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CONFIDENTIAL.

(2636.)

Joseph P. A. H.

MEMORANDUM

PROPERTY OF HISTORICAL DIVISION
RELATING TO THE DEPT. OF EXTERNAL AFFAIRS

NEGOTIATIONS

BETWEEN

GREAT BRITAIN AND THE UNITED STATES

ON THE SUBJECT OF THE

NORTH AMERICAN FISHERIES.

1782-1866.

MAP AND APPENDIX.

*Foreign Office,
July 28, 1866.*

RETURN TO HISTORICAL DIVISION
DEPT. OF EXTERNAL AFFAIRS

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PREFACE.

THE question of the North American Fisheries may be divided into four periods, viz. :—

1. 1782–1814.
2. 1814–1818.
3. 1818–1854.
4. 1854–1866.

1782–1814. *1st Period.*—In 1782 negotiations commenced in Paris between Great Britain and her revolted Colonies for the conclusion of a Treaty of Peace. With regard to the fisheries, the latter demanded an unlimited concession of the rights of fishery, as also a limited right of landing and drying their fish upon certain portions of the coast of the British Possessions. This demand was for some time resisted by the British negotiators; but, in consequence of the urgent necessity of peace on the part of Great Britain, they subsequently yielded. By the IIIrd Article of the Treaty of the 3rd of September, 1783, the people of the United States obtained the “right” of fishing 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 the two countries had been in the habit of fishing. They also were to have the “liberty” to take fish of every kind on such part of the coast of Newfoundland as British fishermen should use (but not to dry or cure the same on that island), and likewise on the coasts, bays, and creeks of all other of His Britannic Majesty’s dominions in America. They were also to have the liberty to dry and cure fish in any of the unsettled bays, harbours, and creeks of Nova Scotia, Magdalen Island, and Labrador, so long as the same should remain unsettled; but so soon as the same, or either of them, should be settled, it would become illegal for the said fishermen to dry or cure fish at the said Settlement, without a previous agreement for that purpose with the inhabitants, proprietors, or possessors of the ground.

The above concessions caused great discontent to the colonists; and on the breaking out of the war between Great Britain and the United States in 1802, and the commencement of negotiations in 1814, for the renewal of peace, they sought by memorials, &c., to obtain the abolition of the stipulations contained in the Treaty of 1783.

1814–1818. *2nd Period.*—In 1814 negotiations for peace commenced at Ghent. With regard to the fisheries, Great Britain refused to renew the stipulations of the Treaty of 1783, without the concession of some commercial equivalent. The United States’ Commissioners maintained, on the contrary, that the stipulations of the Treaty of 1783 regarding the fisheries were not terminated by the war, they contending that the Treaty in question was of an exceptional character. They argued that they saw not why this liberty, no new grant, but a mere recognition of a prior right always enjoyed, should be forfeited by a war, any more than any other of the rights of their national independence, or why they should need a new stipulation for its enjoyment more than they needed a new Article to declare that the King of Great Britain treated with them as free, sovereign, and independent States.

As neither of the two Powers could come to an arrangement on the subject of the

fisheries, the Treaty of Peace of 1818 was signed without any reference being made to the subject.

The United States, however, attempted to maintain their rights under the Treaty of 1783, which was resisted by Great Britain.

In 1818 negotiations commenced in London for the settlement of the fishery question, and in consideration of the surrender of certain fishery rights claimed by the United States on the coasts of Nova Scotia, they obtained—

1. The liberty to take fish on the southern coast of Newfoundland from Cape Ray to the Ramca Islands, and on the western and northern coast of that Island from Cape Ray to the Quirpon Island.

2. Also on the shores of the Magdalen Islands, and on the coasts, bays, harbours, and creeks, from Mount Joly on the southern coast of Labrador, to and through the Straits of Belleisle; and thence northwardly indefinitely along the coast, without prejudice, however, to any of the exclusive right of the Hudson's Bay Company; and—

3. They obtained the liberty of drying and curing fish in any of the unsettled bays, harbours, and creeks situated on that portion of the southern coast of Newfoundland already mentioned, and also the coast of Labrador.

The United States renounced, on their part, all right to fish or dry fish within a distance of three marine miles of any of the coasts, bays, creeks, or harbours of His Britannic Majesty's dominions in America not included in the above-mentioned limits.

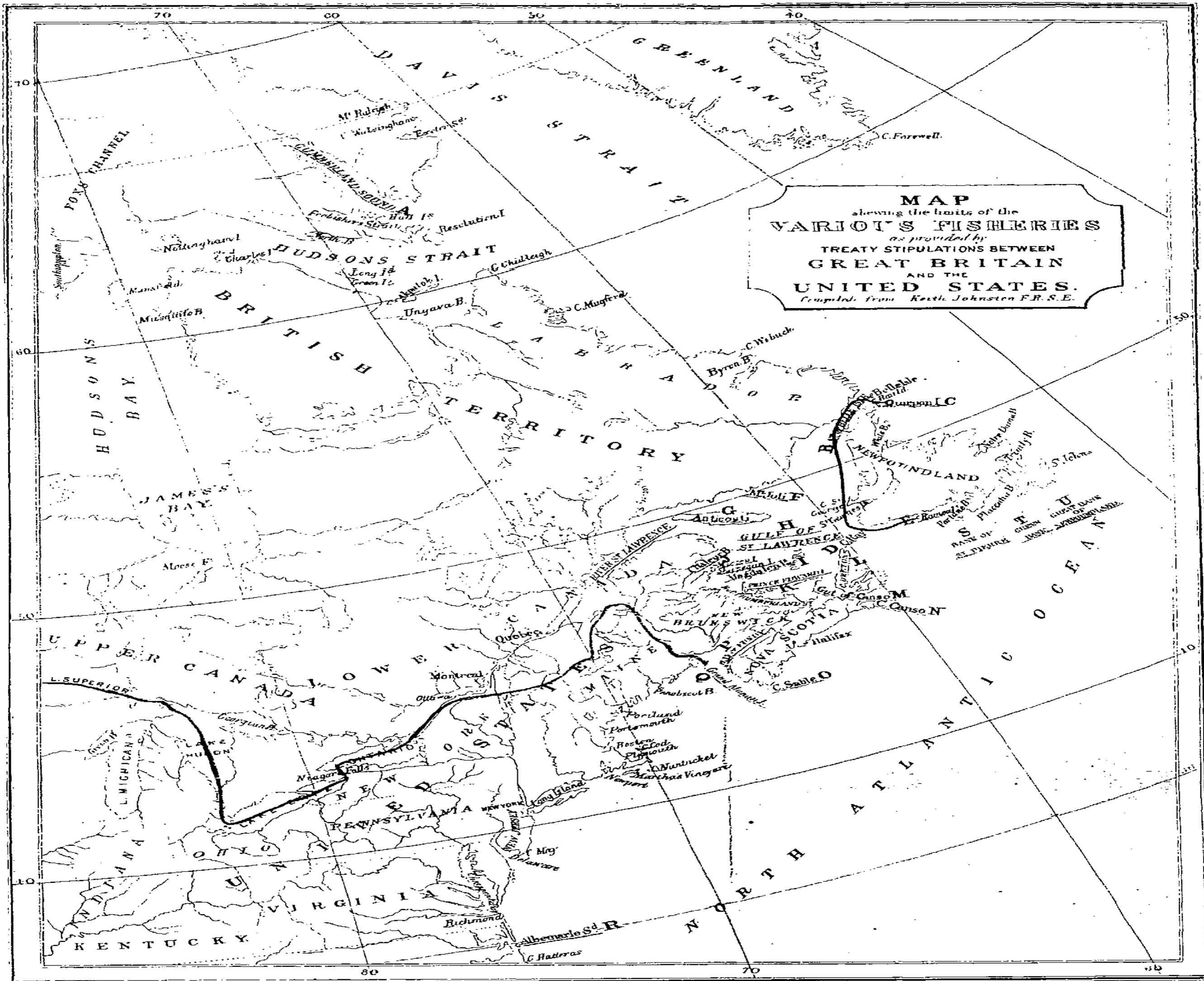
1818-1854. *3rd Period.*—The principal difficulties which arose out of the Treaty of 1818 were caused by the constant infringement by the American fishermen of the three-mile limit. The United States' Government maintained that their fishermen had the right to fish within the headlands of bays situated in the British territory; Great Britain, on the contrary, maintaining that they had no right to fish within three miles of such headlands. This question was a perpetual source of difference between the two Governments, and frequently led to unfriendly relations between the two countries.

In consequence of the danger of collision arising out of the fishery question, both Governments were desirous of terminating it by friendly negotiation. Great Britain offered to concede to the United States an unlimited right of fishing on her North American territory, provided the United States should in return grant certain commercial privileges to the Colonies. This led to the conclusion of the Treaty of 1854, by which Great Britain ceded to the United States, in addition to the rights enjoyed under the Treaty of 1818, an unrestricted right of fishing as regarded distance from shore, with the exception of shell fish, on the sea coasts and shores, and in the bays, &c., of Canada, New Brunswick, Nova Scotia, Prince Edward Island, and the several islands thereunto adjacent. They also obtained the right of landing on such coasts under certain conditions.

The United States, on their side, conceded, besides reciprocal commercial rights to the Colonies, the right of fishery, and also permission to land on that portion of the coasts of the United States situated north of the 36th parallel of north latitude.

1854-1866. *4th Period.*—The Treaty of 1854 proved a source of great commercial prosperity to the two nations. On the 17th March, 1865, however, a note was addressed by Mr. Adams to Her Majesty's Government, stating the determination of the United States to terminate the Treaty at the expiration of the period required. The Treaty consequently terminated on the 17th March 1866, and the Treaty of 1818, with the Imperial and Colonial Acts, passed for giving effect to the same, again came into force.

A. S. G.



MAP
 showing the limits of the
VARIOUS FISHERIES
 as provided by
 TREATY STIPULATIONS BETWEEN
GREAT BRITAIN
 AND THE
UNITED STATES.
Compiled from Keith Johnston F.R.S.E.

- A. Cumberland Sound.
- B. Straits of Belle Isle.
- C. (Newfoundland), Quirpon Islands.
- D. (Ditto), Cape Ray.
- E. (Ditto), Ramez Islands.
- F. Mount Joll.
- G. Island of Anticosti.
- H. Gulf of St. Lawrence.
- I. Magdalen Islands.
- J. Chaleur Bay.
- K. Prince Edward Island.

- L. Island of Cape Breton.
- M. Gut of Canoe.
- N. Cape Canoe.
- O. Cape Sable.
- P. Bay of Fundy.
- Q. Island of Grand Maun.
- R. Albemarle Sound (36 parallel of North latitude).
- S. Bank of St. Pierre.
- T. Green Bank.
- U. Great Bank of Newfoundland.

THIRD ARTICLE OF TREATY OF 1783.

Right of fishery ceded to United States: on Grand Bank and all other Banks of Newfoundland; in the Gulf of St. Lawrence, and all other places in the sea where the inhabitants of both countries had heretofore fished. Also liberty to take fish on such part of the coast of Newfoundland as British fishermen should use (but not to dry or cure the same in that Island), and also on coasts, bays, &c., of all other of His Britannic Majesty's dominions in America. They were also to enjoy the liberty of drying or curing fish in any of the unsettled bays, &c., of Nova Scotia, Magdalen Islands, and Labrador, so long as the same should remain unsettled.

FIRST ARTICLE OF TREATY OF 1818.

- D—E. (Newfoundland). Liberty to take and dry fish.
- C—D. (Newfoundland). Liberty to take fish only.
- F. (Labrador), through Strait of Belle Isle, and thence north indefinitely. Right to fish and dry fish.
- O— All other fisheries limited to a distance of three miles from shore.

TREATY OF 1854.

By the Treaty of 1854 the United States obtained the right of fishing, without being restricted to any distance from the shore, on the coasts of all the British Colonies, including Newfoundland so far as the Treaty was applicable to that Colony.

Printed for the use of the Foreign Office. August 1875.

CONFIDENTIAL.

*Memorandum relating to the Negotiations
between Great Britain and the United
States on the Subject of the North American
Fisheries. 1782-1866.*

1782-1814.

PREVIOUS to entering into the diplomatic transactions which secured to the United States the enjoyment of a share in the fisheries off the shores of the British North American Possessions, it will be useful to give a short description of the principal localities in which the fish most abound.

The following information is principally derived from American sources, and from the able reports made by Mr. Perley to the Colonial authorities in 1849.

Description of Fisheries.

In 1815 Mr. James Lloyd, an American gentleman, in a letter to Mr. Adams, the United States' Minister in London, observed that the shores, the creeks, the inlets of the Bay of Fundy, the Bay of Chaleur, the Gulf of St. Lawrence, the Straits of Belleisle, and the coast of Labrador, appeared to have been designed by the God of Nature as the great ovarium of fish; the inexhaustible repository of this species of food, not only for the supply of the American, but of the European Continent. At the proper season to catch them in endless abundance, he observed, little more of effort was needed than to bait the hook and pull the line, and occasionally even this was not necessary. In clear weather, he stated, near the shores, myriads were visible, and the strand was at times most literally paved with them. With regard to the stipulations of the Treaty of 1783, Mr. Lloyd observed that if any-

thing was gained or secured to the United States on this head, it undoubtedly was the coast fisheries on the shores of the British provinces. He then continued by giving a comparative description of the bank fisheries and the coast fisheries.

The bank fishery he described as being carried on in vessels of from 70 to 90 tons burden, manned by eight or ten men each. They commenced their voyages early in March, and continued in this employment until the last of October, during which time they made two and sometimes three fares to the United States, bringing their fish home to be cured.

The coast and Labrador fisheries, he stated, were prosecuted in vessels of from 40 to 120 tons burden, carrying a number of men according to their respective sizes, in about the same proportion as the vessels on the bank fishery. They commenced their voyages in May, and got on the fishing ground about the 1st June, before which time bait could not be obtained. This bait he described as being furnished by a small species of fish called caplin, which strike in-shore at that time, and are followed by immense shoals of cod fish which feed upon them. Each vessel selected its own fishing ground, along the coasts of the Bay of Chaleur, the Gulf of St. Lawrence, the Straits of Belleisle, the coast of Labrador, even as far as Cumberland Island, and the entrance of Hudson's Bay, thus improving a fishing ground reaching in extent from the 45th to the 68th degree of north latitude. In choosing their situation the fishermen, he stated, generally sought some sheltered and safe harbour or cove, where they anchored in about six or seven fathoms water, unbent their sails, stowed them below, and literally made themselves at home, dismantled and converted their vessels into habitations, at least as durable as those of the ancient Scythians. When the vessel was filled with dried fish fit for an immediate market, which was generally the case by the middle or last of August, she then proceeded immediately to Europe or returned to the United States.

Mr. Perley, Her Majesty's Emigration Officer

in New Brunswick, in his Report to the Colonial Government in 1849 stated that "these fisheries might be prosecuted as well in the open waters of the gulf as within every bay, harbour, creek, cove, and inlet in connection with it. Whether on the bleak and sterile coast of Labrador, or on the western coasts of Newfoundland and Cape Breton, or along the eastern shores of Nova Scotia and New Brunswick, or within the Bay of Chaleur, or around Prince Edward Island, Anticosti, or the Magdalen Islands, the fisherman might pursue his labours with nearly equal chances of success, and the full prospect of securing an ample reward for his toil."

The principal fisheries are divided under the following heads:

Herring, cod, mackerel, and salmon.

The common herring appears in the Gulf of St. Lawrence at the end of April or early in May, and the fishing continues until about the 10th of June, when they retire to deep water. These "spring herring," as they are termed, are taken in "set nets" along the whole eastern shore of New Brunswick, around Miscou Island, and within the Bay of Chaleur.

The cod fishery commences from the 1st to the 10th of June, and continues until the end of November. It may be prosecuted in every part of the Gulf of St. Lawrence to a greater or less extent.

Near the shores of New Brunswick the best fishing grounds, or rather those most frequented are from Point Escuminae to Miscou, and thence along the Bay of Chaleur to the Restigouche.

The excellent fishery on the Labrador coast is prosecuted almost wholly by the Americans and by vessels from Newfoundland, Canada, and Nova Scotia. The season commences about the end of May.

