranged in the Treaty of 1818, to purchase wood and obtain water, and for shelter and repairs. This right was formally and continuously asserted throughout the intervening period to 1852, when the distinct offence of trading for supplies and transshipping fish cargoes became the subject of specific instructions. The Provincial officers in command of the Fisheries Protection Service were instructed by the Government of Nova Scotia, that United States fishing vessels, could not legally land freight, or frequent such ports and harbors for any purposes whatever not described in the Treaty. The following official direction, dated at Halifax, the 28th of August, 1852, is signed by the then Provincial Secretary, the Honorable Joseph Howe:

"No American fishing vessels are entitled to commercial privileges in Provincial ports, but are subject to forfeiture if found engaged in traffic. The Colonial Collectors have no authority to permit freight to be landed from such vessels, which, under the Convention, can only enter our ports for the purposes specified therein, and for no other."

The question arose on the practice of taking on board articles necessary to fishing operations—landing fish for transshipment—and refitting in ports and harbors, at various places around the coast of Nova Scotia.

During the same year, Vice-Admiral Seymour applied to the Admiralty for special instructions as to the powers of naval officers to seize or interfere with United States fishing vessels resorting to ports or harbors for other than the purposes defined in the Convention. The matter was referred to the Law Advisers of the Crown. They pronounced the opinion that these officers were

ls were seized at June, 1817, where the vessels entered was found that it of occupying any legitimate seized in 1818, settled British detained and cleaning fish ere seized and

empowered, under their instructions, to "seize" American fishing vessels only for the offence of fishing within the prescribed limits; but the vessels might be warned off, and compelled to depart, and could be seized by such officers or others, if so authorized by Order in Council,—the penalties or mode of procedure depending upon the local laws and regulations of each Colony. The legal opinion recited, adds that "independently of the express provisions of the statute," vessels infringing these laws, by resorting to ports or harbors for other than the purposes specified by the treaty, might be warned and compelled to depart by whatever force is reasonably necessary by persons authorized by the Colonial Governors, or the British Admiral; and the American Government tacitly assented to this construction of the Treaty.

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The Imperial and Colonial Statutes now in force, provide for regulations in pursuance of the treaty to enforce the terms of the Convention; and instructions to Commanders of Marine Police Vessels, approved by Orders in Council, are such existing "Regulations" provided for by the Statutes as are deemed "*necessary to prevent*" foreign fishermen from abusing "*in any other manner whatever*" the privileges reserved to them by the Convention.

The foregoing references should suffice to establish that the restriction in question, and the construction of the Treaty of which the President is now complaining, is one justified by thirty-five years practice, up to the Treaty of Reciprocity.

In 1841 the Legislature of Nova Scotia submitted certain questions to the Law Officers of the Crown, in England, in connection with this question, as appears by appendix C annexed, and received in reply the opinion of the legal advisers of Her Majesty, given in appendix D annexed. The perusal of which appendices will explain in detail the substance thereof, and the conclusions which were arrived at.

Thus matters stood in 1841, up to which period the British construction of the Treaty of 1818, including their view of the headland lines, was enforced and acquiesced in, though reluctantly, by Americans.

It may be well here to state summarily what were the relative claims and rights of each party, as enforced by Her Majesty's Government.

They may be stated as:—

1st. Concurrent liberty of fishing within certain specified limits between the subjects of Her Majesty and those of the United States, subject to certain specified reservations, stated in the Treaty.

2nd. The privilege to American subjects to land, dry, and cure fish in certain districts named in the Treaty, also subject to certain qualifications, and to visit bays and harbours for the four objects named in such Treaty, viz:—For *shelter, repairing damages, purchasing wood, and obtaining water.*

3rd. Limits reserved exclusively to subjects of Her Majesty, and comprised within bounds of a marine league from the coasts, bays, harbors, and creeks—the line of exclusion and measurement on the three classes of indents last above mentioned, being defined by straight lines drawn across from headland to headland. Such exclusive limits comprising all the shores on the British North American possessions, to which Americans were not given a concurrent right by the Treaty.

Americans renouncing all claims or pretensions that they had ever had except to those common privileges named in clause 1st. It may be stated that, upon the construction of Nos. 1 and 2, no differences of opinion exist.

Regarding the interpretation of No. 3, the American Government advances peculiar claims,—the most important of which is the basis of measurement on the mouths of bays, creeks, and harbors, and the general line of exclusion on our coasts. This line of demarcation between exclusive and common water, the United States contend—as in the tracing of the general coast line three marine miles from land—should at all bays continue to describe the outline of the shores of those indents as if they were sinuosities of the coast, and they deny the correctness of the principle of measuring from three miles outside headland to headland as claimed and enforced by the British without remonstrance up to about the period of 1841, and acted on up to the period of the Reciprocity Treaty.

These are in brief the main points involved in the dispute known as "The Fishery Question," and the raising of these points by the Americans, dates only from 1841, and after upwards of 23 years acquiescence in, the British construction of the Convention. Other minor differences, more or less tributary to this, have entered into the discussion, but this substantially included the only disputable ground of the controversy, prior to the present season, when, as appears by the President's message, fresh claims are set up with regard to their fishermen's rights of entering British Ports for *trading* purposes.

The argument of Great Britain on the main points is twofold:—

1st. That the accepted definition of bays, harbors and creeks, is that established by International Law throughout the civilized world, which distinctly

adopts a headland line, irrespective of the configuration of any part of the coast, or the formation or extent of its indentations.

2nd. That the territorial and maritime jurisdiction of all nations, and particularly of the United States, is so clearly laid down as not to admit of any exceptional application, such as that claimed in connection with these fishing privileges in British America, in derogation of national rights.

3rd. That by the Treaty of 1818, Americans agreed not only not to fish within three miles of the coast, but further, they agreed not to fish within three miles of bays, creeks or harbors,—i. e., three miles outside a line drawn from the headlands which form the entrance of a bay, creek, or harbor.

The legal authorities on this view are cited at length in a special Report by Mr. Whiteher, of the Marine and Fisheries Department, published in 1868, in reference to the Fisheries. Moreover, Great Britain maintains that in the Article of the Convention of 1818, Americans expressly *relinquished the liberty, before "ENJOYED" or "CLAIMED," to pursue their calling anywhere else within British jurisdiction, than in the limits described in the Treaty.* The text thereof being as follows:—

"And the United States hereby renounce for ever any liberty heretofore enjoyed or claimed by the inhabitants thereof, to take, dry, or cure fish on or within three marine miles of any of the coasts, bays, creeks, or harbors of His Britannic Majesty's dominions in America, not included within the above mentioned limits," thus adding by their own voluntary declaration—if that were necessary—to the legal definition of exclusive fishing; besides solemnly withdrawing all pretensions of the kind theretofore advanced.

The Americans shortly before the making of the Reciprocity Treaty, claimed an exceptional application of the Law of Nations, as regards bodies of water, such as the Bays of Fundy and Chaleurs, and other indents along the seacoast of the British North American Colonies, in which the United States fishermen were formerly wont to pursue and capture the fishes of the sea, or to which they still resort to take bait. Yet, while they desired exceptional construction of Treaties, and more especially as applied to the Bays of Fundy and Chaleurs, their statesmen had to admit that the right of exclusion as claimed by us existed. Secretary Webster, 6th July, 1852, writes thus:—

"It would appear that, by a strict and rigid construction of this article, fishing vessels of the United States are precluded from entering into the bays or harbors of the British Provinces, except for the purposes of shelter, repairing damages, and obtaining wood and water. A bay, as is usually understood, is an arm or recess of the sea, entering from the ocean between

"capcs and headlands, and the term is applied equally to small and large tracts of water thus situated; it is common to speak of Hudson's Bay, or the Bay of Biscay, although they are very large tracts of water."

"The British Authorities insist that *England has a right to draw a line from headland to headland*, and to capture all American fishermen who may follow their pursuits inside of that line. It was undoubtedly an oversight in the Convention of 1818; to make so large a concession to England, since the United States had usually considered that those vast inlets or recesses of the ocean ought to be open to American fishermen as freely as the sea itself, to "within three marine miles of the shore."

Thus speaks Daniel Webster, an authority which patriotic Americans will scarcely dispute, and whose sound judgment compelled him to recognize the legal force of the British claims to the only point then in dispute, viz.:—*The Headland Line.*

Again, Chancellor Kent, in his able commentaries lays down, as a rule, that Bays, such as Delaware Bay—(resembling in its characteristics and extent the Bay of Chaleurs) is wholly within the "territorial jurisdiction" of the United States, while the States of New Jersey and Delaware each exercises jurisdiction to its centre, and for three miles seaward, from Capes May and Henlopen. The same rule applies to Chesapeake Bay, and the State of Maryland exercises jurisdiction over that tract of water, which is more than double the extent of Bay des Chaleurs. The same rule is applied to Massachusetts Bay, with an entrance fifty miles wide between Cape Ann and Cape Cod; indeed, the principle is applied in the United States universally, and however much American statesmen may regret the application of the rule on the bays of this Dominion, they cannot with reason deny its strict justice, nor their own renunciation of all claim to admission by the 1st article of the Treaty of 1818. Yet, from that time, up to 1854, the fishermen of the United States accepted the fact reluctantly, and frequently infringed within our limits when they thought they could do so with impunity. Several vessels were seized during the twenty years preceding 1854, outside the three mile limit from land, as construed by Americans, but within *headlands* and *bays*; and thus, by the British construction, violating the Treaty—the British Government enforced our Treaty rights, including the headland claims, up to 1854, with the exception of the Bay of Fundy, in reference to which they made certain exceptions of a temporary character, in 1845, upon the ground that it was not wholly a British bay, inasmuch as part of one side of it was bounded by American territory, and, to that extent, was an exception.

The question arose thus:—The American schooner "*Washington*" was seized while fishing in the Bay of Fundy, ten miles from land, on the ground that she

was fishing within a bay, which, under the terms of the Treaty, as construed by Her Majesty's Government, was illegal. Mr. Stevenson, the then American Minister at London, brought the subject under the notice of Her Majesty's Government, presenting, in an exhaustive manner, the American view of the case. The correspondence continued over a lengthened period. During the time, the Earl of Aberdeen, as well as the late Earl of Derby, then Lord Stanley, who succeeded him, presented the views which Her Majesty's Government entertained, and, in an able manner, replied to Mr. Stevenson, contending for the right to exclude—neither party succeeded in convincing the other; but the Earl of Aberdeen, in the usual spirit of conciliation which has marked the conduct of Her Majesty's Government on this question, while denying the *right*, consented to leave the question in abeyance, at the same time referring the particular case, viz.: The seizure of the "*Washington*," to arbitration; and the arbitrators decided that the Bay of Fundy, being partially bounded by American territory at its mouth, was not, so far as the limits of that territory formed its bounds, a British bay. For further particulars upon this matter see "Sabine's Report on the Fishery Question," and "American State Papers," 1852 and 1853.

In July, 1853, when the question arose in reference to the rights of Americans to fish in the Bay of Fundy, Mr. Secretary Marcy called upon Mr. Rush, the then only surviving American Commissioner who took part in making the Treaty, to state what were his intentions at the making of the Treaty, and his views in reference thereto. Mr. Rush's attention was more especially directed to its application to the Bay of Fundy, being the locality in which the seizure took place which raised the question; and while stating his opinion that Americans had a right to fish in the Bay of Fundy, being, as he terms it, *an arm of the sea*, he uses the following language in speaking of the Fishery clause of the Treaty referred to:—

"They meant no more than that our fishermen, whilst fishing in the waters of the Bay of Fundy, should not go nearer than *three miles* to any of those *small inner bays, creeks, or harbors*, which are known to indent the coasts of Nova Scotia and New Brunswick."

It will thus be perceived that while Mr. Rush coincided in the American view with regard to the right to fish in the Bay of Fundy, on the ground that it was an "*arm of the sea*," he clearly admits their exclusion from the smaller bays, creeks and harbors, and practically disavows the claim of a line three miles from the sinuosities of the coast now put forward by Americans, and thus far sustains the British construction in all but the larger *gulfs* or *bays*, which he claims to be "*arms of the sea*." See Rush's occasional productions, p.p. 289, 290.

He further shows, in his explanatory letter, written in 1854, that Britain enforced her view of the Treaty. He states that, "Great Britain, it may be inferred, expected equivalents by yielding anything to us on this Fisheries question—it was the most important and pressing of any then pending." "How it ever became a question, and when, I have endeavored to show," but, once raised by Great Britain, *she adhered to it to the extent of instructing her ships of war to order our ships away if found on what she claimed as exclusively her fishing grounds.*"

This testimony, from the highest American source—the man who negotiated the Treaty—goes to show that Britain's construction of the Treaty was not a dormant one, but actively asserted.

In 1840, Mr. Stevenson, the then American Minister at London, remonstrated with Her Majesty's Government through the late Lord Derby, who was then, as Lord Stanley, Secretary of State for Foreign Affairs, against the construction put upon the Treaty of 1818, but without effect—Lord Stanley maintaining the English construction of the Treaty, and, in his despatches to the Government of Nova Scotia, announced such decision. In 1843, after such announcement, the American schooner *Washington* was seized in the Bay of Fundy, ten miles from shore, for violating the Treaty by fishing in a British Bay; and later on, during the same season, the American schooner *Argus* was seized off the coast of Cape Breton, 15 miles from shore, but within the headland lines. The Honorable Edward Everett, who had succeeded Mr. Stevenson as American Minister, renewed, with the Earl of Aberdeen, the controversy raised by Mr. Stevenson. The American Commissioners contended that the framers of the Treaty, in referring to *bays* from which their fishermen were excluded, never contemplated the Bay of Fundy, which they claimed was an arm of the sea, but that it was the "*smaller or inner bays*" from which alone it was intended that they should be excluded; and this agrees with and confirms the then American view of their rights, as stated by Mr. Rush. Mr. Stevenson, in referring to the Bays of Fundy and Chaleur, speaks of them, and "*other large bays*," as those from which the British were endeavoring unfairly to exclude them, while Mr. Everett, in dealing with the same subject, speaks of the Bay of Fundy as "*an arm of the sea*," and not by the Treaty included "*amongst the coasts, bays, creeks, and harbors forbidden to American fishermen*," clearly admitting the rule as laid down by Mr. Rush, that from the smaller class of bays they were excluded. See American State Papers, 1852-3. Mr. Sabine, who was employed by the American Government to make out a case for them in his very able Report, in speaking of the result of the controversy, says—

"The declaration of Lord Stanley, in 1842, that our Government *practically acquiesced* in the new construction of the Convention, and the capture of the *Washington*, in 1843, for an infringement of that construction, and for no other offence whatever, were all calculated to impress them (Americans) with the belief that the contest was at an end. Such, I confess, was the inclination of my own mind." And he speaks of the despatch "which has recently been received at the Department of State from Mr. Everett, our Minister at London, with which he transmits a note from Lord Aberdeen, containing the satisfactory intelligence that, after a reconsideration of the subject, although the Queen's Government adhere to the construction of the Convention *which they have always maintained*, they have still come to the determination of relaxing from it, so far as to allow American fishermen to pursue their avocations in any part of the Bay of Fundy, provided they do not approach—except in the cases specified in the Treaty of 1818—within three miles of the entrance of any bay on the coast of Nova Scotia or New Brunswick."

