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CONFIDENTIAL.

MEMORANDUM by Mr. Rothery on the
British North American Fisheries
Question.

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ROUGH DRAFT
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*Foreign Office,
July 1875.*

CONFIDENTIAL.

Rough Draft.

(Not completed.)

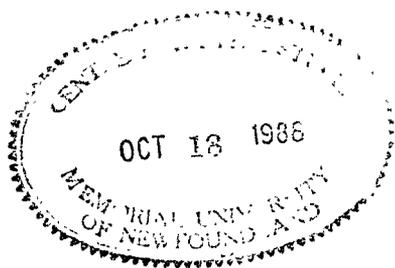
*Memorandum by Mr. Rothery on the British
North American Fisheries Question.*

IN order to understand clearly the points which will have to be considered in connection with the Fisheries Question, it will be necessary to give a brief history of the negotiations which have from time to time passed between this country and the United States of America on the subject.

The great value of the fisheries, not only on the banks of Newfoundland and in the Gulf of St. Lawrence, but also on the coasts of Nova Scotia, New Brunswick, and the other countries now constituting the dominions of this country in North America, were well known from a very early period, and they were annually visited by large fleets of fishing vessels from all the principal maritime States of Europe.

The Colonists of course, so long as they remained subjects of this country, and until the American War of Independence broke out, enjoyed as British subjects the right not only of fishing in British waters, but also of landing on British territory for the purpose of curing and drying their fish, a liberty, be it observed, without which the right of only catching fish is comparatively of little value. When, however, the War of Independence broke out, those who were in revolt against the British Crown, could of course no longer exercise their right within British jurisdiction, and on the return of peace it became a question how far and to what extent those rights should be renewed to them.

The question was very fully discussed in the negotiations which preceded the Treaty of the 3rd of September, 1783. Great Britain did not deny the right of the American citizens to fish on



the great banks of Newfoundland or in the Gulf of St. Lawrence, or elsewhere in the open sea ; but she denied their right to fish in British waters, or to land on British territory for the purpose of drying or curing their fish. But what she claimed was, that United States' fishermen should not fish within three leagues of "all the coast belonging to Great Britain, as well as shores of the islands situate in the Gulf of St. Lawrence," and within fifteen leagues of "the coast of the Island of Cape Breton."

To this, however, the Americans refused to consent, Mr. Adams declaring that "he never would put his hand to any Treaty if the restraint regarding the three leagues and the fifteen leagues were not dispensed with, as well as that of denying his countrymen the privilege of drying fish on the unsettled parts of Nova Scotia.

Mr. Oswald ;
November 30, 1782.

After a great deal of discussion, a compromise was arrived at, and it was agreed that United States' fishermen should be at liberty to fish on such part of the coast of Newfoundland as British fishermen could use, but not to dry or cure their fish on that island ; and they were also to be allowed to fish on the coasts, bays, and creeks of other British possessions in North America, and to dry and cure their fish in any of the unsettled bays, harbours, and creeks of Nova Scotia, Magdalen Islands, and Labrador, so long as they should remain unsettled ; but as soon as any of them became settled, the United States' fishermen were not to be allowed to use them without the previous permission of the inhabitants and proprietors of the ground.

The IIIrd Article of the Treaty of Paris of the 3rd of September, 1783, is in these terms :—

"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 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 Her 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, harbours, 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."

These circumstances probably contributed to induce the British Government to grant these concessions :—

1. The very sparse population at that time to be found in those countries in which the United States' fishermen were to be allowed to land for the purpose of drying their fish, so that there would be little chance of their interfering with the rights of British subjects.

2. The apparently inexhaustible character of the fisheries, so that a few fishermen more or less would, it was thought, make little difference in the number of fish, and last, though not least, the disgust which the country felt at the continuance of the war, and the very strong desire that was felt to conclude a peace.

It should, however, be observed that the rights conceded to the United States' fishermen under the Treaty were by no means so great as those which as British subjects they had enjoyed previous to the War of Independence, for they were not to be allowed to land to dry and cure their fish on any part of Newfoundland, and only in those parts of Nova Scotia, the Magdalen Islands, and Labrador where no British settlement had been or might be formed, expressly excluding Cape Breton, New Brunswick, and other places.

So matters stood until the War of 1812 broke out, when of necessity the right of American citizens to fish in British waters, and to cure and dry their fish on British territory, terminated, if not altogether, at all events during the continuance of the war. But in the negotiations which preceded the Peace of 1814, this question was revived, and the alleged right of American fishermen to fish and cure fish within British jurisdiction underwent a very full discussion between the British and American Commissioners who were assembled at Ghent for the

purpose of drawing up the Articles of Peace. At that time, however, the circumstances had very considerably changed since the Treaty of 1783 had been entered into. In the first place the British North American Possessions had become more thickly peopled, there were fewer *unsettled* bays, harbours, and creeks in Nova Scotia than there had been, and consequently there was a greater risk of collision between British and American interests, and accordingly the Colonists and the English merchants engaged in the fisheries petitioned strongly against a renewal of the privileges to the American fishermen. Moreover, Great Britain had just emerged successfully from a great European war, and was therefore in a position to hold firmer language than she was disposed to do in 1783.

It was under these circumstances that the negotiations for peace were entered into. At their first meeting, which took place on the 8th of August, 1814, the British Commissioners stated "that the British Government did not intend to grant to the United States gratuitously the privileges formerly granted by Treaty to them of fishing within the limits of the British sovereignty, and of using the shores of the British territories for purposes connected with the fisheries. To which, on the following day, the United States' Commissioners replied that they were not provided by their Government with instructions on the point. The question appears to have been subsequently very fully discussed, and at the Conference of the 1st of December, 1814, the United States' Commissioners proposed that, in return for a continuance of the liberty to take, dry, and cure fish in places within the exclusive jurisdiction of Great Britain, as secured by the Treaty of 1783, British subjects should have access to and free navigation of the Mississippi. This offer was, however, refused by the British Commissioners, who stated, in the Conference of the 10th of December, that they were prepared to enter into negotiations for ceding to the United States' citizens the liberty claimed "in consideration of a fair equivalent." This was however refused, and it was finally agreed to omit from the Treaty all mention of the fisheries.

It should here be stated that the ground taken by the British Commissioners was that the Treaty of

1783 had been terminated by the war, and that without a renewal of the rights conferred by that Treaty, to fish and cure and dry fish within British jurisdiction, the rights of the United States' citizens had lapsed.

The Americans, on the other hand, contended that, from the peculiar character of the Treaty of 1783, it was not abrogated by war; that that Treaty had recognized the independence of the United States, which could not be forfeited by the war; that, moreover, the privilege in question was one that had always been enjoyed by the citizens of the United States from time immemorial, and that it was therefore of the nature of a prescriptive right. The reply of the British Commissioners was, in effect, that it was true that the independence of the United States had been recognized for the first time by Great Britain in the Treaty of 1783, but that the independence in no way rested upon the Treaty, but upon the assertion and maintenance of their independence by the States; and that the claim of immemorial and prescriptive right were quite untenable, inasmuch as the inhabitants of the United States had, until quite recently, been British subjects, and that the rights which they possessed merely as British subjects, would not necessarily be continued to them after they had become citizens of an independent State.

Both parties, however, appeared to be of opinion that no new Article was needed; the Americans stating that their rights to the fisheries as stipulated by the Treaty of 1783 was intact, and that they could not subscribe any stipulation abandoning, or implying the abandonment of that right; whilst the British Commissioners held that the Treaty of 1783 was abrogated, and that Great Britain did not intend to renew the privileges of fishing within the limits of British sovereignty, and of using the British territories for purposes connected with the fisheries without an equivalent.

Accordingly, the Treaty was signed at Ghent on the 24th of December, 1814, but without any reference in it to the Fishery Question.

Matters being in this position, no sooner was the British Government released from all fear of a great European war by the defeat of Napoleon at the battle of Waterloo, than orders were sent out to the

Governors of the British North American Colonies not to interfere with citizens of the United States engaged in fishing on the Newfoundland Banks, in the Gulf of St. Lawrence, or on the high seas, but to prevent them from using the British territory for purposes connected with the fishery, and to exclude their fishing vessels from the bays, harbours, rivers, creeks, and of all Her Majesty's possessions; orders were also given to the British naval officers on the Halifax station to resist any encroachments on the part of the American fishermen on the rights of Great Britain.

These measures caused the United States' Government to be anxious to come to some understanding as to the fisheries, and accordingly negotiations were entered into with that view. Pending the negotiations orders were issued to the British naval officers to suspend the operation of the measures which had been contemplated. On the refusal, however, of the United States' Government to accept the terms proposed, the British Admiral on the station was directed to carry out the orders which had been suspended, and the result was the capture of several American fishing vessels for encroaching within the territorial limits of Great Britain. Therefore the President of the United States, in 1818, proposed to the Prince Regent that negotiations should be opened for the purpose of settling the Fishery Question in an amicable way. Commissioners were accordingly appointed by both parties to meet in London, and the result was the signing of the Treaty of the 20th of October, 1818, the 1st Article of which is in these terms:—

“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, harbours, 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 Quirpon Islands, on the shores of the Magdalen Islands, and also on the

coasts, bays, harbours, and creeks from Mount Joly, 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 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, harbours, 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 harbours 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 harbours for the purpose of shelter, and of repairing damages therein, of purchasing wood, and of obtaining water, and for no other purpose whatever. But they shall be under such restrictions as 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 effect of this Treaty was to give to the United States' fishermen liberty to fish on the coasts of Newfoundland and Labrador, within certain limits therein mentioned, and on the shores of the Magdalen Islands; and to dry and cure their fish on any of the *unsettled* bays, harbours, and creeks of the southern part of the coast of Newfoundland before described and the coast of Labrador, but only so long as they should remain unsettled. And the Americans renounced any liberty which they had heretofore enjoyed of taking, drying, or curing fish "on or within three marine miles of any coasts, bays, creeks, or harbours of Her Britannic Majesty's dominions not included within the above-mentioned limits." But the United States' fishermen were to be at liberty to

enter such bays or harbours "for the purpose of shelter and of repairing damages therein, of purchasing wood, and of obtaining water, and for no other purpose whatever."

Two other points, however, deserve to be noted in connection with the making of this Treaty, as showing the object which the two Contracting Powers had in view. In the first place, the American Commissioners were very urgent that the words "for ever" should be introduced into the Article, with a view to secure these rights to United States' fishermen in perpetuity, independently of any subsequent war; these words were accordingly inserted. It is, however, hardly necessary to observe, that any such provision is quite useless, inasmuch as the other State might always make it a condition to assenting to a peace that the provision in question should be revoked.

The other fact to be noted is, that the American Commissioners proposed that United States' fishermen should be allowed to enter bays and harbours, not alone for the purpose of shelter, of repairing damages, and of obtaining wood and water, but also to enable them to procure "bait;" but this was strenuously opposed by the British Commissioners, and accordingly the word "bait" was struck out of the Article.

The Treaty, it should be observed, was received with much dissatisfaction by the Colonists, and by the English merchants interested in the fisheries.

And here it may be proper to mention a circumstance which throws some light on the negotiations which preceded the Treaty of Ghent. It will be remembered that, although some proposals were made for continuing to United States' citizens the rights, which they had enjoyed before the war, of fishing and of curing and drying fish at certain places within British jurisdiction, it was found impossible to come to any agreement on the point, and accordingly no mention of the fisheries was made in the Treaty. The contention of the British Commissioners was that the war had put an end to the Treaty of 1783, and that, unless revived, the privileges secured by that Treaty to the United States' fishermen to fish and cure fish within British jurisdiction were gone. The Americans, on the other

hand, contended that the Treaty of 1783 had not been abrogated by the War of 1812, and that consequently the rights of the United States' fishermen under that Treaty remained whole and intact, and that, independent of that Treaty, the rights to the fisheries were inalienable, and in the nature of a prescriptive right.

Now it appears, from the proceedings of the House of Representatives in America, that a resolution was moved by Mr. Floyd, in 1822, and agreed to, that the President of the United States should be requested to cause to be laid "before the House all the correspondence which led to the Treaty of Ghent, together with the Protocol, which had not been made public, and which, in his opinion, it may not be improper to disclose." In accordance with that request a number of documents were produced, from which it appeared that the American Commissioners had not been unanimous in offering the free navigation of the Mississippi in return for the right to the fisheries. It appeared that one at least of the Commissioners, Mr. Jonathan Russell, had not assented to the proposal. On this becoming known, Mr. Floyd, on the 18th of April, 1822, moved a further resolution: "That the President of the United States be requested to cause to be communicated to this house, if not injurious to the public good, any letter or communication which may have been received from Jonathan Russell, Esquire, one of the Ministers of the United States, who concluded the Treaty of Ghent, after the signature of that Treaty, and which was written in conformity to the indications contained in said Minister's letter, dated at Ghent, December 25, 1814." This resolution having been agreed to, Mr. Russell's letter was laid before the House of Representatives, together with explanatory remarks thereon by Mr. John Quincy Adams, another of the American Commissioners at the Treaty of Ghent, but who was at that time Secretary of State. Mr. Russell's letter, which bears date the 11th of February, 1822, is a very remarkable document; it was a private communication to the then Secretary of State, and explains very fully the grounds on which he differed from his colleagues. In this letter Mr. Russell exposes, in the most trenchant and conclusive terms, the utter fallacy of the arguments

advanced by the United States' Commissioners in opposition to those of the British Commissioners in regard to the Fishery Question.

He stated in that letter that he "could not believe that the independence of the United States was derived from the Treaty of 1783," or "that the recognition of that independence by Great Britain gave to that Treaty any peculiar character:" he considered "that the independence of the United States rests upon those fundamental principles set forth and acted on by the American Congress in the Declaration of July 1776, and not on any British grant in the Treaty of 1783." In his opinion, "the Treaty of 1783 was merely a Treaty of Peace, and therefore subject to the same rules of construction as all other compacts of this nature," which require "after a war the declared assent of the parties for their revival." He stated that "had the recognition of their independence by Great Britain given to the Treaty of 1783 any peculiar character, which it did not, still that character could have properly extended to those provisions only which affected that independence;" and that "the liberty to take and cure fish within the exclusive jurisdiction of Great Britain was certainly not necessary to perfect the jurisdiction of the United States." He added, that the distinction between the special liberty to fish and cure fish within British jurisdiction and the general right to take fish on the high seas "appears to have been well understood by the American Ministers who negotiated the Treaty of 1783, and to have been clearly marked by the very import of the word which they employed." He then proceeded to show that the attempt to derive their title from prescription and from immemorial usage was equally untenable; he stated that "the immemorial enjoyment of a privilege within British jurisdiction, by British subjects, the inhabitants of British Colonies, could not well be considered as evidence of a title to that privilege claimed by the citizens of an independent Republic, residing within the exclusive jurisdiction of that Republic. The people of the United States, as such, could have claimed no special privilege with the dominions of any foreign Power from immemorial usage in 1873, when the longest duration of their own existence in that quality was little more,

at the utmost, than the brief period of seven years, which is surely not beyond the memory of man." He showed also the inconsistency of claiming at the same time under the Treaty and under prescription, and he said "if we claim under the Treaty we must renounce prescription, and if we claim from prescription we can derive no aid from the Treaty." And he thus sums up this part of the case: "I have, from this view of the subject, been led to conclude that the Treaty of 1783 in relation to the fishing liberty is abrogated by the war; that this liberty is totally destitute of support from prescription, and that we are left without any title to it whatever."

The publication of this letter was thought to be so damaging to the reputation of the other American Commissioners that Mr. Adams, one of their number, who had been elected Secretary of State, published in 1822 a work, which I have found in the Foreign Office library, entitled "The Duplicate Letters, The Fisheries, and the Mississippi. Documents relating to Transactions at the Negotiation of Ghent, collected and published by John Quincy Adams, one of the Commissioners of the United States at that Negotiation," and in which Mr. Adams labours, but I cannot say with much success, to defend the character of himself and of the Commissioners who acted with him, and to maintain that the position taken up by the American Commissioners on the Fisheries Question was sound and well-founded: and this too after that position had been expressly abandoned by the subsequent Treaty of 1818. I have been induced to refer to this correspondence at some length, as I find a tendency on the part of the American Government to revert to the doctrine of the indestructible character of the Treaty of 1783, and the right by prescription, in their discussions with the British Government at a much later period on the subject of the fisheries.

To return now to the general course of events. As, has been already stated, the Convention of 1818 gave great dissatisfaction to the Colonists. It was said that the United States' fishermen, on the pretext of seeking shelter, or of repairing damages, or of procuring wood and water, were in the constant habit of resorting to the bays, creeks, and harbours of the British possessions for the purpose of carrying on their fishing operations to the great injury of the

British fishermen. It seems that prior to 1824 no great efforts were employed by our cruizers in the Bay of Fundy to restrain the encroachments of the United States' fishermen, and that the interests of the British fishermen had suffered in consequence. In that year, however, several American vessels were captured by our cruizers for fishing within British jurisdiction, and one of these vessels having been subsequently rescued by an armed body of men from the shore, strong representations on the subject were made to the Government at Washington.

Matters, however, continued in this unsatisfactory state, our cruizers generally capturing United States' fishing vessels for encroaching on British jurisdiction until the year 1836, when Mr. Bankhead, the British Chargé d'Affaires at Washington addressed a letter to the Secretary of State, calling his attention to the repeated acts of irregularity committed by the fishermen from the United States as detailed in a letter from the Sub-Collector of Customs at Gaspé. Accordingly, a notice was issued by the United States' Government directing the Collectors of Customs to inform the masters and owners of vessels engaged in the fisheries that they are "to observe strictly the limits assigned for taking, drying, and curing fish by the fishermen of the United States," under the 1st Article of the Convention of the 20th of October, 1818, a copy of which was annexed to the Circular notice.

Mr. Bankhead to Mr. Forsyth ;
January 6, 1836.

Matters, however, still continued in a very unsatisfactory state, and an address of the Legislative Council and House of Assembly of Nova Scotia having been forwarded to Her Majesty complaining of the habitual encroachments of American citizens on British fishery ground, in violation of the existing Treaties between the two countries, Her Majesty's Government directed that some small vessels of war should be stationed on the coast of Nova Scotia for the purpose of protecting the fisheries ; and Lord Palmerston, in instructing Mr. Fox, our Minister at Washington, to give notice to the Government of the United States of these precautionary measures, and to invite that Government to take the necessary steps to warn American citizens of the illegality of their proceedings, directed him to say that "the chief matter of complaint is, that American citizens, in violation of the Convention of 1818, enter the

gulfs, bays, harbours, creeks, narrow seas, and waters of the Colonies, and that they land on the shores of Prince Edward and the Magdalen Islands, and by force, aided by superior numbers, drive British fishermen from banks and fishing-grounds solely and exclusively British."

He was also directed to state that amongst the points which Her Majesty's Government would have to enforce were—

"1. That three marine miles within which the citizens of the United States are by the Convention prohibited from fishing, must be calculated from the headlands of Nova Scotia, and not, as the Americans contend, from a line curving and corresponding with the coast.

"2. That the fishermen of the United States are to be restrained from setting their nets within the bays or harbours of Nova Scotia and Newfoundland.

"3. That they are to be restricted from the use of jigs upon the coasts of Nova Scotia and Newfoundland.

"4. That they are to be restrained from coming within the bays or harbours of Nova Scotia or Newfoundland, the Magdalen Islands not accepted, for any other purposes than to obtain shelter or to repair damage, or to purchase wood, or to procure water, agreeably to the provisions of the Ist Article of the Convention."

It does not appear that any result followed upon these remonstrances being communicated to the Government of the United States; but in the year 1840, more stringent measures having been adopted by the Authorities of Nova Scotia against the American fishermen, it became the turn of the United States' Government to complain. Accordingly, Mr. Stephenson, the American Minister, was instructed to address the British Government on the subject, and in a letter to Lord Palmerston, dated the 27th of March, 1841, after referring to the Ist Article of the Treaty of 1818, which defined the rights accorded to American fishermen in British territory, he observed that it appeared "from information recently received by the Government of the United States, that the Provincial Authorities assume a right to exclude the vessels of the United States from all their bays (even including those of Fundy and Chaleurs), and likewise to prohibit their

approach within three miles of a line drawn from headland to headland, instead of from the indents of the shores of the Provinces." He then proceeded to say: "Now, the fishermen of the United States believe (and it would seem that they are right in their opinion, if uniform practice is any evidence of correct construction) that they can with propriety take fish anywhere on the coasts of the British Provinces, if not nearer than three marine miles to land, and have the right to resort to their ports for shelter, wood, and water; nor has this claim, it is believed, ever been seriously disputed, based as it is on the plain and obvious terms of the Convention." Mr. Stephenson also complained that the Gut of Canso, a narrow strait separating Nova Scotia from the Island of Cape Breton, had been closed to American fishing-vessels.

A letter was also soon afterwards received from Lord Falkland, the Lieutenant-Governor of Nova Scotia, forwarding copy of a Report of a Committee of the House of Assembly on the fisheries of Nova Scotia, and in which it was said, "the people of this Colony have not been wanting in efforts to repress the incursions of the natives of the United States upon their fishing grounds, but have fitted out with good effect some small armed vessels adapted to follow the trespassers into shoal water, or chase them on the seas (and the expediency of this measure has been corroborated by the testimony of Captain Milne, R.N., in his Report on the fisheries of Newfoundland), but finding their own means inadequate to the suppression of this evil, the Nova Scotians earnestly entreat the further intervention protection of the mother-country," and Lord Falkland requested, in accordance with the prayer of the House, that the naval force employed in protecting the fisheries might be augmented.

Lord Falkland also, to whom Mr. Stephenson's letter of the 27th of March, 1841, had been referred, in a despatch dated the 8th of May following, to Lord J. Russell, observed, that the language used in the Convention of 1818, was "three marine miles of any of the coasts, bays, creeks, or harbours of Her Britannic Majesty's dominion in America," and that it was "considered that three miles from a bay, creek, or harbour must mean three miles from any part of it, and, consequently, from its entrance or

mouth, or in other words from a line drawn from its projecting headlands.”

Lord Falkland also, in the same letter, observed that, the Strait or Gut of Canso was very narrow, not exceeding in some parts one mile in breadth, and that its navigation was not necessary for communication with the space beyond, which might be reached by going round the Island of Cape Breton.

The whole of these papers appear to have been laid before the Law Officers, Sir John Dodson, and Sir J. Wilde, who, in an opinion dated the 30th of August, 1841, advised—

(1.) That the Treaty of 1783 had been annulled by the War of 1812, and that the fishery rights of the United States citizens were regulated by the Treaty of 1818.

(2.) That under that Treaty, American citizens were prohibited from fishing within three miles of the coasts, bays, creeks, and harbours of the British possessions, except in certain defined places; and that the prescribed distance of three miles must be measured from the extreme points or headlands of the bays, and, not from the interior of the bays or indents of the coast.

(3.) That no foreign State had any right to use or navigate the Gut of Canso.

Notwithstanding this opinion, it does not appear that any communication was made to the American Government on the subject, for Mr. Everett, the American Minister, in a letter dated the 10th of August, 1843, to which I shall hereafter have occasion to refer more at length, observes that, beyond the mere acknowledgment of Mr. Stephenson's letter of the 27th of March, 1841, he did not find in the files of the Legation any further communication from Lord Palmerston on the subject, and that he believed that the letter still remained unanswered. Nor, indeed, does it appear that any communication was made to the Colonial authorities on the subject, for, in a letter from Lord Falkland to Lord Stanley, dated the 11th of July, 1842, his Lordship calls attention to his previous letter of the 28th of April, 1841; and, in reply, Lord Stanley, in a letter dated November 28, 1842, forwards to him the Law Officers' opinion, and, at the same time, observes that the Government had, “on full consideration, come to the conclusion, as

regards the fisheries of Nova Scotia, that the precautions taken by the Provincial Legislature appear adequate to the purpose, and that, being now practically acquiesced in by the Americans, no further measures are required; while, with respect to the proposed establishment of a general code of regulations to apply to all the North American provinces, the very satisfactory reports lately received from Vice-Admiral Sir C. Adam (of which copies are inclosed for your information), regarding the fisheries in the Bay of Fundy and Gulf of St. Lawrence, appear to us to render it inexpedient to moot the question."