The whole line of the New Brunswick coast from Bay Verte to Escuminae around the Bay of Miramichi, and thence along the shores from Tabusintac to Shippegan and Miscou, offers the greatest facility for prosecuting either the in-shore, deep sea, or Labrador cod-fishery, there are numerous harbours, creeks, coves, lagoons, and

nlets on this line of coast well sheltered, with sufficient water for boats and vessels of every size and description. The beaches are admirable for drying fish, and there is abundance of wood at hand for the construction of stages and "fish flakes." The soil, too, is generally excellent, and owing to the flatness of the coast, the shore is everywhere easy of approach.

The Bay of Chaleur likewise possesses many advantages for the prosecution of the fisheries. The whole bay may be considered as one great harbour, as throughout its entire breadth and extent there is not a single rock, reef, or shoal. During the summer it literally swarms with fish of every description known on the shores of British North America.

The common mackerel abounds in the Gulf of St. Lawrence, and is one of the chief objects of pursuit with the numerous fleets of American fishing vessels which are to be found yearly in every part of the gulf. The Americans begin fishing for mackerel in the gulf on the 1st of July, and finish at the end of September.

With regard to the salmon fisheries, Mr. Perley states, "Of those rivers of New Brunswick which flow into the Gulf of St. Lawrence the two largest, the Miramichi and Restigouche, furnish the greatest supply of this well-known and delicious fish, but all the smaller rivers also furnish salmon in greater or less numbers. There are also various bays, beaches, islands, and points of land along the coast where salmon are intercepted by nets while seeking the rivers in which they are spawned, and to which salmon always return.

"Large quantities of salmon are caught every season on the Labrador coast in stake nets placed at the mouths of rivers which empty into bays and harbours. A number of vessels from Newfoundland and Canada are engaged annually in this fishery; but the American fishing-vessels pursue it with great vigour and assiduity, and it is reported that of late years they have found it very profitable."

Previous to entering into the diplomatic negotiations relating to the fisheries it will be useful

to refer to some of the early Acts of Parliament relating thereto, particularly with regard to Newfoundland.

Act 10 and 11 Wm. III, cap. 25. By an Act passed in 1699 it was provided that no alien or stranger whatsoever (not residing within the Kingdom of England, dominion of Wales, or town of Berwick-upon-Tweed) should at any time thereafter take any bait, or use any sort of trade of fishing whatsoever in Newfoundland.

Act 15 Geo. III, cap. 31. By a further Act passed in 1775, the privilege or right of drying fish on the shores of Newfoundland, was not to be enjoyed by any of His Majesty's subjects arriving at Newfoundland from any other country except from Great Britain, or one of the British dominions in Europe.

These Acts have been alluded to in order to show that the British American Colonists, previous to the war of independence, did not enjoy equal rights on the shores of Newfoundland with British subjects arriving direct from the British dominions in Europe.

Fishery Rights of Foreign Powers.

It will be also useful to state, before referring to the negotiations of 1782-83, what were the fishery rights enjoyed by foreign Powers at that period, and more particularly by France.

Treaty of Utrecht, March 31, 1713.
France. By the XIIIth Article of the Treaty of Utrecht, France, in consideration of her ceding all her territorial rights on the Island of Newfoundland, obtained the right to fish, and to dry such fish on land within a district stretching from Cape Bonavista on the eastern side of the island to Point Riche on the western side. But the island called Cape Breton, as also all others both in the mouth the River St. Lawrence, and in the Gulf of the same name, were acknowledged to belong of right to France.

By the XIIth Article of the Treaty of Utrecht, by which Nova Scotia or Arcadia had been ceded to Great Britain by France, the cession had been made in such ample manner and form that French subjects were excluded from all kind of fishing "in the said seas, bays, and other places on the coasts of Nova Scotia; that is to say, upon those which lie towards the east, within thirty leagues, beginning from the island commonly called Sable, inclusively, and thence along to the south-west."

On the conquest of Cape Breton in 1758, British subjects exclusively pursued the fisheries on Brown's Bank, and the banks of Nova Scotia, and on the banks of Newfoundland, in common with the subjects of every European nation.

By the Treaty signed in Paris in 1763 between Treaty of Paris, February 10, 1763. Great Britain and France, the latter Power obtained the confirmation of her fishery rights on the Coast of Newfoundland, as provided by the XIIth Article of the Treaty of Utrecht. With regard, however, to the other fisheries, Great Britain consented to leave to the subjects of the Most Christian King, the liberty of fishing in the Gulf of St. Lawrence, on the condition that the subjects of France did not exercise the said fishery but at the distance of three leagues from all the coasts belonging to Great Britain, as well those of the Continent as those of the islands situated in the said Gulf of St. Lawrence. And as to what related to the fishery on the coasts of the Islands of Cape Breton out of the said Gulf, French subjects were not to exercise the said fishery but at the distance of fifteen leagues from the coasts of that island; and the fishery on the coasts of Nova Scotia, or Arcadia, and everywhere else out of the said Gulf, was to remain on the footing of former Treaties.

By the XVth Article of the Treaty of Utrecht Spain. between Great Britain and Spain certain rights of fishing at the Island of Newfoundland had been reserved to the Guipuscoans and other subjects of Spain; but by the XVIIIth Article of the Treaty of Peace between Great Britain and Spain of 1763, His Catholic Majesty had desisted, "as well for himself as for his successors, from all pretension which he might have formed in favour of the Guipuscoans and other his subjects, to the right of fishing in the neighbourhood of the Island of Newfoundland."

From the foregoing it will be observed that at the period of the negotiations of 1782-83, the North American fisheries were principally carried on by fishermen from Great Britain, France, and the American Colonies. It was the subjects only, however, of the first of these Powers which enjoyed unlimited rights of fishing, not only on the bank fisheries, but also upon the Coasts of

North America. The rights of France were very extensive, and were considered of great importance by the Government of that country.

Rights of the Colonists.

The rights of the Colonists, however, with regard to the drying of fish on the Coast of Newfoundland were limited by Act of Parliament, and it is a matter of doubt also, whether their rights of fishery were not also limited by the first clause of the Act 10 & 11 Geo. III, cap. 25.

Article X of Treaty of Commerce between France and United States of 6th February, 1778, on subject of Fisheries.

Appendix I.

In order to protect the interests of French subjects in the Newfoundland fisheries against competition on the part of the fishermen of the United States, the following Article was inserted in the Treaty of Amity and Commerce signed on the 6th February, 1778, between France and these States:—

Article X. "The United States, their citizens and inhabitants, shall never disturb the subjects of the Most Christian King in the enjoyment and exercise of the right of fishing on the banks of Newfoundland, nor in the indefinite and exclusive right which belongs to them on that part of the coast of that island which is designated by the Treaty of Utrecht, nor in the rights relative to all and each of the isles which belong to His Most Christian Majesty, the whole conformable to the true senses of the Treaties of Utrecht and Paris."

Mr. Fitzherbert ;
Paris, August 29, 1782.

Notwithstanding this stipulation, however, France, on the commencement of negotiations in 1872, urged upon the British Government the necessity of resisting the American claim to a participation in the Newfoundland fisheries. It was urged by France that Great Britain was not only bound in interest to reject it, but that she might to do so consistently with the strictest principles of justice, on the ground of her being the sole and undoubted proprietor of the Island of Newfoundland, and, consequently, of the fishery upon its coasts.

Negotiations in Paris for Treaty of Peace between Great Britain and United States.

The freedom of fishery on the banks of Newfoundland and elsewhere was demanded by Dr. Franklin as an indispensable Article in the proposed Treaty of Peace between Great Britain and the United States.

* Annulled by Act of Congress of the 7th July, 1798, c. 67.

With regard to this demand, Mr. Oswald, the British negotiator, remarked, that as to the fishing on the Great Bank, or on any other bank, he did not think it material to ask any questions, as he supposed the privilege would not be denied to the United States, or if denied, doubted whether their exclusion could be maintained but in continuing in a state of perpetual quarrel with the people of the New England Governments. An explanation, he observed, was still the less necessary, as a question on the same subject would come under consideration in the negotiations with France, in the determination of which it would perhaps be no loss to Great Britain if the Americans were (with respect to the fisheries) admitted to an equal privilege with the French.

The American Commissioners at first demanded the right of drying fish on the Island of Newfoundland, and the following is a copy of the the IIIrd Article of the proposed preliminary Treaty of Peace, which was accepted by the British Commissioner, Mr. Oswald, to be referred for the approval of his Government:—

“That the subjects of His Britannic Majesty and people of the said United States shall continue to enjoy unmolested the right to take fish of every kind on the banks of Newfoundland and other places where the inhabitants of both countries used formerly, viz., before the last war between France and Britain, to fish; and also to dry and cure the same at the accustomed places, whether belonging to His said Majesty or to the United States. And His Britannic Majesty and the said United States will extend equal privileges and hospitality to each other’s fishermen as to their own.”

The proposed Article not meeting with the approval of the British Government, after considerable negotiation, it was agreed to omit that portion of the Article relating to the drying of fish on the coast of Newfoundland, on condition that the Americans should be allowed to dry upon any of the unsettled parts of the coasts of Nova Scotia, when they happen to be so far from home that their fish might run some risk of being spoilt before they reached their own shores.

Dr. Franklin also urged that the Gulf of

St. Lawrence and other places, besides the banks of Newfoundland mentioned in the proposed Article, should likewise be included in the fishery rights of the United States.

These proposals, however, did not meet with the approval of the English Government, and a further amended Article was submitted for its consideration, to the following effect :—

“That the subjects of His Britannic Majesty and the people of the said United States shall continue to enjoy unmolested the right to take fish of every kind on all the banks of Newfoundland, also in the Gulf of St. Lawrence, and all other places where the inhabitants of both countries used at any time heretofore to fish; and also to dry and cure their fish on the shores of the Isles of Sables, Cape Sables, and the shores of any of the unsettled bays, harbours, or creeks of Nova Scotia, and of the Magdalen Islands. And His Britannic Majesty and the said United States will extend equal privileges and hospitality to each other's fishermen as to their own.”

This Article on being referred to the British Government was also rejected, and Mr. Oswald was instructed to propose the following, as coming from the British Ministry, which he did on the 25th of November, 1782 :—

Article III. “The citizens of the said United States shall have the liberty of taking fish of every kind on all the banks of Newfoundland, and also in the Gulf of St. Lawrence; and also to dry and cure their fish on the shores of the island of Sables and on the shores of any of the unsettled bays, harbours, and creeks of the Magdalen Islands, in the Gulf of St. Lawrence, so long as such bays, harbours, and creeks shall continue and remain unsettled, on condition that the citizens of the said United States do not exercise the fishery but at the distance of three leagues from all the coasts belonging to Great Britain, as well as those of the islands situated in the Gulf of St. Lawrence. And as to what relates to the fishery on the coast of the Island of Cape Breton out of the said gulf, the citizens of the said United States shall not be permitted to exercise the said fishery but at the distance of fifteen leagues from the coasts of the Island of Cape Breton.”

The terms of the above Article not being accepted by the United States' Plenipotentiaries, an amended Article was proposed by one of them, Mr. J. Adams, to the following effect :—

Article III. "That the subjects of His Britannic Majesty, and the people of the said United States, shall continue to enjoy, unmolested, the right to take fish of every kind on the Grand Bank, and on all the other banks of Newfoundland, also in the Gulf of St. Lawrence, and in all other places where the inhabitants of both countries used at any time heretofore to fish; and the citizens of the said United States shall have liberty to cure and dry their fish on the shores of Cape Sables, and of any of the unsettled bays, harbours, or creeks of Nova Scotia, or any of the shores of the Magdalen Islands and of the Labrador coast. And they shall be permitted in time of peace to hire pieces of land for terms of years of the legal proprietors in any of the dominions of His said Majesty, whereon to erect the necessary stages and buildings, and to cure and dry their fish."

None of the preceding Articles meeting with the approval of the negotiators, on the 29th November, 1782, after great discussion and numerous amendments, an Article was finally drawn up and proposed by Mr. Adams, the American Commissioner, and was subsequently adopted.

During the discussion of the Article an effort had been made by the two British Commissioners to obtain the exclusion of the term "right of fishing," and to have substituted for it the word "liberty," which they considered as a less obnoxious expression. The proposed change, however, met with violent opposition from Mr. Adams, who said that in former Treaties, that of Utrecht and that of Paris, France and England had claimed the right and used the word. He maintained that when God Almighty made the Banks of Newfoundland at 300 leagues distance from the people of America, and at 600 leagues distance from those of France and England, did He not give as good a right to the former as the latter? If Heaven, he said, in the creation gave a right, it was as much that of the United States as of Great Britain; and if occupation, use, and possession gave a right, he stated, "We have it as clearly as you."

Mr. Oswald;
November 30, 1782.

With regard to the limits of three leagues and fifteen leagues, which had been proposed by Great Britain to be those of the American fisheries, Mr. Oswald stated "that if we had not given way in the Article of the fishery we should have had no Treaty at all, Mr. Adams having declared that he never would put his hand to any Treaty if the restraints regarding the three leagues and fifteen leagues were not dispensed with, as well as that of denying his countrymen the privilege of drying fish on the unsettled part of Nova Scotia,"

"On these and other accounts," Mr. Oswald stated, "and being in a manner certain that without an indulgence in this Article of fishery, there would have been no Treaty with America, the abovementioned gentlemen (Messrs. Strachey and Fitzherbert) thought it best to close with the Commissioners by admitting this Article in the way he proposed; in which they not only had my concurrence, but I own I used the freedom to encourage and press them to give their consent, being of opinion that I would be under no difficulty in showing that the grant was not of that importance as to be put in comparison with the consequence of splitting with America at this time. Among other things it occurred to me that if our caution in this particular regarded our marine, and an apprehension of its being abridged by this interference of the Americans to a greater extent in this trade, we might come to suffer much more by what the Commissioners insinuated and indeed threatened in case of refusal, which was to pass an Act of Navigation, by which, after a certain time, all the ports of America should be shut against Great Britain, in so far as the exportation of their produce should be concerned.

"And in the other view of the profits of the fishery trade, and our being deprived of such part of it as the Americans would gain by this admission, I was of opinion that in leaving the fishing sea-port in the West of England, I would not have far to go inland to be satisfied that the loss, by continuing the dispute some time longer with the Americans, or even laying the foundation of a national grudge, would ten times over counterbalance the amount of the said loss; even sup-

posing that the conditions of those restraints would be enforced by keeping the Americans to their proper distances, which I am of opinion would be difficult if not doubtful, or if attempted by our men-of-war on that station might be the means of bringing on quarrels of States instead of being useful in preventing quarrels of fishermen, as one of the motives insisted on in justification of the refusal."

Mr. Fitzherbert, *Separate and Confidential*; November 29, 1782.

Mr. Fitzherbert, who had assisted Mr. Oswald in the negotiations, also justified his acceptance of the proposed Article in the following language:—

"In the remaining Article, viz, that of the fishery, I am sorry to say that we have not equal reason to be satisfied, having been obliged to give up to the Americans their demand of fishing for all sorts of fish, not only on the Great Bank of Newfoundland, but on every part of those seas, whether near to or distant from the several coasts which are frequented by our fishermen; as also the right of drying upon the unsettled parts of Nova Scotia. Your Lordship will, I trust, believe that no sort of argument or instance were spared to procure the settling of this Article more conformably to that sent from England; and, indeed, it was only in consequence of such repeated solicitations that we obtained, first, in regard to the fishery, that the Americans should frequent only such parts of the coast of Newfoundland as we should resort to ourselves; and, secondly, with regard to the drying, that it should not take place on the shores of that island;—both which demands we at first found all the American Commissioners, and particularly Mr. Adams, strenuous in their opposition to. The truth is, had we not obtained these stipulations, no consideration whatsoever should have induced me to consent to Mr. Oswald signing the Treaty, and even having obtained them, I still gave that consent with much reluctance; but I found that, in the first place, there appeared to be no sort of prospect of our engaging the Commissioners to recede from the two obnoxious stipulations of the coast fishery, and the drying at Nova Scotia, they declaring solemnly and unanimously that they never would sign without them; and, in the second place, they, far from

being willing to promise that the rest of the Treaty should remain untouched during the eight days it would have required to receive an answer upon this head from England, they reserved to themselves expressly a right of introducing during that interval any new Articles which they might think expedient, and even produced one this morning requiring a compensation to them for ravages committed in America, which, if insisted on, must have course unhinged the whole negotiation.