Lord Aberdeen thus put the case clearly that he upheld the right of total exclusion, but was willing, under the terms named, to relax that right. In his reply, Mr. Everett refused to accept what the Earl of Aberdeen conceded as a *concession*, and still claimed it as a *right*, while he admitted the exclusion of the smaller bays. In reply to Lord Aberdeen's suggestion that a corresponding concession might be gracefully made by the United States to British fishermen by admitting their fish in duty free,—he gives as a reason against it that the British had advantages, inasmuch as they were "*able to use the net and the seine to greater advantage in the small bays and inlets along the coast, from which the fishermen of the United States, under any construction of the Treaty, are excluded.*" See American Senate State Papers, 1852-3.

It will thus be seen that, with the exception of the larger bays such as they class as "*arms of the sea*," the Americans practically admitted the British construction of the Treaty up to the making of the Reciprocity Treaty.

Then, as to the practice and the construction put upon the Treaty as well by the two contracting parties as by the British Colonies affected thereby, it may be here also stated that the Province of Nova Scotia supplemented the British squadron by several vessels during the years preceding 1845, and that during that time many seizures of American vessels were made, at points ranging from near the shore to a distance of upwards of ten miles from land, but within the headland three-mile line, on the ground that they were within headlands, many of which vessels were condemned and confiscated for such violation of our rights. In the American Senate State Documents, published in 1842-3, is found the following fact reported by the United States Consul, at Pictou, viz.:—"The seizures in the course of the year were numerous. "The *Java*, *Battille*, *May-flower*, *Charles*, *Eriza*, *Suetland*, *Hyder Ali*, *Indepen-*

"dence, Hart, Ocean, Director, Atlas, Magnolia, Amazon, and Three Brothers had enjoyed which t
Americans the use, under certain restrictions, of our bay and inshore fisheries, ment fe
and for which we were supposed to have received compensation by certain trade to conti
arrangements. This Treaty the United States Government put an end to of satisfac
their own act, professing to believe that it was more to the advantage of the of the y
Colonies than their own. Doubtless, the Treaty, during its continuance, was about
beneficial to both countries, but it was not in Nova Scotia considered that they during
had received the equivalent in trade for what they correctly designated as subject
"their priceless fisheries." See Minute of Council of that Province of 26th Congre
April, 1864, as follows:— an ad

"At the same time it is proper that the undersigned should take this ment
"opportunity to express the inimical sentiment pervading this Province, that, in renew
"the construction of that Treaty, fair consideration was not given to the the
"interests whose exhaustless fisheries of priceless value were given away their
"without the coasting trade, or the right to register Colonial-built Shipping, atten
"having been secured in return to these British-American Provinces." they

Such view was also participated in by New Brunswick. Yet, under the
Treaty, an immense trade sprang up between the several Provinces and the
United States, and promoted the prosperity of both countries during
its continuance of eleven years. Unfortunately, the lamentable civil war broke
out in the United States,—the Trent difficulty arose with the *Alabama compli-*
cations, and Americans ascribed to us sympathy for the South, and determined
to punish the Colonies as well for England's sins as for what they were pleased
to call our own; hence the notice to terminate the Treaty. It ended in March,
1866, after the year's notice for which it provided had been given by the
United States Government. The then Provinces of Canada, Nova Scotia, and
New Brunswick, with the approval of Her Majesty's Government, sent Delegates
to Washington, in October, 1865, to endeavour, if possible, to secure its continu-
ance, or else to effect some other trade arrangements which would meet the
approval of both countries. In this they were unsuccessful. The Delegation held
several conferences with the Committee of Ways and Means, and the record of
their proceedings proves that there was really no desire evinced to renew
commercial intercourse with the Provinces on any basis at all resembling the
principles of reciprocal free trade. The efforts of our Delegates proved fruitless,
and they returned about the middle of November following. On the 20th of
February, 1866, a Royal Proclamation was issued by the Governor General of
Canada, notifying American fishermen and United States citizens of the termin-
ation, on the 17th day of the ensuing month, of the fishing privileges which they

Three Brothers had enjoyed under the said Treaty, and warning them of the legal penalties which they would incur by trespassing upon the inshore fisheries of British America, belonging exclusively to Her Majesty's subjects. Her Majesty's Government felt disposed to allow the freedom of fishing that had prevailed since 1854 to continue for the season of 1866, on the distinct understanding that, *unless some satisfactory arrangement between the two countries should be made in the course of the year, such privileges would cease*, and all concessions made in the Treaty, just about to expire, be liable to withdrawal. The press of both countries during the year 1866 referred to the near probability of some concessions on the subject of the tariff being made through a Bill then under the consideration of Congress; the prospect of a satisfactory arrangement appearing to us to be an additional reason for deferring the matter to another season.

The Colonial authorities, whilst acting in concert with Her Majesty's Government, who recommended for that year a temporary arrangement, in the hope of a renewal of the Treaty, were actuated by a sincere desire to deal with the actual situation in a spirit of conciliation and liberality towards their neighbours, irrespective of whatever inconveniences and injuries might attend deferment of the just and valued rights of Colonial subjects, but they experienced much difficulty in accepting the conclusion to which their assent was invited. A Minute of Council was adopted by the Canadian Executive, on the 23rd of March, 1866, setting forth the grounds upon which they believed that the proposed policy could neither be carried out so as to avoid serious and lasting injury to the interests of the country, nor attain the purpose it was designed to effect. The intrinsic worth of the fisheries was pointed out, and also their value to the Confederation of the British North American Provinces (then in prospective), as a staple of extensive trade with foreign countries,—a nursery for hardy seamen—and an inexhaustible resource for the industrial energies of our maritime population. The great and peculiar advantages which their exclusive working by British colonists would afford to the United Provinces was likewise dwelt upon.

The Memorandum in question proceeds to say that:—

"The Canadian Government receive this expression of the opinion of Her Majesty's Government with the utmost respect; but they doubt whether its adoption would not in the end produce most serious evils. They fear there is no reasonable hope of satisfactory commercial relations being restored with the United States within the year. They think the prospect of attaining this result in the future will be greatly diminished if the United States fishermen continue to exercise the rights given by the late Treaty. The withdrawal of their privileges a year hence, will create more irritation than now, as having the character of retaliation. The step, if taken now, is plainly and

publicly known to be the consequence of the act of the United States. They and not Great Britain, have cancelled the agreement, and voluntarily surrendered the right of fishing. The course suggested would certainly be regarded by the American people as evidence of weakness on the part of Great Britain, and of an indisposition to maintain the rights of the Colonies; while it would disturb and alarm the Provinces. The determination to persist in encroachments, and in resistance to law, would be stronger by the impunity of the past year, and the danger of collision, when exclusion becomes necessary, would thus be much increased; while the value of the right of fishing, for the purpose of negotiation, would be diminished precisely in proportion to the low estimate which the Provinces would thus appear to have placed upon it.

"The Committee would also respectfully submit to Her Majesty's Government that any apparent hesitation to assert an undoubted national right will certainly be misconstrued, and be made the ground for other and more serious exactions, till such a point is reached as neither country can recede from with honor."

The fears of the Canadian Government, and the almost prophetic words of their Minute have been realized by the pretensions and claims now put forward by President Grant. Yet, notwithstanding the strong opinions, thus entertained, the Government of Canada, reluctantly acquiescing in the views of Her Majesty's Government, adopted the temporary expedient of issuing season licenses to United States fishing vessels, at a nominal tonnage rate, so as formally to preserve the right of sovereignty without occasioning any serious complications. Under this provisional system any vessels attempting to fish without licenses, and refusing to procure them from the cruising officers, were to be removed from the fishing grounds and punished by confiscation.

The Executive Governments of both Nova Scotia and New Brunswick gave to this expedient an unwilling assent, and on the express condition that it was to continue for only one year, and based upon the hope, as expressed by Her Majesty's Government, "that some satisfactory trade arrangement might be arrived at," and thus give to the American Government an opportunity to renew negotiations in case they desired to have the benefit of our fisheries.

This license system continued throughout the years 1866 and 1867, with very unsatisfactory results. It proved quite inefficient in respect of enforcing compliance with its chief conditions, and equally ineffective with regard to the influence it was presumed to exercise towards inducing the United States Government to assist in merging it in some general commercial measure of a permanent and satisfactory nature.

The refusal of American fishermen to avail themselves of this privilege will be seen by the following statement, shewing the number of licenses issued each year since 1866, and inclusive thereof:—

In 1866 there were 354 licenses.

" 1867	"	281	"
" 1868	"	56	"
" 1869	"	25	"

In order to illustrate the complete failure of the license system, it is sufficient to note the simple fact, that during these four seasons, not a single American vessel was detained, although it was notorious that great numbers were continually invading our limits, even after repeated warnings, a large proportion of which vessels, when afterwards boarded, were found to be still unfurnished with licenses.

It will be perceived that in 1866, the first year of its adoption, the vigorous policy indicated by Her Majesty's Government, and a lively recollection of the numerous seizures and confiscations made by Her Majesty's cruisers, and the officers of the Nova Scotian Government, prior to 1854, for violation of our fishery rights, induced a large number of the American fishermen who resorted to the Gulf that season to take out licenses, notwithstanding that they were indulged in having three warnings given to them by our cruisers before seizure should be effected. The following year only about two-thirds of these took licenses, while in 1868, when it came to be understood that the effect of the instructions issued *requiring three warnings*, was practically to nullify the whole system, the number taking licences dropped, in 1868, to 56 and 1869, to 25.

This sort of protection was of no avail in promoting the interests of Colonial fishermen, but simply ensured Americans in the practical enjoyment of the same privileges which they had enjoyed under the Reciprocity Treaty, and it saved the United States' Government from all trouble and expense of maintaining a naval force in the Gulf.

It was, moreover, a manifest departure from the very terms on which the system was so originated, namely: "That any vessels attempting to fish without licenses, will either be required to procure the license from the cruising officer, or will be removed from the fishing grounds," (*vide* Minute of the Executive Council of Canada, dated 23rd March, 1866.) It also relieved Americans of any pressure such as might influence their Government to desire concessions of ours, as recognised up to 1854; and while it injured the business of Canadian fishermen, by affording facilities to foreigners, such as, together with a prohibitory duty on British caught fish, enabled them to compete with our fishermen on unequal conditions, it also nullified whatever inducements to enter

into a new commercial treaty would otherwise be held forth by reason of indirect counter-tax on their fishing and maritime industry.

The effect of continuing such a system was detrimental in other ways.

American fishermen committed other infractions of the Treaty of 1818 such as frequenting our harbors to transfer cargoes and take supplies, creating riots and disturbances, and setting the law at defiance,—witness the scene at Paspebiac, in Bay des Chaleurs, in 1869, and their refusal to pay harbor dues at Magdalen Islands, during the present season, as reported by Commander Lavoie in May last.

In his Annual Report for the year 1869, Commander Lavoie also says:—

“At Paspebiac there was a strong feeling against the crews of foreign schooners, who, two or three times went ashore and committed all kinds of disorder; so much so, that the inhabitants were obliged to put night watchmen to guard their property, and secure themselves against the outrageous conduct of these people.”

In 1867, the Canadian Government called attention to this defective system, as it did also in 1868 and 1869, and a high authority on the subject of the Fisheries, spoke of it thus:—

“Since the termination of the Reciprocity Treaty of 1866, the system of warnings to trespassers has not realized the anticipations of the Government by which it was established in that year. Hence the desire of the present Dominion Executive to resort to the more stringent steps proposed in the minutes of the Minister of Marine and Fisheries.” The same authority then gives the probable number of American vessels on the fishing grounds that season as 700. In 1868, the instructions were amended so as only to require one warning, and notwithstanding that if seizures were to be made at all, the danger was immeasurably increased to foreign fishermen; during the following year only 25 took out licenses, or about one in 28 of the estimated number of vessels on our coasts. In 1869, an authority well acquainted with the subject, called attention to the fact “That an unusual number of fishing schooners, belonging to the United States, had arrived on the North Shore of Prince Edward Island, but that only a few licences had been demanded by the masters, who objected to pay the licence duty of \$2 per ton, and preferred to run the risk of being caught within the three mile limits.” The impression prevailed amongst the Americans that Her Majesty’s Government, in their great desire to avoid anything of an irritating tendency, would not make any seizures; and, as a matter of fact, notwithstanding repeated violations, no seizures were

Under such circumstances the system of licences could not prove other than a most lamentable failure, and there was really no "substantial protection."

Another ill-effect attending this continued indulgence towards Americans is remarked by the same authority above referred to, that—

"Very few Colonial vessels are engaged in fishing, owing to the interference of Americans and the almost prohibitory Tariff imposed in the United States, on fish imported in Colonial vessels, and the *Colonial fishermen, therefore, in considerable numbers, man the American vessels.*"

It will thus be perceived that the Government of Canada, as well as Her Britannic Majesty's Government, had exercised a great degree of liberality and forbearance in dealing with the fishermen of the United States. They permitted a mere temporary arrangement, made in 1866, *for one year only*, to continue in the interests of the Americans for four, and until they found that they were practically setting our laws and regulations at defiance, and refusing to pay the licence fee on which they were admitted, while on their part we saw no prospect of that relaxation of their almost prohibitive duties on our fish and other articles of trade, which was the foundation of such policy. During the year 1869, the American Executive announced that negotiations would be opened with Canada, negotiations were nominally opened during that year on the invitation of the President, but it became evident at a very early stage that there was no real intention to submit any proposition that Canada could accept, and this was thoroughly verified, when, in December last (4th December, 1869), President Grant issued his annual message, in which the following appeared:—

"The question of renewing a Treaty for Reciprocity of Trade with the United States and the British Province on this continent, has not been favorably considered by the Administration. The advantages of such a Treaty would be wholly in favor of the British Provinces, except possibly a few engaged in the trade between the two sections. No citizen of the United States would be benefitted by Reciprocity; our internal taxation would prove a protection to the British producer, almost to the protection which our manufacturers now receive from the tariff. Some arrangement, however, for the regulation of commercial intercourse between the United States and the Dominion of Canada may be desirable."

This brings the history of the question down to the present year.