Thus matters stood until the following year 1843, when the question of the fisheries became again the subject of serious consideration, owing to the seizure of two vessels, the "Washington" and the "Argus."

The "Washington" it seems, had been seized in the Bay of Fundy, according to the owner at a distance of ten miles from the coast of Nova Scotia, but admittedly beyond the three miles limit. The captors, however, maintained that the capture was legal, contending, on the authority of the opinion of the Law Officers above cited, that the whole of the Bay of Fundy was forbidden ground; and Lord Falkland stated that the capture had been made for the purpose of obtaining a judicial decision as to the proper construction of the Treaty.

On the papers being referred to the Law Officers (Sir John Adam, Sir Frederick Pollock, and Sir William Follett), they gave it as their opinion "that the Bay of Fundy, meaning thereby the waters lying between the British Provinces of Nova Scotia and New Brunswick, is to be considered and treated as a bay in the sense in which the term bay is used in the Convention of the 20th of September, 1818." And, accordingly, Lord Aberdeen, in a letter to Mr. Everett, the American Minister, dated of April, 1844, stated that it was provided by the Treaty that American fishermen should not fish within three marine miles of any bay in Nova Scotia, &c.; that if it was intended simply to stipulate that they should not take fish within three miles of the coast as contended for by Mr. Everett, there would be no occasion for using the word "bay" at all, a construction which his Lordship trusted would be admitted by Mr. Everett.

Mr. Everett to Lord Aberdeen;
May 25, 1844.

In replying to this letter, Mr. Everett began by saying that it was necessary, for a clear understanding of the case, to go back to the Treaty of 1783. He states that, by that Treaty, the privileges reserved to American fishermen were those of fishing in *all* the waters, and of drying them on *all* the unsettled portions of the coast of those possessions; and that all that the Treaty of 1818 did, was to restrict the exercise of this right "within three marine miles of any of the coasts, bays, creeks, or harbours of Her Britannic Majesty's dominions in America." He states that the existing doubt as "to the construction of this provision arises from the fact that a broad arm of the sea runs up to the north-east, between the Provinces of New Brunswick and Nova Scotia." As to the distance of three miles mentioned in the Treaty, Mr. Everett thus expresses himself. He says:—

"In estimating this distance, the Undersigned admits it to be the intent of the Treaty, as it is in itself reasonable, to have regard to the general line of the coast, and to consider its bays, creeks, and harbours (that is, the indentations usually so accounted) as included within that line. But the Undersigned cannot admit it to be reasonable, instead of thus following the general direction of the coast, to draw a line from the south-westernmost point of Nova Scotia to the termination of the north-eastern boundary between the United States and New Brunswick, and to consider the arm of the sea which will thus be cut off, and which cannot on that line be less than sixty miles wide, as one of the bays on the coast from which American vessels are excluded. By this interpretation, fishermen of the United States would be shut out from waters distant, not three, but thirty miles from any part of the Colonial coast. The Undersigned cannot perceive that any assignable object of the restriction imposed by the Convention of 1818 on the fishing privilege accorded to the citizens of the United States by the Treaty of 1783 requires such a latitude of construction.

"It is obvious that, by the terms of the Treaty, the furthest distance to which fishing-vessels of the United States are obliged to hold themselves from the Colonial coasts and bays is three miles. But owing to the peculiar configuration of these coasts,

there is a succession of bays indenting the shores both of New Brunswick and Nova Scotia within the Bay of Fundy. The vessels of the United States have a general right to approach all the bays in Her Majesty's Colonial dominions within any distance not less than three miles—a privilege from the enjoyment of which, however, they will be wholly excluded in this part of the coast if the broad arm of the sea which flows up between New Brunswick and Nova Scotia is itself to be considered one of the forbidden bays."

This letter was referred to the Lieutenant-Governor of Nova Scotia, and, in a letter from that officer to Lord Stanley, dated September 17, 1844, he thus expresses himself:—

"In respect to the expediency of relaxing the strict rule which has hitherto been declared applicable to American vessels found fishing within the limits of the Bay of Fundy, I have found it difficult to arrive at a conclusion, because, although some members of the Executive Council believe, with myself, that such a concession—provided it led to no other of a like nature—would not be productive of injury to Nova Scotia, and might in fairness be granted, other members of the Board, among whom is the Attorney-General, entertain a strong opinion to the contrary.

"When, however, I perceive that Mr. Everett, in his note of the 25th of May, 1844, addressed to Lord Aberdeen, admits that (in estimating the distance of three miles from the shore within which American fishermen are not permitted to approach) it is 'the intent of the Treaty, as it is in itself reasonable to have regard to the general line of the coast, and to consider its bays, creeks, and harbours, that is, the indentions so accounted as included within that line,' which I take to be an acquiescence, in the opinion of Messrs. Dodson and Wilde, that the distance within which American fishermen must not approach is three miles from a line drawn from headland to headland, taking the general configuration of the coast, I cannot but conceive that a great portion of what I have contended for (in my despatch No. 75, dated May 8, 1841, addressed to Lord John Russell) on the part of the Province, is conceded; and it is, therefore, my unreserved opinion, provided always that this interpretation of

Mr. Everett's phraseology be correct, that that which is now asked by the Americans may be granted, without evil consequences, if due care be taken that no further pretensions can hereafter be founded on the concession.

"The difficulties to be apprehended in future, if the arguments of the American Minister are yielded to on the present occasion, are embodied in a paper which I inclose, drawn up by the Attorney-General, to which I beg very earnestly that your Lordship and Lord Aberdeen will direct your particular attention."

Accordingly, Lord Aberdeen, in a letter to Mr. Everett, dated the 10th of March, 1868, begins by informing him, "that, after the most deliberate re-consideration of the subject, and with every desire to do full justice to the United States, and to view the claims put forward on behalf of the United States' citizens in the most favourable light, Her Majesty's Government are nevertheless still constrained to deny the right of United States' citizens, under the Treaty of 1818, to fish in that part of the Bay of Fundy which, from its geographical position, may properly be considered as included within the British possessions."

He adds—"Her Majesty's Government must still maintain, and in this view they are fortified by high legal authority, that the Bay of Fundy is rightfully claimed by Great Britain as a bay within the meaning of the Treaty of 1818. And they equally maintain the position which was laid down in the note of the Undersigned, dated the 15th of April last, that, with regard to the other bays on the British American coasts, no United States' fisherman has, under that Convention, the right to fish within three miles of the entrance of such bays, as designated by a line drawn from headland to headland at that entrance.

"But while Her Majesty's Government still feel themselves bound to maintain these positions as a matter of right, they are nevertheless not insensible to the advantages which would accrue to both countries from a relaxation of the exercise of that right; to the United States, as conferring a benefit on their fishing trade; and to Great Britain and the United States conjointly and equally, by the removal of a fertile source of disagreement between them.

"Her Majesty's Government are also anxious at

the same time, that they uphold the just claims of the British Crown; to evince, by every reasonable concession, their desire to act liberally and amicably towards the United States."

And he then proceeds — "The Undersigned has accordingly much pleasure in announcing to Mr. Everett the determination to which Her Majesty's Government have come to relax in favour of the United States' fishermen that right which Great Britain has hitherto exercised, of excluding those fishermen from the British portion of the Bay of Fundy; and 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."

On the receipt of this communication Mr. Everett, on the 25th of the same month, addressed a letter to Lord Aberdeen, in which he says—

"The Undersigned, Envoy Extraordinary and Minister Plenipotentiary of the United States of America, has the honour to acknowledge the receipt of a note of the 10th instant from the Earl of Aberdeen, Her Majesty's Principal Secretary of State for Foreign Affairs, in reply to the communication of the Undersigned of the 15th of May last, on the case of the 'Washington,' and the construction given by the Government of the United States to the Convention of 1818, relative to the right of fishing on the coasts of Nova Scotia and New Brunswick.

"Lord Aberdeen acquaints the Undersigned that, after the most deliberate reconsideration of the subject, and with every desire to do full justice to the United States, and to view the claims put forward on behalf of their citizens in the most favourable light, Her Majesty's Government are, nevertheless, still constrained to deny the right of citizens of the United States under the Treaty of 1818 to fish in that part of the Bay of Fundy which, from its geographical position, may properly be considered as included within the British possessions; and also to maintain that, with regard to the other bays on the British American coasts, no United States' fisherman has, under that Convention, the right to fish

within three miles of the entrance of such bay, as designated by a line drawn from headland to headland at that entrance.

“Lord Aberdeen, however, informed the Undersigned that, although continuing to maintain these positions as a matter of right, Her Majesty’s Government are not insensible to the advantages which might accrue to both countries from a relaxation in its exercise; that they are anxious, while upholding the just claims of the British Crown, to evince by every reasonable concession their desire to act liberally and amicably toward the United States; and that Her Majesty’s Government have accordingly come to the determination ‘to relax in favour of the United States’ fishermen the right which Great Britain has hitherto exercised of excluding those fishermen from the British portion of the Bay of Fundy, and 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.’

“The Undersigned receives with great satisfaction this communication from Lord Aberdeen, which promises the permanent removal of a fruitful cause of disagreement between the two countries, in reference to a valuable portion of the fisheries in question. The Government of the United States, the Undersigned is persuaded, will duly appreciate the friendly motives which have led to the determination on the part of Her Majesty’s Government, announced in Lord Aberdeen’s note, and which he doubts not will have the material effect of acts of liberality between powerful States of producing benefits to both parties, beyond any immediate interest which may be favourably affected.

“While he desires, however, without reserve, to express his sense of the amicable disposition evinced by Her Majesty’s Government on this occasion, in relaxing in favour of the United States the exercise of what, after deliberate reconsideration, fortified by high legal authority, is deemed an unquestioned right of Her Majesty’s Government, the Undersigned would be unfaithful to his duty did he omit to

remark to Lord Aberdeen that no arguments have at any time been adduced to shake the confidence of the Government of the United States in their own construction of the Treaty. While they have ever been prepared to admit that, in the letter of one expression of that instrument, there is some reason for claiming a right to exclude United States' fishermen from the Bay of Fundy—it being difficult to deny to that arm of the sea the name of 'bay,' which long geographical usage has assigned to it—they have ever strenuously maintained that it is only on their own construction of the entire Article that its known design, in reference to the regulation of the fisheries, admits of being carried into effect.

“The Undersigned does not make this observation for the sake of detracting from the liberality evinced by Her Majesty's Government in relaxing from what they regard as their right, but it would be placing his own Government in a false position to accept as mere favour that for which they have so long and strenuously contended as due to them under the Convention.

“It becomes the more necessary to make this observation in consequence of some doubt as to the extent of the proposed relaxation. Lord Aberdeen, after stating that Her Majesty's Government felt themselves constrained to adhere to the right of excluding United States' fishermen from the Bay of Fundy, and also, with regard to other bays on the British-American coasts, to maintain the position that no United States' fisherman has, under that Convention, the right to fish within three miles of the entrance of such bays, as designated by a line drawn from headland to headland at that entrance, adds that, 'while Her Majesty's Government still feel themselves bound to maintain these positions as a matter of right, they are not insensible to the advantages which would accrue to both countries from the relaxation of that right.'

“This form of expression might seem to indicate that the relaxation proposed had reference to both positions; but when Lord Aberdeen proceeds to state more particularly its nature and extent, he confines it to a permission to be granted to “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 and New Brunswick,—which entrance is defined in another part of Lord Aberdeen's note, as being designated by a line drawn from headland to headland."

Lord Aberdeen, however, in acknowledging the receipt of this letter on the 21st of April, 1868, took care to guard himself against the assumption of Mr. Everett that "it may have been the intention of his note of the 10th ultimo to include other bays on the coasts of the British North American Provinces, in the relaxation which he therein notified to Mr. Everett as to be applied henceforward to the Bay of Fundy alone."

In the meantime despatches had, on the 3rd of March, been forwarded to the Lieutenant-Governor of New Brunswick and Nova Scotia, apprising them "that, by an arrangement entered into between His Majesty's Government and the Government of the United States of America, American cruizers would be henceforward allowed to fish in any part of the Bay of Fundy, provided they did 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;" and directions were given to the Lords of the Admiralty to communicate the fact to the naval officers on the North American station.

I now come to the case of the "Argus." This vessel was seized by the Provincial schooner "Sylph" whilst fishing on the St. Ann's Bank, between Cow Bay Head and Cape North, to the east of the Island of Cape Breton, and, it is said, more than fifteen miles from any land. And Mr. Everett, in drawing Lord Palmerston's attention to the case, in a letter dated the 8th of October, 1844, observes that it was stated by the captain of the "Argus" that the Commander of the Nova Scotia schooner, by whom the capture had been effected, that she was within three miles of the line beyond which, on his construction of the Treaty, she was a lawful prize, and that he had seized her to settle the question. Against this interpretation of the Treaty Mr. Everett strongly protested, and he forwarded copy of a communication which had been made to him by the owners of the "Argus," and in which they remarked, "well we draw a line from Cape Florida to

Cape Cod, and three marine miles from our shores between these capes."

On the receipt of this communication Lord Aberdeen requested Lord Stanley to cause inquiry to be made into the circumstances of the case, and on its being referred for that purpose to the Colony, Lord Falkland, the Lieutenant-Governor of Nova Scotia, on the 2nd January, 1845, forwarded a Report from the capturing officer, in which he says: "When in command of the 'Sylph,' on the 6th of August instant, when cruising round the coast of Cape Breton, I observed the 'Argus' some miles off St. Anne, with her crew actually engaged in fishing, and although more than three miles from any land, still much within the bay that is formed by a straight line drawn from Cape North to the northern head of Cow Bay, and consequently I felt it my duty to take her into Sydney, the nearest port to me at the time."

In the meantime the whole question of the fisheries in connection with these two cases of the "Washington" and the "Argus" appear to have undergone very full consideration by the Government, and on the 8th of May, 1845, the following letter was sent from the Foreign to the Colonial Office, conveying Lord Aberdeen's views on the subject:—

"Sir, *Foreign Office, May 8, 1845.*

"With reference to the correspondence which has passed between this Office and the Colonial Department, on the subject of the 'Washington' and the 'Argus,' United States' fishing-boats, captured by New Brunswick and Nova Scotia Revenue cruisers, the one in the Bay of Fundy, the other off the coast of Cape Breton, for alleged infractions of the Convention of October 20, 1818, between Great Britain and the United States, I am directed by the Earl of Aberdeen to transmit to you, for the purpose of being laid before Lord Stanley, two copies of two additional notes relative to the capture of the 'Argus,' which have been recently addressed to Lord Aberdeen by the United States' Minister in this country.

"It will be seen that, in those notes, Mr. Everett urges the expediency of an extension, on the part of Great Britain, to the whole of the coasts of the

British possessions in North America, of the same principle of liberality with regard to the United States' fishing-boats, as Her Majesty's Government have thought proper to apply to the Bay of Fundy. In fact, Mr. Everett appears willing to assume, from the tenor of Lord Aberdeen's note to him, dated the 10th of March last, of which a draft was sent to the Colonial Department on the 16th of November last, that such is the implied intention of Her Majesty's Government.

“Although that assumption is erroneous, the note in question having been intended to apply to the Bay of Fundy alone, I am directed by Lord Aberdeen to state to you, that it is his decided opinion that the overstrained exercise of an assumed right on our part, to exclude United States' fishermen from all those vast inlets of the sea on the British North American coasts, which are somewhat incorrectly termed bays, ought to be henceforward foregone by us; and that we ought to consider as bays, in the sense of the Treaty, those inlets only which measure from headland to headland at their entrance, double the distance of three miles, within which it is prohibited to the United States' fishing-vessels to approach the coast for the purpose of fishing.

“The Bay of Chaleurs, that of Miramichi, and numerous other bays on the coast of New Brunswick, Nova Scotia, Cape Breton, and the other English dependencies in that quarter, would seem to be equally entitled to be considered as open to the United States' fishermen as the Bay of Fundy.

“In the case of the ‘Argus,’ it appears to Lord Aberdeen that the assumption of the right of exclusion on our part was more than usually strained, since the officer who captured that vessel admits that she was not within three miles of any land, but alleges that she was still ‘much within the bay that is formed by a straight line drawn from Cape North to the northern head of Cow Bay.’

“After attentively examining the map, Lord Aberdeen has been unable to discover any bay formed by a straight line thus described. In fact, there is no such bay in existence.

“Since, therefore, it cannot be denied that such exercises of power are extreme, and may justly be offensive to, and resisted by, the United States, and

as much greater injury is liable to result to us, nationally, from the ill-feeling which such occurrences engender, than could be sustained, provisionally, by our dependencies, from the admission of United States' fishing-vessels to within an equitable distance of these coasts, or of the entrance of the *bonâ fide* bays on these coasts, Lord Aberdeen would submit to Lord Stanley, whether the time is not come, at which we should voluntarily recede from the exercise of a doubtful and dangerous right, and grant to the citizens of the United States that boon to which they appear to be fairly entitled.

“ I am, &c.

(Signed) “ H. U. ADDINGTON.”

On a copy of this letter being transmitted to the Colonies, the strongest remonstrances were received from the Lieutenant-Governor, both of New Brunswick and of Nova Scotia, against any further relaxation of the Treaty in favour of American fishermen; Lord Falkland in his letter observing, “ I am convinced such a relaxation of the construction of the Treaty of 1818, as is apparently contemplated by Lord Aberdeen, would, if carried into effect, except in as far as regards the Bay of Fundy, produce very deep-rooted dissatisfaction both here and in New Brunswick, and cause much injury to a very large and valuable class of Her Majesty's subjects.”

Accordingly, Lord Kimberley, in forwarding these remonstrances to the Foreign Office, observed “ that the views of the Governors of the two Colonies, deprecating the proposed concession, deserve serious consideration, and, at all events, that if it be made, some equivalent should be obtained from the Government of the United States for the British Colonial interests, which there is reason to apprehend will suffer very materially in their fisheries from this measure.”

In reply, Mr. Addington, in a despatch dated the 12th of September, 1868, observed as follows:—

“ *Foreign Office,*

“ Sir,

“ *September 12, 1845.*

“ I am directed by the Earl of Aberdeen to acknowledge the receipt of your letter of the 8th ultimo, together with its inclosures, on the subject of the Nova Scotia and New Brunswick fisheries,

and the serious prejudice which might be liable to result to those fisheries from any further concession being made on the part of Great Britain to the fishermen of the United States, in extending the limits to which their right of fishing in the vicinity of the coasts of Nova Scotia and New Brunswick is now restricted by Treaty.

“ I am to state to you, in reply, that Lord Aberdeen never contemplated the extension of the rights of fishery to the United States’ fishermen beyond their admission to the Bay of Chaleurs, and other large bays of a similar character on the coasts of the British American Provinces, provided always such extension should meet the concurrence of the Colonial authorities and of the Colonial Department.

“ As it now appears that both the Colonial Governments and the Colonial Department are of opinion, not only that great prejudice would result to the fishing interests of Her Majesty’s North American dominions from any further concession to the United States’ fishermen, but that such concession would be liable to bring along with it increased danger of collision between the American and the Provincial fishermen, I am to inform you that Lord Aberdeen is disposed to abandon all idea of further extending the right of American fishermen to fish on the coasts of the British territories, and proposes to adhere to the strict letter of the Treaties between Great Britain and the United States, except in the case of the Bay of Fundy.

“ I am, however, at the same time to point out the expediency of a scrupulous observance of those Treaties on our part, and the danger which cannot fail to arise from any overstrained assumption by our naval officers of the power of excluding United States’ fishermen from waters in which they have a right to exercise their vocation, such as recently occurred in the case of the “ Argus,” which was seized by a provincial revenue cruizer, under the plea of illegal encroachment, in a spot where she was not within three miles of the shore, and where there does not appear to have been any pretence for asserting that she was within any bay, or in unlawful propinquity to any bay on the coast of Nova Scotia.”

And, in a letter to Mr. Pakenham, our Minister at Washington, written on the 18th of the same month, Lord Aberdeen observes—

“ You will learn from these papers that, for the reasons therein set forth, it is not intended further to extend the right of American fishermen to fish on the coasts of the British American provinces ; and that the strict letter of the Treaties between Great Britain and the United States will be adhered to, except in the case of the Bay of Fundy, where a concession has already been made, as stated in the previous correspondence.”

On these resolutions being communicated to the Colonies, in a letter from Lord Kimberley, dated the 17th of September, 1845, all alarm and dissatisfaction appear to have subsided.

A good deal of correspondence subsequently ensued as to the alleged ill-treatment of the crew of the “Argus” by the captors, but with which the question which we are now considering has nothing to do ; and, ultimately, on a refusal of Sir John Dodson, the Queen’s Advocate, that he was “ not prepared to say that the capture of the ‘ Argus ’ was fully warranted, inasmuch, as I incline to think that the vessel was not fishing ‘ within three marine miles of the coasts, bays, creeks, or harbours of the British dominions in America, ’ within the true meaning of the Convention of 1818.” The vessel was ordered to be released, and costs and damages were awarded to the owners.

From this time for some years the question of the fisheries seems not to have excited any particular attention ; no complaint of the encroachments of, or concessions to, the American fishermen were received in this country, nor does there appear to have been any correspondence between the two countries on the subject. But, by the year 1849, a peculiar change would seem to have taken place in the views of the colonists, and instead of seeking to exclude Americans from the fisheries, there seemed to be a general desire to relax still further the restrictions that had been placed upon them. This was sufficiently apparent from the resolutions passed at a meeting of a conference of Delegates from the Provinces of Canada, New Brunswick, Prince Edward Island, and Nova Scotia, which were transmitted in a letter from Sir John Harvey, the Lieutenant-

Governor of Nova Scotia, dated the 7th September, 1849, as well as from a Report of a Committee of the House of Assembly of Nova Scotia on the Fisheries, transmitted in another letter from Sir John Harvey, of the same date. The first of the above-mentioned resolutions were in these words:—

“ 1. Resolved, that in consequence of the recent changes in the commercial policy of the British Empire, it is the opinion of this meeting that it has become necessary to obtain a more extended market for the natural products of the British North American Colonies, and that a reciprocal free exchange of such products between those Colonies and the United States of America would be highly advantageous to both.”

And the Report of the House of Assembly stated that, an American vessel, called the “Hyades,” having been seized for fishing within the British waters, had been condemned and ordered to be sold, but that, owing to the “sympathy for the owner, who crossed from Maine and attended the sale in person, biddings were kept down, and the vessel sold for 13*l.* 5*s.*, insufficient to pay the expense incurred.” “If, therefore,” it is added, “no further seizures are likely to be made, it is probable that the fishery of the Bay of Fundy will be fully participated in by the American people, until the inhabitants of that portion of the province appreciate more justly their exclusive rights.”

This feeling was still more clearly expressed in the following year in a Memorial from the Legislative Council and Assembly at Prince Edward Island, dated the 3rd of April, 1849, in which they pray that the prohibition imposed upon the inhabitants of the United States by the Treaty of 1818, of not fishing within three miles of the coast, might be done away with; they state that the relaxation of this rule would not be attended with great benefit to the Colonists; and they give their reasons for that opinion. On the receipt of this Memorial a copy thereof was sent to the Board of Trade for their opinion, and their Lordships stated in reply that they saw “no objection to the relaxation of the restrictions now imposed in the use of our fisheries forming a part of any arrangement which affects so desirable an object.” Nothing, however, appears to have been then done, owing probably to the fact

that, although such a relaxation of the exclusive rights of fishing might be desired by Prince Edward Island, it might not be equally agreeable to the other Provinces.