“It is, therefore, almost needless for me to add that, having, as I mentioned before, obtained the principal point which your Lordship had insisted upon in your letters to me, viz., the limitation of the American fishery to that part of the coast reserved to us, I thought I should not be justifiable in withholding my assent to the negotiation, as by that means I should inevitably have defeated the important end so anxiously wished for by the King and his Ministers, of procuring ultimatums from the belligerent Powers, and particularly from America, before the meeting of Parliament.”

Extracts from Journal of Mr. J. Adams on subject of French exclusive Rights on Coast of Newfoundland.

Although the following extracts from a journal kept by Mr. John Adams, one of the American Commissioners in Paris, for negotiating the Treaty with Great Britain, allude more particularly to the exclusive rights claimed by France on the coasts of Newfoundland, still they have been considered of sufficient importance to be inserted in this paper, in consequence of the United States, equally with Great Britain, being interested in the question of the exclusive rights of fishery claimed by France of the coast of Newfoundland, a right of fishery having been granted to the United States by the Treaty of 1818, on a portion of the Newfoundland coast, the exclusive use of which is claimed by France.

The French claim the acknowledgment of this exclusive right on the part of the United States by their having signed the Treaty of the 6th February, 1778, in the Xth Article of which they admitted the term “exclusive right” in relation to the French subjects of the coast of Newfoundland.

The following is the extract of a conversation

which took place on the 26th November, 1782, between Mr. Adams and Mr. Fitzherbert, one of the British Commissioners:—

Mr. Adams stated “that he (Mr. Fitzherbert) came in consequence of the desire I expressed yesterday of knowing the state of the negotiation between him and the Count de Vergennes respecting the fishery. He told me that the Count was for fixing the boundaries where each nation should fish; he must confess that he thought the idea plausible, for that there had been great dissensions among the fishermen of the two nations; that the French Marine Office had an apartment full of complaints and representations of dispute; that the French pretended that Cape Ray was the Point Riche.

“I asked him if the French demanded of him an exclusive right to fish and dry between Cape Bonavista and the Point Riche; he said they had not expressly, and he intended to follow the words of the Treaties of Utrecht and Paris without stirring the point. I showed him an extract of a letter from the Earl of Egremont to the Duke of Bedford, of March 1, 1763, in which it is said that, by Article XIII of the Treaty of Utrecht, a liberty was left to the French to fish and to dry their fish on shore, and for that purpose to erect the necessary stages and buildings, but with an express stipulation ‘*de ne pas séjourner dans la dite île au delà du dit temps nécessaire pour pêcher et sécher les porpous.*’ That it is a received law among the fishermen, that whoever arrives first shall have his choice of the stations; that the Duc de Nivernois insisted that, by the Treaty of Utrecht, the French had an exclusive right to the fishery from Cape Bonavista to Point Riche; that the King gave to his Grace the Duke of Bedford express instructions to come to an *éclaircissement* upon the point with the French Ministry, and to refuse the exclusive construction of the Treaty of Utrecht. I also showed him a letter from Sir Stanier Porteen, Lord Weymouth’s Secretary, to Lord Weymouth, inclosing an extract of Lord Egremont’s letter to the Duke of Bedford, by which it appears that the Duke of Nivernois insisted ‘that the French had an exclusive right to the fishery from Cape

Bonavista to Point Riche, and that they had, on ceding the Island of Newfoundland to Great Britain, by the XIIIth Article of the Treaty of Utrecht, expressly reserved to themselves such an exclusive right, which they had constantly been in possession of, till they were entirely driven from North America in the last war.

“Mr. Fitzherbert said it was the same thing now, word for word; but he should endeavour to have the Treaty conformable to those of Utrecht and Paris. But he said we had given it up by admitting the word ‘exclusive’ into our Treaty. I said, perhaps not; for the whole was to be conformable to the true construction of the Treaties of Utrecht and Paris, and that if the English did not now admit the exclusive construction, they could not contend for it against us.”

In a further passage of the journal, Mr. Adams stated, “I forgot to mention that when we were upon the fishery, and Mr. Strachey and Mr. Fitzherbert were urging us to leave out the word ‘right,’ and substitute the word ‘liberty,’ I told them at last, in answer to their proposal to agree upon all other Articles, and leave that of the fishery to be adjusted at the definitive Treaty, that I could never put my hand to any Articles without satisfaction about the fishery; that Congress had three or four years ago, when they did me the honour to give me a commission to make a Treaty of Commerce with Great Britain, given me a positive instruction not to make any such Treaty without an Article in the Treaty of Peace acknowledging our right to the fishery; that I was happy that Mr. Laurens was now present, who, I believe, was in Congress at the time, and must remember it. Mr. Laurens, upon this, said with great firmness, that he was in the same case, and could never give his voice for any Articles without this. Mr. Jay spoke up and said, it could not be a peace, it would only be an insidious truce without it.”

On the 30th November, 1782, the provisional Articles of Peace between Great Britain and the United States were signed at Paris.

By the IIIrd Article it was agreed “that the people of the United States shall enjoy unmolested the right to take fish of every kind on the

Grand Bank and on all the other banks of Newfoundland, also in the Gulf of St. Lawrence, and at all other places in the sea where the inhabitants of both countries used at any time heretofore to fish, and also that the inhabitants of the United States shall have liberty to take fish of every kind on such part of the coast of Newfoundland as British fishermen shall use (but not to dry or cure the same on that island), and also on the coasts, bays, and creeks of all other of His Britannic Majesty's dominions in America; and that the American fishermen shall have liberty to dry and cure fish in any of the unsettled bays, 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."

On the 3rd September, 1783, the Definitive Treaty of Peace was signed between Great Britain and the United States, the IIIrd Article of which was *verbatim* the same as that signed in the Provisional Articles.

The concessions made by the Treaty of 1783 caused great dissatisfaction to the colonists, who complained that by it the harbours of the Atlantic colonies were thrown open to the vessels of the United States, and the native fishermen subjected to a hostile rivalry, with which they were unable to compete, and from which no prospect was afforded to escape; while liberties of no ordinary character were ceded to the United States, affording profitable fields for commerce, and fostering a race of seamen conducive to national wealth in peace and to defence and glory in war. On the commencement of negotiations with France and the United States in 1782-83, the Colonists and British merchant interested in the trade and fisheries of British North America, exerted themselves to their utmost by petitions and memorials to obtain the exclusion of both French and American fishermen from the fisheries. The necessities of the period, however, obliged the Government of Great Britain to con-

Definitive Treaty of Peace, signed in Paris 3rd September, 1783.
Appendix No. II.

Complaints of Colonists at stipulations of Treaty.

cede the demands made by the United States, and their fishermen derived great advantages therefrom. In 1812 the United States declared war against Great Britain, and the colonial fishermen thus found themselves relieved of the competition from which they had so much suffered, the fishing vessels of the United States being ordered off or captured and condemned by the English naval forces.

On the termination of the war in 1814, and the commencement of negotiations for peace, numerous memorials were addressed to the British Government by the colonists and merchants interested in the trade and fisheries of British North America, praying that they might be protected against the renewal of the hateful Articles of the Treaties of 1783, and that French, American, and foreign fishermen might be excluded from the narrow seas and waters of these northern Colonies, whose inhabitants, they stated, procured a living by their industry on those waters which unquestionably belonged to Britain; and they further urged that if American citizens were to obtain the right of entering the gulfs, bays, harbours, or creeks of those Colonies, there would be no security against illicit trade.

1814-1818.

Negotiation of Treaty of Peace at Ghent in 1814.

In 1814 Commissioners from Great Britain and the United States met at Ghent for the purpose of opening negotiations for peace, and the following is an extract of the instructions given to the British Commissioners on the subject of the fisheries:—

To the Commissioners;
July 28, 1814.
State Papers, vol. i, pages 1543 to 1649.

“But the point upon which you must be quite explicit from the outset of the negotiation, is the construction of the Treaty of 1783 with relation to the fisheries. You will observe that the IIIrd Article of that Treaty consists of two distinct branches; the first, which relates to the open sea fisheries, we consider of permanent obligation, being a recognition of the general right which all nations have to frequent and take fish on the high seas.

“The latter branch is, on the contrary, con-

sidered as a mere conventional arrangement between the two States, and, as such, to have been annulled by the war. This part of the Treaty has been found to be productive of so much inconvenience as to determine Her Majesty's Government not to renew the provisions of it in present form, nor do they feel themselves called upon to concede to the Americans any accommodation within the British sovereignty, except upon the principle of a reasonable equivalent, in frontier or otherwise; it being quite clear that by the law of nations the subjects of a foreign State can have no right to fish within the maritime jurisdiction, still less to land on the coasts belonging to His Britannic Majesty, without an express permission to that effect."

In consequence of these instructions the British Commissioners at a Conference held at Ghent on the 8th August, 1814, informed the United States' negotiators 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.

The United States' Commissioners, in reply to the above declaration, stated that they were not authorized to bring into discussion any of the rights or liberties of fishery which the United States had heretofore enjoyed. From their nature, and from the peculiar character of the Treaty of 1783, by which they were recognized, they stated no further stipulation had been deemed necessary by the Government of the United States to entitle them to the full enjoyment of all of them.

They contended that the whole Treaty of 1783 must be considered as one entire and permanent compact, not liable, like ordinary Treaties, to be abrogated by a subsequent war between the parties to it; but as an instrument recognizing the rights and liberties enjoyed by the people of the United States as an independent nation, and containing the terms and conditions on which the two parties of one Empire had mutually agreed thenceforth to constitute two distinct and separate nations.

British Commissioners;
Ghent, August 10, 1814.

They maintained that in consenting by the Treaty of 1783, that a part of the North American Continent should remain subject to British jurisdiction, the people of the United States had reserved to themselves the liberty, which they had ever before enjoyed, of fishing upon that portion of the coasts, and of drying and curing fish upon the shores; and this reservation, they maintained, had been agreed to by the other Contracting Party. They argued that they saw not why this liberty—no new grant, but a mere recognition of a prior right, always enjoyed—should be forfeited by a war, any more than any other of the rights of their national independence, or why they should need a new stipulation for its enjoyment, more than they needed a new Article to declare that the King of Great Britain treated with them as free, sovereign, and independent States.

To British Commissioners, No. 8;
October 18, 1814.

The British Government, however, continued to maintain that although they admitted the right of the United States to fish on the high seas without the maritime jurisdiction of the territorial possessions of Great Britain in North America, the extent of the maritime jurisdiction of the two Contracting Parties must be reciprocal, and they proposed that the usual maritime jurisdiction of one league should be common to both the Contracting Parties, until a mutual arrangement was come to on the subject. The British Government refused, however, to agree to the renewal of the privilege granted in 1783 of allowing the Americans to land and dry their fish on the unsettled shores belonging to His Britannic Majesty, such privilege having been annulled by the war, and it being the undoubted right of the British Government to refuse to renew it.

By the Treaty of 1783, Great Britain had obtained the right of navigating the Mississippi. The American Commissioners argued that if their view was adopted of considering the Treaty of 1783 as differing from ordinary Treaties, in so far as it did not confer but only recognized the advantages enjoyed under it both by Great Britain and the United States, they did not conceive any stipulation to be necessary either

to secure to the United States the full enjoyment of the fisheries, or to Great Britain the free navigation of the Mississippi as stipulated in that Treaty. If, on the contrary, this judgment was incorrect, and the right of the United States to the fisheries, and that of Great Britain to the navigation of the Mississippi, had ceased in consequence of the war, the American Commissioners stated that they could not consent to give to Great Britain without an equivalent the advantage of that navigation.

The British Commissioners observed in reply that the equivalent for the navigation of the Mississippi was to be found in the preceding part of the Article, which not only defined a boundary to the dominions of both nations in that quarter, but provided for a considerable accession of territory to the United States in a north-westerly direction. The American Commissioners declined to consider the definition of boundary to be an advantage, and denied any accession of their territory to be the result of that Article. They, however, professed their readiness to omit that Article altogether. At the close of the discussion the American Commissioners proposed an amendment to the VIIIth Article, founded upon the principle of their acceptance of the fisheries as an equivalent for yielding the navigation of the Mississippi. This offer on the part of the American Commissioners was considered by those of Great Britain as affording a proof that they considered their rights of fishery as being purely of a Conventional character.

In the amended Article the American Commissioners proposed that the inhabitants of the United States should continue to enjoy the liberty to take, dry, and cure fish in places within the exclusive jurisdiction of Great Britain as secured by the former Treaty of Peace; and that the navigation of the River Mississippi within the exclusive jurisdiction of the United States should remain free and open to the subjects of Great Britain in the manner secured by the said Treaty.

The British Commissioners at once admitted that the free access to and the navigation of the Mississippi provided in the amended project of

the VIIIth Article was one to which Great Britain was no longer entitled under the Treaty of 1783, and that it was to be considered as a stipulation given by the American Government in return for the favourable arrangement of their boundary.

To British Commissioners, No. 17;
December 22, 1814.

After several further fruitless attempts to settle the fishery question to the satisfaction of both parties, the British Commissioners were instructed to present a note to the American Commissioners, in which, after referring to the language which they (the British Commissioners) had held on the subject of the fisheries from the very commencement of the negotiations, viz., that Great Britain did not intend to grant gratuitously to the United States the privileges formerly granted to them by Treaty of fishing within the limits of British sovereignty, and of using the shores of the British territories for purposes connected with the fisheries, they were to state that as there did not appear any prospect of agreeing upon an Article wherein that question might be satisfactorily adjusted, they were authorized to accept the proposition which the Commissioners of the United States had made in the Protocol of the 1st December, wherein they expressed their readiness to omit the VIIIth Article altogether.

Treaty of Peace signed at Ghent on the
24th December, 1814.

The American Commissioners having accepted the proposed signature of the Treaty with the omission of the stipulations regarding the fisheries, a Treaty of Peace was signed at Ghent on the 24th December, 1814.

It will be observed that the negotiations of 1814 resulted in no definite arrangement being arrived at on the subject of the fisheries, the Americans on their part maintaining that the stipulations of the Treaty of 1783 were still in force, the British, on the contrary, maintaining that the Treaty of 1783 was terminated by the war.

Instructions sent to Governor of Newfound-
land.

To the Governor of Newfound-
land; June 17, 1815.

In consequence of the stipulations of the Treaty of 1783 not being renewed in 1814, instructions were sent to the Governor of Newfoundland regarding the conduct he was to adopt towards the American fishermen on account of such omission.

In this instruction, the Governor was informed that as the Treaty of Peace lately concluded with the United States contained no provisions with respect to the fisheries, which the subjects of the United States had enjoyed under the IIIrd Article of the Treaty of 1783, it was considered necessary that he should be informed as to the extent to which those privileges were affected by the omission of any stipulations in the existing Treaty, and of the line of conduct which it was in consequence advisable for him to adopt.

He could not but be aware, the instructions stated, that the IIIrd Article of the Treaty of Peace of 1783 contained two distinct stipulations; the one recognizing the rights which the United States had to take fish upon the high seas, and the other granting to the United States the privilege of fishing within the British jurisdiction and of using under certain conditions the shores and territory of His Majesty for purposes connected with the fishery; of these the former, being considered permanent, could not be altered or affected by the relative situation of the two countries, but the other, being a privilege derived from the Treaty of 1783 alone, was, as to its duration, necessarily limited to the duration of the Treaty itself.

On the declaration of war by the American Government, continued the instruction, and the consequent abrogation of the then existing Treaties, the United States forfeited, with respect to the fisheries, those privileges which were purely conventional, and (as they had not been renewed by stipulation by the existing Treaty) the subjects of the United States could have no pretence to any right to fish within the British jurisdiction, or to use the British territory for purposes connected with the fishery.