The people of Canada felt that they had exhausted every reasonable means of conciliation and forbearance, and they viewed with very serious concern the baneful effect on our maritime population of the toleration granted to American fishermen. The prohibitive tariffs on British-caught fish in the United States as against the free admission of fish caught under the American flag, offered a

direct bounty to our people to serve rather in American vessels than Colonial. There was actually presented to them the example of subjects of Republican power and citizens of a foreign state prosecuting their calling at the very doors, and in the exclusive limits of British subjects in Canada, who are themselves shut out of the markets of that country by a prohibitive tariff, adopted in the interest of *their own* fishermen, whilst ours cannot even enjoy unmolested their own exclusive privileges. Could the immediate influence of these circumstances be otherwise than seductive of the loyal attachment and personal enterprise of our sea-board population? It also discouraged the independent employment of Canadian fishing craft and provincial fishermen. It tempted our fishermen to catch and sell their fish clandestinely to United States owners of fishing vessels, who could afterwards market them in the United States, free of duty, as American-caught fish. This practice demoralized our fishing population, and accustomed them to violation of our own Customs' laws, as well as those of the United States. The residents were induced to connive at other infractions of our Treaty rights. The temporary and local advantages which these practices afford are of small account compared with the general injury done to our people. They militated also against our prospects of establishing an extensive fish trade with foreign countries, and others of the British possessions, and thereby developing the shipping and fishing industries of the Dominion, and creating a self-reliant and skilful class of fishermen and sailors, identified in property and affection with our national existence, and attached by past and present associations to British interests.

It became apparent that unless we wished to abandon our fisheries altogether that our Government must adopt a policy of a *national character*, and from the stand point of *the interests of the people of Canada*.

The Parliament of Canada supported that policy, and voted a sum to place on our coasts a marine police for the purpose of seeing that our laws should be respected and trespassers excluded. To this policy Her Majesty's Government assented, and sent out a sufficient number of vessels of war to enforce respect of our national rights. These duties have been performed both by the Imperial and Dominion vessels with marked prudence and judgment, and with great moderation and forbearance; and while insisting upon respect for British law, elicited from Commander E. P. Lull, of the United States Ship *Guard*, who was upon the station looking after American interests, no objection to their course, as appeared from the report of his mission.

The result of the policy adopted this year in reference to the fisheries has been most beneficial to our fishermen: the exclusion of Americans from the three

mile limit has caused those principal feeding grounds of the mackerel, which are mainly inshore, to be reserved for our own people, and the result has been most beneficial to Canadian fishermen.

President Grant states that we have excluded Americans from our fishing grounds, and that the action of the Canadian authorities towards them during the past season has not been marked by a friendly feeling,—that we have legislated in a hostile spirit,—that we have not given their fishermen warning,—that Canada has arbitrarily seized American vessels without cause,—that we have refused to let them trade in our ports.

Let us now take up these charges and see what grounds exist on which to make them.

In reply to the first charge it may be admitted that we have not allowed American fishermen to come in and fish within the three mile limit, as he states has been the practice for many years past, nor were we in anyway required to give them any warning; but we did notify their Government, and the result thereof was a circular from Mr. Secretary Boutwell, a copy of which is in the appendix E annexed, which gives ample warning to their fishermen of the consequences which will attend their disregard of our rights and privileges. And in consequence of such notice, three vessels of war were sent by the American Government, under the direction of Commander Lull, to look after American interests, and to notify their fishermen, and that duty was ably performed by that officer; their fishermen were notified, and it has not been alleged that a single case has occurred in which American fishermen acted in ignorance of our policy, or in which hardship has occurred for want of notification. See Appendix F.

Now, to make this matter intelligently understood, we may state, that up to 1845, when the Reciprocity Treaty was entered into, the rights and claims, as interpreted from the English point of view, were enforced,—this gave American fishermen no right to fish either within three miles outside of headland lines, or in bays, creeks, or harbors, nor in any place within three miles of the shores.

The Reciprocity Treaty suspended that right of exclusion, and Americans were entitled to fish in all but our River and Lake Fisheries in common with ourselves. *They, not we*, gave notice and repealed the Reciprocity Treaty, which alone granted them these privileges, and they placed themselves, so far as Treaty rights were concerned, exactly where they were before it was made,—but out of forbearance towards their fishermen, we agreed that for one season, we would let them come in and fish by taking licenses, at a merely nominal rate, and that vessels found fishing without license, should be entitled to three warnings, as it

was supposed that fishermen might trespass in ignorance of the repeal of the Treaty, this was done in the hope that they would reconsider their policy about Reciprocity which they failed to do. We continued this system for four years, reducing the warnings to one, as the plea of ignorance of the Repeal of the Treaty, after three years, could not be set up by their fishermen. And, notwithstanding the hope held out by the Resolution of Congress, authorising the President of the United States to open negotiations for trade arrangements with Canada, no result followed.

We felt that further forbearance in the hope of an arrangement of commerce was useless, and we gave notice in the early part of this year, of a policy of entire exclusion from the three mile limits—not from the *headland line*—not from the *ten mile bays*,—from all of which they were excluded prior to the Reciprocity Treaty, and which rule we might also have acted upon as the limit, on its termination, as that which would have placed us relatively in the same position as we were in before the Treaty was made.

Is that “unneighbourly”? What is there unfriendly about it?

We have property in our fisheries,—by a Treaty arrangement in 1854. Americans obtained the legal right, during its continuance, to participate in the enjoyment of them with our people, either party to be at liberty to terminate the Treaty after ten (10) years, on giving one year's notice to the other. The Americans enjoyed them for ten years, and then gave notice to terminate the Treaty, which has been done; and now President Grant charges us with “*unfriendly feeling*,” and “*unneighbourly acts*,” because we will not let them continue to enjoy our fisheries in return for the prohibitive tariff by which they exclude our fish. President Grant does not dispute our right to exclude American fishermen from within a line three miles from land—a line that he recognizes as our right even from the American view of the case, and as no interruption of an American fisherman, much less a seizure, has taken place outside that line, and as he admits in his Message that no seizure has yet taken place in consequence of trading, what possible ground of complaint can he make in relation to our acts hitherto? What a position to place his nation in—to see its first Magistrate thus wantonly attack and endeavor to place in the wrong a neighbour who has ever desired to maintain the most friendly relations with, and who has acted in a most generous and liberal manner towards his people in relation to the matters of which he complains.

If there is anything “*unneighbourly*” or “*unfriendly*” in the treatment of this matter, it lays at the door of the United States, in repealing a Treaty admittedly beneficial to both countries; but its repeal applied with peculiar

hardships to the smaller country. Under the Treaty existence of eleven years, trade had been largely influenced towards the United States. Our agriculturists found there a market for our coarse grains, and other productions of both the dairy and the farm; our lumbermen and milling interests, had made connections, and created establishments, based upon its continuance; our infant manufactories, slowly growing into existence prior to 1854, had then to come into competition in a manner with those of the United States, and many of them, in consequence, were closed up, and the business and trade of our country were largely directed into new channels, while the productions of our vast fisheries, which had previously found other foreign markets, were gradually drawn to Boston, as the centre of that trade. It need scarcely be said, that a policy which would seriously interfere with the continuance of such operations, must, for a time, at least, impede the prosperity of our country. Was it then a *friendly* or *neighbourly* act to repeal the Treaty, against our earnest wishes, and with the strictest limitation of time which it entitled Americans to give us, and thus cause serious losses to the interests referred to; but they did more than that—they at the same time increased the duties on our principal articles of production, varying from 25 to 80 per cent., and in the case of coal, to 100 per cent., so as to almost exclude them from their markets. They allowed their feelings of hostility to us, because of our connection with England, and our imputed sympathy with the South, to induce them to aim, by adopting retaliatory measures, at punishing us. Yet their chief magistrate *complains*, because of our exclusion of their fishermen from our *Inshore Fisheries*, our rights to which have never been disputed.

President Grant also states that we have failed in the performance of our *neighbourly* and *friendly* duty, because we did not give, as he states, American fishermen notice.

In reply, it is observed, that by the act of their own Government, in repealing the Treaty, the position of American fishermen in our waters was changed from one of *right* to one of *sufferance*, and it was no part of the duty of the Government of Canada to notify them. Our Government, through the British Minister at Washington, notified the United States Government, and it was the duty of their executive (not of ours) to notify the American people, and they performed that duty. See Secretary Boutwell's circulars, dated respectively 16th May, and 9th June, in appendices E and G. The earliest of these circulars, by the United States Treasury Department, having stated that trespassers would be seized after 24 hours warning, while the statutes had abolished such warning, an amended one was issued after the error had been pointed out by the Canadian authorities, in order to prevent American fishermen from being misled and surprised by an oversight of President Grant's advisers. Thus the very

laws were acknowledged and the restrictions acquiesced in of which the President now complains.

Again, it may be observed that, in addition to the notices thus given of the policy which the Government of Canada had decided upon, with the concurrence of the Imperial Government, it is evident that President Grant was informed of the instructions which were given to our officers, as would appear from the circulars referred to; and the people of Canada have yet to learn that the American Government ever took exception to the policy of exclusion which we adopted, or the instructions under which such exclusion was carried out, and yet though the President acted upon it in May last, he now for the first time discovers that our acts in relation thereto are "*unfriendly*" and "*unneighbourly*."

In Mr. Secretary Boutwell's circular, he distinctly tells American fishermen that they are excluded from the inshore fisheries, and that they are bound to respect "the British laws and regulations for the regulation and preservation of the fisheries." He also informs them that vessels were being fitted out by the Government of Canada for the protection of those fisheries "*against illegal encroachments by foreigners*," and used these words:—

"It will be observed that the warning formerly given is not required under the amended Act, but that vessels trespassing are liable to seizure without such warning."

There is no protest or allegation against either the right or the justice or the neighborly character of the act, and if the President is now right in his assumptions of the spirit of the policy referred to, it was his duty in May last, in the interests of American fishermen, to have taken such steps as would have brought the "*unneighbourly*" or "*unfriendly*" acts under the notice of the Government of Canada, in order that the cause of complaint might have been, if possible, removed. That President Grant did not do so is evidence that his present construction is an afterthought, probably inspired by the recent visit of General Butler to Washington.

He then refers to—

"The Statutes of the Dominion of Canada," as "assuming a still broader and more untenable jurisdiction over the vessels of the United States," and creating the impression that the Legislation of the Dominion, in relation to the fisheries, is of a novel character.

He also says—

"It is not known that any condemnations have been made under this Statute. Should the authorities of Canada attempt to enforce it, it will become my duty to take such steps as may be necessary to protect the rights of the citizens of the United States."

Now, it is much to be regretted that the Chief Magistrate of a great nation should, in a prominent state paper, exhibit such ignorance as is here displayed when referring to the legislation affecting this subject.

What are the facts?

After the Treaty of 1818 was concluded, it became necessary for the British Government to enact a law of the Imperial Parliament to enforce, on the coasts of British America, respect to the provisions of that Treaty. Such a law was passed by the Parliament of Great Britain on the 14th of June, 1819, and has been in force ever since that time. Under it the Treaty rights have been enforced, seizures of foreign vessels have been repeatedly made, and the same proceeded with to trial, and, in many cases, to condemnation.

The Parliament of Nova Scotia, in 1836, passed an Act, based upon the Imperial Act of 1819, which received the sanction of the Imperial Government, under which that Province provided the legal machinery for enforcing respect to their territorial jurisdiction of three miles from the coasts, bays and harbors of that Province; and subsequently, in 1840, adopted an amended law, which is still in force.

Under these laws, the first of which was in active operation for twenty-eight years, numerous seizures of American vessels were made for encroaching and violating Treaty rights, and our rights of exclusion were repeatedly enforced up to the period of the passage of the Reciprocity Treaty.

A similar law was passed both in New Brunswick and Prince Edward's Island, and in 1868, after the formation of the Dominion, a law, almost the exact transcript of the Nova Scotia law, was passed by our Parliament for the "*Regulating of Fishing by Foreign Vessels.*"

As the law now stands, it differs from the Nova Scotia Statute only in this: that twenty-four hours' notice was done away with, inasmuch as it defeated the object of the law, and vessels found hovering inside the limit could be seized at once if they refused to depart when notified, thus assimilating its provisions in that particular to the Imperial Statute of 1819, which has been in force for fifty years. Any other changes in it are in the interests of foreigners. Indeed, it may be stated that the only point in which the Dominion Statute varies at all from the law previously in force, although President Grant states that they assume

"a broader and more untenable jurisdiction over the vessels of the United States" is in the direction of *leniency* and *neighbourly feeling*, and I will here quote from the decision of the venerable and respected Chief Justice of Nova Scotia, Sir William Young, C. B., in his able judgment, in the case of the "*Wampatuck*," delivered on the 6th instant, seized for persistent violation of the Fishing Laws, in which he says:—

"Neither the Government nor the Courts of the Dominion would favor a narrow and illiberal construction, or sanction a forfeiture or penalty inconsistent with national comity and usage, and with the plain object and intent of the Treaty. The rights of a people, as of an individual, are never so much respected as when they are exercised in a spirit of fairness and moderation. Besides, by a clause of the Dominion Act of 1868, which is not to be found in the Imperial Act of 1819, nor in our Nova Scotia Act of 1836, which formed the code of rules and regulations under the Treaty of 1818, with the sanction of His Majesty, the Governor General in Council, in cases of seizures under the Act, may, by order, direct a stay of proceedings; and, in cases of condemnation, may relieve from the penalty, in whole, or in part, and on such terms as may be deemed right—any undue straining of the law, or harshness in its application may thus be softened or redressed; and, although I was told that little confidence was to be placed in the moderation of Governments, it is obvious that confidence is placed in it by the authorities and by the people of the United States; and it is a fact, honorable to both parties, that the naval forces employed on the fishing grounds in the past season, have acted in perfect harmony, and carried out the provisions of the Treaty in good faith. The organs of public opinion indeed, in the United States, of the highest stamp, have denounced open and deliberate violations of the Treaty in terms as decided as we ourselves could use."

And in this Chief Justice Young expresses the sentiment of Canada.

Yet, in the face of these unanswerable facts, the implication is created, *that the legislation is novel*,—that it has never yet been acted on,—and President Grant threatens us if it shall be.

He then refers to the rights of American fishing vessels to enter British ports for other purposes than those named in the Treaty, and again implies that a *new* and *strained construction* of Treaty rights is attempted to be enforced. Here again President Grant exhibits great ignorance of the question, inasmuch as the British construction of that part of the Treaty of 1818, that relates to foreign fishing vessels going into British ports, expressly limits them to "*shelter and of repairing damages therein, of purchasing wood and obtaining water*."

And in all the discussions which have taken place in relation to the fisheries, it may be stated, that no American Statesman has ever before ventured

to claim a right for their fishing vessels to enter our ports for trading purposes, or for any other purposes than those named in the Treaty.

That the limitation to these four objects was strictly enforced after the Peace of 1812, and before the Treaty of 1818, appears by Earl Bathurst's despatch to Vice-Admiral Keats, dated 17th June, 1815. (See appendix.) Also by the extract from Rear Admiral Milne's despatch of 12th May, 1817, and the letter of the Provincial Secretary of Nova Scotia, 28th August, 1852, before quoted, as well as by a number of judicial decisions in the Province of Nova Scotia, between 1832 and 1853.

Yet, in the face of a clear recognition of a practice of over fifty years (less the period it was in abeyance by the Reciprocity Treaty), President Grant states that "so far as the claim is founded on an alleged construction of the Treaty of 1818, it cannot be acquiesced in by the United States," and "it is hoped it will not be insisted on by Her Majesty's Government."