So matters continued until towards the close of that year, when Lord Dundonald, the Commander-in-chief on the North American frontier, in a letter dated the 20th December, 1849, stated that he had "received authentic information that the inhabitants of Canada and New Brunswick are agitating for concessions to the United States of the fishery on the shores of Nova Scotia, Cape Breton, and Newfoundland." He says that "the desire of the Canadians is now (since Free Trade has been conceded without any equivalent) to barter a great national object for one of a limited Colonial nature, namely, the free admission of their produce with the United States," and he urges that the concessions should not be granted, chiefly, as I understand, because he considered the fisheries to be a great
for British seamen.

In a letter to the Admiralty dated January 17, 1851, Lord Dundonald, in transmitting the annual Reports of the commanding officers on the state of fisheries, again returns to the subject. He states that these Reports indicate the depressed state of this once important nursery for seamen, which has dwindled to the employment of small boats along the coast instead of being on the great banks by numerous large vessels equipped in the ports of England, a national advantage now transferred to the French and Americans." Further on he says, "I am thoroughly satisfied that everything relating to the fishery is in a state of complete abandonment and destruction." And the remedy he proposes for this state of affairs is to grant annuities to our fishermen.

Shortly after this, a letter was received from Sir Edmund Head, the Lieutenant-Governor of New Brunswick, dated the 27th April, 1851, forwarding an Address of the Legislative Council and Assembly, and in which they say that, "The deep-sea fisheries belonging to this province, and to the subjects of your Majesty's other North American Colonies, are of immense value, if properly protected; but the encroachments by foreigners upon this important branch of colonial production has now grown to

such an extent as materially to affect its productive-ness"; and they "pray that such measures may be adopted as will remedy the evils complained of."

Annexed to this address was a Report from Commander Robinson of the Royal Navy, in which he recommended that four or five cutters should be sent from England to be permanently employed on the coasts, in lieu of the two men of war now employed.

On these papers being referred to Admiral Sir George Seymour, the Officer commanding on the coast, he stated, in a Report dated the 5th of August, 1851, that small vessels could be usefully employed on the coast, but that they should be provincial vessels, and not vessels of the Royal Navy, but that a screw-steamer of 100 horse-power might be sent out to co-operate with them.

On this Report being received, and referred to the Colonial Office, a letter was, by Lord Grey's directions forwarded to the Admiralty, and which is in these terms:—

Downing Street,

"Sir,

"September 17, 1851.

"I am directed by Earl Grey to acknowledge the receipt of your letter of the 26th ultimo, and to request that you will state to the Lords Commissioners of the Admiralty that his Lordship concurs in the opinion expressed by Sir George Seymour, that if small vessels are to be employed for the purpose of protecting the fisheries on the coasts of the British Colonies in North America, the service ought to be undertaken by the Colonial Governments. Lord Grey conceives that a naval force should be maintained in these waters for the prevention of any successful attempts at open resistance to the measures taken for the protection of the fisheries; but that while Her Majesty's Government furnish a force sufficient for this purpose and to maintain the supremacy of British authority, the duty of preventing the evasion of the laws and trespasses upon British rights should devolve mainly upon the colonial authorities, by whom an effective maritime policy ought to be provided. It is, in Lord Grey's opinion, the more necessary that a rule of this nature should be laid down, as it is well known that there are individuals among the

colonists who find it for their interest to favour the illegal acts complained of, without whose assistance or connivance they would be comparatively limited in extent.

“I am to add that these observations of course have only reference to the present state of affairs, and that Lord Grey does not wish to be understood as expressing any opinion adverse to allowing the subjects of the United States to fish on the shores of the British colonies, if an arrangement upon equitable terms could be made between the two nations for admitting them to that privilege.

“ I have, &c.

(Signed) “ B. HAWES.”

In the same month also, September 1851, a letter was addressed by Mr. Janvrin to Lord Palmerston, which is in these words :—

“ 24, *Royal Crescent, Bath,*

“ My Lord, “ *September 3, 1851.*

“ I take the liberty of addressing your Lordship on a case of gross infraction of Treaty existing between Great Britain and the United States of America with respect to the fisheries on the coast of Bay Chaleurs, in Lower Canada, which infraction has been committed with open impunity by a large fleet of American schooners, who, according to existing Treaties are forbidden to carry on the fishery within three leagues of the shore.

“ By letters I have just received under date of 1st August from my agent at Gaspé, in Lower Canada, it appears that eighty-five American schooners were at that time employed fishing in the Bay of Gaspé, which is not five miles across from shore to shore, consequently these American schooners are infringing the Treaty, and as Halifax is the station of our cruizers which seldom or never visit these important fishing grounds, I beg to solicit your Lordship’s earliest attention to this important subject, feeling persuaded that this violation of the Treaty on the part of the Americans, if not timely checked by your Lordship, will further extend over all British Possessions on that coast, to the great detriment of those British subjects who, like myself (now eighty years carrying on the fishery at Gaspé) have embarked all their fortune in the fisheries

which have always been protected and fostered by the Crown of England as the best nursery for her seamen.

“I beg to apologize to your Lordship for this intrusion.

“I have, &c.

(Signed) “FREDERICK JANVRIN.”

In the meantime negotiations had been opened between the two Governments to establish reciprocal free trade between Canada and the United States. The first suggestion on the subject seems to have been made in 1847 by the British Government, in consequence of a petition to the Queen of the Canadian Parliament.* The proposal was favourably received by the United States' Government, and a Bill for this purpose was brought into the Senate in the year 1848, but failed, not from opposition, but from want of time, to pass it. In the following year it was again brought in, but owing to the opposition of the Protectionist party and of the Southerners, who were at that time greatly irritated against the North on the subject of slavery, it was again got rid of, on each occasion by delay, on the sole ground that it was a Northern measure.

In the same year, on the matter being again brought to the attention of General Taylor's administration, Mr. Clayton, the new Secretary of State, after some delay, replied that the United States' Government would not be indisposed to entertain the question if a general commercial arrangement, on the basis of reciprocity, in which all the British North American Colonies should be included, with the *sine qua non*, however, that the reserved rights of fishing to the Colonies should be included in the cession on their side, and it was proposed that negotiations should be opened on this basis. On the matter being referred to this country, Sir Henry Bulwer, who was then about to proceed as Minister to Washington, was, by an instruction dated the 1st of November, 1849, authorized to enter into a negotiation by which access to the fisheries of all the Colonies (except Newfoundland, which refused to consent on any terms) should be given to the

* See Mr. Pakenham's No. 66 of 1847, and Mr. Crampton's No. 55 of 1848.

citizens of the United States in return for reciprocity of trade with the United States in all natural productions, such as fish, wheat, timber, &c.

The proposal was favourably received by the United States' Government, but some delay occurred owing to the death of General Taylor in 1850. The new President, however, doubted whether it was a proper subject for a Treaty, and thought that it should be done by legislation, and accordingly a Bill was brought in for the purpose. The Bill was, however, thrown out, and from one cause or another nothing was done from that time until June 1852, when we approach one of the most important and eventful periods in the history of the Fisheries Question.

On the 2nd of June, 1852, Sir John Pakington, then recently appointed Secretary of State for the Colonies, addressed a letter to the Lords Commissioners of the Admiralty, of which the following is a copy:—

“ Downing Street,

“ June 2, 1852.

“ My Lords,

“ Urgent representations having been addressed to Her Majesty's Government by the Governors of the British North American Provinces, complaining of the encroachment of vessels belonging to citizens of the United States of America, on the fishing-grounds reserved to Great Britain by the Convention of 1818, whereby the Colonial fisheries are most seriously prejudiced, I have to signify Her Majesty's commands to your Lordships, to give directions for stationing off New Brunswick, Nova Scotia, Prince Edward Island, and in the Gulf of St. Lawrence, such a force of small sailing-vessels and steamers, as shall in the judgment of your Lordships be sufficient to prevent the infraction of the Treaty.

“ It is the command of the Queen, that the officers employed upon this service should be specially enjoined to avoid all interference with the vessels of friendly Powers, except when they are in the act of violating the provisions of the Treaty; and on all occasions to avoid giving ground for complaint, by the adoption of harsh or unnecessary proceedings when circumstances compel their arrest or seizure.

“ It is of importance that the cruisers in question

should be stationed immediately on the fishing-grounds, as the fishing season has commenced and is of short duration.

“ I am, &c.

(Signed) “ J. S. PAKINGTON.”

A copy of this letter was thereupon sent by Lord Malmesbury to Mr. Crampton, with directions that he should take an opportunity of making this matter known to the Government of the United States, as a measure adopted by Her Majesty's Government to prevent a repetition of the complaints which have been so frequently made to Her Majesty's Government against encroachments on British rights by both American and French fishermen.

On the receipt of information as to the measures which had been taken by Her Majesty's Government for the protection of the British fisheries, the greatest excitement arose in the United States, and Mr. Webster expressed to Mr. Crampton a good deal of apprehension as to the effects which might result from the sudden withdrawal from American fishermen of privileges which, he stated, they had long been permitted to enjoy without molestation on the part of the British authorities. In the discussions which ensued between Mr. Fillmore and Mr. Webster, on the one part, and our Minister, on the other, it was at once admitted that American fishermen had, under the Convention of 1818, no right to fish within three miles of any of the coasts; and the only question arose as to the proper interpretation to be given to the word “ bays ” in the Convention. Mr. Fillmore, whilst contesting the extreme construction put by the British Law Officers on the clause, admitted that the wording, which he thought somewhat obscure, countenanced to a certain degree that construction; and he urged that Mr. Crampton should enter with Mr. Webster into some temporary arrangement of the matter, until an agreement could be come to between the Governments as to the true construction of the Convention. The arrangement proposed was, that the water which was at a greater distance than three miles from any part of the coast, but within the limits contended for by the British, should be regarded as neutral

ground, and that British cruizers should refrain from interfering with American fishermen found carrying on their operations within those limits ; and that the United States' Government should, on its side, take every means in its power to prevent their own citizens from fishing within the prescribed distance, as understood by the British. This, however, Mr. Crampton had no authority to assent to.

Some time after this interview, Mr. Webster published in the "Boston Courier" an official paper, giving information of the measures which had been taken by the British Government to protect the fisheries, and stating the points at issue between the two Governments to be as follows :—

"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 harbours of the British Provinces, except for the purpose of shelter, repairing damages, and obtaining wood and water. A bay, as it is usually understood, is an arm or recess of the sea, entering from the ocean between capes or 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.

"Not agreeing that the construction thus put upon the Treaty is conformable to the intentions 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 upon their guard. The whole subject will engage the immediate attention of the Government."

The publication of this official communication,

and a speech delivered by Mr. Webster on the subject on the 24th of July, would seem to have added considerably to the excitement, and grave fears were entertained lest there should be a collision between the American fishermen and the British cruisers. On the receipt of this information, it was thought by Her Majesty's Government that it would be proper to show that no new claims were being preferred against the United States, but merely the enforcement of their admitted rights. Accordingly, a letter was, on the 10th of August, written by Lord Malmesbury's direction to the Colonial Office, in which it is said—

“The whole question of the American fisheries, and the interpretation of the Convention of 1818 and of the British laws bearing upon it, must be attentively considered, and it is essential that it should be calmly discussed between the Governments of Great Britain and the United States.

“Lord Malmesbury would therefore suggest, for the consideration of Sir John Pakington, that there should at present be no interference with United States' vessels in regard to landing their crews on the Magdalen Islands, but that the instructions issued in 1828 on this point should be adhered to until Her Majesty's Government can decide upon the question; it being understood that the right of American citizens so to land their crews must not be acknowledged.

“Sir John Pakington will doubtless think proper to inform Sir George Seymour that Her Majesty's Government, in ordering that British fisheries should be protected, are making no new claims against the United States, and are not altering or reversing any standing orders to Her Majesty's Governors and public functionaries, nor revoking any concessions or privileges such as that which was granted by Her Majesty's Government in 1845 as regards the Bay of Fundy; their object at present being to maintain practically that right which the Government of the United States has never disputed, namely, the exclusive possession of the waters within three marine miles of the British coasts, and leaving the interpretation to be given to the Treaty, as regards other bays, precisely where it was when the matter was discussed and dropped between the two Governments in 1845.”

On the same day Lord Malmesbury expressed the same views in a letter to Mr. Crampton, desiring him to communicate them to the United States' Government; and, in a letter of the 11th of August also to Mr. Crampton, his Lordship thus expresses himself—

“It is almost needless to add, that in regard to the Bay of Fundy, where a special permission to fish has been granted to American fishermen, their vessels will be in no way interfered with; but it must be understood that the three miles limit from shore will, as before, be maintained.”

In the meantime instructions had been sent by the Admiralty to Sir George Seymour, the Admiral commanding on the North American Station, furnishing to him a copy of Sir John Pakington's letter of the 2nd of June, 1851, and directing him to carry Her Majesty's command, as therein expressed, into full effect. On the purport of these instructions becoming known to Lord Malmesbury, his Lordship, on the 13th of August, directed a letter to be written to the Admiralty in these words:—

“As no mention is made in the Colonial Office letter of the 2nd June to the Admiralty, of the relaxation of the fishery police in the Bay of Fundy, which was notified by the Foreign Office to the Colonial Office on the 22nd March, 1845, Lord Malmesbury is of opinion that, in order to preclude all possibility of mistake on the part of Sir George Seymour on this important point, the Admiralty should be specially apprized by the Colonial Office, that the relaxation in question is still to be acted upon as it has hitherto been for some years past.”

In reply, the Admiralty forwarded copy of a letter which they had received from Sir George Seymour, dated the 5th of August, and in which the following passage occurs:—

“I beg to acquaint you, for the information of the Lords Commissioners of the Admiralty, that, on my arrival here this day, I received the letters of which copies are inclosed, from Her Majesty's Minister at Washington, dated the 20th July.

“It is my intention, in consequence, to order the officers employed in the protection of the fisheries to use additional caution, and to prefer as a general measure, to warn off United States' vessels found

within three miles of the shores of our provinces, to seizure, unless in any gross and wilful cases of infraction of the Convention of 1818."

The letter of the 20th of July, 1852, to which Sir George Seymour refers, is one which had been addressed to him by Mr. Crampton, and in which that gentleman pointed out the great excitement that prevailed in the United States on the subject, and the chances there were of disagreement, owing to the different views entertained by the British and American Governments in the construction of the Treaty of 1818. And, in a postscript to that letter, Mr. Crampton thus expresses himself—

"I have just returned from the President's, with whom I have had a conversation on the subject of the fisheries. He suggests that, in order to avoid the question which might arise from the different construction which seems to be given to the Convention of 1818 by the two Governments, that an understanding should be come to by both parties, to abstain from exercising the right which each asserts in regard to points upon which the opinions of the two Governments are at issue, until they can come to an agreement upon it, or refer it to the arbitration of a friendly Power; that is to say, that the British authorities should not seize or interfere with American fishing-vessels which should be found fishing without a line at a distance of three miles from the shore, which line shall follow the bays, creeks, and indents thereof, which is the American construction of the Treaty; while the United States' authorities, on the other hand, warn, and in every way prevent their own people from encroaching upon the space we claim under our construction of it, until such time as it shall be settled which of the two constructions shall prevail. This would seem fair if it could be put into practice; but could the Colonial authorities take upon themselves to carry it into effect without referring it to the Imperial Government? I will write again as soon as I have spoken to Mr. Webster."

In a letter, too, from Sir George Seymour to the Admiralty, dated 6th of August, that officer observes—"I am not aware that any of the seizures have turned upon any line between headlands, and thus the two cases in the Bay of Fundy have, I under-

stand, not been defended by the owners of the vessels."

In order, too, that there might be no doubt as to the instructions which should be given to Sir George Seymour for his guidance in the matter, Sir John Pakington on the 19th of August, 1851, addressed the following letter to the Lords of the Admiralty:—

Downing Street,

"My Lords, *August 19, 1852.*

"In my letter of the 2nd of June last, I conveyed to you Her Majesty's commands for stationing off the coasts of the British Possessions in North America, a sufficient force of small vessels to protect the fisheries, and prevent infractions of the Convention of 1818 with the United States, desiring at the same time that the officers employed on this service should be enjoined to avoid all unnecessary interference with the vessels of friendly Powers, and all harshness in the performance of their duty.

"Since the time when these instructions were issued, apprehensions have been expressed in the United States, that it was intended by them to withdraw the concession made by Her Majesty's Government, in 1845, of liberty to the fishermen of the United States to pursue their avocation within the waters of the Bay of Fundy, provided that they should not approach within three miles of the inlets and coasts of the British Provinces situated within that bay.

"Admiral Sir George Seymour has referred to the instructions given to successive Naval Commanders-in-chief, that although no right on the part of the United States' fishermen to fish from the shores of the Magdalen Islands, or to dry and cure fish there, could be acknowledged, yet they should not be practically interfered with at those islands.

"Sir G. Seymour has also stated that the fishing-vessels of the United States resort in large numbers to the various harbours in Cape Breton, Prince Edward Island, and New Brunswick, where they pass the Sundays without entering those harbours, except from stress of weather, or to repair damages, or for obtaining wood, and purchasing water, as

provided for in the Convention, and he has inquired what course should be taken as to these vessels.

“With reference to these several subjects, I have it in command to instruct your Lordships to inform the Admiral Commanding-in-chief on the North American station, that Her Majesty’s Government, in ordering that the British fisheries should be protected, are not now making new claims against the United States, nor altering or reversing any standing orders to Her Majesty’s Governors and public functionaries, nor revoking any such concession as that which was granted in 1845 as regards the Bay of Fundy, or that which has long been practically made in the Magdalen Islands, it being clearly understood that no right of American citizens to land their crews upon those islands is acknowledged by this permission and sufferance on the part of the British authorities.

“I have further to apprise your Lordships that, unwilling to withdraw any accommodation which fishermen of the United States now find in British harbours, although such accommodation may go beyond the terms of the Treaty, Her Majesty’s Government do not for the present desire any interference with the resort which it appears that they have formed the habit of making to various ports in the British Provinces, at times when they are not engaged in fishing, so long as they may conduct themselves in an orderly and peaceable manner.

“Whas course may be taken hereafter on these several concessions, it is unnecessary now to determine. The various questions at issue between the Government of this country and of the United States will probably be the subject of future discussions between them ; but, in the meantime, Her Majesty’s Government have no wish to withdraw the foregoing privileges from the fishermen of the United States in any manner which could be considered abrupt.

“I have therefore to request that your Lordships will desire the Admiral to execute the instructions which you before conveyed to him with due regard to the above concessions, and with as much moderation and forbearance as may be consistent with the firm maintenance of those rights on the part of the

British North American Provinces, the encroachments upon which have been the subject of their recent and repeated complaints."

In the meantime, Mr. Crampton, who had been on a visit to Mr. Webster at Monkfield, on the 2nd of August, 1852, writes a letter to Lord Malmesbury, in which he says—

"I observe with satisfaction, that Mr. Webster now clearly perceives, and fairly admits, the correctness of the construction of the Convention of 1818 maintained by Her Majesty's Government. The opinion of the Queen's Advocate and of the Attorney-General is, Mr. Webster said, 'undoubtedly right;' and he afterwards informed me that the President, from whom he had just received a letter on the subject, now concurred in that opinion.

"Mr. Webster remarked, however, that he thought that more had been conceded on the part of the United States by the Convention of 1818, strictly interpreted, than had been intended, or ought to have been conceded; and that, at all events, a very important American interest had grown up under its practical operation; an interest which was now threatened with destruction by a strict enforcement of its provisions, and one which the American Government could not, if it would, abandon. Any injury which should be now inflicted upon that interest by the measures contemplated by Her Majesty's Government would not fail to excite an angry feeling on the part of the inhabitants of the New England States against the neighbouring British Colonies, which he was most anxious to prevent. He felt, therefore, he said, most desirous that the whole matter might now be taken up by negotiation; and he read to me a letter addressed to the President of the United States, in which he recommends the adoption of this course in preference to a settlement of the matter by legislation, stating his apprehension that the arrangement of the matter by the latter mode, though preferable on some accounts, might be subjected to indefinite delay."

On the 3rd of August, a debate took place in the Senate, in which Mr. Cass, after showing that "the word 'bay,' as a geographical definition, is very indefinite in its application," thus proceeds:—

“Now, Sir, it is preposterous to run a line from one projecting point of these vast expansion to the other, and claim for the State which holds the coast, even if it is the whole of it, exclusive jurisdiction over great arms of the ocean, with the right to prevent any other nation from enjoying them, either for the purpose of fishing or of navigation.

“That there are many land-locked indentations which constitute portions of the territory of the country whose coasts surround them is indisputable. It is not necessary to enter into the public law, made since by general consent, which regulates that subject. No doubt cases may arise where rights are claimed and resisted, which are not easy of adjustment in consequence of the absence of fixed principles. When such controversies arise, they must take their own course of settlement.”

Mr. Cass's speech is principally directed to show that American citizens had a right to fish in the Bay of Fundy, the Gulf of St. Lawrence, and the other large open bays on the coast ; and he thus proceeds—“They,” that is the United States' fishermen, “were permitted to fish everywhere except within three miles of the coast, being excluded only from the coast and the *small* bays and harbours on the coast ; these were the bays and none others. All else were left open to the fishermen.”

This debate was followed by another on the 12th of August, when M. Soulé, a French refugee, and Senator for Louisiana, amidst a great deal of violent declamation and loose and inaccurate statements, propounded an entirely new doctrine as to what constituted a “bay” within the meaning of the Convention. On this point he thus remarks:—“Such bay,” says an eminent writer, “must communicate with the ocean only by a strait so narrow that it must be reputed as being a part of the maritime domain of the State to which the coast belongs ; so that you cannot enter it without going through the territorial sea of that State ; which means twice the distance of a gun-shot, or six miles. It is required besides, that all the coasts bordering on such bay be subject to the bay claiming such strait. The two conditions must unite to give to any part of the ocean the character of an internal sea, or a *mare clausum*.”

“The Convention of 1818, therefore, excludes us

from no part of the littoral seas washing Her Majesty's Dominions, without three miles of the coast of such littoral seas, be they bays, gulfs, or other inlets, unless the coast, bordering the same, be all under her sovereignty, and unless the strait formed by the headlands at their entrance exceeds six miles in length. The question is here entirely solved and put to rest. It only remains to be ascertained how distant be the headlands at the entrance of the Bays of Fundy, of Chaleurs, and elsewhere. Are they more widely apart than six miles? Then the bays are as open and free as the main ocean itself. Are they within the line of six miles? They then are private bays, bays shut up from the commerce of the rest of mankind, at the will of the riparious Sovereign, provided he be the Lord of the whole coast surrounding them, and not otherwise. Now we know that is not the case with the bays just named. Both have an entrance too wide to be claimed as private seas; and, independent of this, the Bay of Fundy is bounded in part by the State of Maine, a circumstance which alone would preclude all pretensions on the part of England to make it hers. I am done with this part of my subject."

Again, this definition of a bay, Mr. Seward in the Sitting of the 16th of August took occasion to protest. He observes:

"Again, I recall the honourable Senator's argument, viz.:

"'Two things unite to give a country dominion over an inland sea. The first is, that the land on both sides must be within the dominion of the Government claiming jurisdiction, and then that the strait is not more than six miles wide; but that if the strait is more than six miles no such jurisdiction can be claimed.'

"Now, Sir, this argument seems to me to prove too much. I think it would divest the United States of the harbour of Boston, all the land around which belongs to Massachusetts or the United States, while the mouth of the bay is six miles wide. It would surrender our dominion over Long Island Sound—a dominion which I think the State of New York and the United States would not willingly give up. It would surrender Delaware Bay; it would surrender, I think, Albemarle Sound, and the Chesapeake Bay; and I believe it

would surrender the Bay of Monterey, and perhaps the Bay of San Francisco, on the Pacific Coast."

We now come to a very important circumstance in the Fisheries Question. In his letter of the 23rd of August, 1852, to Lord Malmesbury, Mr. Crampton, after stating the demand which he had understood that the United States' Government was about to make, proceeds as follows :—

"These intended demands, and the accompanying threat, were based upon the two following assumptions :—

"1. That the close fishing within three miles of the shores of the Gulf of St. Lawrence, and the privilege of landing and curing fish thereupon, was not what the American fishermen required. It was stated that they were in the habit of taking their fish in the great bays, at a greater distance than three miles from shore; of pickling it on board their vessels, and carrying it home to the American market. It was thought, therefore, that it would be sufficient to procure for the American fishermen the liberty of entering those bays to fish.

