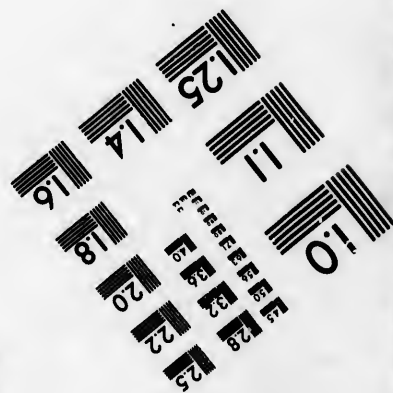
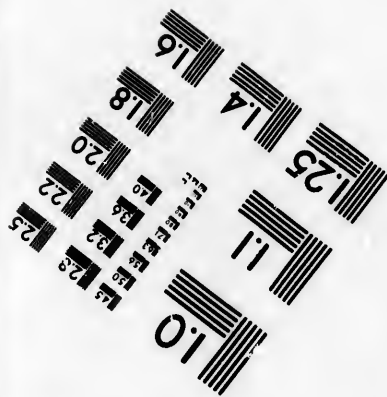
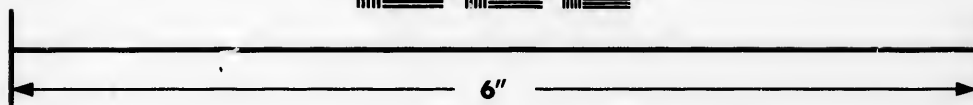
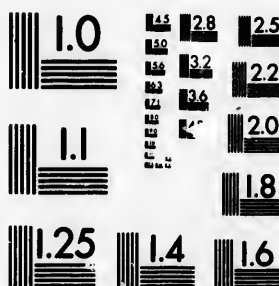


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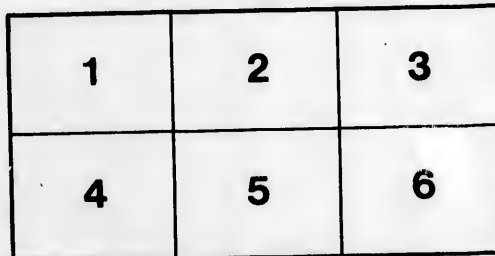
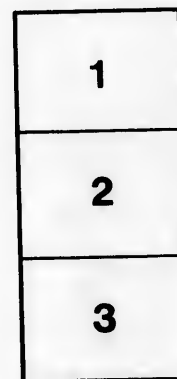
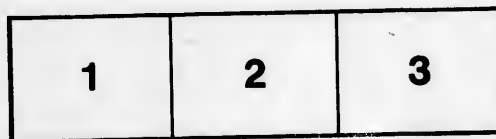
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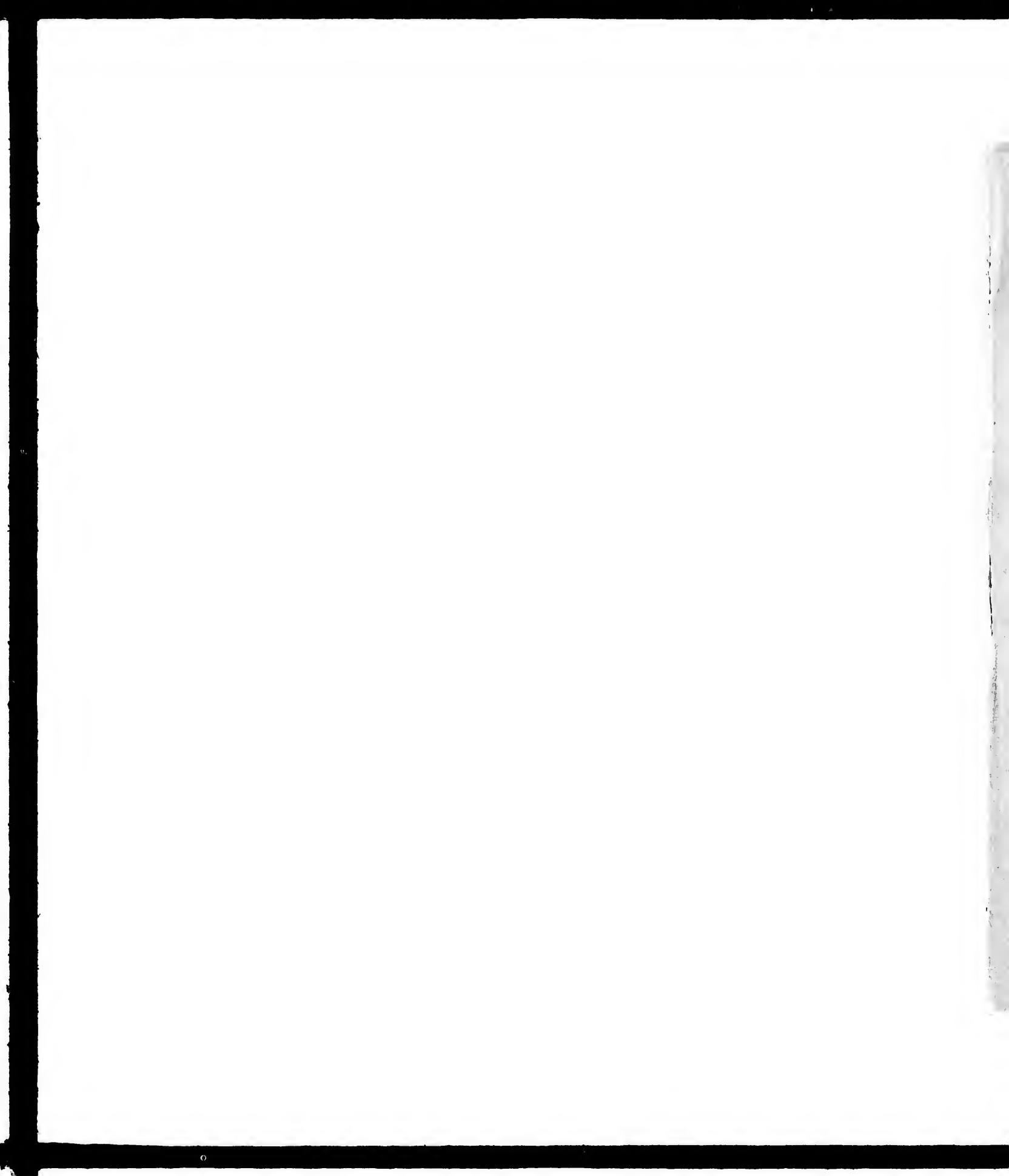
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1871



U. S. Dept. of state

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MEMORANDUM

RESPECTING THE

**NORTH AMERICAN FISHERIES.**

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[PREPARED FOR THE INFORMATION OF THE AMERICAN  
COMMISSIONERS WHO NEGOTIATED THE  
TREATY OF MAY 8, 1871.]