Such being the view taken of the question of the fisheries, as far as related to the United States, the Governor was instructed to abstain most carefully from the interference with the fishery in which the subjects of the United States might be engaged, either on the Grand Bank of Newfoundland, in the Gulf of St. Lawrence, or other places in the sea. At the same time, he was instructed, excepting under certain specified circumstances,

to prevent United States' citizens from using the British territory for purposes connected with the fishery, and also to exclude their fishing-vessels from the bays, harbours, rivers, creeks, and inlets of all Her Majesty's Possessions.

Orders were also issued 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 arrangement on the subject of the fisheries. They still maintained, however, that the stipulations of the Treaty of 1783 had not been terminated by the war.

Concessions proposed by Sir R. Keats.

On the 8th April, 1816, Lord Melville addressed to Viscount Castlereagh a note in which he related a conversation which he had held with Sir Richard Keats, formerly Governor of Newfoundland, in which the latter urged that any permission to be granted to America to fish on the coast of Newfoundland and of Labrador and the Gulf of St. Lawrence would be prejudicial to the interests of the fishery by British subjects, and would also affect materially the revenue of Newfoundland by the facility afforded for smuggling into that island. If, however, it was considered expedient to concede to the Americans the privilege of frequenting and drying their fish on British territory, Sir R. Keats recommended that it should be confined exclusively to the following portions of coast, viz. :—

1. From Mont Joli, opposite the east end of Island of Anticosti, in the Gulf of St. Lawrence, along the coast of Labrador to the Bay and Isles of Esquimaux, near the western entrance of the Straites of Belleisle. If that was not deemed sufficient by the United States, Sir R. Keats recommended in lieu of it—

2. A portion of the southern coast of Newfoundland from Cape Ray (where the French fishery ends) eastward to the Ramca Islands, or about the longitude of 57 degrees west of Greenwich. He objected strongly to the Americans being admitted to the fishery on any other portions of the coast of Newfoundland, or on the

eastern coast of Labrador from the western entrance of the Straits of Belleisle.

On the 16th April, 1816, Mr. Bagot, the British Minister at Washington, was instructed to propose to negotiate with the United States, and to offer, in the first instance, Arrangement No. 1, suggested by Sir R. Keats, or, as an alternative, to offer them the coast as described in the 2nd proposition. Should the American Government urge objections to accept of either of these propositions separately, Mr. Bagot was then authorized, in the last resort, to yield both of them upon their distinctly agreeing to confine themselves to the unsettled parts of the coasts so assigned, abandoning all pretensions to fish or dry within the maritime limits of any other of the coasts of British North America.

To Mr. Bagot, No. 8;
April 16, 1816.
Mr. Bagot instructed to negotiate.

In accordance with these instructions Mr. Bagot offered to concede to the United States the fishery limits proposed by Sir R. Keats. The United States' Government rejected the proposed concession; Mr. Monroe, on their part, stating that the acceptance of either of the two propositions must be attended with the relinquishment of all other claims on the part of the United States, founded on the first branch of the IVth Article of the Treaty of 1783. In the first, he observed, Great Britain offered the use of the territory on the Labrador coast lying between Mount Joli and the Bay of Esquimaux, near the entrance of the Straits of Belleisle; and in the second, of such part of the southern coast of the Island of Newfoundland as lies between Cape Ray and the Ramca Islands.

Mr. Bagot, No. 2;
January 7, 1817.

Mr. Monroe stated that he had made every inquiry that circumstances had permitted respecting both these coasts, and had found that neither would afford to the citizens of the United States the essential accommodation which was desired, neither having been much frequented by them heretofore, or likely to be in future, and he was compelled, therefore, to decline both propositions.

Pending the above negotiations, the British naval officers on the coast of America had, by the desire of Mr. Bagot, suspended the measures which they had adopted for the protection of the

fisheries. On the refusal of the United States to accept the terms proposed, Mr. Bagot had informed the British Admiral on the Halifax station, who gave instructions to revive the orders which had been suspended. This resulted in the capture of several American fishing-vessels. In 1818, the President of the United States having made overtures to the Prince Regent to open a negotiation in London for the purpose, as far as possible, of settling by amicable explanation all the points which had been in discussion between the two Governments, negotiations were commenced in London in August, 1818.

The British Commissioners appointed to negotiate on the occasion were the Right Honourable F. Robinson and Henry Goulburn, Esq.

In September 1818, the American Commissioners presented the project of the Articles to be inserted in the proposed Treaty.

With respect to the fisheries, they observed, that in consideration of the different opinions known to be entertained by the Governments of the two countries as to the right of the United States to a participation in the fisheries within the British jurisdiction, and to the use for those purposes of British territory, they had been induced to forego a statement of their views of this right in the Article which they had proposed, but in so doing they desired it to be understood that they in no degree abandoned the ground upon which the right to the fishery had been claimed by the Government of the United States, and only waived discussion of it upon the principle that that right was not to be limited in any such way as would exclude the United States from a fair participation in the advantages of the fishery. They added, that while they could not but regard the propositions made to the Government of the United States by Mr. Bagot as altogether inadmissible, inasmuch as they restricted the American fishery to a line of coast so limited as to exclude them from this fair participation, they had nevertheless been anxious, in securing to themselves an adequate extent of coast, to guard against the inconveniences which they understood to constitute the leading objection to the unlimited exercise of their fishing.

Negotiations commenced in London.

British Commissioners, No. 3;
September 1818.

With this view, they stated, they had contented themselves with requiring a further extent of coast in those very quarters which Great Britain had pointed out, because it appeared to them that the very small population established in that quarter, and the usefulness of the soil for cultivation rendered it improbable that any conduct of the American fishermen in that quarter could give rise to disputes with the inhabitants or to injuries of the revenue.

They further observed that, as the Treaty of 1783 did not give the United States any right to dry or cure fish on the shores of Newfoundland, and as they were uncertain whether the offer made by Mr. Bagot was meant to include such a concession, they deemed it absolutely necessary in abandoning this privilege, as far as regarded other parts of His Majesty's dominions, to stipulate distinctly for its enjoyment in Newfoundland, and also to require the continuance of a similar concession on the Magdalen Islands, as some situation in the Gulf of St. Lawrence, in which fish might be cured and dried, was essential to the carrying on of the fishery on the coast of Labrador.

They concluded their observations on the subject of the fishery by adverting to that part of the proposed Article in which the right to fish within the limits prescribed was conveyed permanently to the United States, and stated that as they conceived themselves to be abandoning a right to all those advantages conferred by the Article of the Treaty of 1783, it appeared to the Government of the United States no less necessary than just that the fishery which they were henceforth to enjoy should be distinctly admitted as permanent, and as not depending on the duration of the Treaty in which the stipulation was contained.

At the third meeting of the Conference held on the 17th September, 1818, the American Commissioners presented the following Project on the subject of the fisheries:—

“Article A. *Fisheries*.—Whereas differences State Papers, vol. vii, page 178. 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 continue to enjoy unmolested for ever the liberty to take fish of every kind on that part of the southern coast of Newfoundland which extends from Cape Ray to the Ramea Islands, on the western and northern coast of Newfoundland, from the said Cape Ray to Quirpon Island, on the Magdalen Islands, and also on the coasts, bays, harbours, and creeks from Mount Joli, on the southern coast of Labrador, to and through the Straits of Belleisle, and thence northwardly, indefinitely, along the coast; and that the American fishermen shall also have liberty 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 here above described, of the Magdalen Islands, and of Labrador, as here above described: but as 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; and the United States hereby renounce any liberty heretofore enjoyed or claimed by the inhabitants thereof to take, dry, or cure fish on or within three marine miles of any of the coasts, bays, harbours, and creeks of His Britannic Majesty's dominions of North America not included within the above-mentioned limits. Provided, however, that the American fishermen shall be admitted to enter such bays and harbours for the purpose only of obtaining shelter, wood, water, and bait; but under such restrictions as may be necessary to prevent their taking, drying, or curing fish therein, or in any other manner abusing the privileges hereby reserved to them."

British Commissioners;
October 10, 1818.

At a meeting held on the 6th October, 1818, the British Commissioner presented the following counter Projet:—

State Papers, vol. vii, page 195.

"Article A. *Fisheries*.—It is agreed that the inhabitants of the United States shall have liberty

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

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

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

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

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

The above Projct did not meet with the approval of the American Commissioners, particularly that portion which related to the fishery in rivers and smuggling, to which they expressed very considerable objections. The British Commissioners did not consider these objections of sufficient importance to require being resisted in a way that might prevent an arrangement upon the fisheries taking place. There still, however, remained a point undecided, which involved considerations of great moment.

The American Commissioners represented it to be an indispensable condition on their part that the Article respecting the fisheries should be not only permanent in the ordinary sense of conventional stipulations, which were limited by no precise time, but permanent in such a way as not to be abrogated by any future war. It was for this purpose that, in the Projct which they had presented to the Conference, the words “for ever” had been introduced, and a Memorandum presented by them at the same time, explaining their views on the subject. In this paper they stated that, as the United States considered the liberty of taking fish secured to them by the Treaty of 1783 as being unimpaired and still in full force for the whole extent of the fisheries in question, whilst Great Britain considered that liberty as having been abrogated by the war; and as by the Article proposed the United States offered to desist from their claim to a certain portion of the said fisheries, that offer had been made with the understanding that the Article then proposed, or any other on the same subject which might be agreed to, should be considered

State Papers, vol. vii, page 184.

as permanent, and like one for fixing boundaries between the territories of the two parties, not to be abrogated by the mere fact of a war between them; or that if vacated by any event whatever, the rights of both parties should revive and be in full force as if such an Article had not been agreed to.

This demand on the part of the American Commissioners led to a discussion of considerable length. The British Commissioners argued that the adoption of their (the American) view of the subject would involve the British Government in an admission of the very point upon which the two Governments had already been at variance, viz., that a war did not *ex necessitate rei* abrogate stipulations of that sort, and they maintained that such a stipulation could not be made binding "for ever," because, in the event of a war, it would necessarily be competent on the part of Great Britain to refuse to make peace, unless the United States would consent to a non-renewal of the stipulation. The American Commissioners, however, stated that their instructions were peremptory on the subject, and observed the ground upon which they were built was this: that if the arrangements were not to be made permanent to all intents and purposes, and in spite of the contingencies of a future war, it would necessarily be considered as a positive concession on their part, and the late war would then be deemed as having deprived them of an important advantage of which they had not secured the renewal at the peace. The British Commissioners finding the American instructions so peremptory on this point, accepted it *ad referendum* sooner than break off negotiations.

With regard to the British counter-projet, the American Plenipotentiaries stated that they were not authorized by their instructions to assent to any Article on the subject of the fisheries which should not secure to the inhabitants of the United States the liberty of taking fish of every kind on the southern coast of Newfoundland, from Cape Ray to the Ramea Islands, and on the coasts, bays, harbours and creeks, from Mount Joly, on the southern coast of Labrador, to and through the Straits of Belleisle; and

State Papers, vol. vii, page 199.

thence, northwardly, indefinitely along the coast; and also the liberty of drying and curing fish in any of the unsettled bays, harbours, and creeks of Labrador, and of the southern coast of Newfoundland, as above described, with the proviso in favour of private rights of such of the said bays, harbours, and creeks as might be settled.

The American Commissioners observed that the liberty of taking fish within rivers was not asked, and considered that a positive clause to except them was unnecessary, unless it was intended to comprehend under that name, waters which might otherwise be considered as bays or creeks. Whatever extent of fishing ground might be secured to American fishermen, the American Plenipotentiaries stated they were not prepared to accept it on a tenure or on conditions different from those on which the whole had heretofore been held. They considered that the clauses forbidding the spreading of nets, and making vessels liable to confiscation, in case any articles not wanted for carrying on the fishery should be found on board were of that exceptional description, and would expose the fishermen to endless vexations.

State Papers, vol. vii, page 206.

At a Conference held on the 13th October, a second counter-projet was presented by the British Commissioners, which was ultimately adopted, and became Article I of the Treaty.

In communicating this Article to their Government, the British Commissioners stated that they had been desirous of accompanying the tender of their counter-projet with a declaration in answer to the memorandum which had been presented by the American Plenipotentiaries on their making their first proposals at the third Conference. In this declaration, they had intended to reserve the grounds which the British Government had maintained in its previous discussions with the Government of the United States. The American Plenipotentiaries urged, however, in the strongest manner, the difficulties under which such a proceeding would place them, as they repeated that their instructions were positive. It being manifest that a perseverance in their intention would have prevented the conclusion of any arrangement upon the subject of

the fishery, and knowing the importance which their Government attached to an amicable adjustment of this most delicate subject, the British Commissioners resolved (after exhausting all the arguments in their power against the views adopted by the Government of the United States) not to bring forward any counter-declaration which would have been fatal to the arrangement.

On the 20th October, 1818, a Convention was signed in London, the 1st Article of which provided that the inhabitants of the United States should 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 Ramea 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 Belleisle, and thence northwardly indefinitely along the coast, without prejudice, however, to any of the exclusive rights of the Hudson's Bay Company. It also provided that the American fishermen should 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 which had been already described, and of the coast of Labrador; but it was at the same time stipulated that so soon as the same or any portion thereof should be settled upon, it should not be lawful for the said fishermen to dry or cure fish on such portion so settled, without previous agreement for such purpose with the inhabitants, proprietors, or possessors of the ground.

Convention signed in London on the 20th October, 1818.

Appendix No. III.

The United States, on their part, renounced for ever any liberty which had been heretofore enjoyed, or which had been 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 in the before-mentioned limits. It was provided, however, that the American fishermen should be

admitted to enter such bays or harbours for the purpose of shelter and of repairing damages, of purchasing wood, and of obtaining water, and for no other purpose whatever. These were to enjoy these privileges under such restrictions as might be necessary to prevent their taking, drying, or curing fish therein, or in any other manner whatever abusing them.

From the foregoing it will be observed that the stipulation of the Treaty of 1818, with regard to the fisheries, is perpetual in its nature, and not subject to be terminated by war. It will also be observed that the United States failed to obtain a renewal of their rights of drying and curing fish on the coast of Nova Scotia, and that they further renounced "for ever any liberty heretofore enjoyed or claimed by the inhabitants thereof [United States] 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 in the above-mentioned limits." Particular attention is called to this portion of the Article of the Treaty, as it subsequently led to difficulties regarding the three-mile limits, as connected with the different bays situated within the British North American territory.

Correspondence between France and United States on subject of Newfoundland Fisheries.

The Article also conceded the liberty of fishing on the western and northern coast of Newfoundland from Cape Ray to the Quirpon Islands. Attention is also called to this passage, as it subsequently led to a correspondence between the Governments of France and the United States, arising out of the refusal of the former to allow the fishermen of the United States to fish on that portion of the coast of Newfoundland which they alleged formed a portion of the coast on which France had "exclusive" rights. In the correspondence on the subject, the latter maintained that the United States had acknowledged such exclusive right by the Xth Article of the Treaty signed in Paris between the two Powers on the 6th February, 1778, in which the term "exclusive right" was inserted.

Appendix No. 1.

Although the Treaty was no longer in force, still the French Government maintained that the

principle of "exclusive right" had been admitted by the United States.

The United States, on the contrary, maintained that the Treaty of 1778 was no longer in force; that in that Treaty they had acknowledged such "exclusive" rights only in so far as they were conformable to the true sense of the Treaties of Utrecht and Paris; and they concluded by denying the right of France to any jurisdiction within the limits of British sovereignty on the coast of Newfoundland.

This correspondence was communicated to the British Government by Mr. Rush, the American Minister in London, on the 3rd May, 1824.

For the purpose of carrying into effect the stipulations of the Treaty of 1818 an Act of Parliament was passed (59 Geo. III, cap. 38, 14th June, 1819), "to enable His Majesty to make regulations with respect to the taking and curing of fish on certain parts of the coasts of Newfoundland, Labrador, and His Majesty's other possessions in North America, according to a Convention made between His Majesty and the United States of America." Act 59 Geo. III, cap. 38.