"It was supposed that the only, or at least the principal, market for British-caught fish was the United States, where it is consumed in considerable quantity, though subject to a duty of 20 per cent. *ad valorem*, and that consequently an intimation that a prohibitive duty might be imposed upon it, would compel Her Majesty's Government to accede to the terms proposed.

"Both these assumptions, however, turn out, upon more accurate investigation, to be entirely unfounded in fact.

"The close fishing, or the power of following the fish within a mile or half-a-mile of the coast, is absolutely essential to the successful prosecution of the mackerel fishery, which is now the chief and most lucrative branch of the trade, and were American fishermen to be effectually excluded from this, they would be obliged to abandon the pursuit altogether. No interpretation, therefore, of the Convention of 1818, which could by possibility be contended for, or the extension of the privilege accorded in regard to the Bay of Fundy to the other British waters, would be of the least service to the American fishing interest, and of this the United States' Government is now, I believe, perfectly aware.

“As regards the market to which British-caught fish is brought, they now find that they have equally been in error. The United States is by no means the exclusive or most important market for the commodity ; by far the greatest consumption of it takes place at Messina, Naples, in Portugal, in Brizil, and the Spanish and British West India Islands. The demand for mackerel, on the other hand, in the United States, has very much increased, and the fisheries in which it is taken in American waters are very inadequate to its supply ; were American fishermen, therefore, prevented from taking it in British waters, the consumer in the United States would either be deprived of the article altogether, or be obliged to pay a very heavy duty on British-caught fish.

“These considerations have rendered the United States’ Government more than ever anxious to arrange this matter in the only way in which it can be arranged satisfactorily to the American interests concerned in it,—that is to say, by negotiation upon the basis which has been proposed by Her Majesty’s Government ; and I understand that strong efforts will be made in the course of the present week, to procure the passage of a resolution by Congress, which will empower the President to arrange the matter in this mode.”

And, in his letter of the 29th August, Mr. Crampton says that he was shown by Mr. Hunter, the chief clerk at the Secretary of States’ Office, a letter which had been received from Mr. Lawrence, the United States’ Minister in England, and in which Mr. Lawrence states generally, that your Lordship’s observations were to the same effect as those made at his previous interviews with you ; that Her Majesty’s Government designed to leave the parts of the Treaty in regard to which the two Governments disagree, as they were before ; and he seemed to understand that instructions had been sent to the Colonial authorities, and to Vice-Admiral Sir George Seymour, to abstain from making any seizures of vessels trespassing on the fisheries at more than three miles from the shore, and to deal very leniently even with those trespassing within three miles. Mr. Lawrence added, that he had reason to hope that the instructions which had been addressed to Her Majesty’s Legation here, would be of such a nature as to permit me to advise the Colonial

authorities, and the Commanders of Her Majesty's Naval Forces not to make any seizures whatever during the present fishing season, upon the consideration of the loss and suffering to the American interest which had engaged in this year's fishery, and to whom it would be necessary, in order to enable them to "make up their fares," to fish close in shore during the two ensuing months.

Mr. Crampton said that he thought it right to state that he did not feel authorized by any instructions which he had received from Her Majesty's Government to make any such suggestion either to Sir George Seymour or to the Governors of the North American Colonies.

In replying to this despatch, Lord Malmesbury, on the 23rd of September following, observed that "Her Majesty's Government continue to maintain that, under the provisions of the Convention of 1818, the United States' Government clearly and distinctly renounced all right on the part of their countrymen to fish within three miles, not only of the coasts of the British Provinces, saving those specially excepted by Treaty, but also of the bays, creeks, and harbours of those provinces; and from that view Her Majesty's Government cannot, under any circumstances, depart." And his Lordship adds—"And, with reference to the practical adoption of this principle, I have to desire that you will, at an early moment, inform me to what extent the United States' Government assert, at this moment, an exclusive right and power over the large bays of the United States, such as Cape Cod Bay, the Sound (Long Island), Delaware Bay, the Chesapeake Bay, and others of the same description."

In the meantime the United States' Government, owing to the continued excitement on the subject, had thought it necessary to commission Commander Perry to proceed in the steam frigate "Mississippi" to the fishing ground, for the purpose of protecting American fishermen from interference by British cruizers when engaged in the pursuit of their lawful avocations. This officer accordingly proceeded to the British Colonial waters, and in the course of his cruize fell in with Sir George Seymour in the "Cumberland," Commander Campbell in command of the "Devastation," and other British cruizers. Owing, however, to the very discreet and fore-

bearing conduct both of the British and of the American officers no collision whatever occurred; on the contrary, not only was there the most cordial feeling between them, but they seemed to be almost practically agreed as to the waters from which United States' fishermen were excluded under the Convention. Thus, in a letter from Commander Campbell to Sir George Seymour, dated the 26th of August, announcing his meeting with Commodore Parry, we find him saying—

“Commodore Perry, in alluding to the fisheries, told me that he was fully aware that the United States' fishermen frequently violated the Treaty, and pointed out what he considered the limits in nearly the same words as he used while speaking to you in my presence on board the ‘Cumberland.’ I did not enter upon the subject with him more than I could help; but on his asking me what I considered the sea boundary of the Bay of Chaleur, I told him that I thought from Miscou Point to Point Macquereau, but that I was merely giving my private opinion.

“The Commodore then told me that all the fishermen he had seen complained more of the exclusion from Chaleur Bay than any other part of the gulf, but that he told them distinctly they could not fish in that bay without clearly violating the Treaty, and that they must take the consequences if they attempted it. He then informed me that the ‘Telegraph’ had detained another vessel called the ‘Golden Rule,’ but that it was ‘quite right,’ and that he was told by the other American fishermen that that vessel was taken fishing within the three miles.”

He then says that, when the conversation was over, Commander Campbell called the Commodore's attention to a number of American vessels which were fishing in-shore of them, they being at not more than two and a-half miles from the shore; and that the Commodore thereupon ordered the boats out, and sent them away to warn the vessels off, a warning which they at once obeyed. Commander Campbell adds:—

“I neglected to mention that the Commodore remarked that the Treaty excluded his countrymen from fishing in the bay of which Cape St. George and Port Hood are the headlands; but that he is, at the same time, clearly of opinion that the Treaty by

no means provides against their navigating the Gut of Canso.”

We find also Commodore Parry, in a letter to Sir George Seymour, saying:—

“Up to this time I have heard of no unnecessary exercise of rigour or harshness by the officers under your command; on the contrary, I have every reason to believe that they have, in the execution of your instructions, exhibited a degree of forbearance as honourable to themselves as to the enlightened views entertained by yourself upon the question which has recently produced so much discussion.”

In further corroboration of the great importance of the in-shore fishing to the United States' fishermen, Mr. Crampton, in his letter to Lord Malmesbury of the 6th of September, 1852, observes:—

“I am informed that a salutary effect has already been produced by our measures, and that a great number of American fishing-vessels have already returned to Massachusetts, whose masters declare that the pursuit must be abandoned as unprofitable and uncertain unless the close fishing is opened to them on a fair and legal footing.”

Again, Lord Malmesbury, in his letter to Mr. Crampton of the 24th of September, 1852, was anxious to show that the British Government was not claiming any new right. He says:—

“As Mr. Lawrence appears to have totally misunderstood the tenor of my observations, it is necessary that I should inform you that I did not say that seizures would not be made beyond the three-mile distance of the shore within bays; but I said that the President of the United States had proposed to you that Her Majesty's ships should abstain from making such seizures. Moreover, no mention was made, either by Mr. Lawrence, Sir John Pakington, or myself, of permission to American fishermen to ‘make up their fares’ by fishing close in shore during two months. On the contrary, I repeatedly remarked that the intimation given by Her Majesty's Government to the United States left everything as to rights and instructions to Commanders *in statu quo*; that Her Majesty's Government claimed no new right, and laid down no new principle, nor did they abrogate any previous relaxation; that the British proceeding was, in fact, one merely of police; but that we had

especially enjoined upon Her Majesty's Officers forbearance and judgment in the execution of their instructions."

At the same time, it is clear that orders issued to the Commanding Officer were in the most guarded terms, for, in the orders issued by Sir George Seymour to Commander Campbell, dated the 8th August, 1852, it is said:—

"You are therefore hereby directed, when United States' vessels shall be within the headlands of bays, but without three miles of the actual shores, to warn them off, observing their names and descriptions, but not to seize them, and until you shall receive further orders you will consider that three miles from the actual shore shall be the distance within which vessels are liable to seizure when found in undoubted and flagrant violation of the Convention."

And, in reporting to Sir George Seymour his proceedings, Admiral Campbell, in his letter of the 15th of August, says—

"If the Bay of Chaleur is to be open to the Americans, all the evils I have mentioned, with many others, must remain and increase, for it is in vain to attempt to keep them three miles from the shore, the fish being all close to the land for the purpose of spawning, and they will follow them to the very beach, the instant a ship of war is out of sight."

Mr. Crampton also, in his letter of the 12th September, 1852, in describing an interview which he had with the President on the subject, observes—

"Mr. Fillmore entirely concurred in the correctness of this statement; and I then called his attention to the consideration that even the fullest admission on the part of Her Majesty's Government of the principle supposed to be contended for by the the United States' Government in regard to the term 'bay' in the Convention, would in no way affect the state of things I had described. It was now admitted on all hands that 'the close in-shore' fishing is what the American fisherman requires in order to enable him to carry on his occupation with success."

In his despatch of the 26th of September, 1852, Mr. Crampton calls attention to the fact that the United States' Government apply the same rule in regard to prohibiting the Bahamas fishermen from fishing in the Gulf of Florida that the English

Government seek to enforce on the coasts of British North America.

On the 16th of September Admiral Campbell wrote to Sir A. Bannerman, the Lieutenant-Governor of Prince Edward Island—

“The water close to the shore is now absolutely teeming with mackerel in the finest possible condition, and this entirely within three miles of the land; so that by keeping the foreigners at that distance, the shore becomes a vast and valuable preserve for the fishermen to the British Provinces.”

And Sir George Seymour in reporting to the Admiralty on the 16th of October, says—

“The masters of the foreign fishing-vessels complain that they have been unable to make the successive voyages to any from the fishing-grounds, and that very many have been unable to complete their first cargoes.

“It gives me satisfaction to inform your Lordships that the increased protection which has been given in consequence of their orders to the British fishermen, has, especially at Gaspé and Chaleur, enabled British fishermen to use their privileges with far less interruption than usual, and they have consequently made a successful season, and are highly impressed with the advantages they have derived from the measures that have been taken by the Government.”

After the close of the fishing season of 1852, there appears to have been a sincere desire on the part of the American Government, to come to some arrangement on the subject, and a draft Convention having been prepared, a copy thereof was forwarded in Mr. Crampton's despatch of the 19th of December, 1852, together with other remarks made by the President thereon. A good deal of correspondence passed between the two Governments on the subject, but owing to the difficulties connected with the question of the Tariff, the United States' Government seemed to be anxious to have the Fisheries Question dealt with separately, but to this the British Government would not assent. The fishing season of 1853 accordingly opened without any agreement having been come to with the United States, and is now, therefore, determined to issue the same instructions for the protection of the fisheries as had been acted upon last year. The letter in which this order was conveyed, is dated the 28th March, 1853, and

is from the Duke of Newcastle—who had nominated Sir John Pakington as Secretary of State for the Colonies—to the Lords of the Admiralty, is in these words :—

“ *Downing Street,*

“ My Lords,

“ *March 28, 1853.*

“ I have to signify to your Lordship's the Queen's commands, that you take such steps as may be requisite for affording the same protection to the British fisheries in the Gulf of St. Lawrence, and other parts of the British North American station, including Newfoundland, as was afforded last year by the naval force under the orders of Sir George Seymour.

“ The instructions issued to the Admiral on that occasion, which were founded upon the letters from this office of the 2nd June and 19th August last, appear to me to be still perfectly appropriate: but in now repeating them care should be taken to show that they are not in any manner intended to interfere with the lawful exercise of whatever rights American citizens, or the subjects of France, may by Treaty be entitled to, but are solely issued with the view of affording to British subjects, and to Her Majesty's Colonial Dominions, that measure of protective police which is necessary to guard British waters against unlawful intrusion.

“ Your Lordships will instruct the Admiral to execute your orders with every proper caution and forbearance, in order that no unnecessary cause of offence or excitement may thereby be created.

“ I am, &c.

(Signed) “NEWCASTLE.”

Mr. Crampton was informed of these measures having been taken, but was not instructed to communicate them to the American Government, as it was regarded simply as a measure of protective police.

On the 26th of May, 1853, Sir George Seymour writes to the Admiralty concerning his arrival at Halifax, and the measures which he had adopted for the British fisheries. And he adds, “the arrival of the “Argus,” and “Basilisk,” for the protection of the North American fisheries have caused great dissatisfaction in this Province, and I am measures to obtain small vessels to employ as

tenders to carry out their Lordships' instructions for the same object." And further on he says, "A large vessel of war is required this year in the bay, as there are rumours of a disposition to use the same means in this quarter to prevent seizure, that were tried some years since near Eastport, and which were there successful, to release the vessels seized." Sir G. Seymour here referred to a reason that many of the fishing-vessels had left this season for the fishing-ground, well armed, with the intention of resisting by force any small trader or cruizer that might interfere with them.

On receipt of information as to the measures about to be taken by the British Government for the protection of its fisheries, the Government of the United States determined to send a naval force to those waters; and Mr. Crampton, in his letter of the 3rd of July, 1853, thus describes the result of his conversation with the Secretary of State, Mr. Marcy, on the subject. He says—"Mr. Marcy, having sent for me yesterday, informed me that it is the intention of the United States' Government to send shortly a naval force to the fishing-grounds adjoining the British North American Colonies. The amount of this force is not yet determined, nor has the officer under whose command it is to be placed been named. Mr. Marcy remarked, however, that care would be taken to select a commander on whose moderation and discretion entire reliance could be placed. The measure of sending a force to the fisheries was one, Mr. Marcy said, which seemed called for by public feeling on the subject, and was adopted by the United States' Government in no hostile spirit to Great Britain, but the reverse. It was the sincere desire of the President, that no misunderstanding or collision should take place between either the naval forces of the two countries, or their respective citizens and subjects; and it was thought that the presence of a discreet officer at the fisheries, upon whose reports the United States' Government could rely, and who, it was not doubted, would put himself into friendly communication with the Commander of the British naval force, was calculated to conduce materially to this object; for, without the presence of such an officer, the United States' Government would, in case of the occurrence of any difficulty,

have nothing to rely upon but the *ex parte* reports of private individuals. It was with reference to the instructions to be given to this officer, Mr. Marcy added, that he had sought the present interview with me. Sincerely desirous as he now was, and honestly determined now to settle by negotiation the whole question in regard to the fisheries and the trade of the North American Colonies, and entertaining a confident belief that these objects could be effected by the negotiation upon which we were entering, he felt the more anxious that no untoward event during the present fishing-season should occur to intercept or prejudice the friendly discussion of the matter. While there were some points in the Convention of 1818, however, in regard to which the two Governments perfectly agreed, there were others in regard to which they entertained conflicting views. Both Governments were agreed that that Treaty secured to British subjects the exclusive right of fishing within three miles of the shores therein designated. But with regard to the meaning of the word "bays" in the Treaty, and the paces inclosed by lines drawn from headland to headland, the Government of the United States held a different opinion from that entertained by that of Great Britain. It was not his object now to enter upon a discussion of this difference of opinion; still less so, to ask the British Government to abandon its construction of the clause of the Treaty in question, and to adopt the construction of the Government of the United States. The Government of the United States, on the other hand, felt a difficulty in receding from the position which had been taken up by it upon this matter on all former occasions. He hoped, and believed, that all necessity for discussion of this question of construction would be removed by the conclusion of an arrangement which would render it unnecessary; but if such an arrangement should unfortunately be found impossible (and this was a point which must now be determined within a few months), he would then be ready to enter upon the consideration of the question of construction in the most friendly spirit. It would, however, now relieve him from much anxiety if I could, without in any way committing my Government to an abandonment of the principle in regard to bays for which they contended, give

him an assurance, confidentially, that that principle would not be practically enforced during the ensuing fishing season. He by no means intended, he said, to make such an assurance the basis of an announcement to American fishermen that they might fish within the disputed spaces, that is, within bays, but at a greater distance than three miles from their shores, nor would the fact of such an assurance be alluded to in the instructions given to the Commander of the American force; but if such an assurance could be given, it would relieve the United States' Government from the necessity of making any reference whatever to the differences of opinion between the two Governments, whether to the public or to their own officers; and as these would be instructed not only not to protect American fishermen in encroaching within the three-mile limit, but to discourage and discountenance their doing so by every means in their power, the season would, he thought, pass over without the possibility of any collision, and, at all events, without the occurrence of any case in which difference of opinion would occur between the officers in command of the respective naval forces, or between the Governments themselves, as to the application of the provisions of the Treaty.

“I replied to Mr. Marcy, that, although I felt equally anxious with himself that no occurrence of a nature to involve the two Governments in discussions of an unfriendly character should arise in regard to the fisheries, I, nevertheless, did not feel authorized to give him so positive an assurance as he seemed to require. Of the exact words of the instructions to Admiral Sir George Seymour in regard to this point, I was not, I remarked aware; but I could not but presume that these were in accordance with the interpretation given to the Treaty by Her Majesty's Government, which appeared to me to be clear and indisputable. Of this, however, I could assure him, and I thought I could in this respect refer him to the events of last year at the fisheries, that those instructions were conceived in a spirit of the utmost moderation, and would be carried into execution with temper and discretion. I would go further, I remarked, and express my hope and expectation that no cases of the kind Mr. Marcy had alluded to would actually

occur. This hope and expectation was founded, first, upon the fact, that on previous occasions where an example was absolutely necessary to deter encroachment upon our undoubted rights, Sir George Seymour had invariably selected cases in which the violation of the Treaty was flagrant and indisputable; and, secondly, upon the circumstance that practically it was the mackerel fishing close to the shore and not the fishing in the open bays, which, from its greater value, offered the greatest temptation to encroachment on the one hand, and called for a strict enforcement of measures of protection on the other. There might, however, I remarked, be cases in which the intention of encroachment would be rendered so evident by the presence of vessels in certain bays, although just outside the line of three miles from the shores of these bays, apparently ready to profit by the temporary absence of the protecting force to make a further encroachment, that the British commander might not feel himself at liberty to pass them over.

“I concluded by thanking Mr. Marcy for the frankness of his communication as well as for the friendly tone in which it was conveyed, and by stating that I would immediately put myself into direct communication with Admiral Sir George Seymour, as well as with Her Majesty’s Government, on the subject of our conversation, assuring him that no pains would be spared either by that officer or by myself so to frame our proceedings as to meet the exigencies of the case in the manner best adapted to obviate the occurrences of subjects of discussion between the two Governments which the instructions of Her Majesty’s Government would admit of.”

In reply to this note Lord Clarendon wrote to Mr. Crampton on the 23rd of the same month, expressing the great satisfaction which Her Majesty’s Government felt at the frank and friendly tone of Mr. Marcy’s communication; but his Lordship then went on to say:—“With regard to the question put to you by Mr. Marcy, whether, pending a final settlement of a Trade and Fishery Treaty, Great Britain would waive their interpretation of the term ‘bay,’ I have to state to you that Her Majesty’s Government intend to exercise with every prac-

licable forbearance the rights which are secured to them by Treaty ; but so firm is their conviction that their reading of the terms ‘coasts, bays, creeks, or harbours,’ used in the Convention of 1818, is correct, and, moreover, consistent with the usage of the United States themselves, that Her Majesty’s Government cannot consent, even for a temporary object, to waive that right.”

In the meantime the United States’ Government, in pursuance of the intimation made by Mr. Marcy to Mr. Crampton, as stated in his letter of the 3rd of July, dispatched the war first-class steam frigates “Princeton” and “Fulton,” and the ship of war “Decatur,” under the command of Commodore Shubrick, to the British waters ; but, in the meantime, Mr. Marcy addressed a Circular to the Directors of Ports in the United States, couched in very conciliatory terms, directing them to point out to the American fishermen the risk they run by encroaching upon forbidden ground, and by having recourse to resistance by force of arms to Her Majesty’s ships of war, which, Mr. Marcy adds, “can never receive any countenance from this Government.”

Mr. Crampton also, in accordance with the instructions received by Mr. Marcy, proceeded to Halifax, there to confer with Sir George Seymour on the subject. The result of his conference with Sir George Seymour, and of an interview with Mr. Marcy and the President, on his return to Washington, is fully set forth in the following letter to Lord Clarendon, dated 28th of July, 1853. In that letter Mr. Crampton says :—

“With reference to my despatch of the 3rd instant, stating my intention of proceeding to Halifax for the purpose of conferring with Vice-Admiral Sir George Seymour, I have the honour to inform your Lordship that I returned from that place to Washington on the 19th instant.

“I did not fail, during my stay in Halifax, to put the Commander-in-chief in possession of all the information in my possession in regard to the views and intentions of the United States’ Government in sending a naval force to the fisheries, and I stated to him without reserve my own impressions as to the course which the Commodore of the American

force would be most likely to pursue whilst at the fisheries.

“I found Sir George Seymour, while firmly determined to protect Her Majesty’s subjects in their just rights, animated by a most conciliatory spirit, and fully impressed with the importance of avoiding all collision or discussion of disputed points with the officers and with the citizens of the United States.

“His Excellency was so good as to communicate to me the instructions which he had given to the officers under his command entrusted with the protection of the fisheries, and these appeared to me drawn up with as much moderation as is consistent with the proper assertion of British rights.

“The Vice-Admiral felt himself unable to give the assurance desired by Mr. Marcy, that, under no circumstances, the seizure of an American vessel should occur in a British bay at a greater distance than three miles from the shore; but at the same time his instructions are such as render the occurrence of any such seizure very unlikely.

“On my return to Washington, I waited upon Mr. Marcy and the President. My communication of the result of my conference with Sir George Seymour was received in a conciliatory manner. Mr. Marcy assured me that, although the United States’ Government could not consistently abandon their opinion as to the construction of the Convention of 1818 as regarded open bays, they had not sent a squadron to the fisheries to try conclusions on disputed points, but as the best means of preventing such disputes from arising. He entirely disclaimed any intention of menace by sending a naval force into British waters, and remarked that the force about to proceed there was quite too inconsiderable to warrant such an apprehension. He added that Commodore Shubrick, an officer whose prudence and discretion could be entirely relied upon, had been selected, more especially because he was personally well acquainted with Sir George Seymour, and that that Commodore was now instructed to proceed in the first instance to the head-quarters of the Vice-Admiral for the purpose of putting himself into friendly communication with him. The stay at the fisheries of the vessels under Commodore

Shubrick's command would, he added, be short, and his visit to them was to be regarded as a cruise of part of the West Indian squadron, not unnatural at any time in waters where American interests were, under the Treaty of 1818 itself, involved, rather than the detachment of a force for any special purpose connected with the present question regarding the fisheries."

The purport of his conversation with the President and Mr. Marcy is more fully related in a previous letter to Lord Clarendon, dated the 22nd of the same month, in which he says:—

"I returned here on the evening of the 19th, and the next day had interviews with Mr. Marcy and the President. The principal subject of our conversations was the fisheries, and in the inclosed letter, which I immediately wrote to Sir George Seymour, you will find the substance of what was said. Whatever irritation may have been felt has been got over, and there is an evident desire on the part of Mr. Marcy, and more especially on that of the President, that the present fishing season should pass off quietly. At the same time there is as evident a fear of being attacked for not being as zealous in the protection of American rights as their predecessors in office. They would of course have been glad that peace should be secured by the entire concession by us of our position, allowing them to stand forth as the successful assertors of the whole of their claim. I think, therefore, that the communication to them of the view of the case taken by Sir George Seymour has had the good effect of showing them that forbearance must be mutual, and that if they really wish things to pass off smoothly, their instructions to the American Commodore must be couched in the same spirit of moderation as ours to the British Admiral. The misfortune is, that the former have to be made with reference to their production hereafter before Congress and the public rather than as practical directions for the guidance of the officer to whom they are addressed.