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## THE FISHERIES.

### 1. RIGHTS AS DEFINED BY TREATY.

The convention of 1818, hereinafter referred to, gives to American fishermen—

1. The right, in common with British fishermen, to *fish* within three marine miles of the land on all the coasts marked red, blue, and yellow, respectively, on the annexed map.

2. Prior to the negotiation of the treaty of 1818, France had secured for her fishermen, by treaty with Great Britain, a similar right on all the coast marked red. Hence it follows that the American fishermen, as to that portion of the coast, enjoy the right to *fish* in common with the French as well as the British fishermen.

3. The additional right as to the coast marked blue to *land, and dry, and cure* fish, so long as the coast is unsettled. [As to this right, it is to be observed that it is said to be important as to the cod-fisheries, but unimportant as to the mackerel-fisheries. The cod are usually split and dried on shore; the mackerel are cured on board.]

4. The "privilege" is also reserved to the American fishermen to enter the British North American bays or harbors, not included within the limits of coast so marked in colors, "for the purpose of shelter and of repairing damages therein, of purchasing wood, and of obtaining water, and for no other purpose whatever."

[The United States claim that this is a *privilege* to their fishing vessels to go in and out of those bays and harbors for the purposes named without the custom-house formalities, and is not to be confounded with the *right* which all vessels which bear the flag of the United States have to enter the open British ports for the purpose of trade, or any other purpose lawful under the customs of nations.]

5. Except as above defined, the United States renounce forever the liberty to take, dry, or cure fish within three marine miles of any of the coasts, bays, creeks, or harbors of the British dominions in America.

### 2. CHARACTER OF THE FISHERIES.

The fisheries are known as the *deep-sea* and the *in-shore* fisheries.

The latter are principally for herring and mackerel; and are understood to have been the principal cause of the trouble. The former include, and in fact mainly consist of, the cod and halibut fisheries.



## 3. VALUE OF THE BRITISH COLONIAL MARINE FISHERIES.

The value of these fisheries, as given in the latest accessible returns, is—

Quebec .....	\$1,040,240 46
New Brunswick .....	638,576 00
Nova Scotia .....	2,501,507 00
Newfoundland .....	7,005,807 40
Prince Edward's Island .....	169,580 00
Magdalen Islands .....	71,356 00
Total .....	<u>11,433,067 00</u>

The fisheries of Newfoundland are principally deep-sea fisheries. The consul at Halifax gives it as his opinion that, "of the aggregate products of the whole colonial fisheries, the in-shore fisheries—which are pursued chiefly for mackerel and herring—constitute the smaller portion; probably not more than one-fourth of the whole."

## 4. VALUE OF THE AMERICAN FISHERIES.

Mr. Mortimer Jackson, the consul at Halifax, says: "The number of American fishing vessels engaged in the deep-sea fisheries off the coasts of the British North American provinces is, as near as can be estimated, about 1,400, with an aggregate tonnage of nearly 100,000 tons, employing about 17,000 men. They pursue the fisheries on the banks of Newfoundland, in the Gulf of St. Lawrence, and on the western banks. On the banks the fisheries are pursued for cod and halibut, and in the Gulf of St. Lawrence principally for mackerel. The capital employed in these fisheries is estimated at between eight and nine millions. The aggregate annual yield is about seven millions of dollars. The deep-sea fisheries are exclusive of the *in-shore* fisheries, which were alone affected by the abrogation of the reciprocity treaty. During the existence of that treaty, and subsequently, to a limited extent, under the license system, the in-shore fisheries were pursued by our fishermen chiefly for mackerel. *The quantity so taken, however, did not exceed, on an average, in any one year, more than one-fourth of the whole catch of that description of fish.*" (*Manuscript dispatch No. 307, January 23, 1871.*)

Mr. E. H. Derby, of Boston, says: "The fisheries of the State of Massachusetts for whale, cod, mackerel, and herring produce yearly about twelve millions of dollars, of which less than a sixth are usually drawn from our fisheries in the Gulf of St. Lawrence." (*Manuscript Review of the Ottawa Review of the President's Message.*)

## 5. MARKETS FOR CANADIAN FISH.

The Newfoundland cured codfish find a large market in Spain, Portugal, the Mediterranean, South America, and the West Indies.

With that exception, the United States furnish the best market. This market, especially as to mackerel, has not been injured by the abrogation of the reciprocity treaty.

"It was fully demonstrated, during the existence of the reciprocity treaty, that the admission of American fishing vessels to a common participation in the privileges accorded to British vessels, instead of being injurious, was, on the whole, beneficial to the interests of the provincial fishermen." (*Manuscript report of the consul at Halifax, January 23, 1871.*)

#### 6. DIPLOMATIC HISTORY.

The in-shore fisheries were acquired to Great Britain by the treaty of Paris, (1763,) which terminated the French dominion on this continent, and were enjoyed from that time till the Revolution by the inhabitants of the original thirteen States in common with the other inhabitants of the British empire.

In the negotiations preceding the treaty of '83, an attempt was made to induce the American commissions to give up the fisheries, which John Adams met by saying, "I will never put my hand to any article without satisfaction about the fisheries." Finding the commissioners firm on this question, the provisional articles were signed November 30, 1782, and

1782, Nov. 30.