This Act rendered it lawful for His Majesty to issue, with the advice of His Privy Council, &c., such regulations, directions, &c., as might be deemed proper and necessary for carrying into effect the purposes of the Convention, with relation to the taking, drying, and curing of fish by the inhabitants of the United States, in common with British subjects. It further enacted that it was unlawful for any but British subjects to take, dry, or cure any fish of any kind whatever within three marine miles of any coasts, bays, creeks, or harbours whatever in any part of His Majesty's dominions in America not included within the limits specified and described in the 1st Article of the Convention. Provision was, however, made allowing American vessels to enter into such bays and harbours for the purchase of wood and of obtaining water. The penalty for infringing the law, and not conforming to the regulations to be issued from time to time, was confiscation and fine. On the 19th of June, 1819, an Order in Council was issued, ordering that United States'

subjects should not be molested in the rights of fishery enjoyed by them under the Convention of 1818.

The conclusion of this Convention was received by the Colonists with great dissatisfaction, and they complained that notwithstanding the petitions from Nova Scotia, Newfoundland, and the merchants of London, interested in the Colonies, the foregoing fatal Treaty has been proposed, agreed on, and completed with such marked secrecy that none had been apprized of its terms until it had appeared in the public prints, and the colonists had been deprived of their most valuable birthright—the fisheries.

1818-1854.

In consequence of the very voluminous character of the correspondence on the subject of the fisheries, between the years 1818 and 1854, when the last Treaty was concluded with the United States, it will be necessary to confine this memorandum to an outline of the events which occurred during that period, and which subsequently led to the conclusion of the Convention of 1854.

Complaints of Colonists at Stipulations of Treaty of 1818.

As previously stated, the Convention of 1818 had caused great dissatisfaction to the colonists, and several memorials had been addressed to the Prince Regent complaining of its injurious effect upon the commerce and interest of the colonies. Numerous complaints soon also began to be made of the infraction by the United States' fishermen of the fishery limits stipulated in the Convention. In 1838, the colonists of Nova Scotia, in an address to the Queen, complained that the commercial eagerness which characterized the people of the United States of America, aided by the spirit of their Government, had for years caused them to transgress the bounds defined by Treaty, and exercise rights over the fisheries of the colonies not ceded even by the unfortunate Treaty of 1818. They stated that the United States' fishermen, in violation of that Convention, entered the gulfs, bays, harbours, creeks, narrow seas, and waters of the colonies; that they landed

on the shores of Prince Edward and the Magdalen Islands, and by force, aided by superior numbers, drove British fishermen from banks and fishing grounds solely and exclusively British; and by carrying on an unlawful intercourse with needy and unprotected fishermen, induced them to violate all the laws of trade, and introduced feelings and opinions destructive to the principles of a well-intentioned but secluded and uninformed portion of Her Majesty's dominions.

The colonists had maintained, in a previous memorial, dated in 1837, that in the opinion of distinguished lawyers, and by the legitimate construction of the Convention of 1818, the citizens of the United States had no right to fish within three miles of the headlands of the coasts of Nova Scotia, and had no liberty to enter the bays, harbours, or creeks thereof, except for shelter, and to purchase wood and to obtain water. Notwithstanding the stipulations of the Convention, the colonists complained that the American fishermen resorted to their shores with as little concern as they quitted their own, and on various occasions coerced the inhabitants to submit to their encroachments, and had landed on the Magdalen Islands, and pursued the fishing therefrom as unrestricted as British subjects, although the Convention ceded no such rights. They also complained of the mode of fishery adopted by the Americans, and of the advantages they derived from the bounties granted to them by their Government. They also urged that the three-mile limit closed the Gut of Canso against them. In conclusion, the colonists urged that such measures should be adopted by the Imperial Government as would protect the fisheries against the encroachments of the American fishermen.

The complaints of the colonists having been referred to the Queen's Advocate for his opinion, he stated that the intervention of Her Majesty's Government ought to be employed for the protection of British subjects engaged in the North American fisheries against the encroachments of American citizens, so far as the international rights existing between Great Britain and the United States would admit.

Gut of Canso.

Queen's Advocate:
October 31, 1857.
Appendix No. IV.

The 1st Article of the Treaty of 1818, he stated, purported to settle and define those rights, and the question to be decided was whether the complaints of the Assembly of Nova Scotia were founded upon a correct interpretation of that Article. In many respects, he observed, they appeared to him to be so founded, for by the Convention the United States renounced not only the right of fishing within three marine miles of the coast, but also of the bays, creeks, or harbours of certain parts of the British dominions in America, and he therefore thought that the citizens of the United States had no right to calculate, as it was asserted they did, their three marine miles as being a line curving and corresponding with the coast.

In a further Report, the Queen's Advocate stated it to be his opinion that the terms of the Convention did not deprive the citizens of America of the right of passing through the Strait of Canso for the purpose of taking fish in common with British subjects in the Gulf of St. Lawrence.

With regard to the Magdalen Islands, he was of opinion that the British Government had the right of imposing the same restrictions upon Americans entering the harbours of those islands as were imposed upon them when entering those of Nova Scotia and Cape Breton.

In 1841, in consequence of the attempts made by the Colonial Government to enforce the rights of Great Britain with regard to the fisheries, Mr. Stevenson, the American Minister in London, complained of the measures which had been adopted, more particularly as related to the exclusion of the United States' fishermen from the Bays of Fundy and Chaleur, and from passing through the Gut or Strait of Canso.

The questions raised by the American Minister, and also by the Colonial Government, were referred to the Law Officers of the Crown. They reported in reply:—

1st. That the Treaty of 1783 was annulled by the war of 1812, and that the existing rights of the United States' citizens must be considered as defined and regulated by the Convention of 1818.

Gut of Canso.

Queen's Advocate;
March 10, 1838.
Appendix No. V.

Complaints of American Minister at measures adopted by the Colonial Governments.

Mr. Stevenson;
March 27, 1841.

Law Officers:
August 30, 1841.
Appendix No. VI.

2ndly. Except within certain defined limits not included in the question put to the Law Officers, they were of opinion that by the terms of the Convention American citizens were excluded from any right of fishing within three miles of the coast of British America, and that the prescribed distance of three miles was to be measured from the headlands, or extreme points of land next the sea, of the coast, or of the entrance of the bays, and not from the interior of such bays or indents of the coast. They were consequently of opinion that no right existed on the part of American citizens to enter the bays of Nova Scotia, there to take fish, although the fishing, being within the bay, might be a greater distance than three miles from the shore of the bay, as they were of opinion that the term "headland" was used in the Treaty to express the part of the land they had before mentioned, excluding the interior of the bays and the indents of the coast.

3rdly. They were of opinion that the Americans had no right by Treaty or otherwise to navigate the Passage of Canso.

Gut of Canso.

4thly. They were of opinion that the American fishermen had no right to land or conduct the fishery from the shores of the Magdalen Islands. The word "shore," they observed, did not appear to have been used in the Convention in any other than the general or ordinary sense of the word, and must be construed with reference to the liberty to be exercised upon it, and would therefore comprise the land covered with water as far as could be available for the due enjoyment of the liberty granted.

5thly. They were of opinion that American fishing-vessels had the liberty of entering the bays and harbours of Nova Scotia, for the purpose of repairs and water, unrestricted by any condition, expressed or implied. And,

6thly. They were of opinion that the rights ceded to the citizens of the United States, and those reserved for the exclusive enjoyment of British subjects, depended altogether on the Convention of 1818, the only existing Treaty on the subject between the two countries.

One of the principal complaints made by the

Exclusion of American fishermen from the
Bay of Fundy.

Mr. Everett ;
August 10, 1843.

Mr. Everett ;
May 25, 1844.

United States' Government arose out of the attempt of the Colonial Government to exclude American fishing-vessels from fishing in the Bay of Fundy, on the ground that it was a violation of the Convention of 1818.

The American Minister maintained, on the contrary, that the Bay of Fundy was more properly an arm of the sea, and did not in reality possess the character usually implied by the term "bay," although it had been claimed by the provincial authorities of Nova Scotia as being included among the "coasts, bays, creeks, and harbours" forbidden to American fishermen. An examination of the map, he stated, was sufficient to show the doubtful nature of this construction. He could not, he said, admit it to be reasonable 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 would thus be cut off, and which could not on that line be less than sixty miles wide, as one of the bays on the coast from which American vessels were excluded. By this interpretation, he observed, the fishermen of the United States would be shut out from waters distant not two but thirty miles from any part of the colonial coast.

Notwithstanding the opposition of the colonial authorities to the concession of fishery rights to the American fishermen in the Bay of Fundy, Her Majesty's Government determined to relax in favour of the United States' fishermen that right which Great Britain had hitherto exercised of excluding those fishermen from the British portion of the Bay.

The American Minister was consequently informed that, although the British Government still maintained its rights by the Convention of 1818, they were 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 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.

The Bay of Fundy opened to United States' fishermen.

To Mr. Everett ;
March 10, 1845.
Appendix No. VII.

In return for this concession Her Majesty's Government expressed a hope that the Government of the United States would concede a more liberal tariff of duties in favour of British colonial fishermen, the produce of whose labour was excluded from United States' ports by prohibitory duties.

Opinion of the Earl of Aberdeen in favour of immediate opening of Fisheries to United States' Fishermen.

To Colonial Office:

May 8. 1845.

Appendix No. 8.

In consequence of further representation on the part of the United States' Minister, relating to the treatment of American fishermen arising out of the construction of the Convention of 1818, the Earl of Aberdeen informed the Colonial Office that it was his decided opinion that the overstrained exercise of an assumed right on the part of Great Britain to exclude United States' fishermen from all those vast inlets of the sea on the British North American coasts, somewhat incorrectly termed bays, ought to be henceforward foregone, and that Great Britain ought to consider as bays, in the sense of the Treaty, those inlets only which measured from headland to headland at their entrance the double of the distance of three miles, within which it was prohibited to the United States' fishing vessels to approach the coast for the purpose of fishing.

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

Since, therefore, he observed, it could not be denied that such exercises of power were extreme (the seizure of American vessels for fishing within certain bays), and might justly be offensive to and resisted by the United States; and as much greater injury was liable to result to Great Britain from the ill feeling which such occurrences engendered than could be sustained, provincially, by our dependencies from the admission of United States' fishing vessels to within an equitable distance of their coasts, or of the entrance to *bonâ fide* bays on their coasts, his Lordship submitted to Lord Stanley whether the time had not arrived when Great Britain should voluntarily recede from the exercise of a doubtful and dangerous right, and grant to the citizens of the United

Colonists opposed to Concessions proposed
by the Earl of Aberdeen.

To the Governor of Nova Scotia ;
September 17, 1845.

Commencement of Commercial negotiations
with the United States.

States that boon to which they appeared to be fairly entitled.

The concessions proposed by the Earl of Aberdeen having been referred to the Colonial Governments, Memorials were signed by the colonists strongly condemning them, in consequence of which the Governor of Nova Scotia was informed that Her Majesty's Government abandoned the intention it had entertained on the subject, and should adhere to the strict letter of the Treaties, as existed between Great Britain and the United States, except in so far as they might relate to the Bay of Fundy, which has been thrown open to the Americans under certain restrictions.

Having thus far referred to the question relating more particularly to the fisheries, it will now be necessary to recapitulate the negotiations which subsequently led to the conclusion of the Treaty of 1854.

In 1847, in consequence of a Petition addressed to the Queen by the Canadian Parliament, Her Majesty's Minister at Washington proposed to the United States' Government to establish a reciprocal Free Trade between Canada and the United States in certain "natural productions;" wheat, timber, minerals, cattle, &c., being the principal articles.

Mr. Walker, the United States' Secretary of the Treasury, received the proposal favourably, and suggested as the best way of effecting the object in view, that a Bill taking off the duties on the articles in question should be submitted to Congress, it being provided that the provisions of such Bill should come into force so soon as the Canadian Parliament had on their side passed a similar Bill regarding the same articles imported into Canada from the United States.

The Bill was accordingly introduced into the House of Representatives, and passed without debate. It went up to the Senate, but failed, not by opposition, but from delay principally caused by the illness of Mr. Dix, the Senator who had charge of the Bill.

In 1849 the Bill was again brought into the Senate; but on this occasion, from an opposition having been got up against it by the Protectionist party on the one hand, and by the Southerners

Mr. Crampton. No. 25 ;
March 5, 1849.

on the other, who were then very bitter against the North on the subject of slavery, and who opposed the Reciprocity Bill without examination, on no other ground than because it was a "Northern" measure. The Bill, however, was not defeated in debate, but got rid of by delay, as on the previous occasion.

In consequence of this failure, Her Majesty's Chargé d'Affaires applied to Mr. Clayton, the new Secretary of State under General Taylor's administration, to know whether the question could be settled by Treaty negotiations, or whether they would give it their cordial support as a Bill in the next Congress.

Mr. Crampton, No. 33;
March 22, 1849.

To these overtures Mr. Clayton replied that the United States' Government did not think it, on constitutional grounds, a matter for negotiation, and also declined, upon grounds of commercial policy, to support the Bill in Congress. Mr. Clayton, however, added in conversation with Mr. Crampton, and also informed Mr. Merritt, of Canada, that the United States' Government would not be indisposed to entertain the question of a general commercial arrangement on the basis of reciprocity, in which all the British North American Colonies would be included, with the *sine qua non*, however, that the reserved right of fishing secured to the Colonies should be included in the cessions on their side; and Mr. Clayton offered to enter into negotiations with Mr. Crampton on this basis, provided he felt himself empowered to do so.

The proposed basis of negotiation was accepted by Her Majesty's Government, and Sir H. Bulwer, who had been appointed British Minister at Washington, received instructions, after the Colonies interested in the fisheries had been consulted, to commence negotiations on his arrival in that capital.

Instructions to Sir H. Bulwer with regard to Commercial Negotiations.

To Sir H. Bulwer, No. 3:
November 1, 1849.

With the exception of Newfoundland, Sir H. Bulwer was informed that Her Majesty's Government, on certain conditions, and with certain reservations, was prepared to make the concession to which so much importance seemed to have been attached by Mr. Clayton, namely, to throw open to the fishermen of the United States the fisheries in the waters of the British North

American Colonies, with permission to those fishermen to land on the coasts of those Colonies for the purpose of drying their nets and curing their fish, provided that in so doing they did not interfere with the owners of private property or with the operations of British fishermen.

These terms were favourably received by the United States' Government, but in consequence of the death of the President, General Taylor, the consideration of them was delayed. It was finally determined, the new President doubting whether it was a proper subject for diplomatic negotiation, to introduce a Bill on the subject into Congress, which was done in 1850, which however failed in passing.

Sir H. Bulwer again pressed the American Government to re-open the question, and after some delay the President, having again declined Treaty negotiations, brought the question before Congress in his Message of December, 1851.

Measures adopted by Imperial and Colonial Authorities for enforcing Fishery Rights.

Pending these overtures for negotiations, measures had been adopted by the British and Colonial authorities for enforcing the maintenance of the fishery rights of Great Britain, which were being constantly infringed by United States' fishermen. These measures caused great irritation on the part of the United States, who fitted out a squadron to cruize on the fishing grounds.

Ill-defined Rights of Fishery in Bays.

The principal cause of these disputes arose out of the ill-defined rights of fishery in bays. With regard to this question, Mr. Crampton forwarded to Her Majesty's Government two reports explanatory of the views adopted by American legal authorities, particularly Mr. Chancellor Kent, on the subject of the exclusive rights of sovereignty over the large bays of the United States. These views were favourable to the exclusive rights claimed by Great Britain.

Mr. Crampton, No. 115, Confidential; August 9, 1852.

Mr. Crampton, No. 173; November 1, 1852.

Mr. Crampton, No. 156; December 26, 1852.

On the 26th September, 1852, Mr. Crampton communicated to Her Majesty's Government a "Memorandum of Commercial Questions between Great Britain and the United States," which he had presented to the United States' Government, as containing those upon which Great Britain desired to come to definite arrangements. With the exception of that portion relating to the opening to British vessels of the trade between

Mr. Crampton, No. 212; December 19, 1852.

the eastern ports and California, the United States' Government accepted the Memorandum as a basis for negotiation; and, at the request of Mr. Everett, Mr. Crampton drew up the Project of a Convention to be submitted to the consideration of the President.

As the present Memorandum refers purely to the question of the fisheries, it will be sufficient to remark, with regard to the other Articles of the Project of the Convention, that they referred more particularly to the grant of commercial reciprocity as an equivalent for the cession by the Colonies of their "exclusive right" of fishing.