"Mr. Marcy and the President entered upon other subjects, and upon all used the most friendly language. I will refer to them when I write by our own packet of Wednesday next."

I may here observe, as bearing on the importance of the in-shore fisheries, that Sir Ker B. Hamilton,

the Governor of Newfoundland, in a letter to the Duke of Newcastle dated the 28th of June, 1853, observes :—

“The mackerel fishery in the bays of these Provinces and in the Gulf of St. Lawrence is that branch of industry in which they principally fear American competition. Mackerel are pickled on board ship, as soon as they are taken ; the extension of their fishing grounds, therefore, is all the Americans require to be enabled to extend, in an equal degree, their mackerel fishery. Codfish, although sometimes salted on board ship, are cured on shore by a tedious and sometimes uncertain process, dependent very much upon the state of the weather. In the cod fishery, therefore, if the Americans were to cover the banks with their vessels, unless they had facilities for curing on shore, their fleets would be useless ; it is in these facilities that we do, and I think always would, excel them, even after the proposed concession to them of further rights of fishery.”

To return, however, to the United States' squadron, it appears that Commodore Shubrick arrived at Halifax on the 5th of August, and Sir George Seymour, in a letter to the Admiralty dated the 17th of that month, thus describes the result of his interview with Commodore Shubrick. He says :—

“I have to acquaint you, for the information of the Lords Commissioners of the Admiralty, that the communications which were made to me by Commodore Shubrick, after his arrival at Halifax on the 5th instant, were indicative of every disposition on his part to carry on the duty entrusted to him in a conciliatory spirit.

“The Commodore acquainted me that he was instructed to advise his countrymen to act in accordance with the stipulations of the Convention of 1818, and that the commanders of the vessels under his orders were directed, if any difficulties occurred, to report the facts to the United States' Government or himself, and not to take any proceedings of consequence without further authority.

“I referred Commodore Shubrick to a statement Mr. Crampton had made to Mr. Marcy as my views ; and added that, from the disposition he evinced to prevent collisions on the Fishery Question, I could assure him that the Commanders of Her Majesty's

ships were already enjoined to execute their duties with every possible moderation, and to prefer warning to seizure, except in cases of wilful and deliberate encroachment; that no seizures had then been made, but I could not answer (although I hoped) that none would be necessary.

“As Commodore Shubrick did not enter into what orders he had received on the Bay question, I read to him the principal part of a communication I had received from Mr. Crampton, dated the 21st ultimo, on the explanations he had received from the President of the United States and Mr. Marcy as to their motives for sending a force to the fishery grounds; and called his attention to the latter having desired Mr. Crampton to assure me that there was no intention of contesting, during the present season, the only controverted point in the Treaty respecting the open bays. I gave this as my reason for thinking no collision was likely, which he appeared to desire to state to his Government as my opinion.

“I also adverted to the possibility of collision arising with some of the fishing-vessels being armed, which he assured me of his solicitude to prevent.

“Commodore Shubrick did not expressly declare that he was ordered not to contest our view of the Bay question, but concurred generally in his instructions being in consonance with Mr. Marcy’s language to Mr. Crampton; he also, later, expressed his concurrence my views on the Admiralty Courts being the only proper tribunals to decide whether any seizures were justifiable, but I observed that he stated this rather as his personal opinion than that of his Government.”

The United States’ vessels then proceeded through the fishing grounds and, on their return, it would seem, from a letter from Sir George Seymour to the Admiralty, dated the 15th of September, that Commodore Shubrick stated that “he himself had not seen or heard anything which gave him reason to complain of the conduct of the British officers employed in superintending the execution of the Convention, and that he should report accordingly to his Government.”

On the 10th of November Sir J. Seymour reported the close of the fishing season of 1853,

without any untoward event of any kind having occurred. And he adds—

“That the Colonies have derived advantages has been proved by an increased number of vessels being fitted out, and of a better description, which affords every hope that if fraudulent assumption of our flag is checked, the natives of Nova Scotia will not long find it their interest to pursue their calling in foreign vessels, when they can do so more successfully in their own; and it is certain that the support which has been given to the fishing interests by Her Majesty’s Government has had a wholesome influence on the public mind throughout the British provinces.”

In the meantime negotiations for a Treaty between the two countries had been going on, and, on the 1st of September, 1853, Mr. Marcy forwarded a note to Mr. Crampton, with the project of a Commercial Convention. The views, however, of the two Governments were so greatly opposed, that Lord Clarendon, in a letter dated the 2nd of February, 1854, directed Mr. Crampton to inform Mr. Marcy that it would be better, in their present divergence of views, to suspend for a while the pending negotiations until they could see their way more clearly to an appreciation of those views.

In the month of May following, Lord Elgin being about to resume his duties as Governor-General of Her Majesty’s Provinces in North America, it was thought to be a favourable opportunity for renewing negotiations on the subject. His Lordship was accordingly directed in a letter dated the 4th of May, 1854, to pay a visit to Washington on his way to the seat of his Government, and during his stay there to endeavour to ascertain what the views of the United States’ Government were in regard to reopening negotiations with this country, and if any favourable opening presented itself he was instructed to conclude a Treaty on the subject.

He was informed in that letter of the several points on which it was thought desirable that a Treaty should be made, and of the different views entertained by the two Governments; but he was directed to keep steadily in mind, as a principle never to be lost sight of in negotiating with the United States, that no concession can safely

be made to that Government, except in return for corresponding concession on its part ; that any concession on which it may insist must be purchased by concession on its side, and that so far from being likely to arrive at a permanent and satisfactory settlement by the adoption of a yielding tone, the result in all probability would be the reverse."

Lord Elgin accordingly proceeded to Washington, and so successfully were the negotiations conducted that he was enabled in a letter dated the 12th of June following, written after his arrival at Quebec, to announce that he had on the 5th of the same month executed a Treaty with Mr. Secretary Marcy on the subject of the fisheries and reciprocity of trade between the United States and the British Provinces. The main provisions of the Treaty were to throw open the British waters on the East Coast of North America to the United States' citizens, and United States' waters open to the 30th degree of north latitude to British fishermen, except always the salmon and shad fisheries, and such rivers and mouths of rivers as should be carefully reserved to each nation by a Commission to be appointed for the purpose, and to admit certain articles the growth and produce of the British Colonies and of the United States in each country respectively free of duty. The Vth Article provided that it should remain in force for ten years, and for twelve months after either Party should have given notice to the other of its wish to terminate the same. The Treaty was silent as to the fisheries in the Gulf of Florida, the United States being anxious, for various reasons, to exclude British fishermen from these waters; and accordingly United States' fishermen were equally excluded from the British waters on the West Coast. Some difficulty also was experienced in regard to Newfoundland, but at length a clause was agreed to providing that, if the Imperial Parliament, the Provincial Parliament of Newfoundland, and the Congress of the United States should agree that Newfoundland should be included, all the provisions and stipulations of the Treaty should apply to that Colony.

On the 3rd of August the Senate confirmed the Treaty, and on the 8th it was approved by the President. Certain legislative enactments, however, had to be passed, both in this country and in

the Colonies, which, owing to the time of the year at which the Treaty was signed, could not be at once obtained. The United States' Government, however, was very anxious that its citizens should be allowed to have access to the fisheries at once, and accordingly Mr. Buchanan, the United States' Minister in this country, was instructed to apply to Lord Clarendon that orders should be sent "to the authorities in the Colonies not to molest American fishermen in using at once the privileges secured to them by the Treaty of Reciprocity." This course had already been suggested by Lord Elgin in his letter announcing the signature of the Treaty.

Instructions to that effect were accordingly sent out both to the Colonial authorities and to Her Majesty's naval forces on the coast, and a vessel called the "Ellen," which had been seized by one of the Provincial cruizers for encroaching on British waters, was ordered by the Admiral and the Colonial authorities to be released, "the master acknowledging the legality of the original seizure."

It was then thought that, in return for permission granted to American fishermen of being allowed access at once to the British fisheries, the United States' Government would be disposed to admit fish caught by British fishermen to be admitted duty-free; but, with every desire on the part of that Government to act in the most friendly and liberal manner on the subject, it was found that it had no power to remit the duties, and that it was compelled to levy them "on fish brought to its market by British subjects until the Treaty should become operative by the required legislation of Great Britain and the British Provinces."

Mr. Marcy, however, in his letter of the 10th of October, 1854, to Mr. Crampton, stated that "should British fish, caught after the in-shore fisheries were opened, be brought to our markets, and duties paid thereon, it would be reasonable to expect that an application to Congress to refund the duties, founded upon such equitable considerations as the case would present, would be successful; or if such fish thus taken should be put in warehouses, and bonds for the duties thereon given, Congress would, I believe, authorize such bonds to be cancelled and given up, without requiring the fish to be exported."

Immediately on the ratification of the Reciprocity Treaty orders were sent to the Lords of the Admiralty, and by them to the Admiral on the Station, "not to molest American fishermen in

the privileges secured to them by the Treaty ;" and a vessel called the "Ellen," which had been seized for encroaching on British waters, was ordered to be released, on the master acknowledging the legality of the seizure. And, in a letter dated the 30th of September, 1854, in answer to their Lordships' letter of the 18th of August preceding, Rear-Admiral Fanshawe answered that he had withdrawn the British cruizers from the service of protecting the British fisheries. He at the same time forwarded Reports from the captains who had been employed on that service, which contains some particulars relative to the fisheries, which it may not be unimportant to notice. Lieutenant-Commander Napier of the "Daring," in speaking of Port Darrell, observes, "this anchorage was generally a great resort for the American vessels, but for the last two or three years, since the cruizers have visited it, they rarely come here."

And further on he says—

"During the presence of a cruizer the American vessels were, I observed, very cautious in keeping the limits and not coming inside to attempt fishing, but otherwise they had no compunction in coming quite into the harbours.

"It was reported to me, particularly at Gaspé, that they had come close outside a peninsula, called Landy Reach, that they had been fishing there in my absence, and been very successful."

Again, Lieutenant Knocker, of the "Alice Rogers," in his Report says, "the mackerel appear to keep in-shore from Cape Gaspé towards Fox River and northward, off which place and Griffin's Cove a large catch was made at the end of July."

And further on he says—

"The American fishermen, during the first part of the season, would not take the small mackerel, but they have done so lately, from the great demand for fish in the United States. Many of their vessels (upwards of 100 sail) left the Gulf with half cargoes on that account, but the average catch has not exceeded, even if it equalled, that of last year at this

time; and I do not think there are so many vessels employed.

“The contrary is the case with English vessels, and to the credit of Nova Scotia, a great many vessels, as fine and as well found as those from the United States, are from Halifax, Lunenburg, Le Hare, &c., far more than any previous year.

“They came into the Gulf much later than the foreign vessels, but have been doing well; this they attribute to the protection afforded them.

“Encroachments this year by foreign vessels have been frequent, owing, I think, to the less number of cruizers in the Gulf of St. Lawrence, and the American fishermen, knowing no steamer was employed in the protection of the fishermen there, took every advantage of the movement of the cruizers from one part of the coast to another. About Gaspé Bay I did not hear of any cases, but several at and about Fox River, and also received information to that effect from Mr. Belleau, Collector of Customs at Gaspé, copies of whose letter to me, and that of the master of an English schooner to him, I beg to inclose.

“In Chaleur Bay several instances of encroachment, after warning off had not been attended to, compelled me to make two seizures, the ‘Montezuma’ and the ‘Ellen’ of Salisbury (American schooners), considering an example absolutely necessary, having detected twenty-seven within a week in the Bay and off North Cape. The ‘Montezuma’ I released, on the master giving me a written statement that he had been legally seized, and the ‘Ellen’ I took to Bathurst, and delivered her to the Collector of the Customs there. I also detained the American schooner ‘Legislator,’ of Bremen, off East Cape, but, on the master acknowledging his infraction of the Treaty, and that his vessel was a lawful prize, and giving me a written statement to that effect, I released him.”

Again, Lieutenant Dent, of the “Sarah and Adeline,” says, “I was informed by several American fishing masters that the fish were found in great abundance in the bay, but so close in-shore that their vessels had done very badly, owing to the vigilance of the cruizers on the stations.”

And again—

“ After running through the Straits of Canso, on the 17th, I observed an American vessel fishing within the Bay of St. George, which I boarded, and after examining her papers, ordered and saw her off. She belonged to Truro, and was bound home with 170 barrels of mackerel on board. This was the first American vessel I found fishing within the limits.”

Lieutenant Burgess of the “ Netley,” says :—“ I have visited all the different fishing grounds frequently and at irregular periods, and I am happy to say that I have, on no occasion, found any American vessel attempting to trespass or encroach on our waters, neither have I heard of any case of the sort.

“ This has been on the whole a far better season for the fishermen in general than last year, both as regards the deep-sea and in-shore fishing ; herrings have been very abundant on the Nova Scotian shores, more so than they have been for a number of years. At Digby, they were so numerous, as many as 500 or 600 barrels having been taken in one weir in a day, in fact, so plentiful were they at times, both there and at Tusket, they were obliged to make manure of them, or give them away, not being able to cure the large quantities taken.”

Some difficulties were owing to the time required to pass the necessary legislative enactment for admitting fish and other articles, duty free, into the stores, in accordance with the provisions of the Reciprocity Treaty. Difficulties also arose as to the claim of the American fishermen for exemption from the local laws for the regulation of the fisheries, to which the British fishermen were liable. But ultimately all these difficulties was got over, and we find that, in the year following the Treaty, the number of American fishing boats had greatly increased, and yet there appeared to be the greatest harmony between the English and American fishermen. Thus we find Messrs. Lambert of the “ Espiegle,” in a letter dated from Charlotte Town, Prince Edward Island, September 5, 1855, saying, “ that there are about 80 American schooners on this part of the coast, the average tonnage being about 80 tons each ;” and further on in the same letter he says, “ there are this year about 100 American vessels fishing round these islands and the Bird Rock, though the most I saw at one time was twenty-five.

Owing to the Reciprocity Treaty there have been a great many trading vessels from the United States which have brought goods and taken fish in exchange." And in a further letter dated from Halifax, September 21, he says, "the number of American vessels has increased this year, but not so much as might have been expected. The Reciprocity Treaty appears to be working well and gives satisfaction to all parties."

Commander Cochran also in a letter from Halifax, dated September 29, 1855, says—"I have also taken every opportunity of questioning the fishermen as to the present state of the fisheries. From all parties I have obtained but one opinion, as to the perfect harmony existing between our own and the American fishermen, and the conciliatory spirit in which the fishery is conducted in common between them."

It should here be stated that, by the 1st Article of the Treaty, it was expressly provided that the liberty accorded to the United States' fishermen had reference "only to the sea fishery, and that the salmon and shad fisheries in rivers and the mouths of rivers are hereby reserved exclusively for British fishermen." And a similar regard to United States' waters was made by the 2nd Article in favour of United States' fishermen. It was further provided that, with a view to prevent and settle disputes, Commissioners should be appointed by both the Contracting Parties to designate the places reserved from the common right of fishing. Accordingly, Mr. Reilly was appointed by Her Majesty's Government, and another gentleman on behalf of the United States' Government; and these gentlemen were for some years employed in determining the places in which the reservation of exclusive right applied. It is, however, not necessary here to do more than notice the fact, as the reservations in question were expressly mentioned under the XVIIIth and XIXth Articles of the Treaty of Washington of 1871.

In 1862, the question as to how far American fishermen were bound by local laws again came up; and I find Captain Hamilton, of the "Vesuvius," in a letter dated St. John's, Newfoundland, October 6, 1862, the Lieutenant-Governor of that Colony, saying, "It was currently reported, and I believe

with truth, that the Americans had expressed their opinion that they were not bound by the laws of Newfoundland; and had also expressed their intention to bar in herring as usual, and defend their seines by force, if necessary; and the Newfoundlanders of Battle Harbour and Salt's Ponds were equally determined to prevent it; and from some of the Nova Scotian masters having asked me if the Reciprocity Treaty did not except Americans, it was evident the subject had been discussed; and I am of opinion that, if herring had come in, there would have been a serious riot, in which fire arms would probably have been used, had the "Vesuvius" not been present; and to prevent which, I remained a week later on the coast than I otherwise should have done, and till all prospects of herring coming in was over.

On this being reported home the opinion of the Law Officers was taken, and, on the 6th of January, 1863, Sir W. Atherton and Sir Roundell Palmer, the then Attorney- and Solicitor-General, advised that citizens of the United States whilst fishing in the territorial waters of Newfoundland were bound to obey, and were legally punishable for disregarding the laws and regulations for the control of the fisheries, "enacted" by the territorial Legislature.

After this, and so long as the Reciprocity Treaty lasted, no further difficulties appear to have arisen, the trade between the two countries increased, and the fishing operations were carried on in common by British and United States' fishermen, without apparently any collision having occurred between them.

On the 17th of March, 1865, however, Mr. Adams, the United States' Minister in this country, informed Earl Russell that he was instructed by his Government to give his Lordship notice that, at the expiration of twelve months from that day, the Reciprocity Treaty was to terminate. This notice was given in pursuance of a prior resolution of Congress, and approved by the President of the United States.

In communicating this information to Sir F. Bruce, the British Minister at Washington, Earl Russell, pointed out the very great increase of trade which had taken place between the United States and the British North American Provinces during the con-

tinuance of the Treaty, and expressed a hope that means might be taken to obtain a renewal of the Treaty, with such modifications as would be likely "to render it, if possible, even more beneficial to both countries than it has hitherto been."

Various causes, however, contributed to render it impossible at that time to obtain a renewal of the Reciprocity Treaty. The war with the Confederate States had just then been brought to a successful termination, and there was a strong feeling of hostility made against this country and the British Provinces owing to the part which a portion of the population had taken in the war. Moreover, the Protectionist feeling, by the almost total exclusion of the Southern power, had become extremely powerful, and there was a strong desire in the country to pay off a portion of the debt by the imposition of heavy Customs duties, which could not, of course, be done so long as the Reciprocity Treaty lasted. There was also a feeling that the Executive Power had gone somewhat *ultra vires* in negotiating the Treaty at all, inasmuch as all matters relating to Customs were peculiarly within the function of the Legislature. Thus, Mr. Seward, in his letter of the 17th of February, 1866, to Sir F. Bruce, observes:—

"The character of the constitutional distribution of public affairs among the different departments of the Government is well known. It confides commerce and national finance expressly to the Legislature. The now expiring Reciprocity Treaty constitutes almost the only case in which the Executive department has, by negotiation, assumed a supervision of any question of either commerce or finance. Even in that case the Executive department did little more than to make a Treaty, the details of which had been virtually matured beforehand in the Congress of the United States, and sanction was given to the Treaty afterwards by express legislation."

It was felt that the only compensation which could be given for the right of admission to the British fisheries, would be of a relaxation of the Customs laws, and that this could only properly be done by Congress. On the other hand, this country was very naturally unwilling to cede by Treaty such valuable privileges to the United States' fishermen,

when the only security for the admission of Canadian goods into the States depended upon an Act of the United States' Legislature, which may be repeated at pleasure. The result was that nothing could be done, and the Treaty came to an end.

In view, however, of the approaching termination of the Reciprocity Treaty, it becomes necessary for Her Majesty's Government "to consider the course which it would be expedient to pursue with respect to the fishery rights conceded to the United States by that Treaty;" and, accordingly, Mr. Cardwell, the Minister for the Colonies, in a letter to Lord Monck dated the 3rd March, 1866, wrote as follows:—

"Her Majesty's Government have just received, in General Sir J. Michael's despatch of the 12th of February, the announcement of the actual termination of the Reciprocity Treaty on the 17th instant.

"This information renders it necessary for Her Majesty's Government to consider the course which it will be expedient to pursue with respect to the fishery rights conceded to the United States by that Treaty. Her Majesty's Government do not feel disinclined to allow the United States, for the season of 1866, the freedom of fishing granted to them in 1854, on the distinct understanding that, unless some satisfactory arrangement between the two countries be made during the course of the year, this privilege will cease, and all concessions made in the Treaty of 1854 will be liable to be withdrawn.

"As the fisheries will open so soon, no time should be lost in arriving at a decision on the subject. It is not improbable that the British North American Provinces may desire to press upon the Imperial Government the withdrawal from the Americans of the rights of fishery enjoyed by them under the Reciprocity Treaty, in the hope that this measure might induce the American Government more readily to conclude another Commercial Treaty. But it must not be forgotten that, while the advantages of such a concession from the United States would all accrue to the British Provinces, the cost of maintaining a naval force at the fisheries for the protection of British fishermen as against the encroachments of American fishermen would fall entirely on the Imperial Government. I have to request you to be good enough to ascertain what

are the views of your Ministry on this subject, though you will not feel yourself at liberty to pledge Her Majesty's Government to an absolute deference to the wishes of your advisers.

"I need not impress upon you the great importance, both to the British Possessions in North America and to this country, of avoiding any measure which might produce any feeling of irritation between ourselves and the United States."

In the meantime Lord Monck had issued a notice warning the citizens of the United States that their right to fish in the in-shore waters of Canada would cease on the 17th of March, 1866; and Mr. Cardwell, in acknowledging the receipt of Lord Monck's letter, observes:—

"I have to acknowledge the receipt of your despatch of the 19th February last. It was doubtless desirable, whatever course Her Majesty's Government may, upon full consideration, determine to pursue, that immediate notice should be given to all parties concerned of the termination of the legal rights enjoyed by American fishermen under the Treaty of 1854. It may be apprehended, however, that, after those rights have been so long enjoyed, and have now been so abruptly terminated, the difficulties with which, before the conclusion of the Treaty, the question of the fisheries was surrounded will be much increased. The greatest forbearance will be necessary on the part of the Colonial Governments with respect to enforcing the rights which revive to them by the expiration of the Treaty, and Her Majesty's Government are now engaged in giving to the subject their most earnest consideration.

"I shall hope to acquaint you with the result of that consideration before the time arrives for the commencement of the fishing season."

The matter was accordingly taken into consideration by Her Majesty's Government, and the result was communicated in a despatch from Lord Clarendon to Sir F. Bruce dated the 17th March, 1866. His Lordship says—

"The attempts thus made, whether to renew the Treaty, to conclude a new one, or to extend the time for its expiration, in order to admit of negotiations, having thus failed, and the Treaty having thus expired, it becomes the duty of Her Majesty's

Government to consider what course they should pursue."

And he then proceeds—"With regard to the navigation of the St. Lawrence and the canals, it is not the intention of Her Majesty's Government to interfere for the present with the privileges which the citizens of the United States have enjoyed during the time the Treaty has been in operation. But, as regards the privileges of fishing and of landing upon the shores and coasts of Her Majesty's possessions for the purpose of drying their nets and curing their fish, which have been enjoyed by citizens of the United States under the Treaty, Her Majesty's Government are very desirous to prevent the injury and loss which may be inflicted upon the citizens or the United States by the sudden withdrawal of their privileges. They are, however (now that the Treaty has come to an end), bound by the Act 59 George III, cap. 38, as well as by Acts of the Legislatures of New Brunswick and Nova Scotia, which have obtained the Imperial sanction. By those Acts, which were only suspended during the existence of the Treaty, severe penalties, extending to the confiscation of their vessels, with the cargoes, tackle, stores, &c., are inflicted upon all persons, not British subjects, who shall be found fishing within the distance of three miles of the coast of Her Majesty's possessions in North American.

"It becomes the duty of Her Majesty's Government and of the Governments of the respective provinces to enforce the law, until those Acts are modified or repealed, citizens of the United States will be prohibited from fishing in British waters, from landing on British territory for the purpose of drying their nets and curing their fish, and will be subject to all the penalties which the violation of the law entails."