"The definitive treaty of peace" was signed, of which the 3d article (being identical with Article III of the provisional articles) reads thus:

1783, Sept. 3.

#### ARTICLE 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 New Foundland 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.

The fisheries were among the questions discussed by the commissioners for negotiating the treaty of peace that closed the war of 1812. The United States commissioners claimed that the treaty of 1783 conferred no new rights upon the United States; that it was an agreement as to a division of property which took place on the division of the British empire after the success of the American Revolution, and was not in that respect abrogated by war. The British commissioners, on the other hand, held that, while the treaty of 1783 recognized the *right* of the United States to the deep-sea fisheries, it conferred *privileges* as to the in-shore fisheries and the use of the shores which were lost by

1813-14.

FISHERIES.

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a declaration of war. The parties being unable to agree, (see *Am. St. Pap., For. Rel., vol. 3, pages 732 et seq.*)

1814, Dec. 21.

The treaty of Ghent was concluded without allusion to the fisheries.

1815, June 17.

Lord Bathurst instructed the governor of Newfoundland that "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 pretense to any right to fish within the British jurisdiction, or to use the British territory for purposes connected with the fisheries." (*Review of President's Message, Ottawa, December, 1870.*)

1815-'16.

This position resulted in a long correspondence between Mr. John Quincy Adams and Lord Bathurst, which ended by the British government adhering to its position. The correspondence may be found in *Foreign Relations, vol. 4, page 352 et seq.*

1816, Nov. 27.

Mr. Bagot, British minister at Washington, reasserting Lord Bathurst's construction of the treaty of 1783, and of the effect of the war, proposed a new arrangement, upon the basis of a concession of the right to cure fish on certain coasts, to fish within British limits on certain coasts, and of a renunciation of the right to fish within those limits on all other coasts. The first proposition made was not an acceptable one.

Dec. 31.

Another proposition was made, which, although not accepted, appears to have been the basis of the subsequent arrangement. (*Ib., page 365 et seq.*)

1817, Aug. 8.

Instructions having been issued by Great Britain to seize foreign vessels fishing or at anchor in any of the harbors or creeks in Her Majesty's British North American possessions, or within their maritime jurisdiction, and send them to Halifax for adjudication, several vessels were seized, and information officially communicated to this Government. (*Ib., page 369.*)

1818, May 22.

Mr. Gallatin, envoy extraordinary and minister plenipotentiary to France, and Mr. Rush, envoy extraordinary and minister plenipotentiary to Great Britain, were then empowered "to agree, treat, consult, and negotiate, of and concerning the general commerce between the United States and Great Britain and its dominions or dependencies, and such other matters and subjects interesting to the two nations as may be given to them in charge, and to conclude and sign a treaty or treaties, convention or conventions touching the premises." (*Ib., page 372.*)

Their instructions related to the prolongation of the treaty of commerce of 1815, (8 *Stat. at Large, 228;*) to the commerce and intercourse with the British colonies in the West Indies and North America; to indemnify to the owners of slaves carried away after the ratification of the treaty of Ghent; to the boundary line between the United States and the British possessions; and to the fisheries. (*Ib., pages 371-2.*)

They arranged for all these points, except the commerce with the colonies, in which the British ministry of that day were not disposed to allow the United States to share. (*Ib.*, page 330.)

At the third conference of the commissioners the American plenipotentiaries submitted their proposed articles, among which was the following relating to the fisheries:

Sept. 17.

## ARTICLE A.\*

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 continue to enjoy unmolested, forever*, 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, and the western and northern coast of Newfoundland, from the said Cape Ray to Quirpon Island, on the Magdalen Islands, and also on the coasts, bays, harbors, and creeks from Mount Joli, on the southern coast of Labrador, to and through the Straits of Belleisle, and thence northwardly indefinitely along the coast; and that the American fishermen shall also 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, here above described, *of the Magdalen Islands*, and of Labrador, *as here above described*; 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 previous agreement for that purpose with the inhabitants, proprietors, or possessors of the ground; 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, creeks, and 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 and harbors for the purpose *only of obtaining shelter, wood, water, and bait, but under such restrictions as may be necessary to prevent their drying or curing fish therein, or in any other manner abusing the privilege hereby reserved to them.*

At the fifth conference the British plenipotentiaries presented a counter project, of which the part relating to the fisheries was in the following language:

1813, Oct. 6.

## ARTICLE A.

It is agreed that the inhabitants of the United States shall have liberty to take fish of every kind on that part of the western coast of Newfoundland which extends from Cape Ray to the Quirpon Islands, and on that part of the southern and eastern coast of Labrador which extends from Mount Joli to Huntingdon Islands. And it is further agreed that the fishermen of the United States shall have liberty to dry and cure fish in any of the unsettled bays, harbors, and creeks of the said south and east coast of Labrador, so long as the same shall remain unsettled; but as soon as the same, or any part of them, shall be settled, it shall not be lawful for the said fishermen to dry or cure fish without a previous agreement for that purpose with the inhabitants, proprietors, or possessors of the ground.

And it is further agreed that nothing contained in this article shall be construed to give to the inhabitants of the United States any liberty to take fish within the rivers of His Britannic Majesty's territories, as above described; and it is agreed on the part of the United States that the fishermen of the United States resorting to the mouths of such rivers shall not obstruct the navigation thereof, nor willfully injure nor destroy the fish within the same, either by setting nets across the mouths of such rivers or by any other means whatever.

\* The words in Italics were erased as the article was finally agreed to, and, in most cases, other words substituted in their places. (See *post*.)

His Britannic Majesty further agrees that the vessels of the United States, *bona fide* engaged in such fishery, shall have liberty to enter the bays and harbors of any of His Britannic Majesty's dominions in North America for the purpose of shelter or of repairing damages therein, and of purchasing wood and obtaining water, and for no other purpose, and all vessels so resorting to the said bays and harbors shall be under such restrictions as may be necessary to prevent their taking, drying, or curing fish therein.