By Article 1 of the Project it was proposed, in addition to the liberty secured to American fishermen by the Convention of October 20, 1818, of taking, curing, and drying fish on certain coasts of British North American Colonies therein defined, that the inhabitants of the United States should have, in common with the subjects of Her Britannic Majesty, the liberty of taking fish of every kind on the sea coasts, and in the bays, harbours, and creeks of Canada, New Brunswick, Nova Scotia, and Prince Edward Island. They were also to have the right of landing upon the coasts of those Colonies for the purpose of drying their nets and curing their fish, provided, however, that in so doing they did not interfere with the owners of private property, or with the operations of British fishermen. It is also to be understood that the above-mentioned liberty applied solely to the sea fishery, and that the fisheries in estuaries and in the mouths of rivers were to be reserved exclusively for British fishermen.

In addition to the places mentioned in the above Project, the President urged the insertion of the Magdalen Islands, and such parts of the western and northern coasts of the Island of Newfoundland as United States' fishermen were then permitted to fish upon.

By the 2nd Article of the Project it was proposed that all fish, either cured or fresh, imported into the United States from the British North American Colonies in vessels of any nation or description, should be admitted free of duty, and upon terms in all respects of equality with fish imported by citizens of the United States.

The President proposed that the words "being the produce of British Colonies" should be inserted in the Article.

This provision was to be reciprocal.

To Mr. Crampton, No. 5;
January 15, 1853.

Mr. Crampton, in reply to the despatch communicating his project, was informed that Her Majesty's Government had no hesitation in authorizing him to sign the Treaty as proposed by him, but objected to the alterations suggested by the President.

The British Government admitted the objection made by the United States to opening the trade to British vessels between the Pacific and Atlantic ports of the United States; but urged that the United States should concede on its part to British fishermen a reciprocal right of fishing on the coasts and shores of the United States, and of the islands thereto belonging, and in the bays, harbours, and creeks of the United States, without being restricted to any distance from the shore.

Great Britain also objected to cede to citizens of the United States the right of landing to dry nets and cure fish on that part of the coast of Newfoundland on which they had, under the Convention of 1818, only the liberty of taking fish. On the contrary, it was found necessary to add to the amended draft of a Treaty sent to Mr. Crampton an Article, for the purpose of recording that Newfoundland was excepted from its stipulations.

Mr. Crampton, No. 35;
February 5, 1853.

The United States objected to the proposed amendments, and more particularly to the exclusion of Newfoundland from the proposed Treaty.

Mr. Crampton, No. 151;
September 5, 1853.

An American counter-project of a Treaty was subsequently sent to Mr. Crampton for the consideration of Her Majesty's Government. With regard to the fisheries, the counter-project made exceptions to the admission of shell fish in the Reciprocity Article, and an exception was also made to granting to British fishermen the right of fishing on the coast of Florida. The IIIrd Article of the draft proposed to extend the mutual right of fishing to the coasts of the United States and of British territories on the Pacific coast of North America; and the draft omitted

any engagement for the discontinuance of the bounties accorded to American fishermen.

The American counter-project not meeting with the approval of Her Majesty's Government, more particularly the Articles relating to the exclusion of British fishermen from the coast of Florida, and the proposed opening of the fisheries on the coasts of the Pacific, Mr. Crampton was instructed to suspend the negotiations in the hope that time might improve the chance of coming to a better understanding.

On the 28th April, 1854, Dr. Travers Twiss, by the direction of the Earl of Clarendon, forwarded to the Foreign Office a legal opinion* as to the true and correct interpretation to be put upon the expression employed in the 1st Article of the Treaty of 1818, regarding the renunciation on the part of the United States "of 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 certain above-mentioned limits.

The question upon which Dr. Twiss had to report was on the side of Great Britain, that the United States' fishermen were prohibited from fishing within three marine miles of the entrance of any such bays, creeks, or harbours of His Britannic Majesty's dominions in America; whilst on the side of the United States it was contended that the United States' fishermen were permitted by the 1st Article of the Convention of 1818 to fish in the said bays, creeks, or harbours, provided they did not approach within three miles of the shore in pursuit of their trade.

After quoting numerous authorities on international law, and also several Judgments of the American Judge Story regarding the limits of bays, Dr. Twiss concluded his Report by stating that it was his decided opinion that the United States' fishermen were not permitted by the Convention of 1818 to fish in the bays, creeks,

To Mr. Crampton, No. 19;
February 2, 1854.

Opinion of Dr. Travers Twiss regarding
interpretation of Article I of Treaty of 1818.
Dr. Travers Twiss;
April 28, 1854.

* Printed for the use of the Foreign Office, Confidential,
No. 332.

or harbours of Her Britannic Majesty's dominions, provided that they did not approach within three marine miles of the shore. He maintained on the contrary, that the Government of Great Britain was justified in maintaining that the United States' fishermen were, by the Article of the Treaty, prohibited from fishing within three marine miles of the entrance of any of the bays, creeks, or harbours of Her Britannic Majesty's dominions in America, with the exception of those specified in the earlier part of the same Article.

Mission of the Earl of Elgin.
To Lord Elgin. No. 1;
May 4, 1854.

In May, 1854, the Earl of Elgin, who was then Governor of Canada, being about to return to his post from England, Her Majesty's Government considered that it would be highly beneficial to the public service that he should, on the way to his seat of government, pay a visit to Washington, to confer with the Government of the United States on matters in which the interests of the British provinces were very materially concerned. In the event of his ascertaining from communications with the President and Mr. Marey, that there was a prospect, by the resumption of negotiations, of their being brought to a successful conclusion, the Earl of Elgin received full powers under the great Seal to conclude a Treaty between Her Majesty and the United States.

Previous, however, to his visiting Washington, Lord Elgin was directed to ascertain whether the several British provinces would be willing to moderate their demands. He was informed that, should difficulties more particularly originate in the pretentious adherence of the provinces to their demands, Her Majesty's Government might, however reluctantly, be compelled to look rather to Imperial than to Colonial interests alone, and, as in the case of Newfoundland, would be driven to consider whether it was right to sacrifice the former for the latter.

After recapitulating the difficulties which had caused the failure of previous negotiations, Lord Elgin was informed, that unless these conflicting pretensions and requirements could be reconciled the conclusion of any agreement between the two countries was out of the question, but the point to

which Her Majesty's Government wished to direct his Lordship's attention was the possibility of reconciling them.

It was not, however, considered desirable that he should appear at Washington in the character of an Envoy specially appointed to settle these troublesome questions, as it might suffice to render the Government of the United States still more inaccessible than heretofore to reason, inasmuch as it would conclude, however erroneously, that the British Government was prepared, while engaged in an arduous warfare with an European Power (Russia), to make sacrifices, for the sake of averting a discussion with the United States.

If, however, his Lordship should find that the Colonial Legislatures were willing to moderate their demands, he was instructed to ascertain from the United States' Government whether it would be prepared to act in this respect in a spirit of reciprocity.

In the event of the Colonial Legislatures expressing a willingness, in order to facilitate an arrangement of the Fishery question, which was fraught with so much danger to the maintenance of a good understanding between Great Britain and the United States, to modify their demands, his Lordship was informed that Her Majesty's Government would have no objection to give effect to such an improved disposition, and it would be for his Lordship to ascertain how far the United States' Government would be prepared to act in a corresponding spirit.

If the United States should accept the proposed negotiation, Lord Elgin was instructed to state that he was prepared at once to conclude an arrangement on the basis of mutual concessions.

If, on the other hand, the Government of the United States should be unwilling to accede to terms in themselves fair, and such as it would comport with the honour of the British Crown, his Lordship was to hold out no expectation of the British Government acquiescing in any one-sided settlement.

In order to discountenance any unreasonable pretensions on the part of the Colonial Governments, his Lordship was granted discretionary power to adopt such course as he should think

fit; but he was informed that Her Majesty's Government, except in a very extreme case, would be unwilling that anything like even moral coercion should be resorted to for the purpose of obtaining their assent to the terms of the negotiation.

His Lordship was also directed to keep steadily in mind, as a principle never to be lost sight of in negotiating with the United States' Government, that no concessions could safely be made to that Government except in return for corresponding concessions on its part; that any concessions on which it might insist must be purchased by concessions 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.

His Lordship was, however, informed that Her Majesty's Government did not mean to say that in all cases he should require concessions exactly equivalent in value. For instance, Great Britain would be content to forego the fishery on the coast of Florida, which the Americans declined to yield, in return for the withdrawal by the United States of the pretensions which they had advanced to the fisheries on the coasts of the British territories on the north-west side of the Continent.

Her Majesty's Government expressed itself as being desirous of settling the question of fisheries and reciprocity of trade on a permanent footing; but if that should not be possible, they would not object to a temporary arrangement being effected, which would obviate the risk of collision on the coasts between the national forces of Great Britain and the United States, or between the respective fishermen. Nevertheless, even with a view to the conclusion of a temporary arrangement, his Lordship was informed that, from the transactions of the last two years, the advantage of acting with firmness, no less than with moderation, in the treatment of the question should not be lost sight of.

With regard to the power of the Crown to conclude a Convention with the United States, admitting the fishermen of the United States to fish within three miles of the coast of Nova Scotia, without the consent of the Legislature of

Power of the Crown to conclude Convention
without consent of Colonial Legislature.

To Lord Elgin, No. 2;
May 4, 1854.

the Province, Lord Elgin was informed that the Law Officers' opinion was contrary to the view taken by the Lieutenant-Governor of that Colony, that the Colonial Legislature could either control or exclude the action of the Imperial Legislature over the three marine miles adjacent to the coast.

Law Officers :
May 2, 1854.
Appendix No. IX.

The Law Officers were, however, of opinion that an Imperial Act would be necessary to give effect to any such stipulations with regard to fisheries as those in question.

With regard to the question of the limits of fisheries within bays, harbours, &c., Lord Elgin received for his guidance a copy of Dr. Twiss' Report, which has been previously alluded to in this Memorandum.

To Lord Elgin, No. 3 ;
May 4, 1854.

Dr. Travers Twiss ;
April 28, 1854.

In consequence of the special privileges of fishing enjoyed by France on the coast of Newfoundland, great difficulties were felt regarding the admission of that Colony into the proposed Convention with the United States.

Fisheries on Coast of Newfoundland.
To Lord Elgin, No. 5 ;
May 4, 1854.
To Lord Elgin, No. 6 ;
May 19, 1854.

The Legislature of the Colony was desirous of such admission, and the United States' Government was also desirous that it should be admitted. In order to obviate any difficulties to the conclusion of the Treaty, Lord Elgin was empowered to negotiate a separate Convention with regard to Newfoundland, should it be found impossible to include it in any general Treaty.

To Lord Elgin, No. 7 ;
May 19, 1854.

On the 5th June, 1854, a Treaty relative to fisheries, commerce, and navigation between Great Britain and the United States was signed at Washington.

Signature of Treaty on 5th July, 1854.
Lord Elgin ;
June 12, 1854.
Appendix No. 10.

Lord Elgin, in communicating the satisfactory termination of the negotiations, stated that the main obstacle which had presented itself in coming to an understanding with the United States was the case of Newfoundland. In accordance with his instructions, Lord Elgin proposed to Mr. Marcy, in the first instance, as the proper mode of dealing with the question, that Newfoundland should be altogether omitted from the proposed Treaty, and a clause inserted pledging the British and United States' Governments to make it the subject of a separate arrangement. Mr. Marcy, however, expressed much unwillingness to adopt this course, as, he

Difficulties with regard to Newfoundland.

alleged, it might lead to embarrassing discussions in the Senate. Still greater objections applied to the suggested insertion of a clause in the Treaty reserving not only "the rights of France under existing Treaties," but also "the rights which might be conferred on France by any future Treaty." After much consideration, Article VI of the Treaty was agreed to.

By this clause, the provisions of the Treaty were extended to Newfoundland, in "so far as they are applicable to that Colony;" and it was further agreed that, if either the Imperial Parliament, the Provincial Parliament, or Congress, should fail to include Newfoundland in any legislation which might be necessary for giving effect to the Treaty, such omission should not prevent the Treaty from taking effect as regarded the other Colonies. The terms of the Treaty, therefore, distinctly implied that, in some respects, it was not applicable to Newfoundland; and they further pointed out a mode by which that Colony might be excluded from its operation. Lord Elgin stated that he had been most desirous to avoid doing anything at Washington which could prejudice the endeavours of Her Majesty's Government to effect an amicable arrangement with France, with reference to the rights of that country in the fisheries of Newfoundland; but at the same time he felt that so favourable an opportunity for settling important questions which had been long pending between Great Britain and the United States might not again present itself, and that he had, therefore, not shrunk from assuming a responsibility which a faithful discharge of his duty had entailed upon him.

Advantages obtained by the Treaty of 1854.

Passing from this special, though embarrassing case, his Lordship observed that the general scope of the Treaty might be briefly described as providing for the admission duty free into one of the greatest, and certainly most rapidly-rising markets of the world, of all the more important staple products of the British North-American Colonies, among which were included coal, timber, fish, grain, and flour. In return for this advantage, the people of the United States obtained certain rights of fishing and navigation,

which they valued highly, but the enjoyment of which by them would, it might be confidently predicted, be attended with benefit rather than loss to the Colonists, as leading to the more rapid improvement of resources hitherto but imperfectly developed.

In order to avoid disputes, to which the ambiguity of the word "estuary" might give rise, it had been provided in the drafts of the proposed Treaty that the estuaries and rivers to be excepted from its operation should be enumerated. Lord Elgin, however, found on enquiry that this enumeration would cause great delay. He agreed, therefore, with Mr. Marey to substitute the words contained in the two paragraphs of Articles I and II for the terms used in earlier drafts, and to add an arbitration clause, which would, he trusted, furnish the means of amicably adjusting any differences which might arise with respect to the extent of the reservation in question.

In order to get rid of all difficulty in regard to interference with the chartered rights of the Hudson's Bay Company, and also with respect to privileges of fishing on the coast of Florida, the fisheries on the Pacific coast were altogether omitted from the Treaty; and the liberty of fishing conceded to the subjects of Her Majesty on the eastern coast of the United States was bounded by a geographical line (36th parallel of north latitude).

By the Treaty of 1854 Great Britain ceded to the United States, in addition to the rights enjoyed under the Convention of 1818, an unrestricted right of fishery as regarded distance from the shore, with the exception of shell-fish, of the sea coasts and shores, and in the bays, harbours, and creeks of Canada, New Brunswick, Nova Scotia, Prince Edward Island, and of the several islands thereunto adjacent. They also obtained permission to land upon the coasts and shores of those Colonies and the islands thereof, and also upon the Magdalen Island, for the purpose of drying their nets and curing their fish: provided that in so doing they did not interfere with the rights of private property, or with British fishermen in the peaceable use of

any part of the said coast in their occupancy for the same purpose. This liberty, however, applied only to the sea fishery; the salmon and shad fisheries, and all fisheries in rivers and the mouths of rivers, were reserved exclusively for British fishermen.

Appointment of Commissioners to settle River Fishery Limits.

In order to settle disputes as to the places to which the reservation of exclusive right to British fishermen applied, it was stipulated that within six months of an application being made by either of the Contracting Parties, Joint Commissioners should be appointed for the purpose of settling such questions. In the event of any difference of opinion on the part of the Commissioners, the Commissioners were to have the power to select a third party to act as Umpire or Arbitrator.

The decision of the Commissioner or Umpire was to be considered by the High Contracting Parties as final and absolute.

The United States, on their side, conceded to British fishermen an unrestricted right of fishing, excepting for shell fish, on the eastern sea-coasts and shores of the United States, north of the 36th parallel of north latitude, and on the shores of the several islands thereunto adjacent, and in the bays, &c., of the said coasts, with the permission to land on the said coasts, and provided they did not interfere with private property or with the fishermen of the United States. This liberty was to apply solely to the sea fishery; the salmon and shad fisheries, and all fisheries in rivers and mouths of rivers being reserved exclusively for fishermen of the United States.