He then refers to the pretensions put forward by the British Commissioners at the time of negotiating the Treaty, and implies that similar pretensions to those now enforced were then put forward by the British Commissioners, resisted by the Americans, and finally abandoned.

That many pretensions were put forward by the representatives of both Governments in negotiating the Treaty of Peace at the close of the war of 1812 is true, but it is also true that the unreasonable pretensions of the American Commissioners caused the Treaty of Peace to be closed with the fishery question still unsettled; that, in 1815, as appears by Lord Bathurst's despatch, His Britannic Majesty enforced and maintained the British view of the question, and when a Treaty was made in 1818, in reference to the fisheries, the Americans clearly limited themselves to the right to enter British ports for only the four objects stated.

Is President Grant not aware that American vessels have been repeatedly seized for its infringement? And that the practice has been acquiesced in by the United States? Does he know that his statements in the message referred to, professing to give an accurate account of what took place between the several Commissioners of Great Britain and America, at the making of the Treaty of 1818, are not strictly accurate? If he does not know all these things, it may be well to tell him that he has not correctly reported the circumstances to which he refers. In addition to the authorities before quoted, reference may now be made to the original protocol submitted by the American Commissioners, Messrs. Gallatin and Rush, in London, on the 17th September, 1818, to the British Commissioners Messrs. Robinson and Colbourn, in these words:—

"And the United States hereby renounce 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, harbors and creeks of His Britannic Majesty's Dominions in North America, not included within the above mentioned limits—provided however, that the American fishermen shall be admitted to enter such bays and harbors for the purpose only of obtaining shelter, wood, water, and bait, but under such restrictions as may be found necessary to prevent their taking, drying, or curing fish therein, or in any other manner abusing the privileges hereby reserved to them." See British and Foreign State Papers, Vol. 7, page 178.

The British Commissioners submitted, on the 6th October following, a counter-projet which contained several clauses to which the Americans took exception, and amongst them two which may seem to bear upon this subject, and to which we presume the President had reference, and of which the text is as follows:—

"It is further well understood that the liberty of taking, drying, and curing fish granted in the preceding part of this article, shall not be construed to extend to any privilege of carrying on trade with any of His Britannic Majesty's subjects residing within the limits hereinbefore assigned for the use of the fishermen of the United States."

The next clause also proposed to limit them to having such goods on board as may be necessary for the prosecution of the fishery or the support of the fishermen whilst engaged therein, or in the prosecution of their voyages to and from the fishing grounds."

If the President had searched the State Papers within his reach relating to that subject, he would have found that no claim of right or even of liberty to trade was ever put forward by the American Commissioners. There is no record of such a claim ever having even been discussed between themselves in connection with the fishermen of his country or their privileges; on the contrary, such a pretension on their part would have been met with a refusal on the part of the British Government, as may be gathered from the correspondence between the two Governments, between 1815 and 1819, upon the general subject of the navigation and trade generally, between the Colonies and the United States, and in consequence of which, in a spirit of retaliation, the United States passed their celebrated Navigation Laws. President Grant should have perceived that the first article above quoted, which the British Commissioners submitted, was expressly confined in its operation to the "limits" thereinbefore "assigned for the use of the fishermen of the United States."—i.e., on that part of the southern coast of Newfoundland, which extends from Cape Ray to the Rameau Islands on the western and northern coast of Newfoundland, from the said Cape Ray to the Quirpon Islands, on the shores of the Magdalen Islands, and also on the coasts, bays, harbors, and creeks, from Mount Joly on the southern coast

enjoyed of Labrador, to and through the Straits of Belle Isle, &c., and thence northerly indefinitely along the coast, without prejudice, however, to any of the exclusive rights of the Hudson Bay Company," and that it could not in any way be construed to apply to the ports of Nova Scotia, Prince Edward Island or New Brunswick, nor indeed to any but those named in the "limits" specified—while, on the contrary, in the general ports, the objects to which they are expressly limited, as the only purposes for which they shall visit them are "shelter," "repairing damages," "purchasing wood," and "obtaining water."

It is true that the American Commissioners objected to those clauses, not because they claimed a right to trade in British ports, but because the boarding and examining cargoes of American vessels by British cruisers would be "both troublesome and vexatious"—here are their own words:—

"The clauses forbidding their spreading of nets, and making vessels liable to confiscation in case any articles not admitted for carrying on the fishery should be found on board are of that description, and would expose the fishermen to endless vexations."—same Vol., page 199.

As the question of the fisheries was one that had been the cause of great trouble and anxiety to both countries, the then pending negotiations were entered into with a view to obtaining a settlement thereof by mutual concession and compromise, and the British Commissioners submitted a "*second counter-projet*," which was accepted by the Americans, and now forms the first Article of the Treaty of 1818.

From this the word "*bait*" was omitted, and though the smuggling clause was also omitted as being "vexatious," they clearly limited themselves to the four objects, for which alone they could enter British ports "for shelter and repairing damages, and purchasing wood and water." How can it then with reason be claimed that a solemn agreement can thus be set aside, and fresh pretensions be set up, at variance with not only the spirit but the letter of the Treaty, more especially when the American Commissioners evidently put forward the limitation to enter ports for four objects alone, as a means of compromise, from their point of view, to meet the object desired in a less objectionable way to their people than that proposed by the British Commissioners; and in their official letter to Mr. Adams, the American Commissioners informed him of the conclusion of the Treaty, and admitted that the proposition of limitation to four objects, and to those only, was made by themselves.

The omission of any liberty to visit our ports to procure "*bait*," practically settles this, the main question of Trade, as objected to by Canada. As one great object of the fishermen in visiting our ports, and against which we object, is to

obtain "*bait*" for which they trade their smuggled goods, and without which the prosecution of their voyages is practically defeated. It thus appears clear, that so far from this pretension having been discussed by the Commission, and subsequently abandoned by the British Commissioners, on the grounds stated by President Grant, is not substantially correct; true, the clause relating to the searching of American fishing vessels for goods not necessary for the fisheries, or the illegality of their having them on board was abandoned, but not the chief object of that trade (*bait*), nor was any right given to enter our ports for trade, nor was even a claim to such effect set up by the American Commissioners. Yet President Grant states that it is a construction of the Treaty he cannot admit and if the right is exercised under the Statutes of the Dominion, he cannot but regard it as unfriendly, and in contravention of the spirit if not the letter of the Treaty.

We might offer the President many other proofs of our practical friendliness, towards American fishermen, but confine ourselves at present to two very notable and peculiar instances:—

Under article 1, of the Convention, so strangely misquoted by President Grant, United States citizens may *take fish* on the shores of the Magdalen Islands, but they cannot use the land for carrying on fishing operations. It so happens, therefore, that the privilege is practically inoperative. But rather than spoil their voyages the Canadian Government have allowed them year after year to land their boats and haul their seines, and, in fact, enjoy every facility for prosecuting the inshore fishing in common with Canadians. These privileges have been generously allowed to them at great inconvenience and loss to ourselves. Their manner of fishing—the great extent of their machinery—the numerous fleet of vessels crowding together into the bays and harbors during the fishing seasons, the numbers of disorderly persons among their crews,—these things have every year caused serious damage to the pursuits of British fishermen, and have exposed the lives and properties of the peaceable inhabitants to violence. The Canadian Government have, for many years past, been obliged by such occurrences to maintain an armed force on the premises, and to incur considerable trouble and expense in upholding the Customs, Navigation and Fishery laws among these itinerants. True, the simple remedy of entire seclusion might have been adopted. Is it because we have done otherwise that our conduct is "unfriendly?" Then, in the case of the settled parts of the Labrador coast. The Treaty allows American fishermen to *dry and cure fish* in certain "unsettled" places on the southern coast of Labrador, in Canada. The principal places frequented by United States fishermen have long been occupied by settlers and resident fishermen. Yet, Americans have never

been prevented from drying and curing their fish, and even erecting establishments on shore, the Canadian Government having always considerably provided for this liberty by granting temporary occupation of the soil to British subjects with such reservation, instead of subjecting United States citizens to the option of the "inhabitants, proprietors, or possessors of the ground," as specified in the Treaty. Is it because they have been thus liberal and considerate, that the American Government and United States fishermen and people, through their Chief Magistrate, accuse us of being "unfriendly"? If such forbearance and liberality in the case of the Magdalen Islands, and such amicable precautions in the case of the Labrador coast, are not worthy of being considered friendly and neighbourly, we might as well save ourselves the trouble and loss which attend them. We shall thus gratify our own people who suffer from them, and also promote our own fishing interests. The American fishermen will, doubtless, be duly grateful to President Grant and their representative friend, General Butler, for thus befriending them in a manner so much more practical and appreciable than we can ever expect to do!

Thus much in reply to the statements of President Grant, in relation to our treatment of the Fishery Question.

Reference may now be made to his statements affecting the "*Navigation of the St. Lawrence.*"

President Grant states that "a like unfriendly disposition has been manifested on the part of Canada, in the maintenance of a claim of right to exclude the citizens of the United States from the navigation of that river."

Let us ask President Grant when did ever the Canadians exhibit such a feeling as he ascribes to them?—or on what occasion did they ever refuse? We know of none; and it may be safely asserted that no refusal was ever at any time made by the Canadian Government to any application for liberty to use the St. Lawrence, either on the part of the American Government, or of any of its citizens. Nay, more than this—the Welland and St. Lawrence Canals, built at a cost, by us, of seventeen millions of dollars—to whichever President Grant will not pretend to have any claim—have been as freely used by the tonnage of the United States as they have been by our own; and without them, the navigation of the St. Lawrence could not be utilised. The following extract from two leading Canadian papers may be here referred to, to show to what extent Americans can use our canals:—

"From a return just published, it appears that the total amount of American shipping that enjoyed the "freedom of the St. Lawrence" for the year ending

" 30th June last, comprised 2,884 steam and sailing vessels, having a total tonnage of 765,552 tons. This immense fleet passed the Welland Canal; nor does it appear that any applied for passage through that most useful of canals and were refused. The Americans already have the "freedom" that commerce demands, upon paying tolls necessary for the maintenance of the public work, the same as British vessels. Surely, they do not ask that Canadians should construct and maintain a work of such magnitude for their benefit, and "give them a gratis passage into the bargain."

The following is a comparative statement of the number and tonnage of vessels arrived at the Port of Montreal during the years 1869 and 1870 :—

VESSELS ARRIVED FROM SEA.

	No.	Tons.
1870	584	202,609
1869	480	251,557
Increase in 1870	104	41,142

VESSELS ARRIVED FROM THE UNITED STATES THROUGH THE CANALS :—

	Sailing Vessels.		Steamers.	
	No.	Tons.	No.	Tons.
1870	539	39,841	15	5,543
1869	363	27,438	2	904
Increase 1870	176	12,403	13	4,639
1870.				
Increase vessels from sea	104		41,142	
" " United States	189		17,042	
Total increase	293		58,184	

Thus it will be seen that the Americans have used our canals pretty extensively, and that during the year just closing they have done so to a greater extent than ever before. Had it not been for the Canadian canals these American vessels could not have used the St. Lawrence route; must have adopted President Grant's suggestion, and kept to the Lakes and River; a plan which, involving as it would, a plunge over the Falls of Niagara, might have been found inconvenient.

This use too has been available for the transit of war materials, as well as in the prosecution of all commercial objects. The obstruction met with by the Canadian Steamer "*Algoma*" at the Sault St. Marie Canal last summer presents a striking contrast to our liberality. Is there a single other canal in the United States that the policy of his country will permit our people to use? A notable

instance of the contrast between American policy and our own, may be adduced in the carriage of lumber between Ottawa and New York—a portion of which is done by American vessels, and a part by Canadian. American canal boats, in competition with our own, navigate our Ottawa and St. Lawrence canals and rivers, and can go, without breaking bulk, to White Hall or New York; but so soon as a British canal boat reaches the American frontier, she is stopped, and is not permitted, by the restrictive policy of American Navigation Laws, to go any further. Is that neighbourly treatment?

He complains again that:—

“The foreign commerce of our ports on their waters is open to British competition, and the major part of it is done in British bottoms.”

Whether this is so or not, it is needless to discuss here; but if it is so, it is because of the unsound policy of protection which is now dominant in the United States, and in despite of enormous charges imposed in their ports upon our tonnage. In our ports there are, comparatively, no tonnage dues to pay—in American ports, a charge of 30 cents gold per ton is exacted, and Customs Officer's fees, ranging, for each entry, from \$1 50 to \$3; the same for each clearance, to be avoided only by taking out a coasting licence, which, of course, can only be done by an American vessel, as ours are excluded from their coasting trade. The effect of this system is a practical violation of the Treaty of Commerce by which Americans agreed to place our vessels on the same terms as their own in their ports with regard to charges; but while professing to do that, by charging fees on all vessels entering and clearing at their ports, without distinction, they except vessels having coasting licences, which, by their laws, can only be obtained by their own vessels. Is this “neighbourly,” or is it just? And does it not possess the aspect of avoiding the spirit of the Treaty while professing to keep it to the letter? Again, in the prosecution of the western trade, Americans have, by their construction of customs regulations, placed our vessels at a great disadvantage as compared with their own, in a number of ways, which are anything but “neighbourly.” And yet, in spite of it all, the President says “we monopolize the trade.” If we do, it is not because of restrictions which we place upon American commerce, for their vessels have been treated precisely as our own, but because our ships cost us less, as we buy or build them where we can get them cheapest, and they are worked more cheaply—we have less taxes to pay, and fewer restrictions placed upon our vessels; and also, because our geographical position in connection with the great grain-growing States of the west makes our St. Lawrence route to the sea, upon which our inland vessels are mainly engaged, the more desirable and cheaper one. The President's reference to the “*Mississippi*” is unfortunate for his case. He would have done well to have read up the

history of that transaction before referring to it. He would then have found that Mr. Rush, the American Minister at London, together with Mr. Gallatin, refused to renew the right to British subjects to navigate that river, except upon condition of receiving *compensation in fishery concessions entirely beyond its value*, and in the official letter the former to Mr. Adams, the American Foreign Secretary of that day, he took great credit to himself for having successfully got rid of what he alleged to be a very objectionable feature in the Treaty of 1783, and it was one of the points which the British Commissioners, for peace sake, conceded. Still the President has the hardihood to put that case forward in this discussion, as a ground upon which to found their claim to a common right to navigate the St. Lawrence. The illustrations given by President Grant of instances of rivers such as the "Rhine," the "Danube," the "Douro," and others named in his message, as having been thrown open, are not appropriate, and have but little analogy to the case of the St. Lawrence. Some of these, as in the case of the Danube, were thrown open after the termination of a mighty struggle, and others were made the subject of mutual arrangement at international conventions on grounds of public necessity and interest; while others were made the subject of international negotiations, based upon compensations given by one and received by the other of the nations interested. But where is the compensation here? Americans want the navigation of the St. Lawrence; what do they offer for it? They cannot use it without our canals! Will they offer us the use of their internal river navigation and canal system for it? Will they offer us some compensation in trade arrangements? Let us hear what it is to be, for we must have a "*quid pro quo*." A portion of the press of the United States would seem to indicate that it is sufficient for them to take our coal, fish, lumber and salt free of duty, on condition that we take theirs, and give them up the free right to navigate our rivers and canals, with a condition that we shall deepen and enlarge the latter; and allow them a common right in all our valuable fisheries. This seems to be the measure of compensation which they offer, but which we most respectfully decline. We tell them, in reply that our market in Ontario, for the coal of Ohio and Pennsylvania, is quite a compensation for the market which their New England and seaboard States offer to our Nova Scotia coal miners, and free admission of coal cannot be long resisted in the latter States. As to *lumber* and *fish* they must have them both—the production is not more than can supply the demand—their own forests are either too remote, or are comparatively exhausted to meet the home and foreign demand for lumber; and as for *fish*, their fishermen cannot supply the growing demand without either poaching on our preserves, or purchasing from our fishermen. As a proof of this, (mackerel), the fish they most prize, and the feeding grounds of which, are

mainly on our limits, have advanced in price from thirty to forty per cent. in five years,—and as to salt, the advantage would be entirely on the side of the Americans; Besides, any taxes placed upon either of these articles of prime necessity, simply enhance the price to their own people, who are the consumers. Is it not, therefore, apparent that the admission of the articles they name will inure quite as much, if not more, to the benefit of their people as of ours. and if that is so, then what has been offered for the navigation of the St. Lawrence?—the right to use our canals?—participation in our fisheries—our registry of shipping—and our coasting trade? They say they are willing to make a reasonable arrangement! Let them state what it is, for we have heard nothing like reason from them yet in connection with these subjects, since the repeal of the Reciprocity Treaty.