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 for any of the purposes aforesaid.

And in order the more effectually to guard against smuggling, it shall not be lawful for the vessels of the United States engaged in the said fishery to have on board any goods, wares, or merchandise whatever; except such as may be necessary for the prosecution of the fishery or the support of the fishermen while engaged therein, or in the prosecution of their voyages to and from the said fishing grounds. And any vessel of the United States which shall contravene this regulation may be seized, condemned, and confiscated, together with her cargo.

1818, Oct. 7.

The American plenipotentiaries replied to this as follows:

#### FISHERIES.

The American plenipotentiaries are not authorized by their instructions to assent to any article on that subject which shall not secure to the inhabitants of the United States the liberty of taking fish of every kind on the southern coast of Newfoundland from Cape Ray to the Ramea Islands, and on the coasts, bays, harbors and creeks from Mount Joli on the southern coast of Labrador to and through the Straits of Belleisle, and thence northwardly indefinitely along the coast, and also the liberty of drying and curing fish in any of the unsettled bays, harbors, and creeks of Labrador, and of the southern coast of Newfoundland, as above described, with the proviso respecting such of the said bays, harbors, and creeks as may be settled.

The liberty of taking fish within rivers is not asked. A positive clause to except them is unnecessary, unless it be intended to comprehend under that name waters which might otherwise be considered as bays or creeks. Whatever extent of fishing ground may be secured to American fishermen, the American plenipotentiaries are not prepared to accept it on a tenure or on conditions different from those on which the whole has heretofore been held. Their instructions did not anticipate that any new terms or restrictions would be annexed, as none were suggested in the proposals made by Mr. Bagot to the American Government. The clauses forbidding the spreading of nets, and making vessels liable to confiscation in case any articles not wanted for carrying on the fishery should be found on board, are of that description, and would expose the fishermen to endless vexations.

1818, Oct. 9.

At the sixth conference the American plenipotentiaries declared that they could not agree to the article on the fisheries brought forward by the British plenipotentiaries at the preceding conference. (*Ib.*, page 392.)

Oct. 13.

The British plenipotentiaries presented the following article as to the fisheries:

#### ARTICLE A.\*

Whereas differences have arisen respecting the liberty claimed by the United States for the inhabitants thereof to take, dry, and cure fish on

\* The words in Italics were inserted by the British commissioners in lieu (generally) of other words erased from the project submitted by the American commissioners on the 17th of September. In some cases the words in Italics are additions. (See *ante*.)

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, forever, 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 Ramen 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 Joli, 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, forever, to dry and cure fish in any of the unsettled bays, harbors, and creeks of the southern part of the coast of Newfoundland, here above 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, forever, any liberty heretofore enjoyed or claimed by the inhabitants thereof to take, dry, or cure fish on or within three marine miles of any of the coasts, bays, 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 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.

This article was accepted by the American commissioners, and is identical with article incorporated in the convention. (8 Stat. at Large, page 248.)

The comparison of this article with the article submitted by the American commissioners, on the 17th of September, shows that the only material change made, so far as the present discussion is concerned, was in the exclusion of the word "bait." It is represented that the "bait" referred to in the treaty must have been bait for "cod," which were caught in those waters, as the mackerel fisheries in those waters did not begin till several years after that time. It was, therefore, within the letter and spirit of the convention to deny to American fishermen the right to catch that bait in those waters. The favorite bait for the mackerel is said to be caught only off the coast of Maine, and not to be found in Canadian waters. If this is correct, it could not have been intended to deny to our fishermen the right to purchase that bait in British ports.

Was passed in the Imperial Parliament the "Act to enable His Majesty to make regulations with respect to the 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." It is by this statute declared to be unlawful for persons, not natural-born British subjects, to fish for, in a foreign vessel, take, dry, or cure any fish within three marine miles of any coasts, bays, creeks, or harbors whatever, in any British port in America, not included within the limits specified and described in the first article of the convention of 1818.

1818, Oct. 20.

1819, June 14.

It is further declared that it may be lawful for the United States fishermen to enter into such bays or harbors, for the purpose of shelter and repairing damages therein, and of purchasing wood, and of obtaining water, and for no other purpose whatever; that the governor of Newfoundland is vested with power to order such persons to depart; and that persons refusing to depart after notice, or neglecting to conform to regulations, shall forfeit two hundred pounds. (*Sabine's Fisheries*, 394.)

1823. In the spring of the year the schooner "Charles" was seized for a breach of this act, in returning to a harbor a second time after warning, "the weather being fine and moderate the whole time. (*S. Ex. Doc. 100, 32d Con., 1st sess., page 5.*)

1824, June 10. It appearing that the Charles, during her detention, had been used as a British cruiser, the vessels captured by her were restored, and official information thereof given. (*Ibid., page 11.*)

1826, Feb. 5. Mr. Vaughn informed Mr. Clay that "the Charles had been regularly condemned in the vice-admiralty court of the province of New Brunswick, and that it was not expected that the Government of the United States would lend further countenance to the complaints of the owners." (*Ibid., page 54.*)

It does not appear that there was any further correspondence about this vessel.

1824-'26. More or less correspondence took place about the "Reindeer" and the "Ruby," which were rescued by force after having been seized by a British cruiser.

1826, April 29. The last letter on the subject (from Mr. Vaughn to Mr. Clay) does not appear to have been ever answered. From that time until 1836 there is no evidence of complaint on the files of the Department of State, so far as known.