Mr. Cardwell also, in a letter dated the 12th of April, 1866, to the Lords of the Admiralty, instructing them to take the necessary measures for the protection of the British fisheries, thus expresses himself—

"Her Majesty's Government are clearly of 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 the question what is a British

bay or creek is one which has been the occasion of difficulty in former times.

It is, therefore, at present, the wish of Her Majesty's Government neither to concede, nor, for the present, to enforce, any rights in this respect which are in their nature open to any serious question. Even before the conclusion of the Reciprocity Treaty, Her Majesty's Government had consented to forego the exercise of its strict right to exclude American fishermen from the Bay of Fundy; and they are of opinion that during the present season that right should not be exercised in the body of the Bay of Fundy, and that American fishermen may not be interfered with either by notice or otherwise, unless they are found within three miles of the shore or within three miles of a line drawn across the mouth of a bay or creek which is less than ten geographical miles in width, in conformity with the arrangement made with France in 1839.* American vessels found within these limits should be warned that by engaging or preparing to engage in fishing they will be liable to forfeiture, and should receive the notice to depart which is contemplated by the laws of Nova Scotia, New Brunswick, and Prince Edward Island, if within the waters of one of these colonies under circumstances of suspicion. But they should not be carried into port except after wilful and persevering neglect of the warnings which they may have received; and in case it should become necessary to proceed to forfeiture, cases should, if possible, be selected for that extreme step in which the offence of fishing has been committed within three miles of land.

Her Majesty's Government do not desire that the prohibition to enter British bays should be generally insisted on, except when there is reason to apprehend some substantial invasion of British rights. And, in particular, they do not desire American vessels to be prevented from navigating the Gut of Canso (from which Her Majesty's Government are advised they might be lawfully excluded), unless it shall appear that this permission is used to the injury of Colonial fishermen, or for other improper objects.

I have it in command to make this communication to your Lordships as conveying the decision of Her Majesty's Government on the subject.

* Hertslet, vol. v, p. 89; Convention of August 2, 1839, Articles IX and X.

In the meantime Lord Monck had, on the 31st of March, addressed a letter to Mr. Cardwell, forwarding copy of a minute of the Executive Council of Trade, to some fisheries of which it may be proper to call attention. The Committee of Council after stating it is their earnest wish to avoid any step that would be likely to lead to a collision with the United States' fishermen proceed as follows:—

“The intrinsic value of the fisheries is not very generally known in England, nor the important influence their possession must hereafter exercise on the destinies of British North America. The take of fish by provincial fishermen, irrespective of Newfoundland, now amounts annually in value to from 4,000,000 to 5,000,000 dollars, employing upwards of 20,000 men and boys, and providing a nursery for hardy seamen, which will in the future make British North America the predominant maritime Power on this continent. This trade, even subject to the competition of American fishermen, has had a very rapid growth, and now forms the staple of the export of Nova Scotia and Newfoundland.” And they then observe—“The United States do not possess on their coast any fisheries of much value; and though they still hold, in common with other nations, the right of deep-sea fishing, still the mackerel and herring fishing is now almost wholly within the three-mile coast-limit, and the catch of bait is entirely in-shore. The exclusion of American fishermen from the in-shore fishing will, therefore, give the Provinces the entire control of the mackerel and herring fisheries, and a great advantage in the cod fishing; and it cannot be long before the former fishermen will prove unable to compete with the latter, even with the high duties levied by the United States on fish. It is also to be observed that a very large trade in fish now exists between the United States and the foreign West Indies, which a very slight increase in the cost of American-caught fish must transfer to the British Provinces.” They then proceed to consider the suggestions made by Mr. Cardwell, in his letter of the 3rd of March preceding—“that for the current year no interference with American fishermen should take place, in view of the hope of a change of policy in the United States on the question of reciprocal Treaties; and, after stating

their reasons for not agreeing with the proposal, they say:—"The Canadian Government could not, consistently with what they regard as the true interests of the country, consent to leave the rights of Canada to her own fisheries in abeyance or in doubt. But they feel the importance of enforcing the recognition of this right of sovereignty in such a manner as will deprive the United States of all just ground of complaint, and of avoiding, so far as practicable, those questions which caused past difficulties. They have, therefore, invited the maritime Provinces to unite with Canada in the issue to American fishermen of joint licenses to fish in all provincial waters at a moderate fee, to form a fund for the maintenance of a joint marine police. Any vessels attempting to fish without a license will either be required to procure the license from the cruising officer, or will be removed from the fishing-grounds. The instructions to be given to the officers will be to avoid harshness or undue zeal; and if causes of difficulty arise, they will, it is thought, be such as to leave the United States' Government no ground of complaint."

This suggestion, that American fishermen should be allowed to fish during the current year in all provincial waters, upon payment of a moderate license fee, having met with the full approval of Her Majesty's Government, instructions were accordingly sent out by Mr. Cardwell to that effect.

The fee charged in the year 1866 was fixed at half a dollar per ton of the vessels' registered tonnage, and it was arranged that the license should be interchangeable, that is to say, that a license taken out in any one Colony should be available for all the others. It was not intended, however, that the 50 cents per ton licensing fee was a mere nominal charge, and made rather as an assertion of the Colonial right to the fisheries; and that assuming the catch of fish to be at an average about ten barrels to the ton, it amounted only to a charge of 5 cents per barrel, whereas the duty per barrel upon British-caught fish imported into the United States was no less than 2 dollars. Accordingly, in the following year, 1867, the Colonies of Nova Scotia, New Brunswick, and Prince Edward Island raised the licensing fee to 1 dollar, Canada, however, still

retaining the half dollar fee. Explanations were demanded from this country, and its being shown how inadequate half a dollar was, the charge was sanctioned.

But now another difficulty arose. It seems that the British Admiral, in giving instructions to his officers, when the subject was quite new, directed that two warnings should be given any vessel found fishing within the prohibited limits without a license, and that she should only be seized on the third occasion. Accordingly, we find, in a letter from the Lieutenant-Governor of Prince Edward Island to the Duke of Buckingham and Chandos, dated the 14th of August, 1867, after reporting the arrival at that island of Her Majesty's ship "Favourite," under command of Captain Short, that he thus proceeds :—

"The 'Favourite' is one of three vessels placed in the Gulf of St. Lawrence, by Vice-Admiral Sir Rodney Mundy, for the protection of the fisheries. I think it right to bring to your Grace's notice a fact communicated to me by Captain Shortt, that as the American fishermen have become aware that no attempt will be made (should they be unprovided with licenses) to seize their vessels until they have had three distinct warnings, very many have made up their minds to fish in British waters without licenses, feeling that the chances of their being three times boarded, and their licenses demanded, are very remote.

"In confirmation of this I understand that the master of the 'Crown Point,' an American fishing vessel which entered this harbour four days ago, informed Lieutenant Hood of the 'Favourite,' who boarded the vessel, that he had no license, and that it was not his intention to take out one, although he could easily do so."

It was proposed also in the following year, no agreement having been come to with the United States for the admission of Canadian goods, that the licensing fee should be raised to 2 dollars a ton. This was accordingly approved, as well as that one warning only should be sufficient.

On the 23rd of May, 1868, instructions were issued from the Department of the Marine and Fisheries of the Dominion of Canada, signed by

Mr. Mitchell, the Minister, to the Dominion cruisers. In these instructions it was stated—

“ The limits within which you will, if necessary, exercise the right of excluding American vessels and United States’ fishermen, are for the present year to continue exceptional. Difficulties have arisen in former times with respect to the question whether the exclusive limits should be measured on lines drawn parallel everywhere to the coast and describing its sinuosities, or on lines produced from headland to headland across the entrances of bays, creeks, or harbours. Her Majesty’s Government are clearly of 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. It is, however, the wish of Her Majesty’s Government neither to concede nor, for the present, to enforce any rights in this respect which are in their nature open to any serious question. Until further instructed, therefore, you will not interfere with any American fishermen unless found within three miles of the shore, or within three miles of a line drawn across the mouth of a bay or creek which is less than ten geographical miles in width.

The instructions then, after stating that the licensing fee for the use of the in-shore fisheries for the year 1868 is to be 2 dollars per ton, proceeds as follows :—

“ After accosting every United States’ vessel actually within a maritime league of the shore, along any other part of the coast except Labrador and around the Magdalen Islands, or within three marine miles of the entrance of any bay, harbour, or creek which is less than ten miles in width, either fishing, preparing to fish, or having obviously fished within the exclusive limits, you will offer the owner, master, or person in charge a license on the above terms.

“ Should the owner, master, or person in charge of any American vessel, being clearly within proscribed limits and so fishing therein, refuse or neglect to take and pay for a license, yet after being duly notified to depart and informed of liability to forfeiture, still wilfully persist, in despite of twenty-

four hours' warning, to remain and fish in such waters, you will seize and detain the vessel for an infraction of the Statute of Canada, entitled 'An Act respecting fishing by foreign vessels,' copies of which are herewith for use and distribution."

In the meantime, a Resolution was submitted to the House of Representatives requesting that the President should send a "sufficient number of vessels of war to the fishing grounds in the Gulf of St. Lawrence adjacent to the British Provinces, for the purpose of protecting American vessels in the exercise of their rights, as instituted in existing Provinces," which was referred to the Committee for Foreign Affairs, and Mr. Thornton, our Minister at Washington, reports—

"On my observing to Mr. Seward that there seemed to be some unfriendliness in this step, he said that we ought not to have such a feeling with regard to anything that might be done by the House of Representatives, who were an irresponsible body; and that we should take no account of such proceedings until they were adopted by the Executive Power, and carried into execution by the latter, or at least until the intention of doing so should be communicated by him, either to me, or to Her Majesty's Government through Mr. Adams. Mr. Seward added that he did not believe the Resolution in question would be carried any further."

And such appears to have been the case. It would seem, however, that the Executive Council of Prince Edward Island, having expressed a wish to enter into direct communication with the United States, with a view to the admission of American vessels to fish in its waters. The House of Representatives appointed three of their members, including Mr. P. B. B , to proceed to Prince Edward Island for the purpose of communicating directly with the Colonists. They came to the Island, and in the absence of the Governor, had a meeting with some of the members of the Executive Council, but the whole proceeding was strongly disapproved of in this country, and they were reminded, in a letter from the Duke of Buckingham and Chandos to the Governor, bearing date the 3rd October, 1868, "that a Colonial Government has no authority whatever to enter into any arrangement with a

Foreign Power, or with the representatives of a Legislative Body of a foreign country.”

In the early part of 1869 the United States seemed disposed again to enter into negotiations with us for a relaxation of the Customs duties in return for admission to the fisheries, and a Resolution was brought forward by the Committee of Ways and Means of the House of Representatives, and was, on the 22nd March, adopted without opposition. The Resolution was in these words—

“That, while this House does not admit any right in the Executive and Treaty-making power of the United States to conclude, without the assent or sanction of the Legislative Departments, Treaties or Conventions with any Foreign Government by which import duties shall be mutually regulated, it is, however, of opinion, and recommends to the President, that negotiations with the Government of Great Britain should be renewed and pressed, if possible, to a legitimate conclusion regarding commercial intercourse, and securing to our citizens the rights claimed by them in the fisheries on the coast of the British Provinces in America, and the free navigation of the St. Lawrence river, from its sources to the sea.”

Nothing further seems to have been done at that time, but on the 12th of June following, Mr. Fish wrote to Mr. Thornton, asking the Consul to consult him as to the “when it would be most agreeable to all parties to consider the question of commercial intercourse between the United States and Canada and the Fisheries,” &c. Accordingly, Mr. Thornton called upon him on the following day, and, as he states, in a letter of the 14th of the same month to Lord Clarendon, Mr. Fish then informed him “that, although he considered it difficult, in consequence of the Resolution of the House of Representatives, inclosed in my despatch of the 22nd of February last, to conclude a Convention which would be acceptable to Congress, he was willing, in consequence of the representation made to him by his countrymen interested in trade with Canada, to use his best efforts to arrive at so desirable an end, and, if any arrangement could be come to between the two countries, to use all his influence, to bring about its acceptance by Congress.

“I pointed out to Mr. Fish that I could not

undertake the responsibility of discussing the subject with him without being assisted by some person who would be possessed with the views and enjoy the entire confidence of the Government of Canada, and that I therefore thought it advisable to invite the Governor-General to take steps that some one might be sent here for that purpose."

In consequence of this suggestion, Mr., now Sir John Rose, the Finance Minister of the Dominion, proceeded to Washington, and had when there one interview with Mr. Fish on the subject. In the course of one of these interviews it was pointed out to Mr. Fish that the British Government "had continued to allow the United States the use of the fisheries on terms practically free, although provincial-caught fish were subject to very heavy duties when imported into the United States." But Mr. Fish appeared to entertain great difficulty as to whether the Executive could by negotiations come to any arrangement for a reduction or abolition of the import duties. In the result, however, Mr. Fish observed that he would put himself in communication with the parties whose views he desired to ascertain, and that another Conference would then be arranged.

Sir John Rose then returned to Canada, and the Governor-General was soon afterwards directed by Earl Granville to put himself in communication with the Governors of Prince Edward Island, Newfoundland, and British Columbia, in order to arrange such a mode of proceeding as shall give them no cause to consider their interests neglected in case negotiations should be opened for a Treaty of Commerce between the British North American Possessions and the United States.

At the close of 1869, Vice-Admiral Wellesley, in forwarding the Reports of the officers commanding the "Dart," "Venables," and "Minstrel," which had been employed during the past season in the protection of the fisheries, found it necessary to call attention to the complete failure of the licensing system. He stated that of the 162 vessels found fishing within three miles of the coast, and boarded by Her Majesty's officers, 150 were without license, and only 12 licensed; and that of these 150 vessels 131 had been warned once, and 19 more than once; and he thus proceeds:—

“ When established the charge was fixed at half a dollar per ton, and a large proportion of vessels took our licenses the first year. Some, however, did not do so, and the fishermen soon discovered that there was little risk of interference or capture, as so few cruizers were employed, and no other efficacious measures were adopted to prevent infraction of the Treaty by those not licensed. The fee was then raised to one dollar per ton, and has this year been further raised to two dollars a ton, without any increase of vigilance, and the natural result has been that very few licenses have been taken out, and those, in fact, only by vessels which, having received a warning, were liable to capture if found fishing again within the three-mile limit.

“ Moreover, in direct violation of the 1st Article of the Convention of 1818, American vessels are permitted to resort to the harbours, not alone for shelter, repairing damages, or for wood and water, but in order to land and deposit their fish on board, whence it is conveyed to the United States by a regular line of steamers.

“ So far as I am aware, the only measure adopted by the Colonial Authorities has been the employment of the steamer ‘ Druid,’ which, as I have already stated, could not have effected much, as she had other and important duties calling her elsewhere. She occupies also a very anomalous position in not being a man-of-war.

“ The result, therefore, is, that the encroachments of American fishing vessels are practically disregarded by the Colonial Authorities, and they are actually encouraged by the inhabitants, who derive large profits from supplying their wants at the various ports. Very few Colonial vessels are engaged in fishing, owing to 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.”

And he thus concludes :—

“ In conclusion, I would observe, that as all the American fishermen are all fully aware of the illegality of fishing within the three-mile limit, and of the means which are afforded them by the license system of obtaining the privilege of doing so, the order as to giving them one warning should be aban

done, and public notice should be given, before the next season commences, that all vessels without licenses found fishing within the limit will be at once captured, and sent in for adjudication."

On the receipt of this communication, the Lords of the Admiralty called Earl Granville's attention to the very limited assistance afforded by the Colonial Authorities, and expressed a hope that some more satisfactory arrangement with regard to the fisheries might be come to before the commencement of the next season.

Further negotiations on the subject of a Treaty between Great Britain and the United States passed between Mr. Fish and Mr. Thornton at the end of 1869 and the beginning of 1870, and in a letter dated the 14th of February, 1870, to the Earl of Clarendon, Mr. Thornton states as follows:--

"I have the honour to inclose copy of a Private and Confidential letter which I have addressed on the 10th instant to his Excellency Sir John Young, communicating to him the substance of certain statements made to me on that day by Mr. Fish.

"Your Lordship will perceive that, at the instigation of some of the Western Members of Congress, Mr. Fish asks for the free navigation of the Welland Canal, and the River St. Lawrence, and the improvement of the former, and the freedom of the Canadian fisheries, in exchange for a reduction of the duties on lumber, salt, fish, and coal, and, perhaps, even the abolition of the import duties on the first three articles.

"I observed to Mr. Fish, that the Western Members asked a good deal, and offered very little. He replied, however, that though he would be last man to tell them so, he considered that the navigation of the St. Lawrence would be of very little value as a competitive means of transport for the western produce of the sea. It would be several years before the necessary improvements in the Welland Canal could be completed; and the St. Lawrence itself would not be open to navigation more than four or five months in the year.

"With regard to the fisheries, he thought that once the import duty on fish was removed, Canadian fishermen would easily compete with Americans, because they would be fishing in waters with which they were much better acquainted than the latter;

and all their appliances, such as vessels, supplies, and crews, could be obtained at a much cheaper rate in Canada than in the United States.”

At this time, the Canadian Government thinking that there was no serious intention on the part of the United States' Government to enter into any Reciprocity Treaty at all, feeling sure that the license system had completely broken down as evidenced by the fact, as they say, that Her Majesty's cruizers had not during the last “four seasons detained a single American vessel, although it was notorious that great numbers of United States' vessels were continually invading our limits, even after repeated warnings, many of which were afterwards boarded and found to be still unfurnished with licenses,” applied through the Governor-General for the total abolition of the license system, and that a sufficient naval force should be sent out to protect the fisheries.

In forwarding these documents to the Foreign Office, in a letter dated the 12th of March, 1870, Lord Granville, after stating the course which the negotiations had taken, then proceeds:—

“Meantime the negotiations for the renewal of the Reciprocity Treaty have proved abortive; while the British Government has informed that of Canada that Her Majesty's ships cannot be employed in collecting payments imposed by the municipal law of the Dominion, and that Colonial vessels should be fitted out for this purpose, one of Her Majesty's ships remaining on the station, and the officer in command of that ship exercising control over the Colonial vessels.

“To this, however, the Canadian Government object, partly because if they are to enforce the law at their own expense, they desire to do it in their own way; partly because they claim from England a greater security against foreign interference than one vessel would afford.

“Their case is, that the United States by a hostile system of duties is bringing to bear upon them a pressure calculated to undermine their independence, that their legitimate mode of defence against this is by refusing to the United States these fishing privileges, which were only conceded to them in consideration of that commercial intercourse which they now refuse to continue, and that in this just defence of their own interests they have

a right to look to England for protection from unlawful violence from a foreign Power, which is, in fact, threatened by the New England fishermen.

“With these views they propose, as has been said, the abolition of the license system, and urge that a sufficient naval force to prevent collision should be sent out from England.

“It appears to Lord Granville that, although Canada might properly be expected to refrain from the assertion of her unquestioned rights, while the renewal of the Reciprocity Treaty was under serious consideration, she can no longer be called upon to do so now that the negotiations respecting that renewal are broken off, and at the cost of practically weakening those rights by their continued non-assertion. Nor, in his Lordship’s opinion, can Her Majesty’s Government properly or wisely refuse her the support of such a force as may be sufficient to secure the Colony against lawless violence.

“If Lord Clarendon should concur in these conclusions, Lord Granville would suggest that Mr. Thornton should be instructed to communicate them to the United States’ Government, and should submit the expediency of coming to an understanding respecting the amount of naval force which the British and American Governments should respectively send to the neighbourhood of the Canadian waters, with the view of preventing collisions hazardous to the good understanding between the countries.”

Further correspondence followed, showing that Mr. Fish had not altogether abandoned the intention of negotiating upon the question of a reduction of the Tariff, but that admission to the British fisheries was to be a *sine qua non*. Mr. Thornton, however, suggested that, in view of the withdrawal of the licenses, “an adequate force of Her Majesty’s ships should be placed on the coast, with, if possible, an American force also, to prevent collisions and the complaints likely to arise out of it.” Accordingly, on the 9th of April, 1870, the Lords of the Admiralty, in accordance with the request of Lord Clarendon, directed Vice-Admiral Wellesley “to despatch a sufficient force to Canadian waters to protect Canadian fishermen and maintain order, and to instruct the Senior Officer of such force to cooperate cordially with any United States’ force sent on

the same service." And Mr. Thornton was directed by Lord Clarendon to "apprise Mr. Fish without delay of the intention there to employ a British naval force in the waters of the Dominion, and you will express to him the hope of Her Majesty's Government that a sufficient force will be despatched to the same quarter by the Government of the United States, with instructions similar to those which the officer in command of Her Majesty's naval force will receive, so that both may co-operate together for the maintenance of good order."

In the meantime the announcement that it was the intention of the Canadian Government not to issue any more licenses caused a good deal of excitement in the United States, and a Resolution was adopted in the House of Representatives in these words :—

"That the President be requested to communicate to this House, if not incompatible with the public interest, any information in his possession as to the determination of the Canadian authorities in the matter of the fisheries in the Gulf of St. Lawrence and upon the coast of Canada ; and whether any steps have been taken for the protection of the interests of American fishermen engaged in the fishing trade on said coast, and securing to them the privileges which they have heretofore enjoyed in the inshore fisheries thereof."

In reply, the following Message, dated the 11th of March, 1870, was received from the President of the United States :—

"To the House of Representatives :

"In answer to the Resolution of the House of Representatives of the 7th instant, relating to fisheries in British waters, I transmit a Report from the Secretary of State and the papers which accompanied it ; and I have to state that the commanding officer of the naval steamer ordered to the fishing-grounds will be instructed to give his attention, should circumstances require it, to cases which may arise under any change which may be made in the British laws affecting fisheries in the British jurisdiction, with the view to preventing, so far as it may be in his power, infractions by citizens of the United States of the 1st Article of the Treaty between the

United States and Great Britain of 1818, the laws in force relating to fisheries within British jurisdiction, or any illegal interference with the pursuits of the fishermen of the United States.”

That there was, however, no intention on the part of the United States to act in any very hostile or violent manner, is evident from Mr. Thornton's letter to Lord Clarendon of the 25th of April, 1870, in which, after stating that he had, in accordance with his Lordship's instructions of the 9th instant, informed Mr. Fish that it was the intention of Her Majesty's Government to despatch a sufficient force to those waters for the maintenance of order, wished that the United States' Government would do the same, he thus proceeds :—

“Mr. Fish replied that the Government had very few spare vessels at their disposal just now, it being necessary to keep an unusual number on the coast of Cuba; he believed, however, that the ‘Dispatch,’ a small revenue steamer, and the ‘Frolic,’ a paddle-wheel steamer of about 600 tons, had already been sent to Canadian waters, with instructions to use the greatest moderation and discretion in the maintenance of order at the fisheries, and to concert, as far as possible, with the officers of the Canadian cruizers and of Her Majesty's vessels.

“Mr. Fish added that, if it were in their power, the Government of the United States would send additional vessels to those waters, and if I would let him know the precise nature of the instructions given to the Commanders of Her Majesty's vessels, those given to the United States' officers would be assimilated to them as far as possible. I promised Mr. Fish that if I should receive more detailed information of the instructions given to Her Majesty's officers, and should be authorized to communicate it to him, I would do so without delay.”

Nor, indeed, did Mr. Fish take any exception to a Memorandum drawn up Sir John Macdonald, the Prime Minister of Canada, and which had been communicated to him by Mr. Thornton, in which Sir John states that, in accordance with an Order in Council dated the 8th of June, 1870, it was intended “that the system of granting fishing licenses to foreign vessels, under the Act 31 Vict., c. 61, be discontinued, and that henceforth all foreign fisher-

men be prevented from fishing in the waters of Canada," further than to point out that this might require some modification, seeing that the Dominion of Canada had now been extended so as to include a part of the coast on which, under the Treaty of 1818, United States' fishermen were entitled to fish. And to this it was subsequently replied that it was never contemplated to interfere in any way with rights secured to United States' citizens by that Treaty.