President Grant states :

"That there are eight States with 17,600,000 people upon these waters discharging into it," and he says :

"The United States are ready to make any reasonable arrangement as to the navigation of the St. Lawrence, which may be suggested by Great Britain."

If this was really so, why was the Reciprocity Treaty repealed? If it is so now, why refuse last year to renew it, or offer some fair trade arrangement? President Grant refused to do this, and yet pretends to be ready to make any reasonable arrangement. They want our fisheries,—they want the use of our canals, and the navigation of the St. Lawrence; and yet, with such professions upon their lips, they refuse the only thing that they have to offer that is of any value to us. The fact is that, in repealing the Reciprocity Treaty, the Government of the United States aimed at punishing us, and starving us into annexation, as some fondly imagined they would do, and in which results prove they have been disappointed. Since 1867, our trade has steadily and largely increased—manufactures have multiplied in our cities, towns and villages—our agriculturists never were more prosperous than at present; and, in spite of the enormous duties which meet them in the American markets, our lumbermen have grown wealthy, and our fishermen are becoming more hopeful. Though United States laws preclude us from American registry or employment for our ships in their coasting trade, our tonnage has enormously increased in the face of a large diminution in theirs—our revenue is abundant, with moderate taxation—our country, it cannot be denied, is in a most prosperous condition—and all this, in the face of legislation in the United States, which was thought likely to work most injuriously to us—notwithstanding that Americans have been tolerated in the enjoyment without any compensation of our valuable fisheries—

our canals—our river navigation—our registry of shipping—and our coasting trade,—they now threaten us with *retaliation*, unless we give up everything that we still possess, and for what? Simply nothing.

They threaten to "*Suspend the Bonding system, and exclude the Vessels of the Dominion from United States Waters.*"

They do this, too, without communicating with us, and upon the assumption that we have acted unfairly by their fishermen, and, influenced by the statement of *political* demagogues that we have refused to transmit their fish in bond from our ports. We have not done this. No application has ever been made for such a concession that we are aware of, though it is true that we contend that it is contrary to [the Treaty to have their fishing vessels frequenting our ports for any other than for the four objects named therein. What will the thousands of your own citizens, who are interested in the transit trade across your country from the Atlantic to the Lakes, say to this? What will the States of New York and Vermont say to loss of business on the Erie and Burlington Canals? What will those interested in your great lines of railroad say? And if experience teaches us anything of your institutions, they count for something where party tactics and political influence are concerned. More than all, what will the 17,630,000 people of the Western and North-Western States, of whom you speak, say to it? What will the Southern States say to your thus paralyzing the trade in their great staple article of production—*Cotton*? What will the great manufacturing interests of New England and the middle States say when you arrest the immense trade which has grown up between us? Will the people of Portland be benefitted by the removal of the winter terminus of those magnificent Canadian Ocean Steamers of the "*Allan Line*" to Halifax or St. John? and, as soon as the Intercolonial Railway is completed, and we hope it will by another season, this can be closed without much inconvenience to our people. Will it please the people of New York, Boston, Philadelphia, and your other leading seaboard cities, or will it promote the interests of the Public of the United States to shut out, by your *non-intercourse system*, all those established lines of British steamers by which your *communication*, your *commerce*, and your *postal service* is now carried on with Europe? You now tax our merchants with oppressive charges and restrictions in the bonding system which do not exist in ours; and, doubtless, if you carry out your threat, it will cause us such inconvenience as generally attends any considerable interruption to trade; but we can survive it, as we did the loss of the Reciprocity Treaty. We are rather inclined to think that we will prosper quite as much under it as you will. Our tonnage can always find employment sufficient and profitable, and if not employed in carrying grain from Chicago and your Western

grain-producing States, the sea is open to them, and employment abundant; but what about the crops of the West? Can the Erie Canal, of which such great complaints are now made of its want of capacity, as well as of the insufficiency of its water supply, if its capacity was otherwise increased, *do your work?*—and it cannot do it now, how can it possibly meet the growing necessities of that fertile western region? Now, suppose we really were to do what you charge us with, and act in an “unneighbourly” manner. Suppose we closed *our* canals for a single season against your trade, what would Western people say to you, if you were the cause of it? Have you thought of that? Will the States of Michigan and New York, whose use of *our* bonding system is so extensively used in connection with the business of their railroads, be benefitted if we should retaliate? What, too, will the merchants of New York, Boston, Portland, and other Atlantic cities, say for losing the Canada trade? Our merchants now buy in bond, in these cities, foreign goods amounting to about \$16,000,000 worth, and your merchants and the population of these cities, of course, have the advantage of it, and no small one either. Carry out your threat, and this important trade is at once transferred to the route of the St. Lawrence. Again, your merchants buy from us, and carry over our canals annually over \$15,000,000 worth of lumber alone, which they largely re-ship, out of bond, to the West Indies, Brazil, and other Southern markets. Do you want to stop that trade, and complete what the repeal of the Treaty has already begun? viz: The diversion of it to the St. Lawrence route? Before the repeal of the Treaty, in 1866, we did not ship a single cargo to South America; your merchants shipped our lumber to that market, and made the profit, while this year our own people, as the result of your high tariff policy, have shipped upwards of \$3,000,000 worth of it. Obstructions to that trade, such as you yourself have indicated, would annihilate it, and it would be difficult for you to justify your policy to the lumber merchants of New York City, White Hall, Boston, Portland, and other important centres of your foreign lumber trade.

The same argument applies to the foreign fish trade, in which you re-ship largely, in bond, to Southern markets. Look at the statistics of Boston, the great fish market of your country, and see how your policy has undermined, and is gradually destroying that trade, and forcing our people to do it direct with the consumers in the South, in place of doing it through Boston merchants, and giving them the profit.

Again, you threaten—

Non-intercourse!!! Have you ever considered how it affects your existing Treaties, by which British subjects are *entitled* to admission into your ports on the terms of the most favored nations? Would you not be deliberately breaking

a national engagement, and without cause? But, what if Britain retaliated? Do you think the suffering would be all on our side? We rather think not!

You will probably reflect on this matter before adopting an expedient so destructive of the true interests of your own people!

The records of the past will tell you that if you resort to *non-intercourse*, it will not be the first time in the history of your country, and it is much to be regretted that past lessons have been thrown away upon you. Your message tells us that your "commerce is depressed." Instead of making it worse by trying to punish Canadians, suppose you try what common sense and sound principles of policy would dictate,—offer to meet us halfway,—say to us, we find it to be for the interest of our country as it is that of yours, to have fewer restrictions upon trade, and a more free interchange of commodities,—we want the use of your Canals, and we will reciprocate,—we want the use of your St. Lawrence, though 'tis true, that we have no corresponding compensation to offer,—we want to participate in your fisheries, though we cannot offer you any fisheries in return that are worth anything to your people,—we will at least throw open our coasting trade and registry of shipping to the People of the Dominion, as fair compensation for our participation in theirs, and we will enter into either a Reciprocity Treaty or an arrangement for trade and commerce, just and equitable to both nations. This would restore some of the prosperity which your country has lost—it would build up your commercial navy by giving you the advantage for your commerce of our cheap ships, at one half the expense which your own now cost you, and do much to enable you to regain your foreign trade, and especially that part of it emanating from Canada. Then it is a much easier and cheaper way of accomplishing what you profess to desire, viz:—to obtain all the natural advantages which we possess, and to promote the welfare of your country, than following the advice of reckless demagogues. If we are to judge by the utterances of those politicians who seem to have inspired your policy, you imagine that the restrictive and retaliatory policy will make us dissatisfied with our condition as British subjects, and advance the fulfillment of your "*Munroe doctrine*." Let us say to you, if that at all influences you, or the party with whom you act in your treatment of us, that you and they make a fatal mistake. It has already had quite a contrary effect.

That there are some amongst us dissatisfied or disappointed men, or some who may see in change of system something to be desired, is quite probable, such you will also find in your own country, they are to be found in all lands and under all Governments; but this we say, without fear of contradiction, that

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your restrictive policy and retaliative measures have had the effect of attaching our people more to our own country and institutions.

Whether your Munroe doctrine may hereafter prevail or not, is a matter for the future; but we do not believe it, and we certainly do not desire it! And if we are only,—as you say,—the “*semi-independent but irresponsible*” Government known “*as the Dominion of Canada*,” we are contented with our position, “*semi-independent*” though it be, and much prefer its continuance to taking the position which would probably be our fate, under the successful operation of your “Munroe doctrine.” We will not pretend to deny but that our prosperity would be advanced, as we believe yours would also be, by a fair, liberal and just trade arrangement—either by Treaty or otherwise—and hence we desire that arrangement, and, to that extent, connection with you; but there is a reason applicable to your “*Munroe doctrine*,” which should, in addition, influence you to secure some reciprocal trade arrangement, and it is this that the history of the past has taught us, that any of the disciples of that “*doctrine*” that we have amongst us were mainly influenced thereto by the trade advantages of the former Treaty—*business*, not *retaliation*, will best promote your views in that direction. For our part, we are satisfied with our political relations as they stand—we are connected with a country from whom we have, as you have yourselves inherited, free institutions, which we have—as you have—developed to suit the wants of our respective countries. We do not envy you yours, nor your great progress, nor your wealth, nor your increasing population,—we are glad to see you prosper, and if your President so far forgets what is due to his position as the first magistrate of a great nation, as to taunt us with our “*semi-independence*,” and what he is pleased to term our “*irresponsible*” character, we can only notice it with regret as being beneath the dignity of his position as the representative of a great and powerful people. This we may say to you, that we are to-day more populous than your country was when it declared its independence; we certainly are not less wealthy, we have a greater extent of territory, a much larger amount of tonnage, a greater extent of trade, revenue, and commerce, with institutions quite as free, and at least as acceptable to our population as your’s; and with a population increasing in numbers quite as fast as even the great progressive increase of your own country—nay more, *we are contented*, feeling secure in our alliance with a parent State, which knows not only how to make concessions to her people when they are entitled to them, but also how to defend their rights. Then why should we desire the application of your “*Munroe doctrine*?”

President Grant avows his disposition to punish Canada, if, during next season, her laws affecting fishing by foreigners, shall be enforced against United

States citizens; and he asks Congress to empower him to suspend commercial intercourse with Canadians. Since, as we have shown, the alleged "unfriendly and vexatious treatment" of American fishermen, consists of excluding them from the free use of our inshore and exclusive fisheries, and as Canada has no idea of abandoning the privileges which of right and justice belong to her, and the use and enjoyment of which are essential to the industry and prosperity of her own fishermen, although they will as formerly be enforced with the same moderation and forbearance which always characterise the enforcement of British rights, it may be presumed that President Grant will exercise the power which he moves Congress to confer on his executive. This being the future prospect, we may as well at once accept and prepare for the foregone conclusion. If our neighbours are determined, through the sanction of their popular representatives, that we shall not protect our own property, but allow a small class of their immense population, for their pecuniary gain, to trespass on our rights and privileges, and rob us of what belongs as wholly and clearly to ourselves, as the fish within three miles of the American coast belong to subjects of the United States, without incurring the hostility of President Grant, his cabinet and outside advisers—if it really is a necessity of their political system, that rank outrage of laws and treaties and flagrant national injustice must be done to peaceful and friendly neighbours for mere *party purposes*—if the interests and aims of an election campaign necessarily super-add to this sacrifice of a great and powerful nation's honest dignity and self-respect, the further infliction of injury to the *trade and commerce of a much more numerous class, and far more extensive interests* than General Butler's constituents represent—then we earnestly hope that Congress will say so, by adopting the President's suggestion. We know precisely, and can tell them beforehand, just what it will produce among our people. They will deeply regret the persistent attitude of unfriendliness which Americans will have assumed and maintained towards them, simply because they are resolved to remain British subjects. They will sincerely deplore the unjust and illiberal treatment they have received from neighbours towards whom they have always acted with justice and liberality. They will feel that their rights are assailed, their conciliation contemned, and their business embarrassed, not in reality because they have a desire to keep and use their inshore fisheries for themselves, but because the United States Government entertain "unfriendly" feelings towards the Empire, for want of sympathy in the late Civil War, and for unsettled claims to compensation and amends; and that American politicians are madly bent on *retaliating* such fancied wrongs, through the Imperial connection with Colonial affairs, and the national responsibility of Great Britain. We are not blind to the real object of President Grant's "unneighbourly" acts and utterances. The true aim is at Her Majesty's Government. This is where an effect is

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desired to be produced. If he can only succeed in making mischief between Great Britain and Canada, and stirring up to prejudice and strife the ill-suppressed rancour with which certain of the American people regard England, and everything British, whether in Europe or America, the darling purpose of such a manifesto as this message, for the year of grace 1870, may be fulfilled. Last year the attack was on the ground of the Alabama claims from Britain—this year it is Canada and the fisheries. The Alabama grievances have been worn threadbare,—they have lost their force as a *party cry*—something fresh must be tried, hence the reference to possible difficulties that *we may create about the fisheries*. What a high and noble purpose for any statesman to avow as the mouthpiece of a Christian nation! We are assured it will fail of its intent, so far as Great Britain is concerned—we cannot believe it will succeed with the enlightened people of the United States. The course pursued by Canada towards her next door neighbour, has been in complete accord with the views of the Imperial Government, and has been marked throughout these fishery difficulties by extreme liberality,—patient conciliation,—and a degree of moderation and forbearance, which has been acknowledged by the Empire as most exemplary. We have nothing to fear from President Grant's peculiar tactics. All we contend for is simple justice as British subjects. This Great Britain has not yet ceased to ensure to her loyal and devoted colonists. The President's unjust aspersions and menaces will knit us together in a firm determination to adhere to our rights in a becoming spirit,—a spirit of conscious right that can afford to be temperate and conciliatory, while just and determined. It will put many of our minor and local differences into abeyance. It will prepare us to make some sacrifices, and endure some interruptions to our trade. We shall redouble our efforts to complete our canal and railway system from the North-Western Territories to the Atlantic coast. These internal communications have been already too long delayed. We may thank President Grant for bringing sharply to the practical appreciation of Canadians the urgent necessity for their completion. In this respect his surly message will have rendered us an unexpected service. Above all, we shall become more than ever attached to our own country and to British Institutions. This policy, intended to discourage and embarrass us, will really create a strong public sentiment and national feeling in our midst, and serve to attach Canadians, if possible, more loyally than ever to those free and prosperous principles of *self-dependence, free commerce, and enlightened government*, which have made it impossible for the mother country to propose or perpetrate such absurdities as seem necessary at Washington in the interests of bigoted and vindictive politicians. We shall endeavour to make our young country independent of such caprices. Sincerely as we would wish to preserve amicable relations with our neighbours, and we do sincerely desire it, and to

renew those intimate trade relations which have proved mutually beneficial, and we are ready to do that,—greatly as we should regret the adoption of such extreme measures of mis-called retaliation as President Grant contemplates,—we will not be intimidated into any relinquishment of our just rights to avoid either temporary inconvenience or permanent loss, and we confidently rely upon the Government and Parliament of our country to reflect the independent spirit of our people in the presence of the unworthy menace contained in this Message.