1836. Some complaints of trespass were made by Great Britain this year, but on investigation they appeared to have little foundation. (*Ib., pages 55, 56, 57, and 58.*)

1836. In this year the statute of Nova Scotia was passed, authorizing officers to go on board vessels hovering within three miles of the coasts or harbors; to stay on board; to require the vessel to depart; to bring it into port if it did not do so within twenty-four hours; to examine the master on oath; to condemn him to a forfeiture of £100 if he did not make true answer; and also authorizing a forfeiture of the vessel or cargo found fishing within forbidden waters. There were many other extraordinary, onerous, and unjust provisions in this act, for which reference is made to the act. (*S. Ex. Doc. 100, 32d Con., 1st sess., page 108.*)

1838. The same colony, in an address to the Queen, prayed for "a naval force to put an end to American aggressions"; to which the colonial secretary replied that "it had been determined for the future to station, during the fishing season, an armed force on the coast of Nova Scotia to enforce a more strict observance of the treaty by American citizens. (*Sabine's Fisheries*, page 399.)

The seizures which followed this course were numerous. (*Ib., page 400.*)

The voluminous correspondence which grew out of these

seizures will be found in the Senate Ex. Doc. already cited, pages 59 to 103. The results are summed up in a report from the acting Secretary of State, Mr. Vail (*page 92*), and in a report from Lieutenant Commanding Paine to Mr. Forsyth (*page 98*). Mr. Vail "is unable to state whether, in the cases under consideration, there has been any flagrant infraction of the existing treaty stipulations" (*page 95*). He appears to think that most of the cases were connected with alleged violations of the customs laws. Lieutenant Paine reports that "the authorities of Nova Scotia seem to claim a right to exclude Americans from all bays," "and also to draw a line from headland to headland;" "that the provincial authorities claim a right to exclude vessels, unless in actual distress;" and "would exact that American fishermen shall have been supplied on leaving home with wood and water for the cruise." (*Ib., pages 99, 100.*)

1830, Aug. 14.

Dec. 20.

Mr. Forsyth informed Mr. Stevenson, the United States minister in London, that the provincial "authorities claim a right to exclude our vessels from resorting to their ports, unless in actual distress, and American vessels are accordingly warned to depart, or ordered to get under way and leave a harbor, whenever the provincial custom-house or British naval officer supposes, without a full examination "of the circumstances under which they entered, that they have been there a reasonable time;" and instructed him to "immediately remonstrate against the illegal and vexatious proceedings of the authorities of Nova Scotia toward our fishermen, and request that measures be forthwith adopted by Her Majesty's Government to remedy the evils arising out of this misconstruction on the part of the provincial authorities of their conventional obligations." He also gave strong and explicit instructions as to the Nova Scotia act of 1836. (*Ib., pages 106-108.*)

1841, Feb. 20.

The reasoning of Mr. Forsyth, on pages 107 and 108, upon the Nova Scotia law of 1836, is applicable, without changing a word, to the Dominion laws of 1868 and 1870.

Mr. Stevenson brought to Lord Palmerston's notice: 1. The claim to exclude American vessels from waters "within three miles of a line drawn from headland to headland, instead of from the indents of the shores of the provinces;" 2. That the authorities of Nova Scotia had "put upon the stipulations of the treaty [as to the entry to harbors, &c.] a construction directly in conflict with their object, and entirely subversive of the rights and interests of the citizens of the United States;" 3. The objectionable law of Nova Scotia; 4. The assertion, said to be untenable, "that the Gut of Canso is a narrow strip of water, completely within and dividing several counties of the province." (*Ib., pages 113, 114, and 115.*)

Mar. 27.

It resulted from this note that the law officers of the Crown were inquired of, and gave their opinions: 1. Sustaining the colonial "headland" doctrine, on the assumption that the word "headland" is used in the convention; no such word is there found. 2. Giving an answer as to the use of ports, which is immaterial in the present aspect, but which was favorable to the American fishermen so far



as it went. 3. Say nothing about the objectionable clauses in the law. 4. Affirming the colonial doctrine about the Gut of Canso. (*Sabine Fisheries, pages 405 and 406.*)

It does not appear that this document was ever officially communicated to this Government.

1843-'44.

In a discussion, however, which took place at London, between Mr. Everett and Lord Aberdeen, in regard to the schooner Washington, captured in the Bay of Fundy, these views of the Crown law officers were officially asserted, but without referring to them. (*S. Ex. Doc. No. 100, as above, page 120, et seq.*)

1845, Mar. 10.

Lord Aberdeen informed Mr. Everett that while the British Government did not concede that the United States had a right to the fisheries in the Bay of Fundy, "they are prepared to direct their colonial authorities to allow henceforward the United States 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." (*Ib., page 136.*)

In this long discussion Mr. Stevenson's complaints as to the restrictions upon the use of ports seem not to have been noticed by the British Government, unless the last clause quoted from Lord Aberdeen's note to Mr. Everett is to be construed as an implied reassertion of the doctrine.

Sept. 17.

Sir Robert Peel's Government having meanwhile fallen, Lord Stanley wrote to Lord Falkland that the British Government had abandoned the intention they had on the subject, and should adhere to the strict letter of the treaties, except in so far as they may relate to the Bay of Fundy.

1852, July 5.

No collision of authority, however, occurred, or was threatened, until Mr. Crampton gave notice that a force of war steamers and sailing vessels was coming to the fishing grounds to prevent encroachments of vessels belonging to citizens of the United States on the fishing grounds reserved to Great Britain. (*Ib., page 154.*)

This was done after an ineffectual attempt to induce the United States to conclude a reciprocity treaty. (*Sabine's Fisheries, pages 436-7-8.*)

July 6.

Mr. Webster, Secretary of State, thereupon issued a circular notice to the American fishermen. The following passage is quoted with approbation in the pamphlet review of the President's message already cited (*page 15*), and appears to be relied upon by Canadian authorities:

It would appear that by a strict and rigid construction of this article fishing vessels of the United States are precluded from entering 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 capes 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 has usually considered that those vast inlets or recesses ought to be opened to American fishermen as freely as the sea itself to within three marine miles of the shore.

The reviewer claims that Mr. Webster's "sound judgment compelled him to recognize the legal force of the British claims to the only point then in dispute, viz, the headland line." (*Review of President's Message*, page 16.)