The Treaty was to take effect so soon as the laws required to carry it into operation should have been passed by the Imperial Parliament of Great Britain, and by the Provincial Parliament of the Colonies affected by the Treaty on the one hand, and by the Congress of the United States on the other. The Treaty was to remain in force for ten years, and to be then terminable on twelve months' notice being given by either of the Contracting Parties.

With regard to Newfoundland, it was provided that the stipulations of the Treaty should extend to that Colony, so far as they were applicable to

that Colony. But if the Imperial Parliament, the Provincial Parliament of Newfoundland, or the Congress of the United States, should not embrace in their laws enacted for carrying the Treaty into effect, the above Colony, then this Article (VI) should have no effect.

As the present Memorandum relates purely to the question of the fisheries, no reference has been made to the other stipulations of the Treaty relating to commerce and navigation.

Lord Elgin, in concluding his Report on the Treaty, stated it to be his opinion, formed from a long residence in the British Colonies, that should it come into operation, its favourable results on their prosperity and progress would be found very far to exceed what its most sanguine supporters had ventured to anticipate.

In order to carry into execution the Treaty of 1854, various Acts were passed by the Contracting Parties, of which the following is a list:—

Great Britain.

Act of Parliament, 18 Vic., cap. 3 (February 19, 1855). *Hertslet's Treaties vol. x, page 653.*

Colonies.

Canada, September 23, 1854. *Ibid., page 648.*
 Nova Scotia, 18 Vic., cap. 1 (December 13, 1854). *Ibid., page 649.*
 New Brunswick, November 3, 1854. *Ibid., page 651.*
 Prince Edward Island, October 7, 1854. *Ibid., page 652.*
 Newfoundland, 18 and 19 Vic., cap. 2 (July 7, 1855). *Ibid., page 652.*

United States.

Act of Congress, August 5, 1854 (cap. 269). *Ibid., page 647.*
 Act of Congress, March 2, 1855 (cap. 144). *Ibid., page 655.*
 Proclamation, March 16, 1855. *Ibid., page 657.*
 Proclamation, December 13, 1855 (Newfoundland). *Ibid., page 657.*

1854-1866.

As the Earl of Elgin had foretold, on the conclusion of the Treaty of 1854, it proved a source of great commercial prosperity to the

Powers interested. The Treaty had also put an end to the serious misunderstandings which had frequently occurred between the two nations, regarding the extent of the right of fishing on the coasts of British North America, and for a period of nearly eleven years during which the Treaty has existed, the subjects and citizens of the two countries had carried on their respective occupations, and enjoyed the privileges which they had obtained under it, without any question having arisen to disturb the good understanding established between the two Governments.

Termination of Treaty of 1854.
Mr. Adams;
March 17, 1865.

On the 17th March, 1865, Mr. Adams, the American Minister in London, communicated to Her Majesty's Government a Joint Resolution passed by the Congress of the United States for the termination of the Treaty of the 5th June, 1854, commonly known as the Reciprocity Treaty. In accordance with the stipulations of the Treaty it was to terminate at the expiration of twelve months after either of the Contracting Parties should give notice to the other of its wish to terminate the same.

The Treaty having come into operation on the 16th March, 1855, by the Resolution of the Congress it ceased to be in force on the 17th March, 1866.

Negotiations proposed by Her Majesty's
Government.

To Sir F. Bruce;
March 24, 1865.

On the receipt of Mr. Adam's note, Her Majesty's Government addressed an instruction to Sir F. Bruce, in which, after recapitulating the great advantages which had been mutually enjoyed by the two countries through the Treaty of 1854, expressed its willingness to reconsider the Treaty in conjunction with the Government of the United States, to negotiate for a renewal of it, and so to modify its terms as to render it, if possible, even more beneficial to both countries than it had hitherto been.

Before any modifications can be considered, however, Her Majesty's Government desired to be informed whether the notice given by Mr. Adams in terms so peremptory was intended to put an end to the Treaty, or whether it left open the door to negotiation.

In the latter case, Sir F. Bruce was instructed to ask Mr. Seward to state in detail the points

upon which a modification of the Treaty was desired.

Before expressing any opinion on the suggestions which Mr. Seward might make, Sir F. Bruce was instructed to communicate with the Governor-General of Canada, as well as to report to Her Majesty's Government.

Subsequently to forwarding the above instruction, a despatch was received from Mr. Burnley at Washington, which stated that Mr. Seward had requested him to inform Her Majesty's Government that, with a view of still further inaugurating a more friendly policy, the Government of the United States was willing, as the season advanced, to enter into negotiations for remodelling the Reciprocity Treaty on terms which might prove, he hoped, advantageous and beneficial to both parties.

Mr. Burnley :
March 9, 1865.

In consequence, however, of the assassination of the President and the illness of Mr. Seward, it was impossible to obtain a statement of the points in the Treaty which the United States wished to submit to negotiation.

Sir F. Bruce :
June 7, 1865.

On the 8th July, Sir F. Bruce was informed that the Governors of the Lower Provinces of British North America had been instructed to place themselves in communication with him on ~~the subject~~ of negotiation for the renewal of the Treaty.

To Sir F. Bruce :
July 8, 1865.

As the negotiations for the renewal of the Treaty refer more particularly to commercial reciprocity, and as this Memorandum refers to the fisheries only, it will suffice to state what passed on that particular subject alone.

The Colonial Delegates, who visited Washington for the purpose of assisting Sir F. Bruce in his negotiations, proposed that in consideration of the continuance of the existing regulations with reference to the fisheries in the British Colonies, an assurance should be given by the United States that the trade of the Western States would not be diverted from its natural channel by legislation; and if the United States were not then prepared to consider the general opening of their coasting trade, it would appear desirable, with regard to the internal waters of the

Sir F. Bruce :
February 11, 1866.

Continent, that no distinction should be made between the vessels of the two countries.

The terms proposed by the Canadian Delegates were not accepted by the United States; and the imposts which it was proposed by the latter to impose upon Colonial produce was considered by the Delegates as in some cases prohibitory, and as likely to seriously interfere with the natural course of trade.

Sir F. Bruce;
February 22, 1866.

On the 16th February, Sir F. Bruce addressed a note to Mr. Seward, stating the course which Her Majesty's Government were prepared to take if the Government of the United States were disposed to negotiate a fresh Treaty.

Sir F. Bruce stated in his note that the British Government would be well content to renew the Treaty in its existing form; that at the same time they were willing to consider the Treaty in conjunction with the Government of the United States, if such a course would be agreeable to them, and so to modify its terms as to render it, if possible, more beneficial to both countries than it had hitherto been.

Should the latter course be adopted it was suggested by Sir F. Bruce that an arrangement of a provisional character might be adopted with a view to afford time for fresh negotiations, and he expressed his willingness to submit any proposal to that effect to his Government.

Mr. Seward, in reply to these overtures, dwelt on the desire of the Congress to treat the subject directly, and not to approach it through the forms of diplomatic agreement; and he at the same time stated that no such harmony of public sentiment existed in favour of the extension of the Treaty, as could encourage the President in directing negotiations to be opened.

Negotiations having thus failed, on the 19th of February, 1866, the Governor of Canada issued a Proclamation warning citizens of the United States that their right to fish in the in-shore waters of the United States would cease on the 17th March.

Proclamation issued by the Canadian Government.

Colonial Office;
March 6, 1866.

Instructions sent to Sir F. Bruce regarding the Termination of Treaty of 1854.

To Sir F. Bruce;
March 17, 1866.

Sir F. Bruce likewise received instructions regarding the course which Her Majesty's Government had resolved to pursue in consequence of the termination of the Treaty. With regard to

the privileges of fishing and of landing upon the shores and coasts of Her Majesty's possessions for the purposes of drying their nets and curing their fish, which had been enjoyed by the citizens of the United States under the Treaty, Her Majesty's Government expressed itself as desirous of preventing the injury and loss which might be inflicted upon the citizens of the United States by the sudden withdrawal of their privileges. They were, however (now that the Treaty had come to an end), bound by the Act 59 George III, cap. 38, as well as by the Acts of the Legislatures of New Brunswick and Nova Scotia, which had obtained Imperial sanction.

By those Acts, which were only suspended during the existence of the Treaty, severe penalties, extending to confiscation of their vessels, &c., were inflicted upon all persons, not British subjects, who should be found fishing, or to have been fishing or preparing to fish, within the distance of three miles of the coast of Her Majesty's possessions in North America.

It became, therefore, the duty, in consequence of the termination of the Treaty of 1854, Sir F. Bruce was informed, that Her Majesty's Government and the Governments of the respective provinces should enforce the law; and until those Acts were modified or repealed, citizens of the United States would be prohibited from fishing in British waters, from landing on British territory for the purpose of drying their nets and curing their fish, and would be subject to all the penalties which the violation of the law entailed.

Under these circumstances, Lord Monck had issued a Proclamation informing all persons who might be concerned of the state of the law, and warning them of the penalties which they incurred by its violation.

Her Majesty's Government expressed itself as not insensible to the great inconvenience and losses to which the exclusion of the American citizens from privileges so long enjoyed by them, and in which capital to a considerable amount had been invested, and labour to a large amount had been employed, must unavoidably subject a great number of persons.

Her Majesty's Government feared that so long

an enjoyment of those privileges might induce those who had been engaged in fishing ventures on the coasts on the British possessions to defy the law and carry on their operations, thus exposing their property to seizure and confiscation. A feeling of irritation would thus be engendered in the north-eastern States of America against the British Government and nation, which Her Majesty's Government would greatly regret, and which might lead to serious misunderstandings between the two Governments.

Her Majesty's Government expressed its satisfaction at feeling that they had done their utmost to prevent these consequences. They had declared their readiness, and they were still prepared to come to any arrangement with the United States, either by a continuation or a renewal of the Reciprocity Treaty, or by entering into new engagements by which the privileges hitherto enjoyed by American citizens might be still secured to them.

The Government of Washington had declined to accede to these proposals, and Her Majesty's Government could not, therefore, it stated, accept any responsibility for the results.

On the 9th March, Sir F. Bruce reported that a Bill had been introduced into Congress by Mr. Morrill, the Chairman of the Ways and Means Committee, which aimed at imposing an exceptional scale of duties on provincial productions, with provisos making the duration of this scale contingent on the continuance of the privileges accorded by the Reciprocity Treaty to the inhabitants of the United States, and empowering the President, if enjoyment of these was withdrawn, to put an end to the special duties in whole or in part.

This Bill met with great opposition, and was subsequently thrown out, principally through the influence of the Protectionists. Sir F. Bruce considered its rejection as advantageous to British interests.

The following Imperial and Colonial Acts, &c., come into force by the termination of the Treaty of 1854:—

Sir F. Bruce;
March 9, 1866.

Sir F. Bruce;
March 14, 1865.

Imperial.

Act 59 Geo. III, cap. 38, 1819.

Hertslet's Treaties, vol. iv,
page 489.*Colonial.**Newfoundland.*

Order in Council, 19th June, 1819.

Ibid., vol. x, page 635.

Prince Edward Island.

Colonial Act, 6 Vict., cap. 14, April 15, 1843. Ibid., page 636.

Order in Council, September 3, 1844.

" " September 3, 1844.

Nova Scotia.

Colonial Act, 14 and 15 Vict., cap. 94, 1851.

" " 14 and 15 Vict., cap. 170, 1851.

New Brunswick.

Colonial Act, 14 Vict., cap. 31, April 30, 1851.

" " 15 Vict., cap. 53, April 7, 1852.

" " 16 Vict., cap. 39, May 3, 1853.

" " 16 Vict., cap. , May 3, 1853.

The regulations or laws relating to the fisheries
in force in the British colonies were collected and
printed by the Colonial Office in 1853.

(Signed) A. S. GREEN.

Foreign Office,
July , 1866.

APPENDIX.

No. 1.

*Article X of Treaty of Commerce between France and the United States,
February 6, 1778.**

THE United States, their citizens and inhabitants, shall never disturb the subjects of the Most Christian King in the enjoyment and exercise of the right of fishing on the banks of Newfoundland, nor in the indefinite and exclusive right which belongs to them on that part of the coast of that Island which is designed by the Treaty of Utrecht, nor in the rights relative to all and each of the isles which belong to His Most Christian Majesty, the whole conformable to the true sense of the Treaties of Utrecht and Paris.

No. 2.

*Article III of Treaty of Peace between Great Britain and the United States, signed at Paris,
September 3, 1783.*

IT is agreed that the people of the United States shall continue to enjoy unmolested to take fish of every kind on the Grand Bank, and on all the other banks of Newfoundland; also in the Gulf of St. Lawrence, and at all other places in the sea, where the inhabitants of both countries used at any time heretofore to fish; and also that the inhabitants of the United States shall have liberty to take fish of every kind on such part of the coast of Newfoundland as British fishermen shall use (but not to dry or cure the same on that island); and also on the coasts, bays, and creeks of all other of His Britannic Majesty's dominions in America; and that the American fishermen shall have liberty to dry and cure fish in any of the unsettled bays, 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.

No. 3.

*Article I of Convention between Great Britain and the United States, signed at London,
October 20, 1818.*

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 Ramea 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

* Annulled by Act of Congress of the 7th July, 1798.

Joly, on the southern coast of Labrador, to and through the Straits of Belleisle, and thence northwardly indefinitely along the coast, without prejudice, however, to any of the exclusive rights of the Hudson 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.

No. 4.

The Queen's Advocate to Viscount Palmerston.

My Lord,

Doctors' Commons, October 31, 1837.

I AM honoured with your Lordship's commands signified in Mr. Fox Strangway's letter of the 19th of September, transmitting the accompanying letter from the Colonial Department, containing copies of a despatch from the Lieutenant-Governor of Nova Scotia, together with copies of the Resolution and Report of the House of Assembly of that Colony relative to the fisheries in the Gulf of St. Lawrence and on the coast of Newfoundland, and requesting that I would take these papers into consideration, and report to your Lordship my opinion thereupon.

In obedience to your Lordship's commands, I have taken into consideration the letter from the Colonial Department, together with the copies of the despatch from the Lieutenant-Governor of Nova Scotia, and of the Resolution and Report of the House of Assembly of that Colony, and have the honour to report that I am of opinion that the intervention of Her Majesty's Government ought to be employed for the protection of the British subjects engaged in the North American fisheries against the encroachments of American citizens, so far as the international rights of this kingdom and of the United States of America will permit.

The 1st Article of the Convention between Great Britain and the United States, signed at London on the 20th of October, 1818, purpose to settle and define those rights; the question, therefore, is whether the complaints of the Assembly of Nova Scotia are founded upon a correct interpretation of that Article. In many respects they appear to me to be so founded. By the Convention the United States renounced not only the right of fishing within three marine miles of the coast, but also of the bays, creeks, or harbours of certain parts of the British dominions in America, and I therefore think that the citizens of America have no right to calculate, as it is asserted they do, their three marine miles as being beyond a line curving or corresponding with the coast.

It is stated in the Report of the House of Assembly that the fishermen of the United States have in many instances set their own nets within the harbours of the Province of Nova Scotia, and that they have on various occasions by force coerced the inhabitants to submit to their encroachment. This is clearly a violation of the Convention. It is also stated that they approach within the prescribed limits, and by the use of bait tole the fish into deep water, and then take them by jigs. This likewise appears to me to be contrary to the provisions of the Treaty. I also think that they cannot claim the privilege of coming within the bays or harbours, either to buy bait from the inhabitants, or to take it for themselves. By the terms of the Treaty they may enter for the purpose of shelter and repairing damages therein, of purchasing wood and of obtaining water, but for no other purpose whatever.

Another complaint is that the citizens of the United States land on the Magdalen Islands and pursue the fishery therefrom. The stipulation of the Convention in this respect is as follows:—“It is agreed between the High Contracting Parties that the

inhabitants of the 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 Ramea 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 Belleisle, and thence northward indefinitely along the coast." The Contracting Parties may have intended some material distinction when they used the word "shores" as applicable to the Magdalen Islands, and the word "coast" with reference to the other parts of the territories mentioned, and possibly may have meant to confer upon or reserve to American citizens, in common with British subjects, a right to land upon the shores of the Magdalen Islands for the purpose of taking fish, although I am inclined to think otherwise, inasmuch as I conceive that the word "shore" has not, either in law or in common parlance, a larger signification than the word "coast." A reference, however, to any documents showing what passed upon the subject when the Convention was negotiating may perhaps afford the requisite information.