OTTAWA,

12th December, 1870.

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APPENDIX A.

Instructions from the British Government to the Governor of Newfoundland, relative to the Privilege enjoyed by Citizens of the United States to fish within British Jurisdiction. London, 17th June, 1815.

DOWNING STREET, 17th June, 1815.

SIR,—As the Treaty of Peace lately concluded with the United States contains no provisions with respect to the fisheries which the subjects of the United States enjoyed under the third article of the Peace of 1783, His Majesty's Government consider it not unnecessary that you should be informed as to the extent to which those privileges are affected, by the omission of any stipulation in the present Treaty, and of the line of conduct which it is in consequence advisable for you to adopt.

You cannot but be aware that the third article of the Treaty of Peace of 1783, contained two distinct stipulations—the one recognizing the rights which the United States had to take fish upon the high seas, and the other granting to the United States the privilege of fishing within the British jurisdiction, and of using, under certain conditions, the shores and territory of His Majesty for purposes connected with the fishery: of these, the former, being considered permanent, cannot be altered or affected by any change of the relative situation of the two countries; but the other being a privilege derived from the Treaty of 1783 alone, was, as to its duration, necessarily limited to the duration of the Treaty itself. On the declaration of war by the American Government, and the consequent abrogation of the then existing Treaties, the United States forfeited, with respect to the fisheries, those privileges which are purely conventional; and, as they have not been renewed by stipulation in the present Treaty, the subjects of the United States can have no pretence to any right to fish within the British jurisdiction, or to use the British territory for purposes connected with the fishery.

Such being the view taken of the question of the fisheries, as far as relates to the United States, I am commanded by His Royal Highness the Prince Regent to instruct you to abstain most carefully from any interference with the fishery, in which the subjects of the United States may be engaged, either on the Grand Bank of Newfoundland, in the Gulf of St. Lawrence, or other places in the sea. At the same time, you will prevent them, except under the circumstances hereinafter mentioned, from using the British territory for purposes connected with the fishery, and will exclude their fishing vessels from the bays, harbors, rivers, creeks, and inlets, of all His Majesty's possessions. In case, however, it should have happened that the fishermen of the United States, through ignorance of the circumstances which affect this question, should, previous to your arrival, have already commenced a fishery similar to that carried on by them previous to the late war, and should have occupied the British harbors, and formed establishments on the British territory, which could not be suddenly abandoned without very considerable loss, His Royal Highness the Prince Regent, willing to give every indulgence to the citizens of the United

States, which is compatible with His Majesty's rights, has commanded me to instruct you to abstain from molesting such fishermen, or impeding the progress of their fishing during the present year, unless they should, by attempts to carry on a contraband trade, render themselves unworthy of protection or indulgence. You will, however, not fail to communicate to them the tenor of the instructions which you have received, and the view which His Majesty's Government take of the question of the fishery; and you will, above all, be careful to explain to them that they are not, in any future season, to expect a continuance of the same indulgence.

I have, &c.,

BATHURST.

Vice-Admiral Sir Richard G. Keats.

APPENDIX B.

IMPERIAL ACT 59, GEO. III., CAP. 38.

An Act to enable His Majesty to make regulations with respect to taking and curing fish on certain parts of the coast of Newfoundland, Labrador, and His Majesty's other Possessions in North America, according to a Convention made between His Majesty and the United States of America. (14th June, 1849.)

WHEREAS, a Convention between His Majesty and the United States of America, was made and signed at London, on the twentieth day of October, one thousand eight hundred and eighteen; and by the first article of the said Convention, reciting that differences had arisen respecting the liberty claimed by the United States for the inhabitants thereof, to take, dry, and cure fish, in certain coasts, bays, harbors and creeks of His Britannic Majesty's Dominions in America, it is agreed that the inhabitants of the said United States shall have for ever, in common with the subjects of His Britannic Majesty, the liberty to take fish of every kind on that part of southern coast of Newfoundland, which extends from Cape Ray to the Rameau Islands, on the western and northern coasts of Newfoundland, from the said Cape Ray to the Quirpon Islands, on the shores of the Magdalen Islands, and also on the coasts, bays, harbors and creeks from Mount Joly, on the southern coasts of Labrador, to and through the Straits of Belleisle, and thence northwardly indefinitely along the coast, without prejudice, however, to any of the exclusive rights of the Hudson's Bay Company; and it was also, by the said article of the said Convention, agreed that the American fishermen should have liberty for ever to dry and cure fish in any of the unsettled bays, harbors and creeks of the southern part of the coast of Newfoundland, above described, and of the coast of Labrador; but that so soon as the same, or any portion thereof, should be settled, it should not be lawful for the said fishermen to dry or cure fish at such portion so settled, without previous agreement for such purpose with the inhabitants, proprietors or possessors of the ground:—And whereas, it is expedient that His Majesty should be enabled to

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carry into execution so much of the said Convention as is above recited, and to make regulations for that purpose;

Be it therefore enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the passing of this Act, it shall and may be lawful for His Majesty, by and with the advice of his Majesty's Privy Council, by any Order or Orders in Council, to be from time to time made for that purpose, to make such regulations, and to give such directions, orders and instructions to the Governor of Newfoundland, or to any officer or officers on that station, or to any other person or persons whomsoever, as shall, or may be, from time to time, deemed proper and necessary for the carrying into effect the purposes of the said Convention, with relation to the taking, drying and curing of fish by the inhabitants of the United States of America, in common with British subjects, within the limits set forth in the said article of the said Convention, and hereinbefore recited; Any Act or Acts of Parliament, or any law, custom or usage to the contrary in anywise notwithstanding.

II. And be it further enacted, That, from and after the passing of this Act, it shall not be lawful for any person or persons, not being a natural born subject of His Majesty, in any foreign ship, vessel or boat, nor for any person in any ship, vessel or boat, other than shall be navigated according to the laws of the United Kingdom of Great Britain and Ireland, to fish for, or to take, dry, or cure any fish of any kind whatever, within three marine miles of any coasts, bays, creeks or harbors whatever, in any part of His Majesty's Dominions in America, not included within the limits specified and described in the first article of the said Convention, and hereinbefore recited; and that if any such foreign ship, vessel or boat, or any persons on board thereof, shall be found fishing, or to have been fishing, or preparing to fish, within such distance of such coasts, bays, creeks or harbors, within such parts of His Majesty's Dominions in America, out of the said limits, as aforesaid, all such ships, vessels and boats, together with their cargoes and all guns, ammunition, tackle, apparel, furniture and stores, shall be forfeited, and shall and may be seized, taken, sued for, prosecuted, recovered and condemned by such and the like ways, means and methods, and in the same Courts as ships, vessels or boats may be forfeited, seized, prosecuted and condemned for any offence against any laws relating to the Revenue of Customs, or the laws of Trade and Navigation, under any Act or Acts of the Parliament of Great Britain or of the United Kingdom of Great Britain and Ireland; Provided that nothing in this Act contained shall apply, or be constructed to apply, to the ships or subjects of any Prince, Power or State in amity with His Majesty, who are entitled by Treaty with His Majesty to any privilege of taking, drying or curing fish on the coasts, bays, creeks or harbors, or within the limits in this Act described.

III. Provided always, and be it enacted, That it shall and may be lawful for any fisherman of the said United States to enter into any such bays or harbors of His Britannic Majesty's Dominions in America, as are last mentioned, for the purpose of shelter and repairing damages therein, and of purchasing wood and of obtaining water, and for no other purpose whatever; subject, nevertheless, to such restrictions as may be necessary to prevent such fishermen of the said United States from taking, drying or curing fish in the said bays or harbors, or in any other manner whatever abusing the said privileges by the said Treaty and this Act reserved to them, and as shall for that purpose be imposed by any Order or Orders to be from time to time made by His Majesty in Council under the

authority of this Act, and by any regulations which shall be issued by the Governor, or person exercising the office of Governor, in any such parts of His Majesty's Dominions in America, under or in pursuance of any such Order in Council as aforesaid.

IV. And be it further enacted, That if any person or persons, upon requisition made to the Governor of Newfoundland, or the person exercising the office of Governor, or by any Governor or person exercising the office of Governor, in any other parts of His Majesty's Dominions in America as aforesaid, or by any officer or officers acting under such Governor, or person exercising the office of Governor, in the execution of any orders or instructions from His Majesty in Council, shall refuse to depart from such bays or harbors, or if any person or persons shall refuse or neglect to conform to any regulations or directions which shall be made or given for the execution of any of the purposes of this Act, every such person so refusing or otherwise offending against this Act, shall forfeit the sum of two hundred pounds, to be recovered in the Superior Court of Judicature of the Island of Newfoundland, or in the Superior Court of Judicature of the colony or settlement within or near to which such offence shall be committed, or by bill, plaint, or information in any of His Majesty's Courts of Record at Westminster; one moiety of such penalty to belong to His Majesty, his heirs, and successors, and the other moiety to such person or persons as shall sue or prosecute for the same; provided always that any such suit or prosecution, if the same be committed in Newfoundland, or in any other colony or settlement, shall be commenced within three calendar months; and, if commenced in any of His Majesty's Courts at Westminster, within twelve calendar months from the time of the commission of such offence.

APPENDIX C.

Questions proposed by the House of Assembly of Nova Scotia, for consideration of Her Majesty's Legal Advisers; 8th June, 1841:—

I. Whether the Treaty of 1783 was annulled by the war of 1812, and whether citizens of the United States possess any right of fishery in the waters of the lower Provinces other than ceded to them by the Convention of 1818; and if so, what right?

II. Have American citizens the right, under that Convention, to enter any of the bays of this Province to take fish, if, after they have so entered, they prosecute the fishery more than three marine miles from the shores of such bays; or should the prescribed distance of three marine miles be measured from the headlands, at the entrance of such bays, so as to exclude them?

III. Is the distance of three marine miles to be computed from the indents of the coasts of British America, or from the extreme headlands: and what is to be considered a headland?

IV. Have American vessels, fitted out for a fishery, a right to pass through the Gut of Canso, which they cannot do without coming within the prescribed limits, or to anchor there or to fish there? and is casting bait to lure fish in the track of the vessel fishing, within the meaning of the Convention?

V. Have American citizens a right to land on the Magdalen Islands, and conduct the fishery from the shores thereof, by using nets and seines; or what right of fishery do they possess on the shores of those islands: and what is meant by the term shore?

VI. Have American fishermen the right to enter the bays and harbours of this Province, for the purpose of purchasing wood or obtaining water, having provided neither of these articles at the commencement of their voyages, in their own country; or have they only the right of entering such bays and harbours in cases of distress, or to purchase wood and obtain water, after the usual stock of those articles for the voyage of such fishing craft has been exhausted or destroyed?

VII. Under existing treaties, what right of fishery are ceded to the citizens of the United States of America, and what reserved for the exclusive enjoyment of British subjects?

APPENDIX D.

Opinion of the Queen's Advocate General, and Her Majesty's Attorney General of England, upon a case submitted by the Assembly of Nova Scotia, as to the construction of the Convention of 1818, relative to the fisheries:—

DOCTORS' COMMONS,
30th August, 1841.

MY LORD,—We are honored with Your Lordship's commands, signified in Mr. Backhouse's letter of the 26th March, stating that he was directed to transmit to us the accompanying letter from the Colonial Office, enclosing the copy of a despatch, from the Lieutenant Governor of Nova Scotia, enclosing an Address to Her Majesty from the House of Assembly of that Province, complaining of the continued encroachments of American fishermen on the fishing grounds of Nova Scotia and the adjoining Colonies, and praying that Her Majesty would establish by an Order in Council, general regulations for the protection of the fisheries, according to the code annexed to the Address.

Mr. Backhouse is pleased to request that we would take these papers into consideration, and report to Your Lordship our opinion, whether there is anything in the proposed regulations which would be inconsistent with the stipulations of the Convention of the 20th October 1818, between Great Britain and the United States of America.

We are also honored with Mr. Backhouse's letter of the 19th April, stating that he was directed to transmit to us a further letter from the Colonial Office, dated the 16th instant, enclosing the copy of a despatch from the Lieutenant Governor of Nova Scotia, covering a copy of an address from the Legislative Council of that Province, objecting to one of the above mentioned regulations proposed by the House of Assembly, in the Session of 1838, and to request that we would take these matters into consideration, in addition to those referred to in his letter of the 26th March last, and that we would report to Your Lordship, at our earliest convenience, our opinion thereon.

We are also honored with Mr. Backhouse's letter of the 8th June, stating that he was directed to transmit to us the accompanying letter from the Colonial Office, together with the copy of a despatch from the Lieutenant Governor of Nova Scotia, enclosing a copy of a report of the House of Assembly, on the subject of the fisheries of that Province, and also enclosing a case for opinion, as to what rights have been ceded to the citizens of the United States of America, and as to what rights have been exclusively reserved to Her Majesty's subjects, and to request that we would take the papers into consideration, and report to Your Lordship our opinion on the several questions stated in the case above mentioned.