To reach that result he suppresses the following language from the close of the same circular:

*Not agreeing that the construction thus put upon the treaty is conformable to the intention of the contracting parties, this information is, however, made public to the end that those concerned in the American fisheries may perceive how the case at present stands and be on their guard.*" (*Sabine's Fisheries*, page 441.)

The provincial secretary of Nova Scotia issued a notice that "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." (*Review of President's message*, page 12.)

1852, Aug. 23.

The case of the "Washington" (one of the vessels whose seizure was discussed by Mr. Everett) came before the joint commission for settlement of claims, in London, and on disagreement of the commissioners was decided by the umpire, (Mr. Joshua Bates,) who said:

1852-54.

The question turns, so far as relates to the treaty stipulations, on the meaning given to the word "bays" in the treaty of 1783. By that treaty the Americans had no right to dry and cure fish on the shores and bays of Newfoundland, but they had that right on the *coasts, bays, harbors, and creeks* of Nova Scotia; and as they must land to cure fish on the shores, bays, and creeks, they were evidently admitted to the shores of the *bays, &c.* By the treaty of 1818 the same right is granted to cure fish on the coasts, bays, &c., of Newfoundland, but the Americans relinquished that right and the right to fish within three miles of the *coasts, bays, &c., of Nova Scotia*. Taking it for granted that the framers of the treaty intended that the words "bay or bays" should have the same meaning in all cases, and no mention being made of headlands, there appears no doubt that the Washington, in fishing ten miles from the shore, violated no stipulations of the treaty.

It was urged on behalf of the British Government, that by coasts, bays, &c., is understood an imaginary line, drawn along the coast from headland to headland, and that the jurisdiction of Her Majesty extends three marine miles outside of this line; thus closing all the bays on the coast or shore, and that great body of water called the Bay of Fundy, against Americans and others, making the latter a British bay. This doctrine of headlands is new, and has received a proper limit in the convention between France and Great Britain of 24 August, 1839, in which "it is agreed that the distance of three miles fixed as the general limit for the exclusive right of fishery upon the coast of the two countries shall, with respect to bays, the mouths of which do not exceed ten miles in width, be measured from a straight line drawn from headland to headland."

The Bay of Fundy is from 65 to 75 miles wide, and 130 to 140 miles long; it has several bays on its coast; thus the word bay, as applied to this great body of water, has the same meaning as that applied to the Bay of Biscay, the Bay of Bengal, over which no nation can have the right to assume sovereignty. One of the headlands of the Bay of Fundy is in the United States, and ships bound to Pessamaquoddy must sail through a large space of it. The islands of Grand Menan (British) and Little Menan (American) are situated nearly on a line from headland to headland. These islands, as represented in all geographical maps, are situated in the Atlantic Ocean. The conclusion is, therefore, in my mind irresistible, that the Bay of Fundy is not a British bay, nor a bay within the meaning of the word, as used in the treaties of 1783 and 1818. (*Report of Decisions of Commission*, page 181.)

- 1852, July 18. Mr. Richard Rush, one of the negotiators of the treaty of 1818, wrote to the Secretary of State, (referring to that instrument:) "In signing it we believe that we retained the right of fishing in the sea, whether called a bay, gulf, or by whatever term designated, that washed any part of the coast of the British North American provinces, with the simple exception that we did not come *within a marine league* of the shore. \* \* \* \* \* We inserted the clause of renunciation. The British plenipotentiaries did not desire it."
- 1854, June 5. The conclusion of the reciprocity treaty rendered the reassertion of the disputed claim by the Nova Scotian secretary of no importance, and disposed of all the other questions for the time being. (10 *Stat. at Large*, page 1089.)
- 1865, Mar. 17. Notice was given to abrogate the reciprocity treaty, the abrogation to take effect in one year from the notice.
1866. The Canadian government then resorted to the system of licensing American fishermen to fish in the in-shore fisheries. The number of licenses taken out the first year is reported to have been 354. (*Review of President's message*, page 23.) The fee is stated to have been fifty cents per ton. (*Manuscript review of the review*, page 27.)
1867. The license fee the next year was one dollar per ton. (*Manuscript review, &c.*, page 27.) The number of licenses was 281. (*Review, &c.*, page 23.)
- 1868-'69. The license fee was again doubled, viz, to two dollars per ton, (*Ms. review, &c.*, page 27;) only fifty-six licenses were taken out in 1868, and in the following year (1869) only twenty-five licenses were taken out. (*Review of President's message*, page 23.)
- 1868, May 22.  
1870, May 12. The Dominion "act respecting fishing by foreign vessels," passed in 1868, and the third section, amended in 1870, contains, among other provisions, the following: Section 1, authorizing the granting of licenses. Section 2, authorizing officers to board ships, vessels, or boats within any harbor of Canada, or hovering within three marine miles of the coasts, &c., and to stay on board. Section 3, as amended, provides that any one of such officers, &c., may bring any ship, &c., hovering, &c., into port and search her cargo; and may also examine the master on oath touching the cargo and voyage; and that if true answers are not given the master shall forfeit \$400, and that if the ships, &c., be foreign or not navigated according to the laws of the United Kingdom or Canada, and shall 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, &c., not included in the limits named in the convention of 1818, the ship, &c., with its tackle, &c., shall be forfeited. Section 4 provides that every person opposing an officer shall forfeit \$800. Section 10 provides that in case of seizure *the burden of proving the illegality shall be upon the owner or claimant.* Section 12 requires heavy security to be given before a seizure can be contested. Section 14 limits a right of action for an illegal seizure to three months.
- This statute contains in an exaggerated form the worst features of the Nova Scotia statute of 1836.

Mr. Forsyth, in his instructions to Mr. Stevnsen, already alluded to, said that that statute was a "violation of well-established principles of the common law of England, and of the principles of all just powers and of all civilized nations, and seemed to be expressly designed to enable Her Majesty's authorities, with perfect impunity, to seize and confiscate American vessels, and to embezzle, almost indiscriminately, the property of our citizens employed in the fisheries on the coasts of the British possessions." Mr. Everett stigmatized it as "possessing none of the qualities of the law of civilized states but its forms." And it was styled by a Senator of that time as "evidently designed to legalize marauding upon an industrious, enterprising class of men, who have no means to contend with such sharp and unwarrantable weapons of warfare." (*Sabine's Fisheries*, page 478.)