In the course of these negotiations Mr. Fish suggested to Mr. Thornton that, in the event of the Welland Canal, the River St. Lawrence, and the fisheries being thrown open to the United States' fishermen, he thought that probably they might agree to the admission into the States of lumber, fish, and salt, duty free, and of cod with only such a duty as that Nova Scotia then would be able easily to compete with that of the United States. On this being announced by Mr. Thornton to the Canadian Government they at first refused to take it into consideration, entertaining as they were, some doubt whether the proposals had been made with proper authority, but on a further letter from Mr. Thornton, the question was taken into consideration by the Committee of Privy Council of the Dominion, who, as a Minute of the 9th of March, 1870, put forward a counter-proposal, in which they regarded the admission of a great number of other articles besides the four proposed by Mr. Fish, stating they only were equally bound to consider the interests of certain populations of the Dominion of Canada, and they only hoped "that Mr. Thornton would remind Mr. Fish that the actual property of Quebec and Canada were chiefly breadstuffs and animal, to which no reference whatever was made in Mr. Fish's proposition." In return for these concessions the Committee proposed to concede the free navigation of the St. Lawrence and the use of the Canals to the citizens of the United States. On this proposal of the Canadian Government being laid before Mr. Fish, that gentleman informed Mr. Thornton that he was hopeless of carrying any measure unless the freedom of the fisheries were made one of the concessions; that for his part he thought the opening of the St. Lawrence would be much more of minor importance, and that admission to the fisheries was a *sine quâ non*. The

Mr. Thornton to Sir John Young,
February 10, 1870.

case is very fully and fairly stated in a letter from the Colonial Office, dated 8th April, 1870, and which is in these words:—

“I am directed by Earl Granville to acknowledge your letters of the 23rd ultimo and 5th instant, relating to certain communications which have passed between Her Majesty’s Minister at Washington and the Governor-General of Canada respecting the Canadian fisheries, and the commercial relations between Canada and the United States.

“In the first of those letters you request to be informed whether, after its perusal, Lord Granville retains the views expressed in my letter of the 12th ultimo.

“It appears that Mr. Fish, acting under a pressure from certain sections of the community, has led Mr. Thornton to suppose that his Government would entertain a proposal for reducing the duty on a limited number of articles, if the Canadians would concede the free navigation of the St. Lawrence, and admission of the United States’ fishermen to their fisheries.

“At first the Canadian Government, doubting, it would seem, the seriousness of the proposal, declined to entertain it. But, on receiving explanations from Mr. Thornton they have made a counter-proposal, which is not, perhaps, entirely unambiguous, but which seems correctly understood by Mr. Fish as meaning that, in consideration of reductions of duty much more extensive than those which he proposed, they would be ready to concede the free navigation of the St. Lawrence, but not admission to the fisheries.

“Mr. Fish replies, or is expected to reply, that no scheme would have any chance of acceptance with Congress which did not involve admission to the fisheries. But he appears to indicate that, with that concession the proposed alterations of the Tariff, or something like them, might pass.

“With regard to the fisheries, Mr. Thornton writes that it will be very desirable that an adequate force of Her Majesty’s ships should be placed on the coast, with, if possible, an American force also, to prevent collision and the complaints likely to arise out of it.

“Lord Granville is glad to find his own views

in this respect corroborated by those of Mr. Thornton, and he has no reason for altering them.

“It appears to him probable that the attitude of the Canadian Government in respect of the fisheries may have had its share in producing that pressure which disposes Mr. Fish towards a commercial arrangement.

“Lord Granville sees no reason to find fault with the Canadian proposal if viewed merely as a mode of opening negotiations; but, on comparison of this project with that approved by Sir John Rose last year, he is inclined to believe that, if the American Government were to accept, with some modification, the schedules proposed by the Canadian Ministry, Canada might fairly be expected to open the fisheries. It appears to him that the language held by Mr. Fish points to the possibility of some such arrangement.”

In a subsequent despatch to Lord Clarendon, dated the 28th of March, 1870, Mr. Thornton observes that, in an interview which he had with Mr. Fish, that gentleman had stated to him that no further arrangement could be entertained unless the freedom of the fisheries in Canadian waters for cruisers of the United States should form a part of it. And Mr. Thornton adds that—

“As on both sides there seems to be a determination not to yield upon this point, I fear there is no chance for the present of any arrangement being arrived at—a result which is to be regretted more perhaps on account of the irritation which will arise amongst American fishermen from their exclusion from Canadian waters than for any other reason.”

We now approach another period in the history of the Fisheries Question of more importance. In view of the contemplated repeal of the licensing system, and of the determination to exclude American vessels from the in-shore fisheries, it becomes necessary to issue instructions to Her Majesty's cruisers on the subject. Accordingly, on the 30th of April, 1870, a letter was sent from the Colonial Office to the Admiralty, which was in these terms:—

“In Mr. Secretary Cardwell's letter to the Lords Commissioners of the Admiralty of the 12th April, 1866, it was stated that American vessels should not be seized for violating the Canadian Fishing Law, ‘except after wilful and persevering neglect of the

warnings which they may have received; and in case it should become necessary to proceed to forfeiture, cases should, if possible, be selected for that extreme step, in which the offence of fishing has been committed within three miles of land.'

"The Canadian Government has recently determined, with the concurrence of Her Majesty's Ministers, to increase the stringency of the existing practice, by dispensing with the warnings hitherto given, and seizing at once any vessel detected in violating the law.

"In view of this change, and of the questions to which it may give rise, I am directed by Lord Granville to request that you will move their Lordships to instruct the officers of Her Majesty's ships, employed in the protection of the fisheries, that they are not to seize any vessel unless it is evident and can be clearly proved that the offence of fishing has been committed, and the vessel itself is captured, within three miles of land."

And, on the same day, a telegraphic message was sent by Lord Granville to Sir John Young in the following words:— "Take steps to insure that American fishing-vessels are not seized, even between headlands, except within three miles of the shore."

In the meantime, however, instructions had been drawn up by the Minister of Marine and Fisheries of Canada for the guidance of the officers in command of the Colonial vessels, in which the following passage occurs:—

"*Jurisdiction.*—The limits within which you will, if necessary, exercise the power to exclude United States' fishermen, or to detain American fishing-vessels or boats, are for the present to be exceptional. Difficulties have arisen in former times with respect to the question, whether the exclusive limits should be measured on lines drawn parallel everywhere to the coast and describing its sinuosities, or on lines produced from headland to headland across the entrance of bays, creeks, or harbours. Her Majesty's Government are clearly of 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. It is, however, the wish of Her Majesty's Government neither to concede, nor, for the present,

to enforce any rights in this respect which are in their nature open to any serious question. Until further instructed, therefore, you will not interfere with any American fishermen unless found within three miles of the shore, or within three miles of a line drawn across the mouth of a bay or creek which is less than ten geographical miles in width. In the case of any other bay, as Bay des Chaleurs, for example, you will not admit any United States' fishing-vessel or boat, or any American fishermen, inside of a line drawn across at that part of such bay where its width does not exceed ten miles."

A copy of these instructions were forwarded to this country in a letter from Sir John Young, bearing date the 4th of May, together with a Minute of the Privy Council, dated the 3rd of that month, stating that they had been under consideration in Lord Granville's telegraphic message of the 30th of April, "requesting that steps might be taken to secure that American fishing-vessels should not be seized even between headlands, except within three miles of shore," and that his Lordship should be informed "that steps have already been taken to provide against the seizure of American vessels under the circumstances above mentioned, and that the instructions to the officers in command of the vessels engaged in the protection of the fisheries (copies of which have been forwarded to the Colonial Secretary) contain special directions on the subject."

A copy of these instructions having been sent by Sir John Young to Mr. Thornton, that gentleman immediately called Lord Clarendon's attention to the apparent discrepancy between the instructions issued to Her Majesty's cruisers in accordance with Lord Granville's letter to the Admiralty of the 30th of April and those issued to the Colonial officers; the former stated that no United States' vessel should under any circumstances be seized, unless she was within three miles of the coast: whereas the latter stated she might be seized not only if she was within three miles of the coast, but even if she was within three miles of a line drawn across the mouth of a bay or creek which is less than ten geographical miles in width.

Mr. Thornton thus expresses himself in his letter to Lord Clarendon:—

"Having always felt that, as the Canadian

Government had determined not to continue the practice of granting licenses to foreign fishermen, the question of the right of the latter to fish in bays within headlands, but without the three miles from the shore would be the most likely of all others to lead to disputes, I was very glad to learn that it had been referred for decision to Her Majesty's Government, who, I was convinced, would be inclined to take the most liberal view of the matter. And, indeed, I interpret Lord Granville's telegram to mean that Americans are to be allowed to fish everywhere, even within headlands, provided they do not encroach upon the three miles from the shore, except upon the coasts where they are allowed to do so by the Treaty of October, 1818.

“But, in the instructions of the 12th ultimo, it is intimated that American vessels are not to be allowed to fish within three miles of the shore, or within three miles of the entrance of any bay, harbour, or creek, which is less than ten geographical miles in width.”

On this being brought to the attention of the Colonial Office, Lord Granville being of opinion that, in the present state of feeling in the United States, it would be expedient, if possible, to avoid raising any question respecting the fisheries and, therefore, to restrict the enforcement of British subjects as far as possible within uncontested limits, on the 6th of June, 1870, addressed a letter to Sir John Young, in which the following passage occurs:—

“Her Majesty's Government are fully aware that no step should be taken which should prejudge the question what are Canadian waters, or should admit the right of United States' fishermen to fish within those waters except within the limits prescribed by the Convention of 1818. But they do not abandon the hope that the question of abstract right may yet be avoided by some arrangement between Canada and the United States, or that the limits may be definitely settled by arbitration or otherwise, and while any exception of this kind exists they desire to avoid all occasion of dispute, so far as this is possible consistently with the substantial protection of the Canadian fisheries. With these objects they think it advisable that United States' fishermen should not be excluded from any waters except

within three miles of shore, or in the usual case of a bay which is less than six miles wide at its mouth, but spreads out to a greater width within.

“It will of course be understood, and explained to the United States’ Government, that this liberty is conceded temporarily, and without prejudice to the right of Great Britain to fall back on her Treaty rights if the prospect of an arrangement lessens, or if the concession is found to interfere practically with the protection of the Canadian fisheries.”

And, on the following day, Lord Granville telegraphed to Sir John Young in these terms:—

“Her Majesty’s Government hope that United States’ fishermen will not for the present be prevented from fishing, except within three miles of land, or bays which are less than six miles broad at the entrance.”

In the meantime Mr. Boutwell, the Secretary to the Treasury at Washington, had, on the 16th of May, addressed a Circular to the Collectors of Customs at the various ports on the east coast of the United States directing them “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 licenses to foreign vessels, under which they have heretofore been permitted to fish within the marine jurisdiction of the said Dominion, that is to say, within three marine miles of the shores thereof.” Accordingly, Lord Granville, in a letter dated the 7th of June following, observed that Lord Clarendon’s attention should be called to the Circular, and he observes—

“It states that the Dominion of Canada have terminated the system of granting licenses permitting foreign fishing-vessels to fish within the maritime jurisdiction of the Dominion, that is to say, within three marine miles of the shores thereof.

“It will be seen by my letter of this day’s date that Lord Granville is desirous that the Canadian right of exclusion should not be in fact enforced beyond the three-mile limit. But the temporary abandonment of the right in practice is rendered much more difficult if the United States’ authorities put forth statements which involve the denial of it in principle.

“The principle that the maritime right of a country extends not only to the three-mile limit,

but also, in the words of Wheaton (page 248), 'to the ports, harbours, bays, mouths of rivers, and adjacent parts of the sea inclosed by headlands,' is, Lord Granville believes, not disputed by jurists. And the United States are hence bound to respect it in the present case by the words of the Treaty of 1818, in which they renounce the right of fishing within three miles, not of the coasts only, but of the 'bays, creeks, or harbours of Her Britannic Majesty's dominions in America.'

If the British right is not to be practically enforced, it would seem very desirable that the claim of right should be held in abeyance on both sides; or, if this cannot be done, that the United States' Government should be very distinctly made aware that Her Government claim on the part of Canada that jurisdiction above described over bays and creeks which was recognized by them in the Treaty of 1818, and, according to the American writer already quoted, rests on 'the generally-approved usage of nations which forms the basis of international law.'

Accordingly, Lord Clarendon, on the 10th of June, forwarded the following telegram to Mr. Thornton:—

"Take an opportunity to point out to the Secretary of State that Mr. Boutwell's Circular of May 16, 1870, respecting the Canadian in-shore fisheries, may lead to future misunderstanding, inasmuch as it limits the maritime jurisdiction of the Dominion to three marine miles of the shores thereof, without regard to international usage, which extends such jurisdiction over creeks and bays, or to the stipulations of the Treaty of 1818, in which the United States renounce the right of fishing within three miles not of the coast only but of the bays, creeks, or harbours of Her Britannic Majesty's dominions in America."

With a view also to prevent any misapprehension in regard to the effect of the instructions now issued, Lord Granville, who had now become Foreign Secretary, on the 9th of July following wrote to Mr. Thornton in these words:—

"I have to request you, in any communications which you may make to the Government of the United States on this subject, to explain clearly to them, as suggested in this letter, that the instructions respecting the limits within which the pro-

hibition of fishing is to be enforced against United States' fishermen are not to be considered as constituting an arrangement between the Governments of Great Britain and of the United States by which Canadian rights are waived or the United States' fishermen invested with any privilege, but only as a temporary direction given by the British and Canadian Governments to their own officers, in hopes that the question may soon be settled, and in order to prevent any controversy arising on a subordinate point."

In the meantime, however, Mr. Fish had written to Mr. Thornton, on the 30th of June, expressing the approval of the American Government of the instructions which had been issued by Her Majesty's Government on the subject of the fisheries. He thus expresses himself—

Mr. Fish to Mr. Thornton;
June 30, 1870.

"In view of the claims heretofore presented by Her Majesty's Government, and which, as it contends, are supported by the law of nations and the stipulations of the Treaty of 1818, as to the extent of British maritime jurisdiction in the waters in which the fisheries are prosecuted on the eastern coasts of North America, the President is pleased to recognize in the tenor of the despatches and instructions which have been addressed by Her Majesty's Government to the Canadian authorities and to Admiral Wellesley, a generous spirit of amity, which is reciprocated by the United States. Animated by that spirit, he directs that Her Majesty's Government be informed that the description of the limit of Canadian maritime jurisdiction contained in the Circular in question, and which was adopted before this Government was made acquainted with the nature of the instructions which it was proposed by Her Majesty's Government to issue, was used for the sake of brevity in expressing the interpretation which has been heretofore placed upon the 1st Article of the Treaty of 1818 by this Government, and not with the expectation of renewing a controversial discussion upon the subject, which, under present circumstances, he would sincerely deprecate."

In order, however, that there might be no misapprehension as to the nature of these concessions, Mr. Thornton, in pursuance of instructions from Lord Granville, informed Mr. Fish, in a letter of the 21st of July, 1870, 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 Great Britain by which Canadian rights are waived, or the United States' fishermen invested with any privilege; but only as a temporary direction given by the British and Canadian Governments to their own officers, in the hopes that the question may soon be settled, and in order to prevent any controversy arising on a subordinate point."

Against these concessions to the United States' fishermen the Canadian Government strongly protested; they urged that, as the United States' Government had voluntarily put an end to the Reciprocity Treaty, matters ought to be restored to the position in which they were previous to that Treaty; and that the exclusive rights of the Canadian fishermen under the Treaty of 1818 should be enforced; and they deputed one of their body, Mr. Campbell, the Postmaster-General, to come to England for the purpose of urging their views upon the Home Government. The result of Mr. Campbell's Mission to this country, so far as the Fishery Question was concerned, was, that a proposal should be made to the United States' Government for the appointment of a Commission, in which Great Britain, the United States, and the Dominion should be represented, to define the geographical limits of the exclusive fishing rights of Canada under the Treaty of 1818.

Lord Kimberley also, in a letter dated the 11th of August, 1870, to the Governor-General of the Dominion, thought it desirable to explain at length the course which had been taken by Her Majesty's Government in dealing with the Fisheries Question, and the reasons which had induced them to limit the exclusive right of United States' fishermen to a distance of three miles from the shore, then following the indentations of the coast. His Lordship then proceeds:—

"The waters prohibited by the Instructions of 1866 are those within three miles of a line drawn from headland to headland of a bay less than ten miles in width. It will be seen by inspection of the annexed chart of Canada, that the conformation of some bays is such that it is by no means

easy to say where the mouth really is, and, consequently, that disputes might easily arise, whether that mouth was ten miles broad or not. It follows that, with regard to the ten mile bays, the line of prohibition is an imaginary straight line connecting two imaginary points at sea, which again are only determined as being three miles from points, which are not themselves always determinate, on land.

“ It will also be seen that, while the Canadian fisheries occupy several thousands of square miles, the patches of water which are within bays less than ten miles broad, but which are not within three miles of land, are comparatively of small extent. They are coloured red in the annexed map, and, on a rough calculation, it would appear that the approximate area of water covered by blue colour is 10,419 geographical miles, or 11,958 statute miles, and that the approximate area of water covered by red colour is 255 geographical miles, or 297 statute miles.

“ Her Majesty’s Government also had reason to believe that a temporary concession on this point, advisable in itself as a matter of caution, would mitigate the irritation likely to arise in the United States at the more effectual enforcement of the prohibitions, a consideration which no person who really considers the public interest both here and in Canada will deem unimportant.”

In the meantime great irritation had been caused in the States by the arrest of some United States vessels, which had been caught fishing within three miles of the coast, and by the warning off of others. And a very violent speech on the subject was made by General Butler, on the occasion of presenting himself for re-election to Congress.

Unfortunately, too, another circumstance occurred at this time, which tended very greatly to increase the existing excitement. By the Treaty of 1818 it was provided that the American fishermen shall be allowed to enter the bays and harbours of Her Majesty’s dominions in America “ for the purpose of shelter and of repairing damages therein, of purchasing wood, and of obtaining water, and for no other purpose whatever.” It seems, however, these American fishing-vessels had for a long time been accustomed to put into the bays and ports for the purposes of trading, and of procuring provisions, salt, ice, and other articles required for carrying on their

fishing operations. It further appeared that, in August 1870, a vessel, the "Clara B. Chapman," had, in Charlotte Town Harbour in Prince Edward Island, transhipped her fish to the Boston steamer "Alhambra," for conveyance to the United States, and had received from her provisions and stores, under a permit from the Collector of Customs at that place; and she was thus enabled at once to recommence her fishing operations. On this coming to the notice of the naval authorities, orders were given to put a stop to the practice as being illegal. The Dominion authorities also had given directions that it should not be allowed to continue. On the other hand, the Council of Prince Edward Island passed a series of resolutions strongly protesting against the abolition of a trade which had been so beneficial to the colonists. They stated that the practice was not confined to Prince Edward Island but that it had, until a recent period, been allowed in the Strait of Canso, which were within the territories of the Dominion; and that the New Brunswick Railway had transported large quantities of foreign-caught fish to the States. At the same time, they stated that, having been advised by the Law Officers of the Colony that the practice was illegal, and being desirous of acting in unison with the Dominion, they had consented to prohibit the trade, although that course would be attended with "serious loss to Her Majesty's subjects of all classes, as well as to foreigners engaged in the fishing business, some of whom have carried on extensive transactions in the island, with mutual advantage to themselves and the colonists." In forwarding these resolutions, the Lieutenant-Governor observes:—

Sir Robert Hodgson to Lord Kimberley;
September 7, 1870.

"I was induced to move in this matter, which I considered clearly illegal, partly because I had good reason to believe, that the Commanders of Her Majesty's ships employed on the coasts of this island for the protection of the fisheries, and who hold commissions under the island's statute, 6 Vict., cap. 14, would not respect any entry by such vessels at the Customs, but would seize them and their cargo and prosecute them to condemnation, which I afterwards stated verbally in Council, and partly because the Dominion Government, having interdicted and prevented such practice, not only in the

Strait of Canso, where more especially it had been extensively carried on, as also in all their other ports, I conceived that the Government of this Colony was bound in terms of my despatch of the 1st of June last, wherein I stated it was acting in unison with the Dominion Government, to pursue the same course."

The information reaching the United States that American fishermen would no longer be allowed to frequent the Canadian ports and bays for transhipping their ships, replenishing their stores, or for any other purposes than those expressly mentioned in the Treaty of 1818, Mr. Fish called Mr. Thornton's attention to the fact, stating that it was an interpretation of the Treaty which the United States' Government was not prepared to admit; and as Mr. Thornton was then able to pay a visit to Sir John Young he offered to communicate with the Governor of the Dominion on the subject. All Mr. Thornton's efforts to induce the Canadian Ministers to alter their views on the subject failed; and, on his communicating that fact on his return to Mr. Fish, that gentleman stated that, if the rights were persisted in, the United States' Government would have to take measures to protect themselves. The ground taken by Mr. Fish was that—

"He considered that the 'bays or harbours,' from which, by the Treaty, fishing vessels were to be excluded, except for particulars purposes, did not comprise regularly established commercial ports where Custom-houses existed, and the Treaty never intended to exclude them from such ports, or to prohibit their trading there. In support of this argument Mr. Fish referred me to the negotiation of the Treaty which your Excellency will find in detail in vol. vii. of the 'British and Foreign State Papers,' 1819, 1820, and particularly to the Protocol of the 5th Conference, held on the 6th of October, 1818, when the British Commission de a counter-proposal of a fishery Article recorded therein. In this Article a stipulation was proposed that fishing vessels should be allowed to enter bays and harbours 'for the purpose of shelter, &c., and for no other purpose whatever.'

"In the next paragraph it is proposed that 'the liberty of taking, drying, and curing fish shall not

be construed to extend to any privilege of carrying on trade,' &c. ; and further, that the vessels should not have on board any goods, &c.

“ Mr. Fish argues that the British Commissioners considered these last stipulations necessary for the prevention of trade ; but the United States' Commissioners refused to admit them, and induced their British colleagues to recede from their demands ; whence Mr. Fish concludes that the Treaty, as finally adjusted, did not intend to prohibit trading by American fishing vessels.”

Lord Kimberley to Sir John Young ;
October 12, 1870.

On the receipt of these communications Lord Kimberley, on the 12th of October, 1870, addressed a letter to Sir John Young, in which he observed, that whatever might be the strict effect of this clause in the Treaty of 1818—

“ It was noticed in the following terms in Mr. Cardwell's letter to the Lords of the Admiralty of 12th April, 1866—‘ Her Majesty's Government do not desire that the prohibition to enter British bays should be generally insisted on, except when there is reason to apprehend some substantial invasion of British rights.’”

And his Lordship then proceeds to say that “ Her Majesty's Government are not prepared to withdraw their own Instructions of 1866, and I have therefore requested the Lords of the Admiralty to call Admiral Fanshawe's attention to the passage which I have quoted from Mr. Cardwell's letter, and to inform him that the transshipment of fish and obtaining supplies by American fishing vessels cannot be regarded as a ‘substantial invasion of British rights’ such as is contemplated by those instructions, and that unless there is some further ground of interference than the Convention of 1818, and the consequent enactments of 59 Geo. III, c. 38 (Imperial), and 6 Vict., c. 14 (Prince Edward Island), he is not to prevent the United States' fishermen from entering British bays for such purposes. If the Admiral should be of opinion that this admission of United States' vessels renders it difficult practically to enforce the law against fishing in British waters, he will be instructed to report that opinion, and the grounds on which he has formed it, and Her Majesty's Government will then consider whether it is necessary that any further steps should be taken

for the more effectual prevention of encroachment on the Colonial fisheries by foreign vessels."

A copy of this letter was forwarded by Lord Granville to Sir E. Thornton for his information, and, in a subsequent letter dated the 24th October, Sir E. Thornton was directed to be careful not to admit Mr. Fish's "interpretation of the Treaty of 1818, as against the exclusion of United States' vessels from Canadian ports."

Lord Granville to Sir E. Thornton
October 24, 1870.