We are also honored with Mr. Backhouse's letter of the 5th ult., stating that he was directed to transmit to us a correspondence, as marked in the margin, which has passed between the Foreign Office and Mr. Stevenson, the American Minister at this Court, and the Colonial Department, on the subject of a remonstrance addressed by Mr. Stevenson, against the proceedings of the authorities in Nova Scotia, towards American fishing vessels, encroaching on the fisheries of that coast, and to request that we would take these papers into consideration, and to report to Your Lordship our opinion thereupon.

1st Query.—In obedience to Your Lordship's commands, we have taken these papers into consideration, and have the honor to report that we are of opinion that the Treaty of 1783 was annulled by the war of 1812; and we are also of opinion that the rights of fishery of the citizens of the United States, must now be considered as defined as regulated by the Convention of 1818; and with respect to the general question 'if so, what right?' we can only refer to terms of the Convention, as explained and elucidated by the observations which will occur in answering the other specific queries.

2nd and 3rd Queries.—Except within certain defined limits, to which the query put to us does not apply, we are of opinion that by the terms of the Convention, American citizens are excluded from any right of fishing within three miles of the coast of British America; and that the prescribed distance of three miles is to be measured from the headlands, or extreme points of land next the sea, or the coast, or of the entrance of bays, or indents of the coast; and, consequently, that no right exists on the part of American citizens to enter the bays of Nova Scotia, there to take fish, although the fishing being within the bay may be at a greater distance than three miles from the shore of the bay; as we are of opinion that the term "headland" is used in the treaty to express the part of the land we have before mentioned, including the interiors of the bays, and the indents of the coast.

4th Query.—By the Convention of 1818, it is agreed that American citizens should have the liberty of fishing in the Gulf of Saint Lawrence, and within certain defined limits, in common with British subjects; and such Convention does not contain any words negating the right to navigate the Passage or Strait of Canso, and therefore it may be conceded that such right of navigation is not taken away by that Convention; but we have now attentively considered the course of navigation to the Gulf by Cape Breton, and likewise the capacity and situation of the Passage of Canso, and of the British possessions on either side; and we are of opinion that, independently of treaty, no foreign country has the right to use or navigate the Passage of Canso; and, attending to the terms of the Convention relating to the liberty of fishing to be enjoyed by the American citizens, we are also of opinion that that Convention did not, either expressly or by necessary implication, concede any such right of using or navigating the passage in question. We are

also of opinion that casting bait, to lure fish in the track of any American vessel navigating the passage, would constitute a fishing within the negative terms of the Convention.

5th Query.—With reference to a claim of a right to land on the Magdalen Islands, and to fish from the shores thereof, it must be observed, that by the Convention, the liberty of drying and curing fish (purposes which could only be accomplished by landing), in any of the unsettled bays, &c., of the southern part of Newfoundland, and of the coast of Labrador, is specifically provided for; but such liberty is distinctly negatived in any settled bays, &c., and it must therefore be inferred, that if the liberty of landing on the shores of the Magdalen Islands had been intended to be conceded, such an important concession would have been the subject of express stipulation, and would necessarily have been accompanied with a description of the inland extent of the shore, over which such liberty was to be exercised, and whether in settled or unsettled parts; but neither of these important particulars are provided for, even by implication; and that, among other considerations, leads us to the conclusion, that American citizens have no right to land, or conduct the fishery, from the shores of the Magdalen Islands. The word "shores" does not appear to have been used in the Convention in any other than the general or ordinary sense of the word, and must be construed with reference to the liberty to be exercised upon it, and would, therefore, comprise the land covered with water, as far as could be available for the due enjoyment of the liberty granted.

6th Query.—By the Convention, the liberty of entering the bays and harbors of Nova Scotia, for the purpose of purchasing wood and obtaining water, is conceded in general terms, unrestricted by any condition expressed or implied, limiting the enjoyment to vessels duly provided with those articles at the commencement of their voyage; and we are of opinion that no such condition could be attached to the enjoyment of the liberty.

7th Query.—The rights of fishing ceded to the citizens of the United States, and those reserved for the exclusive enjoyment of British subjects, depend altogether upon the Convention of 1818, the only existing treaty on this subject between the two countries, and the material points arising thereon, have been specifically answered in our replies to the preceding queries.

We have, &c.,

(Signed,)

J. DODSON,
THOS. WILDE.

Viscount Palmerston, K.B., &c., &c.

APPENDIX E.

CIRCULAR RELATING TO CANADIAN IN-SHORE FISHERIES.

TREASURY DEPARTMENT,
WASHINGTON, May 16, 1870.

SIR,—In compliance with the request of the Secretary of State, you are hereby authorised and directed to inform all masters of fishing vessels, at the time of clearance from your port, that the authorities of the Dominion of

Canada have terminated the system of granting fishing licences to foreign vessels under which they have heretofore been permitted to fish within the maritime jurisdiction of the said Dominion—that is to say, within three marine miles of the shores thereof; and that all fishermen of the United States are prohibited from the use of such in-shore fisheries, except so far as stipulated in the first article of the Treaty of October 20, 1818, between the United States and Great Britain, in virtue of which the fishermen of the United States have, in common with the subjects of Her Britannic Majesty, the liberty to take fish of every kind on that part of the southern coast of Newfoundland which extends from Cape Ray to the Rameau Islands, on the western and northern coast of Newfoundland, from the said Cape Ray to the Quirpon Islands, on the shores of the Magdalen Islands, and also on the coasts, bays, harbors, and creeks, from Mount Joly, which was, when the treaty was signed, on the southern coast of Labrador, to and through the straits of Belle Isle, and thence northwardly, indefinitely along the coast, without prejudice, however, to any exclusive rights of the Hudson's Bay Company; and have also liberty forever, to dry and cure fish in any of the unsettled bays, harbors, and creeks of the southern part of the coast of Newfoundland, above described, and of the coast of Labrador, unless the same, or any portion thereof, be settled, in which case it is not lawful for the said fishermen to dry or cure fish at such portion so settled, without previous agreement for such purpose with the inhabitants, proprietors, or possessors of the ground; and also, are admitted to enter any other bays or harbors for the purpose of shelter and repairing damages therein, of purchasing wood, and of obtaining water, and for no other purpose whatever, subject to such restrictions as may be necessary to prevent their taking, drying, or curing fish therein, or in any other manner whatever abusing the privileges reserved to them as above expressed.

The Canadian Law of the 22nd of May, 1868, 31 Victoria, Cap. 61, entitled "An Act respecting Fishing by Foreign Vessels," among other things, enacts that any commissioned officer of Her Majesty's Navy, serving on board of any vessel of Her Majesty's Navy, cruising and being in the waters of Canada for purpose of affording protection to Her Majesty's subjects engaged in the fisheries; or any commissioned officer of Her Majesty's Navy, fishery officer, or stipendiary magistrate on board of any vessel belonging to or in the service of the Government of Canada, and employed in the service of protecting the fisheries, or any officer of the customs of Canada, sheriff, magistrate, or other person duly commissioned for that purpose, may go on board of any ship, vessel, or boat within any harbor in Canada, or hovering (in British waters) within three marine miles of any of the coasts, bays, creeks, or harbors in Canada, and stay on board so long as she may remain within such place or distance. It also provides, that if such ship, vessel, or boat be bound elsewhere, and shall continue within such harbor, or so hovering for twenty-four hours after the master shall have been required to depart, any one of such officers or persons as are above mentioned may bring such ship, vessel, or boat into port, and search her cargo, and may also examine the master upon oath touching the cargo and voyage, and if the master or person in command shall not truly answer the questions put to him in such examination, he shall forfeit four hundred dollars; and if such ship, vessel, or boat be foreign, or not navigated according to the laws of the United Kingdom or of Canada, and have been found fishing, or preparing to fish, or to have been fishing (in British waters) within three marine miles of any of the coasts, bays, creeks, or harbors of Canada, not included within the above mentioned limits, without a licence, or after the expiration of the period named in the last licence granted to such ship, vessel, or boat under the first section of this Act, such ship,

vessel, or boat, and the tackle, rigging, apparel, furniture, stores, and cargo thereof shall be forfeited. And that all goods, ships, vessels, and boats, and the tackle, rigging, apparel, furniture, stores, and cargo liable to forfeiture under this Act, may be seized and secured by any officers or persons mentioned in the second section of this Act; and every person opposing any officer or person in the execution of his duty under this act, or aiding or abetting any other person in any opposition, shall forfeit eight hundred dollars, and shall be guilty of a misdemeanor, and upon conviction be liable to imprisonment for a term not exceeding two years. On the 8th of January, 1870, the Governor General of the Dominion of Canada, in Council, ordered that suitable sailing vessels, similar to *La Canadienne*, be chartered and equipped for the service of protecting the Canadian in-shore fisheries against illegal encroachments by foreigners, these vessels to be connected with the police force of Canada, and to form a marine branch of the same. It is understood that by a change of the boundaries between Canada and Labrador, the Canadian territory now includes Mount Joly, and a portion of the shore to the east thereof, which in the Treaty of 1818 was described as the southern coast of Labrador.

This municipal change of boundary does not, however, interfere with the rights of American fishermen, as defined by the treaty, on that portion of what was the southern coast of Labrador, east of Mount Joly.

Very respectfully,

GEO. S. BOUTWELL,
Secretary.

APPENDIX F.

MEMORANDUM of United States Fishing Vessels seized by Imperial and Canadian Cruisers during the season of 1870, for unlawful fishing, etc :—

"*Wompatuck*."—Seized 27th June, 1870, at Aspy Bay, Nova Scotia; actively fishing close in shore.

Captain of vessel admitted having caught fish within the prohibited limits during that day, and that he was aware he was fishing illegally.

"*J. H. Nickerson*."—Seized 30th June, 1870, at Ingonish Island, Nova Scotia, actually fishing inside the Island, within a mile distant from shore. Had been previously warned three times, on the 25th, 26th, and 27th June, before fishing, with notice that vessel would be seized. Captain was personally informed that he had already violated the law by remaining in shore without cause, and was supplied with a copy of Mr. Boutwell's circular to American fishermen.

"*G. Marshall*."—Seized 31st July, 1870, at Sandy Beach, inside Gaspé Bay, Quebec; actually fishing, and drawing seine ashore.

Previously boarded and warned.

"*Albert*."—Seized 20th August, 1870, at Charlotte Town, Prince Edward Island; violation of Merchant Shipping Act. Owner, master and crew, by their plea, own to knowledge of offence.

"*Clara F. Friend*."—Seized at Broad Cove, Cape Breton, Nova Scotia; actually fishing within three miles of shore. Previously warned.

Rescued by crew and re-captured.

NOTE.—The three seizures last above named, were made by Her Majesty's cruisers.

"*Lettie*."—Seized 18th August, 1870, inside Gaspé Bay ; actually fishing, and having fished for seven days previously within prohibited limits. Had been boarded and warned.

"*Lizzie A. Tarr*."—Seized 27th August, 1870, at Seven Islands, Quebec, about 100 miles inside of the mouth of the River St. Lawrence ; actively fishing one quarter of a mile from shore. Master was aware that the vessel was trespassing. Owner subsequently pleaded for release, on ground that he had specially directed said master not to go and fish at that place according to his expressed intention, because he would thereby expose said owner's property to seizure. Master and crew fishing on shares with owner.

"*A. H. Wonson*."—Seized 3rd September, 1870, near Broad Cove, Sea Wolf Island, Cape Breton, Nova Scotia. Actively fishing between island and mainland, distant about one mile and a half from either shore. Previously boarded and warned.

"*A. J. Frankin*."—Seized 15th October, 1870, at Broad Cove, Cape Breton, Nova Scotia, having fished within prohibited limits. Previously warned on the 7th of October. Captain strongly denied having fished, and although boarding officer felt satisfied that trespass had been committed, he desisted for the time being from seizing on such assurance. Afterwards, proof of actual and extensive fishing within the prohibited limits during 10th and 11th was obtained, and the seizure effected on the 15th October.

"*Granada*."—Seized 25th October, 1870, at Port Hood, New Brunswick. Smuggling.

"*Romp*."—Seized 8th November, 1870, at Back Bay, New Brunswick, having fished at Grand Manan Island, New Brunswick, within prohibited limits. Master acknowledged being aware of the illegality of such fishing.

"*White Fawn*."—Seized 25th November, 1870, at Head Harbor, Campo Bello, New Brunswick ; preparing to fish.

APPENDIX G.

CIRCULAR RELATING TO CANADIAN IN-SHORE FISHERIES.

TREASURY DEPARTMENT,

WASHINGTON, June 9, 1870.

SIR,—In compliance with the request of the Secretary of State, you are hereby authorized and directed to inform all masters of fishing vessels, at the time of clearance from your port, that the authorities of the Dominion of Canada have terminated the system of granting fishing licences to foreign vessels, under which they have heretofore been permitted to fish within the maritime jurisdiction of the said Dominion, that is to say, within three marine miles of the shores thereof ; and that all fishermen of the United States are prohibited from the use of such in-shore fisheries, except so far as stipulated in the first article of the Treaty of October 20, 1818, between the United States and Great Britain, in virtue of which the fishermen of the United States have, in common with the subjects of Her Britannic Majesty, the liberty to take fish of every kind on that part of the southern coast of Newfoundland which extends from Cape Ray to the

Rameau Islands, on the western and northern coast of Newfoundland, from the said Cape Ray to the Quirpon Islands, on the shores of the Magdalen Islands, and also on the coasts, bays, harbors, and creeks, from Mount Joly, which was, when the treaty was signed, on the southern coast of Labrador, to and through the Straits of Belle Isle, and thence northwardly, indefinitely along the coast, without prejudice, however, to any exclusive rights of the Hudson's Bay Company; and have liberty forever to dry and cure fish in any of the unsettled bays, harbors, and creeks, of the southern part of the coast of Newfoundland, above described, and of the coast of Labrador, unless the same, or any portion thereof, be settled, in which case it is not lawful for the said fishermen to dry or cure fish at such portion so settled, without previous agreement for such purpose with the inhabitants, proprietors, or possessors of the ground; and also, are admitted to enter any other bays or harbors, for the purpose of shelter and of repairing damages therein, of purchasing wood, and of obtaining water, *and for no other purpose whatever*, subject to such restrictions as may be necessary to prevent their taking, drying, or curing fish therein, or in any other manner whatever abusing the privileges reserved to them as above expressed. Fishermen of the United States are bound to respect the British laws and regulations for the regulation and preservation of the fisheries to the same extent to which they are applicable to British or Canadian fishermen.