Mr. Thornton officially communicated to Mr. Fish the intention of the Canadian government to issue no more licenses to American fishermen. 1870, April 29.

Mr. Thornton communicated officially to the Department the instructions issued to the commander of the British naval forces, by which it would appear that, notwithstanding the decision of the umpire in 1853, Her Majesty's government in 1866 were "clearly of the opinion that by the convention of 1818 the United States have renounced the right of fishing not only within three miles of the colonial shores, but within three miles of a line drawn across the mouth of any British bay or creek;" but that they are not disposed, for the present, to enforce what they regard as their rights." (*Foreign Relations*, 1870, page 419.) June 3.

The whole correspondence in the book last cited, from page 407 to page 434, bears directly upon the issues now raised.

Mr. Thornton informed Mr. Fish that he had "received instructions from Earl Granville to explain to Mr. Fish that the instructions respecting the limits within which the prohibition of fishing is to be enforced against United States fishermen are not to be considered as constituting an arrangement between the governments of the United States and of Great Britain by which Canadian rights are waived, or the United States fishermen invested with any privilege." July 21.

#### 7. SUMMARY OF THE CONCLUSIONS ESTABLISHED BY THE FOREGOING REVIEW.

I. That the acquisition of the right to American fishermen to fish on the in-shore fisheries, from which they are now excluded, is more important as removing danger of collision than as of great intrinsic value. Its money value is probably overestimated by the Canadians.

II. That the British headland doctrine has no foundation in the treaty, has been decided against Great Britain in a cause where it was the only issue, and is now insisted upon theoretically rather than practically.

III. That the right now asserted to exclude American fishermen from the open ports of the Dominion; to prevent

them from purchasing bait, supplies, ice, &c.; to prevent them from transshipping their fish in bond, under color of the provisions of the convention of 1818, is an assumption and a construction of that instrument which was never acquiesced in by the United States; and is carrying out in practice provisions which were proposed to the United States commissioners by the British commissioners, in 1818, and were rejected by the former.

IV. That the mackerel fishery, out of which the trouble mostly comes, is a matter that has come into existence since the negotiation of the treaty, and it is a subject for consideration whether the terms of the convention are fairly applicable to it.

#### 8. REMEDIES.

It is suggested that this class of questions may be adjusted, either,

I. By agreeing upon the terms upon which the whole of the reserved fishing grounds may be thrown open to American fishermen, which might be accompanied with a repeal of the obnoxious laws, and the abrogation of the disputed reservation as to ports, harbors, &c., &c.; or, failing that,

II. By agreeing upon the construction of the disputed renunciation; upon the principles upon which a line should be run by a joint commission to exhibit the territory from which the American fishermen are to be excluded; and by repealing the obnoxious laws, and agreeing upon the measures to be taken for enforcing the colonial rights, the penalties to be inflicted for a forfeiture of the same, and a mixed tribunal to enforce the same. It may also be well to consider whether it should be further agreed that the fish taken in the waters open to both nations shall be admitted free of duty into the United States and the British North American Colonies.

In addition to the authorities hereinbefore cited, there is in the archives of the Department of State a copious and well-arranged memoir upon the subject of the fisheries, by Richard D. Cutts, esq., of the Coast Survey, which will be placed at the disposal of the commissioners.