The decision arrived at by Her Majesty's Government as to the notification of United States' vessels, although distasteful to the authorities in the Dominion, seems to have given great satisfaction in the Colony of Prince Edward Island, for, in a letter from the Lieutenant-Governor to Lord Kimberley of the 23rd of November, 1870, we find the following passage:—

Lieutenant-Governor Robinson to
Lord Kimberley;
November 23, 1870.

"The colonists are not a little gratified at the result of the appeal made by the late Government to the Secretary of State. Trade suffered severely in consequence of the action which Government felt called upon to take in August last, and the people look forward with satisfaction to re-opening their ports next summer to their remunerative and welcome visitors."

Notwithstanding the measures applied by the British Government to mitigate as far as it was possible the effect of the more stringent orders issued for the exclusion of American vessels from using British waters, it was found that at the end of the season 1870 eight American vessels had been captured by Dominion cruizers, and three by vessels of the Royal Navy. These captures, the more strict enforcement of the British rights, and the repeated warnings to which the Americans found themselves exposed, caused the greatest excitement in the States, insomuch that the President in his Message thought fit to call especial attention to the subject, and, after a series of observations of the most extraordinary character, and which it is only surprising should have been made by any one holding so high and responsible a position, he thus proceeds:—

"Anticipating that an attempt may possibly be made by the Canadian authorities in the coming session to repeat their unneighbourly acts towards our fishermen, I recommend you to confer upon the

Executive the power to suspend, by proclamation, the operation of the laws authorizing the transit of goods wares, and merchandize in bond across the territory of the United States to Canada; and, further, should such an extreme measure become necessary, to suspend the operation of any laws whereby the vessels of the Dominion of Canada are permitted to enter the waters of the United States."

He further went on to observe that a like unfriendly disposition had been shown in excluding American citizens from the navigation.

The President began by stating that the course pursued by the Canadian authorities towards the fishermen of the United States during the past season had not been marked by a friendly feeling. He stated that it had been "the custom for many years to give to intending fishermen of the United States a reasonable warning of" trespassing in British waters, or, as he ~~was released~~ to call it, "of their isolation of the technical rights of Great Britain." He heard that "vessels had 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. 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." He complained that the Imperial Government had delegated its powers to the Colonial authorities, and that the latter had exercised them in an unfriendly way. He also strongly protested against the powers which had been given to the cruisers of seizing and searching vessels found hovering within three miles of the coast and unprovided with a license. The President also complained that United States' fishing vessels were not allowed to lay in provisions, purchase bait, or to trade in any manner in British ports, but were limited exclusively to the objects expressed in the Treaty of 1818.

He further went on to observe that a true unfriendly disposition had been shown in excluding American citizens from the navigation of the River St. Lawrence, and that he trusted that the Government of Great Britain would see "the justice of abandoning the narrow and inconsistent claims to

which her Canadian Provinces have urged her adherence.”

It will readily be supposed that these outrageous statements did not pass unchallenged, and especially by the Canadian authorities, against whom, in fact, they were chiefly levelled. It was remarked, in reply, that the right of Great Britain and the Colonies to the exclusive fishing within three miles of the coast was not a technical right, but one which had not, and could not, be disputed. That the system of licenses and of warnings had been abandoned because the American fishermen refused any longer to pay for licenses to fish in British waters, when they found that the risk of their being captured was very small, if it were made contingent upon their having been previously warned. The complaint, too, as to authority having been conferred upon the Provincial cruizers of capturing United States' fishermen when found encroaching on British waters, could hardly have been seriously made. As to the charge that the United States' fishermen had been prevented from purchasing provisions, bait, and everything used for carrying on their operations in British ports, it must have been well known to the President when he delivered his message, that it had no foundation, orders having some time previously been issued both by the Imperial and by the Colonial authorities to admit them to these privileges.

Lastly, as to the free navigation of the St. Lawrence, the President must have known, when he made the charge, that no attempt had been made to interfere with the free navigation of the river by the United States' citizens since the termination of the Reciprocity Treaty of 1866, although it was by that Treaty that the right of free navigation had been granted, and it was the United States' Government that had put an end to the Treaty. It was, however, shown that, practically, the free navigation of the St. Lawrence, unaccompanied with the liberty of fishing in Canadian canals, was of no value, the river being stopped by the Falls of Niagara; and if the President means that the United States' citizens had no absolute right to navigate canals made in Canadian soil, and with Canadian and British capital, it was contended that such a claim was quite preposterous.

It is difficult, indeed, to understand how a person,

holding so high and responsible a position as the President of the United States, could have been induced to make such extravagant and unfounded charges, unless, indeed, there may have been some expectation that negotiations for a Treaty were about to be renewed, and that it would be well beforehand to make out as strong a case as possible. But, however this may be, certain it is that, towards the end of 1870, negotiations were reopened with that view; and Sir John Rose having been commissioned to proceed in an unofficial character to Washington for the purpose of sounding the United States' Government on the subject, that gentleman was enabled, in the month of February following, to announce to Lord Granville that the United States' Government were prepared to refer all questions between the two countries to a Joint High Commission.

It is not necessary here to detail the steps that were taken to bring the Commission together, or the various discussions which took place at their meetings. Suffice it to say, that the Joint High Commission, which consisted of five members on each side, held their first meeting at Washington on the 27th of February, 1871, and that one of the first subjects which was discussed, after the usual preliminary formalities, was the Fisheries Question. It was discussed at length on the 6th, 20th, 22nd, and 28th of March, and again on the 17th, 18th, and 19th of April, and on the 22nd of April the Articles so far as related to the Fisheries, were finally settled.

At the meeting of the 6th of March the British Commissioners at first proposed a renewal of the Reciprocity Treaty as it formally stood, in return for the fisheries being thrown open to the United States' fishermen. The American Commissioners, however, stated that the renewal of the Reciprocity Treaty would, in their opinion, be so unacceptable to Congress that it must be discarded; and they proposed, in return, that it would be more acceptable to the United States to purchase the right to the in-shore fisheries in perpetuity for a gross sum, and that it would be reasonable to ask a provision for the admission of fish duty free. Some discussion then seems to have taken place as to the supposed value of the in-shore fisheries, which the

American Commissioners computed at about one-fourth of the total fisheries, and General Schenck valued the whole catch at 12,000,000 dollars, and consequently the in-shore fisheries at 3,000,000 dollars; but from which he said large deductions would have to be made for expense and risk. The American Commissioners then asked whether the British Commissioners were prepared to negotiate on the basis of the free admission of fish, coal, salt, and firewood; but this the British Commissioners stated was a wholly inadequate return. The American Commissioners then asked if the British Commissioners were prepared to name a gross money value, but the British Commissioners said that the purchase of the fishery rights had not been contemplated in their instructions, and that they could not, therefore, offer any opinion on the subject. Some discussion ensued as to whether the purchase was to be in perpetuity, or for a term of years; and ultimately it was arranged that the British Commissioners should refer home for instructions as to whether they were to be at liberty to negotiate for the purchase of the fisheries "in return for a money payment, or partly for a payment of money, and partly for commercial facilities. The American Commissioners said that they wish to know what were the principal articles in which the Tariff was required to be modified, and were informed that they were cereals, root crops, lumber, minerals, and mineral products;" but they stated that such an arrangement would in their opinion be impossible.

On the 20th of March the subject of the fisheries was resumed, when the British Commissioners stated that they were now prepared to discuss the question without any restrictions "as to the nature of the equivalent that might be accepted for the privilege of fishing in Canadian waters;" and they invited the American Commissioners to state what they proposed on the subject. The United States' Commissioners then stated that they did not "consider the in-shore Canadian fisheries as in themselves of any real intrinsic commercial value," but that the principal object contemplated in their acquisition was "to avoid cause of irritation between the two Governments;" and that for this reason they were prepared to offer more than they were really worth, and proposed to give a gross sum of 1,000,000

dollars for the use of the in-shore fisheries in perpetuity. The British Commissioners asked if their offer was accompanied with any traffic facilities; and the American Commissioners replied that they had advisably offered traffic facilities in free fish, coal, salt, and firewood, but they found that they had offered too much, and now withdrew that offer, as the revenue from the fish dry alone was nearly 200,000 dollars. Some further discussions ensued as to the value of the in-shore fisheries, and it was agreed that Sir John Macdonald and Mr. Howe should meet between that time and the next meeting of the Commissioners, on the 22nd of March, and discuss the statistics. The British Commissioners, however, before specially stated that the sum offered was, in their opinion, wholly inadequate, and that no arrangement could be satisfactory which did not include fish free.

At the opening of the Commission on the 22nd of March, Sir John Macdonald and Mr. Howe stated that, owing to the imperfect nature of the returns, they had been unable to arrive at any accurate estimate of the value of the in-shore fisheries. The British Commissioners thereupon suggested that, under these circumstances, they would inherit, as a fair equivalent for the use of the in-shore fisheries, the admission free of duty of fish, timber, coal, and salt, and the reciprocal opening of the coasting trade. The United States' Commissioners stated that it would be useless to entertain the question of the opening of the coasting trade, for that Congress would not consent to it. The British Commissioners then proposed to substitute a money payment for the opening of the coasting trade. But the American Commissioners stated that in connection with so large a concession of duties they must decline a money payment; but they were ready to offer free entry of mackerel, herring, and cod, free coal, and free salt; and the admission of timber free of duty from the 1st of July, 1870.

On the 25th of the same month the subject of the fisheries again came under discussion. The American Commissioners then proposed the admission free of duty of coal, salt, firewood, and fish-oil; and of all kinds of fish, except those preserved in oil, as well as the remission of duty on all kinds of timber and lumber, from the 1st July, 1870. They ~~proposed~~, how-

ever, to limit the right of British subjects to fish in the American limits to the 39th degree of latitude instead of to the 36th, as provided by the Reciprocity Treaty of 1854. On being asked by the British Commissioners why they wished to except fish preserved in oil, the American Commissioners stated that it was to prevent any question being raised by Italy and other continental nations with regard to sardines, which were subjected to a heavy duty as articles of luxury. And, on being asked why they limited the fishing rights to the 39th degree of latitude, the American Commissioners stated that, between the 36th and 39th degrees of latitude, the coast had not been surveyed by the Fishery Commissioners, and that they were anxious to avoid the expense and delay that would be occasioned by having to complete the survey to the 39th degree. They added that, as a matter of fact, ~~there~~ were no fisheries, except of the best, between ~~the 36th~~ and 39th degrees of latitude. The British Commissioners, however, remarked that, by drawing the line at the 39th degree, Canadian fishermen would be excluded from Chesapeake and Delaware Bays.

On the 27th of March the subject again came under discussion, when the British Commissioners stated that they found that the lake fisheries could not be opened to American fishermen. The American Commissioners thereupon observed that the United States must consequently exclude lake and river fish; and they proposed that the abolition of the duties on lumber and timber should date from the 1st of July, 1874. It was at this meeting also arranged that the contemplated Tariff and fishery arrangements should be for ten years certain, with a two years' notice.

On the 28th of March, the Commissioners, in a letter to Lord Granville, stated that they had after a discussion of several days brought the United States' Commissioners to the following proposals, beyond which they stated that they were not likely to advance; some of the reciprocal rights of fishing in Canadian waters, and in American waters down to the 39th degree of latitude, except always, the reservation of certain rights defined by the Fishery Commissioners under the Reciprocity Treaty of 1854; the admission, duty free, of coal, salt, fish (except shell fish and fish preserved in oil, as well as those

caught in lakes or the fishery waters direct), fish oil, and fire wood, and the admission free of duty of timber and lumber of all kind after the 1st July, 1874; the arrangement to be for ten years certain, and thereupon subject to a two years' notice. The Commissioners add that, with the exception of Sir John McDonald, they think that the arrangement is, on the whole, a fair one, and that they are sure that it is the best that can be obtained. The objections to the proposed arrangement are stated by Sir John McDonald in a Memorandum which he drew up, were that the duties on coal and salt would certainly be shortly abolished; and that it therefore amounted to a cession of the British inland fisheries in return for the admission, duty free, of fish and fish oil, and of lumber from the 1st of July, 1864, which he thought was not an adequate consideration.

On the 17th of April following, the Fisheries Question again came under discussion; when Her Majesty's Commissioners stated that they had, in accordance with their promise, referred to Her Majesty's Government the proposal of the United States' Commissioners that the United States should to take the duties off Canadian fish, salt, and coal at once, and lumber on the 1st of July, 1864, in return for the privilege of admission to the in-shore fisheries, but that they had been instructed that Her Majesty's Government could not accept their tariff advantages as sufficient equivalents for the privilege derived, and were of opinion that they should be supplemented by the payment of a sum of money to be agreed upon by the High Commissioners; and that should the United States' Commissioners be prepared to agree to that arrangement, they were ready to proceed to discuss the amount. The United States' Commissioners then replied, that they were prepared at once to say that they could not add a money payment to the proposed tariff arrangements, and that consequently their proposals on the point must be considered as entirely withdrawn. that this being so, and as it would greatly embarrass the United States' Government to equivalent to a money payment, they would proceed to consider the possibility of an arrangement on the basis of an equivalent in money. They stated that

from what had already passed, it would clearly be impracticable to agree as to a money value; and they would therefore propose that, following the principle already agreed to for the solution of other questions, the value of the privilege of admission to the in-shore fisheries should be decided by a Commission to be appointed for the purpose. The British Commissioner said that the proposal was so novel, that they must have time to consider it, and also to refer home for instructions; but that in the meantime, and without prejudice, they were prepared to discuss its details. This being assented to, the British Commissioner proposed that the arrangement should be for ten years, to which the United States' Commissioners objected, as involving a re-valuation at the end of that period, and they would therefore prefer a settlement in perpetuity. The British Commissioners also stated that they did not think that it would be possible to come to any arrangement which did not involve the concession to the United States of free fish. To this the United States' Commissioners objected, on the ground that the fish taken in-shore formed but an insignificant portion of the total catch, and that by granting free fish, the United States would not improbably be granting more than the in-shore fisheries were worth. After some further discussion, and after the United States' Commissioners had conferred together on the question, they stated that "they were now willing to negotiate on the basis of a limit of years, and although ten years was far too short a term, and also to consider the propriety of a relaxation of the Tariff in regard to fish; with the understanding that, if granted, the value of free fish must be taken into consideration by the Tribunal of Arbitration in assessing the payment in money, to be made in return for admission to the in-shore fisheries; that is to say, that it should be left to the Arbitrators to determine whether any pecuniary consideration should be given in addition to this Tariff advantage."

After some further discussion it was proposed that twenty-five years would be a suitable period for the duration of the arrangement, and that the Commissioners should, as in the case of the Claims Commissioners, consist of three members, one to be named by Great Britain, one by the United

States, and the third by the Austrian Ambassador in London, and it was arranged that Draft Articles should be drawn up.

The subject was further discussed in the Conference of the 18th and 19th of April, and again on the 22nd, when the British Commissioners stated that they had been authorized by Her Majesty's Government to accept the principles of arbitration as to the money value of the fisheries, but upon the distinct understanding that fish should be admitted free of duty. Ultimately, it was agreed that "fish oil, and fish of all kinds, except fish of the inland lakes and of the rivers falling into them, and except fish preserved in oil" should be admitted free of duty. The United States' Commissioners also proposed that fifteen years should be the term fixed, but the British Commissioners stated that they were not authorized to consent to more than ten years; and the question of the term of years was postponed for further discussion.

On the 24th of April it was finally settled that the term should be for a period of ten years certain, with power to either party at the expiration of that period to terminate them on giving two years' notice.

The United States' Commissioners then stated that they hoped that provisions would be made for the Fishery Articles to come in force during the approaching fishing season; to which it was replied that these Articles would not, of course, come into operation until the United States were prepared to admit fish duty free, but that the British Commissioners would give the matter their best consideration.

It was further agreed that the arrangements in regard to the fisheries should extend to Newfoundland, unless the Legislatures of Great Britain, the United States, and Newfoundland should otherwise provide.

Ultimately, the Treaty was signed on the 8th of May, and the ratifications were exchanged on the 17th of June following. And the Articles which relate to the Fishery Question are XVIII to XXV, and XXXII and XXXIII. It may be well briefly to state their provisions.

Article XVIII provides that, in addition to the rights conferred upon the United States' fishermen

by the Treaty of 1818 they should have liberty to take fish of all kinds, except shellfish, on the coasts and in the bays, harbours, and creeks of Quebec, Nova Scotia, New Brunswick, and Prince Edward Island, and to land on shore, coasts, &c., and also on the Magdalen Islands, for the purpose of drying their nets and curing their fish; and there is an express reservation made of the salmon and shad fisheries, and all other fisheries in rivers and in the mouths of rivers.

Article XIX gives British fishermen the same rights of fishing, and drying their nets and curing their fish on the shores of the United States, down to the 39th degree of latitude, with the same reservations, however, as to the salmon and shad fisheries, and the fisheries in rivers and the mouths of rivers.

Article XX provides that the places designated by the Commissioners appointed under the 1st Article of the Reciprocity Treaty of 1854, upon the coasts of Her Majesty's dominions and of the United States, as places reserved from the common rights of fishing under that Treaty, shall be still so regarded; and that if any doubt arises as to any other places not so designated, a Commission shall be appointed, as provided by the Treaty of 1854, so designated therein.

Article XXI provides that fish oil and fish of all kinds (except fish of the inland lakes and of the rivers falling into them, and except fish preserved in oil) being the produce of the Dominion of Canada, or of Prince Edward Island, or of the United States, shall be admitted into such country respectively free of duty.

Article XXII provides for the appointment of Commissioners to determine whether any and, if so, what amount of compensation ought to be paid by the Government of the United States to the Government of Her Britannic Majesty for the excess in value of the privileges accorded to United States' citizens under Article XVIII over and above the value of the privileges accorded to British subjects by Articles XIX and XXI, and that the amount so accorded shall be paid within twelve months after it has been made.

Article XXXIII provides that the Commission shall consist of three members, one to be named by Great Britain, another by the United States, and a

third by the Austrian Ambassador in London, in case the High Contracting Parties should not be able to agree upon a third Commissioner. Three months is allowed for filling up a vacancy in case any should occur, The Commission is to meet at Halifax, in Nova Scotia, and each of the High Contracting Parties is to name a person as its Agent, to represent it in all matters connected with the Commission.

Article XXIV directs that the proceedings shall be conducted in such manner as the Commissioners may direct ; and that either party may produce such oral or written testimony as they think fit, with liberty to the opposite Party to cross-examine, in case oral testimony should be produced by either. Provision is also made for the production of the original documents if required ; and it is provided that the case on either side shall be closed within a period of six months from the date of the organization of the Commission, the Commissioners to give their award as soon as possible afterwards. There is provision also to extend the period for three months in case of a vacancy among the Commissioners.

Article XXV provides for the appointment of a Secretary and other officers, and for keeping accurate record of all their proceedings ; and directed that all expenses shall be divided yearly between the two Governments, except those of its Commissioners and Agents, which shall be born by the respective parties.

Article XXXII provides that all the fishery arrangements shall extend to Newfoundland, unless the Legislatures of Great Britain, the United States, or Newfoundland shall otherwise enact.

Article XXXIII provides that Articles XVIII to XXV are to take effect as soon as the laws required to carry them into operation shall have been passed by the Legislatures of Great Britain, the United States, Canada, and Prince Edward Island ; and shall remain in force for ten years from that time, and further until the expiration of two years after either of the High Contracting Parties has given notice of its wish to terminate the same.

Such then are the provisions of the Treaty of 1871, as far as they relate to the Fisheries Question.

In the meantime it had become necessary to take measures for the protection of the fisheries during

the ensuing season ; and Admiral Fanshawe, the Admiral on the station, wrote to the Admiralty on the 21st of April, 1871, saying, that he was about to adopt similar measures to those taken by his predecessors in the preceding year, but with this addition, that the transshipment of fish and obtaining supplies by American fishing vessels was not to be regarded as a substantial invasion of British rights, and that those vessels were therefore not to be prevented from entering British bays and harbours for that purpose.

The Canadian authorities, indeed, had been very urgent that Her Majesty's Government should revert to the Instructions which had been in force just prior to the Reciprocity Treaty coming into operation, in other words, to the Instructions of 1852 and 1853. This, however, could not be done without repealing the Instructions of 1866 and 1870. They ~~therefore~~ proposed to issue Instructions nearly similar to those of 1870, and a copy thereof having been forwarded by Lord Lisgar (formerly Sir John Young) to this country, Lord Kimberley, in reply, stated that there was one point April 12, 1871. in which the proposed Instructions required amendment, namely, as to "the exclusion of United States' fishing vessels from entering Canadian bays or harbours for the ;" and he observed that the United States' Government had remonstrated against this exclusion, and that the Canadian Government had already been informed that "the transshipment of fish and obtaining supplies by American fishing vessels could not," in the opinion of Her Majesty's Government, "be regarded as a substantial invasion of British rights, such as was contemplated by the Imperial Instructions of 1866." His Lordship added that, "if the negotiations at Washington should be still pending when the fishery season commences, the enforcement of this exclusion might seriously endanger their success, and cannot therefore doubt that your advisers will agree with Her Majesty's Government in the necessity of, at all events, suspending that part of the Instructions to which I have referred until the result of the negotiation is known."

On the receipt of this communication the Canadian authorities altered their Instructions, so as to meet Lord Kimberley's views, thus, in fact, making

them conformable to those which Admiral Fanshawe had already expressed it to be his intention to issue to the officers under his command.

I may add that several American vessels were captured during the early part of the year 1871, and whilst the negotiations were going on at Washington; and although it does not appear that the seizers exercised their power in a harsh or arbitrary manner, it occasioned great excitement in the United States.

No sooner, therefore, was the Treaty signed, in fact, on the very day of the signature, the 8th of May, 1871, Mr. Fish wrote to Mr. Thornton expressing a hope that, in the event of the ratification of the Treaty, Her Majesty's Government would be prepared at once to open the Canadian waters to United States' fishermen, offering at the same time that the United States' waters should be thrown open to British fishermen, and stating ██████████ although it was not in the power of the ██████████ to admit any article duty free without the sanction of Congress, the President undertook, in the event of his proposal being acceded to, to recommend and urge upon Congress, at their next sitting, to pass an Act providing that any duties collected on fish and fish-oil after the 1st of July, 1871, should be refunded. In reply, Mr. Thornton was instructed by Lord Granville to say that Her Majesty's Government would recommend to the Colonial Government to assent to the proposed arrangement, and to throw open at once the British Colonial waters to the United States' fishermen. At the same time orders were sent to Admiral Fanshawe to suspend the instructions proposed to be issued for the protection of the North American fisheries during the approaching season, until the action of the United States' Government in regard to the Treaty should be known.

Not so, however, was the Treaty received by the Colonial Authorities. No sooner did its provisions become known, by the premature publication thereof by the American newspapers, than the greatest indignation was expressed, more especially at the arrangements which it was proposed to make in regard to the fisheries, and a strong determination not to pass the Legislative Act necessary to give effect to the Treaty. On learning, too, that orders had been sent to the Imperial naval authorities to suspend the operation of the instructions for the

protection of the fisheries, they energetically protested against such a course, and refused to suspend the operation of the instructions to the Colonial cruizers.

Notwithstanding, however, the menacing attitude assumed by the Colonial authorities, Her Majesty's Government were determined, as far as they could, to remove any ground of complaint that the United States' Government might have; and accordingly, a letter was, on the 12th of June, 1871, sent from the Colonial Office to the Lords of the Admiralty, by which their Lordships were informed that it was "the desire of Her Majesty's Government that during the suspension of those instructions, the officers commanding Her Majesty's ships should be directed, whilst abstaining from taking active measures to enforce the exclusion of United States' fishermen from the fisheries in question, to assist the local authorities by preserving order amongst the fishermen, and to protect the Colonial revenue vessels from being interfered with by any armed force."

Orders to that effect were accordingly telegraphed to Admiral Fanshawe, and, on the 13th of June, that officer informs the Lords of the Admiralty that the following directions had, in consequence, been issued to the commanding officer of Her Majesty's ships employed in the Canadian fishery service:—

"I.—*The Instructions for the Protection*

[The Memorandum was not completed.]