The Canadian law of the 22d of May, 1868, 31 Victoria, Cap. 61, intituled "An Act respecting fishing by foreign vessels," and the Act assented to on the 12th May, 1870, intituled "An Act to amend the Act respecting fishing by foreign vessels," among other things, enact, that any commissioned officer of Her Majesty's navy, serving on board of any vessel of Her Majesty's navy, cruising and being in the waters of Canada for the purpose of affording protection to Her Majesty's subjects engaged in the fisheries, or any commissioned officer of Her Majesty's navy, fishery officer, or stipendiary magistrate, on board of any vessel belonging to or in the service of the Government of Canada, and employed in the service of protecting the fisheries, or any officer of the Customs of Canada, sheriff, magistrate, or other person duly commissioned for that purpose, may go on board of any ship, vessel, or boat, within any harbor in Canada, or hovering (in British waters) within three marine miles of any of the coasts, bays, creeks, or harbors in Canada, and stay on board so long as she may remain within such place or distance; and that any one of such officers or persons as are above mentioned may bring any ship, vessel, or boat, being within any harbor in Canada, or hovering (in British waters) within three marine miles of any of the coasts, bays, creeks, or harbors in Canada, into port, and search her cargo, and may also examine the master upon oath, touching the cargo and voyage; and if the master or person in command shall not truly answer the questions put to him in such examination, he shall forfeit four hundred dollars; and if such ship, vessel, or boat, be foreign, or not navigated according to the laws of the United Kingdom, or of Canada, and has been found fishing or preparing to fish, or to have been fishing (in British waters) within three marine miles of any of the coasts, bays, creeks, or harbors of Canada, not included within the above mentioned limits, without a license, or after the expiration of the period named in the last license granted to such ship, vessel, or boat, under the first section of this Act, such ship, vessel, or boat, and the tackle, rigging, apparel, furniture, stores, and cargo thereof, shall be forfeited. And that all goods, ships, vessels, and boats, and the tackle, rigging, apparel, furniture, stores, and cargo, liable to forfeiture under this Act, may be seized and secured by any officers or persons mentioned in the second section of this Act. And every person opposing any officer or person in the execution of his duty

under this Act, or aiding or abetting any other person in any opposition, shall forfeit eight hundred dollars, and shall be guilty of a misdemeanor, and upon conviction be liable to imprisonment for a term not exceeding two years.

It will be observed, that the warning formerly given is not required under the amended Act, but that vessels trespassing are liable to seizure without such warning.

On the 8th of January, 1870, the Governor General of the Dominion of Canada, in Council, ordered that suitable sailing vessels, similar to the "*La Canadienne*," be chartered and equipped for the service of protecting the Canadian in-shore fisheries against illegal encroachments by foreigners, these vessels to be connected with the police force of Canada, and to form a marine branch of the same. It is understood that, by a change of the boundaries between Canada and Labrador, the Canadian Territory now includes Mount Joly, and a portion of the shore to the east thereof, which, in the Treaty of 1818, was described as the southern coast of Labrador. This municipal change of boundary does not, however, interfere with the rights of American fishermen, as defined by the treaty, on that portion of what was the southern coast of Labrador, east of Mount Joly.

Very respectfully,

GEO. S. BOUTWELL,
Secretary of the Treasury.

APPENDIX H.

EARL BATHURST TO MR. ADAMS.

FOREIGN OFFICE, 30th October, 1815.

The undersigned, one of His Majesty's principal Secretaries of State, had the honour of receiving the letter of the Minister of the United States, dated the 25th ultimo, containing the grounds upon which the United States conceive themselves, at the present time, entitled to prosecute their fisheries within the limits of the British Sovereignty, and to use British territories for purposes connected with the fisheries.

A pretension of this kind was certainly intimated on a former occasion, but in a manner so obscure that His Majesty's Government were not enabled even to conjecture the grounds upon which it could be supported.

His Majesty's Government have not failed to give to the argument contained in the letter of the 25th ultimo, a candid and deliberate consideration, and, although they are compelled to resist the claim of the United States, when thus brought forward as a question of right, they feel every disposition to afford to the citizens of those States all the liberties and privileges connected with the fisheries which can consist with the just rights and interests of Great Britain, and secure His Majesty's subjects from those undue molestations in their fisheries which they have formerly experienced from citizens of the United States. The Minister of the United States appears, by his letter, to be well aware that Great

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Britain has always considered the liberty formerly enjoyed by the United States of fishing within British limits, and using British territory, as derived from the third article of the Treaty of 1783, and from that alone; and that the claim of an independent State to occupy and use at its discretion any portion of the territory of another, without compensation or corresponding indulgence, cannot rest on any other foundation than conventional stipulation. It is unnecessary to enquire into the motives which might have originally influenced Great Britain in conceding such liberties to the United States, or whether other articles of the Treaty, wherein these liberties are specified, did, or did not, in fact, afford an equivalent for them, because all the stipulations profess to be founded on reciprocal advantages and mutual convenience. If the United States derived from that Treaty privileges from which other independent nations, not admitted by Treaty, were excluded, the duration of the privileges must depend on the duration of the instrument by which they were granted; and if the war abrogated the Treaty, it determined the privileges.

It has been urged, indeed, on the part of the United States, that the Treaty of 1783 was of a peculiar character, and that, because it contained a recognition of American Independence, it could not be abrogated by a subsequent war between the parties. To a position of this novel nature Great Britain cannot accede. She knows of no exception to the rule, that all Treaties are put an end to by a subsequent war between the same parties. She cannot, therefore, consent to give to her diplomatic relations with one State a different degree of permanency from that on which her connexion with all other States depends. Nor can she consider any one State at liberty to assign to a Treaty made with her such a peculiarity of character as shall make it, as to duration, an exception to all other Treaties, in order to found, on a peculiarity thus assumed, an irrevocable title to all indulgences, which have all the features of temporary concessions.

The Treaty of Ghent has been brought forward by the American Minister as supporting, by its reference to the boundary line of the United States, as fixed by the Treaty of 1783, the opinion that the Treaty of 1783 was not abrogated by the war. The undersigned, however, cannot observe in any one of its articles any express or implied reference to the Treaty of 1783, as still in force. It will not be denied that the main object of the Treaty of Ghent was the mutual restoration of all territory taken by either party from the other during the war.

As a necessary consequence of such a stipulation, each party reverted to their boundaries as before the war, without reference to the title by which these possessions were acquired, or to the mode in which their boundaries had been previously fixed. In point of fact, the United States had before acquired possession of territories asserted to depend on other titles than those which Great Britain could confer.

The Treaty of Ghent, indeed, adverted, as a fact of possession, to certain boundaries of the United States which were specified in the Treaty of 1783; but surely it will not be contended that therefore the Treaty of 1783 was not considered at an end.

It is justly stated by the American Minister that the United States did not need a new grant of the boundary line. The war did not arise out of a contested boundary; and Great Britain, therefore, by the act of treating with the United States, recognized that nation in its former dimensions, excepting so far as the *jus belli* had interfered with them, and it was the object of the Treaty of Ghent to cede such rights to territory as the *jus belli* had conferred. Still less does the free navigation of the Mississippi, as demanded by the British negotiators at Ghent, in any manner express or imply the non-abrogation of the Treaty of

1783 by the subsequent war. It was brought forward by them as one of many advantages which they were desirous of securing to Great Britain; and if, in the first instance, demanded without equivalent, it left it open to the negotiators of the United States to claim for their Government, in the course of their conferences, a corresponding benefit. The American Minister will recollect that propositions of this nature were at one time under discussion, and that they were only abandoned at the time that Great Britain relinquished her demand to the navigation of the Mississippi. If, then, the demand on the part of Great Britain can be supposed to have given any weight to the present argument of the United States, the abandonment of that demand must have effectually removed it.

It is by no means unusual for Treaties containing recognitions and acknowledgements of title, in the nature of perpetual obligation, to contain, likewise, grants of privileges liable to revocation. The Treaty of 1783, like many others, contained provisions of different characters, some in their own nature irrevocable, and others of a temporary nature. If it be thence inferred that, because some advantages specified in that Treaty would not be put an end to by the war, therefore all the other advantages were intended to be equally permanent, it must first be shown that the advantages themselves are of the same, or, at least, of a similar character; for the character of one advantage recognized or conceded by Treaty can have no connection with the character of another, though conceded by the same instrument, unless it arises out of a strict and necessary connection between the advantages themselves. But what necessary connection can there be between a right to independence and a liberty to fish within British jurisdiction, or to use British territory? Liberties within British limits are as capable of being exercised by a dependent, as by an independent State, and cannot, therefore, be the necessary consequence of independence.

The independence of a State is that which cannot be correct^{ly} said to be granted by Treaty, but to be acknowledged by one. In the Treaty of 1783, the independence of the United States was certainly acknowledged, not merely by the consent to make the Treaty, but by the previous consent to enter into the provisional articles executed in November, 1782. The independence might have been acknowledged, without even the Treaty or the provisional articles; but, by whatever mode acknowledged, the acknowledgment is, in its own nature, irrevocable. A power of revoking, or even of modifying it, would be destructive of the thing itself, and, therefore, all such power is necessarily renounced when the acknowledgment is made. The war could not put an end to it, for the reason justly assigned by the American Minister, because a nation could not forfeit its sovereignty by the act of exercising it, and for the further reason, that Great Britain, when she declared war on her part against the United States, gave them, by that very act, a new recognition of their independence.

The nature of the liberty to fish within British limits, or to use British territory, is essentially different from the right to independence, in all that may reasonably be supposed to regard its intended duration. The grant of this liberty has all the aspect of a policy temporary and experimental, depending on the use that might be made of it, on the condition of the islands and places where it was to be exercised, and the more general conveniences or inconveniences, in a military, naval, or commercial point of view, resulting from the access of an independent nation to such islands and places. When, therefore, Great Britain, admitting the independence of the United States, denies their right to the liberties for which they now contend, it is not that she selects from the Treaty, articles, or parts of articles, and says, at her own will, this stipulation is liable to forfeiture by war, and that it is irrevocable; but the principle of her reasoning

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is, that such distinctions arise out of the provisions themselves, and are founded on the very nature of the grants. But the rights acknowledged by the Treaty of 1783 are not only distinguishable from the liberties conceded by the same Treaty, in the foundation upon which they stand, but they are carefully distinguished in the Treaty of 1783 itself. The undersigned begs to call the attention of the American Minister to the wording of the first and third articles, to which he has often referred for the foundation of his arguments. In the first article, Great Britain acknowledges an independence already expressly recognized by the Powers of Europe and by herself, in her consent to enter into provisional articles, of November, 1782. In the third article, Great Britain acknowledges the right of the United States to take fish on the Banks of Newfoundland and other places, from which Great Britain has no right to exclude an independent nation; but they are to have the liberty to cure and dry them in certain unsettled places within His Majesty's territory. If these liberties, thus granted, were to be as perpetual and indefeasible as the rights previously recognized, it is difficult to conceive that the plenipotentiaries of the United States would have admitted a variation of language so adapted to produce a different impression, and, above all, that they should have admitted so strange a restriction of a perpetual and indefeasible right as that with which the article concludes, which leaves a right so practical and so beneficial as this is admitted to be, dependent on the will of British subjects, in their character of inhabitants, proprietors, or possessors of the soil—to prohibit its exercise altogether.

It is surely obvious that the word *right*, is, throughout the Treaty, used as applicable to what the United States were to enjoy in virtue of a recognized independence, and the word *liberty* to what they were to enjoy as concessions strictly dependent on the Treaty itself. The right of the United States has been asserted upon other arguments, which appear to the undersigned not altogether consistent with those that had been previously advanced. It has been argued by the Minister of the United States that the Treaty of 1783 did not confer upon the United States the liberty of fishing within British jurisdiction, and using British territory, but merely recognized a right which they previously had; and it has been thence inferred that the recognition of this right renders it as perpetual as that of their independence.

If the Treaty of 1873 did not confer the liberties in question, the undersigned cannot understand why, in their support, the point should have been so much pressed, that the Treaty is in force notwithstanding the subsequent war. If, as stated by the American Minister, the time of the settlement of North America was the origin of the liberties of the United States in respect to the fisheries, and their independence, as recognised in 1783, was, as further argued by him, the mere recognition of rights and liberties previously existing, (which must have been in virtue of their independence,) it would seem to follow that their independence was recognised from the time of the settlement of North America, for no other period can be assigned. The undersigned is totally unable to collect when the American Minister considers the independence of his country to have commenced, yet this is a point of no small importance, if other rights are to be represented as coeval with it, or dependent on it.

As to the origin of these privileges, in point of fact, the undersigned is ready to admit that, so long as the United States constituted a part of the Dominions of His Majesty, the inhabitants had the enjoyment of them, as they had of other political and commercial advantages, in common with His Majesty's subjects. But they had, at the same time, in common with His Majesty's other subjects, duties to perform, and when the United States, by their separation

from Great Britain, became released from the duties, they became excluded, also, from the advantages of British subjects; they cannot, therefore, now claim, otherwise than by Treaty, the exercise of privileges belonging to them as British subjects, unless they are prepared to admit, on the part of Great Britain, the exercise of the rights which she enjoyed previous to the separation.

If it be contended, on the part of the United States, that, in consequence of having been once a part of the British dominions, they are now entitled, as of right, to all the privileges which they enjoyed as British subjects, in addition to those which they have as an independent people, the undersigned cannot too strongly protest against such a doctrine; and it must become doubly necessary for Great Britain to hesitate in conceding the privileges which are now the subject of discussion, lest, by such a concession, she should be supposed to countenance a principle not less novel than alarming. But, though Great Britain can never admit the claim of the United States to enjoy those liberties, with respect to the fisheries, as matter of right, she is by no means insensible to some of those considerations with which the letter of the American Minister concludes.

Although His Majesty's Government cannot admit that the claim of the American fishermen to fish within British jurisdiction, and to use the British territory for purposes connected with their fishery, is analogous to the indulgence which has been granted to enemies' subjects engaged in fishing on the high sea, for the purpose of conveying fresh fish to market; yet they do feel that the enjoyment of the liberties formerly used by the inhabitants of the United States may be very conducive to their national and individual prosperity, though they should be placed under some modifications; and this feeling operates most forcibly in favor of concession. But Great Britain can only offer the concession in a way which shall effectually protect her own subjects from such obstructions to their lawful enterprises as they too frequently experienced immediately previous to the late war, and which are, from their very nature, calculated to produce collision and dissension between the two States.

It was not of fair competition that His Majesty's Government had reason to complain, but of the pre-occupation of British harbors and creeks, in North America, by the fishing vessels of the United States, and the forcible exclusion of British vessels from places where the fishery might be most advantageously conducted. They had, likewise, reason to complain of the clandestine introduction of prohibited goods into the British Colonies by American vessels, ostensibly engaged in the fishing trade, to the great injury of the British revenue.

The undersigned has felt it incumbent on him thus generally to notice these obstructions, in the hope that the attention of the Government of the United States will be directed to the subject; and that they may be induced amicably and cordially to co-operate with His Majesty's Government in devising such regulations as shall prevent the recurrence of similar inconveniences.

His Majesty's Government are willing to enter into negotiations with the Government of the United States for the modified renewal of the liberties in question, and they doubt not that an arrangement may be made, satisfactory to both countries, and tending to confirm the amity now so happily subsisting between them.

The undersigned avails himself of this opportunity of renewing to Mr. Adams the assurances of his high consideration.

(Signed)

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