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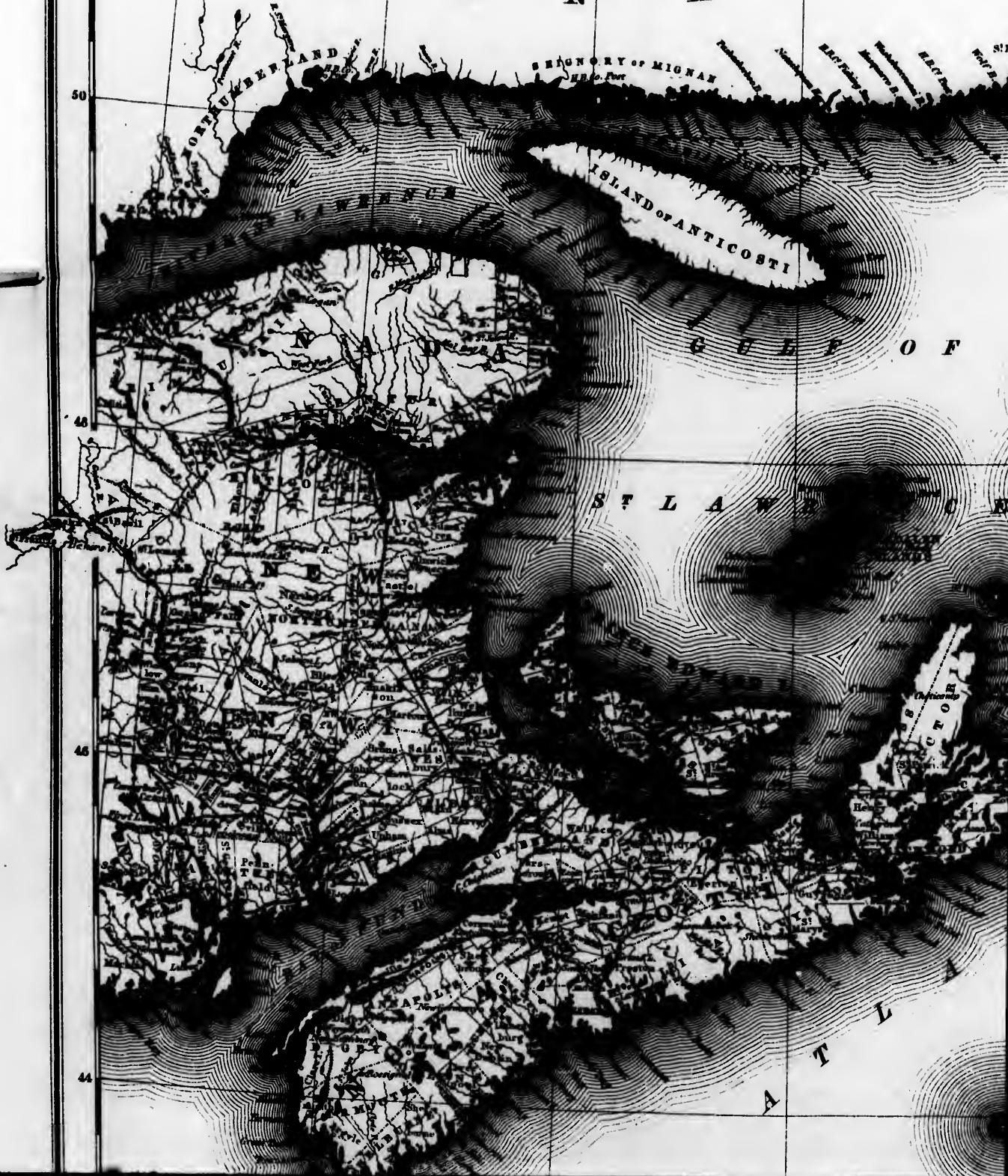
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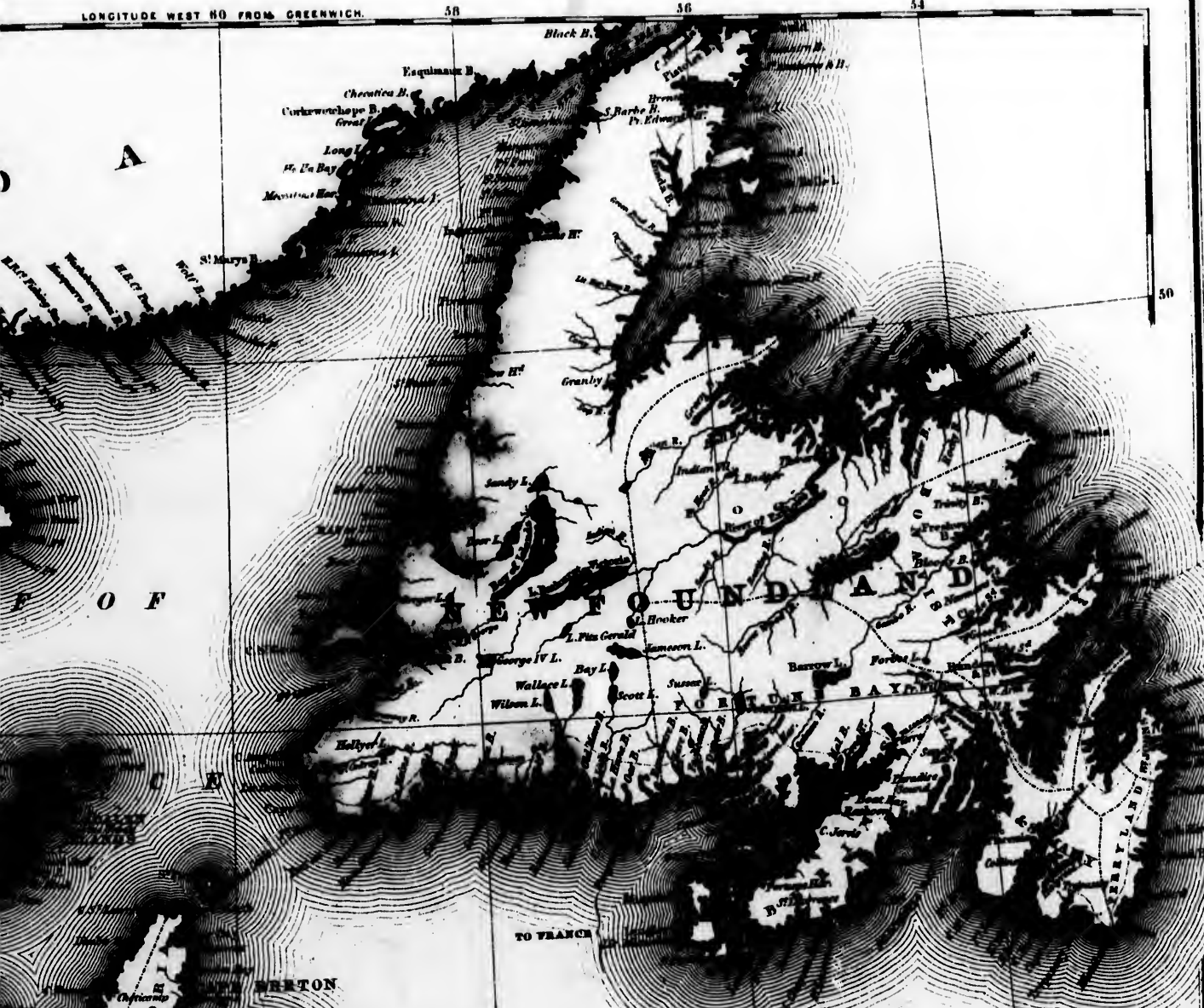
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A T L A N T I C





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*PRINCE EDWARD I.*

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The American fishermen have the right to take fish of every kind on the coasts colored thus

They have also the right to dry and cure fish in the unsettled bays, harbors, and creeks of the coast colored thus

It is claimed that the French fishermen have also the right to take fish on the coast colored thus

The United Dominions in a pose of shelter may be necessary



The United States have renounced the liberty to take, dry, or cure fish within three marine miles of the coasts, bays, creeks, or harbors of the British Dominions in America not included in the above limits; but the privilege is reserved to American fishermen to enter such bays or harbors for the purpose of shelter and repairing damages there, of purchasing wood, and of obtaining water, and for no other purpose whatever, under such restrictions as may be necessary to prevent them from taking, drying, or curing fish therein, or in any other manner whatever abusing the privileges reserved to them.