Upon another point the complaint of the House of Assembly does not appear to me to be well-founded. I cannot concur in the opinion expressed in the Report, that the fishing vessels of the United States may not enter the bays, harbours, and creeks of Nova Scotia for the purchase of wood or to obtain water, except on proof of having left their own ports sufficiently supplied for the voyage. Such proof may, perhaps, be very properly required from vessels entering an interdicted port on the plea of necessity; but I find no such proof required by the Convention. It provides expressly that the American fishermen shall be permitted to enter such bays or harbours for the purpose of shelter and repairing damages therein, of purchasing wood, and of obtaining water; but that 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 thereby reserved to them. Under this stipulation, I think the privilege of entering the harbours for the purposes mentioned cannot be denied to the fishing vessels of America, although proper restrictions may be imposed upon them, when they do enter, to prevent an abuse of the privilege.

I have further the honour to observe that the Statute 59 Geo. III, cap. 38, enables the Crown to make regulations for the government of the North American fisheries, according to the Convention, and to prevent the abuse of the privileges thereby conceded to the fishermen of the United States.

In conclusion, I take leave to submit to the judgment of your Lordship whether it may not be advisable to transmit the Report and Resolution of the House of Assembly to the Board of Trade for their consideration, and for any observations which they may have to offer thereon.

I have, &c.
(Signed) J. DODSON.

No. 5.

The Queen's Advocate to Mr. Denis Le Marchant.

Sir,

Doctors' Commons, March 10, 1838.

I AM favoured with your letter of the 20th of January, stating that the Lords of the Committee of Privy Council for Trade direct you to inform me that they have received from Lord Palmerston my Report of the 31st of October, 1837, on the questions that have arisen out of the interference of the citizens of the United States with the fisheries in the Gulf of St. Lawrence, the same having been transmitted with the accompanying papers to the Board of Trade by his Lordship pursuant to my recommendation.

And you are pleased to state that their Lordships, feeling the importance which is attached to the matter in Nova Scotia, have attentively considered the above-mentioned papers, as well as consulted other sources of information, and the result has been to raise doubts in the minds of their Lordships on the following points, to which my attention has not yet been drawn with the preciseness that the light in which they are regarded by the Colony appears to their Lordships to require.

1st. Concurring, as their Lordships do, in the opinion expressed in my Report, that the Americans cannot, under the Treaty, come beyond a line of three miles from

the coast, such coast line running a direct course from headland to headland, their Lordships are still apprehensive that the question raised by the reference of the House of Assembly in Nova Scotia to this part of the Treaty remains in some degree unanswered. The Gut of Canso, through which the Americans claim, and at present exercise, the right of sailing in their route to the Gulf of St. Lawrence, is not more than a mile in breadth, and the exclusion of the Americans from it is represented to the Board as most essential to the interest of Colonial fisheries, and both shores being in the possession of Great Britain, it has been contended by some of the authorities in the Colony that it must [*not*] be regarded as the high sea; and, therefore, coming under the above-mentioned clause of the Treaty, or else as the maritime way of the Province, and as such, by the principles of international law, under the exclusive jurisdiction of Great Britain, the Americans having sufficient access left to the shores of the Colony by going round Cape Breton to satisfy the general words of the Treaty. That their Lordships therefore direct you to submit the point to my consideration, and to report my opinion whether Great Britain has the power to close the Gut or Strait in question to the Americans.

The second point to which their Lordships direct you to draw my attention relates to the Magdalen Islands. That it appears from the information which their Lordships have obtained on the subject, to be extremely doubtful whether the Committee of the House of Assembly of Nova Scotia intended to found any distinction upon the use of the two terms of "coast" and "shores" in the Article of the Treaty so far as these Islands were concerned, it being understood in the Colony that no right of landing on the shores of these Islands had been claimed by the Americans, although the practice had prevailed to some extent surreptitiously: that the nature and limit of the restriction to which the Americans subject themselves on entering the harbours of these islands are represented to their Lordships to constitute the chief object of interest with the Colony on this head, and you are therefore directed to request that I would report to the Board my opinion whether, under the sound construction of the Treaty, the Americans have the right of entering the harbours of those islands upon other conditions than are imposed upon them when entering those of Nova Scotia and Cape Breton.

In obedience to the directions above contained, I have the honour to report that, having carefully perused and considered the documents, and also the Convention between Great Britain and the United States of the 20th October, 1818, with reference to the points to which my attention has now been directed, I am of opinion that the terms of the Convention do not deprive the citizens of America of the right of passing through the Strait of Canso for the purpose of taking fish in common with British subjects in the Gulf of St. Lawrence.

Upon the other point I think that the British Government have the right of imposing the same restrictions upon Americans entering the harbours of the Magdalen Islands as are imposed upon them when entering those of Nova Scotia and Cape Breton.

I have, &c.
(Signed) J. DODSON.

No. 6.

The Law Officers of the Crown to Viscount Palmerston.

My Lord,

Doctors' Commons, August 30, 1841.

WE are honoured with your Lordship's commands signified in Mr. Backhouse's letter of the 26th of May, 1840, stating that he was directed to transmit to us the accompanying letter from the Colonial Office, inclosing the copy of a despatch from the Lieutenant-Governor of Nova Scotia, inclosing an Address to Her Majesty from the House of Assembly of that province, complaining of the continued encroachments of American fishermen on the fishing ground of Nova Scotia and the adjoining Colonies, and praying that Her Majesty would establish, by an order in Council, general regulations for the protection of the fisheries according to the Code annexed to the Address.

Mr. Backhouse is pleased to request that we would take these papers into consideration, and report to your Lordship our opinion whether there is anything in the proposed regulations which would be inconsistent with the stipulations of the Conven-

tion of the 25th of October, 1818, between Great Britain and the United States of America.

We are also honoured with Mr. Backhouse's letter of the 19th April, stating that he was directed to transmit to us a further letter from the Colonial Office, dated the 16th instant, inclosing the copy of a despatch from the Lieutenant-Governor of Nova Scotia, covering a copy of an Address from the Legislative Council of that Province, objecting to one of the above-mentioned regulations proposed by the House of Assembly in the session of 1810; and to request that we would take these papers into consideration, in addition to those referred to in his letter of the 26th May last, and that we would report to your Lordship at our early convenience our opinion thereupon.

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

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

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

1st Query.—That we are of opinion that the Treaty of 1783 was annulled by the war of 1812, and we are also of opinion that the rights of fishery of the citizens of the United States must now be considered as defined and regulated by the Convention of 1818; and, with respect to the general question, "If so, what right?" we can only refer to the terms of the Convention, as explained and elucidated by the observations which will occur in answering the other specific queries.

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

4th Query.—By the Convention of 1818 it is agreed that American citizens should have the liberty of fishing in the Gulf of St. Lawrence (and within certain defined limits), in common with British subjects, and such Convention does not contain any words negating the right to navigate the Passage or Gut of Canso, and therefore it may be conceded that such right of navigation is not taken away by that Convention, but we have now attentively considered the course of navigation to the Gulf of Cape Breton, and likewise the nature and situation of the passage of Canso, and of the British dominions on either side, and we are of opinion that, independently of Treaty no foreign country has the right to use or navigate the Passage of Canso; and attending to the terms of the Convention relating to the liberty of fishery to be enjoyed by the American citizens, we are also of opinion that that Convention did not, either expressly or by necessary implication, concede any such right of using or navigating the passage in question. We are also of opinion that casting bait to lure fish in the track of any American vessels navigating the passage would constitute a fishing within the negative terms of the Convention.

* Mr. Stephenson, March 27; to Mr. Stevenson, April 2 and April 28; to Colonial Office, April 2; Colonial Office, April 12 and June 18, 1841.

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

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

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

We have, &c.
(Signed) J. DODSON.
THOS. WILDE.

No. 7.

The Earl of Aberdeen to Mr. Everett.

Sir,

Foreign Office, March 10, 1845.

THE Undersigned duly referred to the Colonial Department the note which Mr. Everett, &c., did him the honour to address to him on the 25th of May last, respecting the case of the “Washington” fishing-vessel, and on the general question of the right of United States’ fishermen to pursue their calling in the Bay of Fundy, and having shortly since received the answer of that Department, the Undersigned is now enabled to make a reply to Mr. Everett’s communication, which he trusts will be found satisfactory.

In acquitting himself of this duty, the Undersigned will not think it necessary to enter into a lengthened argument in reply to the observations which have at different times been submitted to Her Majesty’s Government by Mr. Stevenson and Mr. Everett, on the subject of the right of fishing in the Bay of Fundy, as claimed in behalf of the United States’ citizens. The Undersigned will confine himself to stating 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 United States’ citizens in the most favourable light, Her Majesty’s Government are nevertheless still constrained to deny the right of the 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.

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’ fishermen have, 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 material benefit on their fishing trade, and to Great Britain and the United State 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.

The Undersigned has accordingly much pleasure in announcing to Mr. Everett the determination to which Her Majesty's Government has 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 henceforth the United States' fisherman 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.

In thus communicating to Mr. Everett the liberal intentions of Her Majesty's Government, the Undersigned desires to call Mr. Everett's attention to the fact that the produce of the labour of the British Colonial fishermen is at the present moment excluded by prohibitory duties on the part of the United States from the markets of that country; and the Undersigned would submit to Mr. Everett that the moment at which the British Government are making a liberal concession to United States' trade might well be deemed favourable for a counter-concession on the part of the United States to British trade, by the reduction of the duties which operate so prejudicially to the interests of the British Colonial fishermen.

I am, &c.

(Signed) ABERDEEN.

No. 8.

Mr. Addington to Mr. Stephen.

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 the 20th October, 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, 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 these 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 respect to 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, 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 the double of 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 Chaleur, that of Miramichi, and numerous other bays on the coasts 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 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, provincially, by our dependencies, from the admission of United States' fishing vessels to within an equitable distance of their coasts or of the entrance of the *bout fide* bays on their 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.

No. 9.

The Law Officers of the Crown to the Earl of Clarendon.

My Lord,

Doctors' Commons, May 2, 1854.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 29th ultimo, stating that he was directed to transmit to us therewith an extract of a despatch from the Lieutenant-Governor of Nova Scotia to Her Majesty's Minister at Washington, by which we shall perceive that the Lieutenant-Governor appears to construe an opinion given by the Law Officers of the Crown of the 10th of August, 1853, of which a copy is inclosed, as entitling the Legislature of Nova Scotia to expect that its concurrence should be asked previously to the conclusion of any Convention by Her Majesty and the United States for admitting the fishermen of the United States to fish within three miles of the coast of Nova Scotia.

Mr. Hammond further states that your Lordship directs him to request that we would inform your Lordship whether that construction is correct, and whether if Her Majesty were to enter into a Convention with the United States for the purpose above mentioned, it would be necessary to insert in the Article relating to the fisheries a provision that its execution must depend on the assent of the Local Legislature of Nova Scotia.

In obedience to your Lordship's commands we beg to state,—

That the construction which it appears has been put upon our Report of the 10th of August, 1853, by the Lieutenant-Governor of Nova Scotia is not correct, if our opinion has been construed as importing that the authority of the Provincial Legislature of Nova Scotia over the three marine miles adjacent to the coast can either control or exclude the action of the Imperial Legislature.

We are, indeed, of opinion that the proposed Convention being in derogation of the provisions of the Statute 59 Geo. III, cap. 38, cannot be carried into effect without a Legislative Act, but such Act should proceed from the Imperial Parliament, and not from the Local Legislature.

We have, &c.
(Signed) J. D. HARDING.
A. E. COCKBURN.
RICHARD BETHELL.

Articles I, II, and VI of Treaty between Her Majesty and the United States of America, relative to Fisheries, Commerce, and Navigation; signed at Washington, June 5, 1854.

ARTICLE I.

It is agreed by the High Contracting Parties that, in addition to the liberty secured to the United States' fishermen by the above-mentioned Convention of October 20, 1818, of taking, curing, and drying fish on certain coasts of the British North American Colonies therein defined, the inhabitants of the United States shall have, in common with the subjects of Her Britannic Majesty, the liberty to take fish of every kind, except shell-fish, on the sea-coasts and shores, and in the bays, harbours, and creeks of Canada, New Brunswick, Nova Scotia, Prince Edward Island, and of the several islands thereunto adjacent, without being restricted to any distance from the shore; with permission to land upon the coasts and shores of those Colonies and the islands thereof, and also upon the Magdalen Islands, for the purpose of drying their nets and curing their fish: provided that, in so doing, they do not interfere with the rights of private property, or with British fishermen in the peaceable use of any part of the said coast in their occupancy for the same purpose.

It is understood that the above-mentioned liberty applies solely to the sea fishery, and that the salmon and shad fisheries, and all fisheries in rivers and the mouths of rivers, are hereby reserved exclusively for British fishermen.

And it is further agreed that, in order to prevent or settle any ~~dispute~~ ^{dispute} as to the places to which the reservation of exclusive right to British fishermen contained in this Article, and that of fishermen of the United States contained in the next succeeding Article, apply, each of the High Contracting Parties, on the application of either to the other, shall, within six months thereafter, appoint a Commissioner. The said Commissioners, before proceeding to any business, shall make and subscribe a solemn declaration that ~~they~~ ^{they} will impartially examine and decide, to the best of their judgment, and according to justice and equity, without fear, favour, or affection to their own country, upon all such places as are intended to be reserved and excluded from the common liberty of fishing under this and the next succeeding Article; and such declaration shall be entered on the record of their proceedings. The Commissioners shall name some third person to act as an Arbitrator or Umpire in any case or cases on which they may themselves differ in opinion. If they should not be able to agree upon the name of such third person, they shall each name a person, and it shall be determined by lot which of the two persons so named shall be the Arbitrator or Umpire in cases of difference or disagreement between the Commissioners. The person so to be chosen to be Arbitrator or Umpire shall, before proceeding to act as such in any case, make and subscribe a solemn declaration in a form similar to that which shall already have been made and subscribed by the Commissioners, which shall be entered on the record of their proceedings. In the event of the death, absence, or incapacity of either of the Commissioners or of the Arbitrator or Umpire, or of their or his omitting, declining, or ceasing to act as such Commissioner, Arbitrator, or Umpire, another and different person shall be appointed or named as aforesaid, to act as such Commissioner, Arbitrator, or Umpire, in the place and stead of the person so originally appointed or named as aforesaid, and shall make and subscribe such declaration as aforesaid.

Such Commissioners shall proceed to examine the coasts of the North American provinces and of the United States embraced within the provisions of the first and second Articles of this Treaty, and shall designate the places reserved by the said Articles from the common right of fishing therein.

The decision of the Commissioners and of the Arbitrator or Umpire shall be given in writing in each case, and shall be signed by them respectively.

The High Contracting Parties hereby solemnly engage to consider the decision of the Commissioners conjointly, or of the Arbitrator or Umpire, as the case may be, as absolutely final and conclusive in each case decided upon by them or him respectively.

ARTICLE II.

It is agreed by the High Contracting Parties that British subjects shall have, in common with the citizens of the United States, the liberty to take fish of every kind except shell fish, on the eastern sea-coasts and shores of the United States north of the

36th parallel of north latitude, and on the shores of the several islands thereunto adjacent, and in the bays, harbours, and creeks of the said sea-coasts and shores of the United States and of the said Islands, without being restricted to any distance from the shore: with permission to land upon the said coasts of the United States and of the islands aforesaid for the purpose of drying their nets and curing their fish, provided that in so doing they do not interfere with the rights of private property, or with the fishermen of the United States in the peaceable use of any part of the said coasts in their occupancy for the same purpose.

It is understood that the above-mentioned liberty applies solely to the sea fishery, and that salmon and shad fisheries, and all fisheries in rivers and mouths of rivers, are hereby reserved exclusively for fishermen of the United States.

ARTICLE VI.

And it is hereby further agreed that the provisions and stipulations of the foregoing Articles shall extend to the Island of Newfoundland, so far as they are applicable to that Colony. But if the Imperial Parliament, the Provincial Parliament of Newfoundland, or the Congress of the United States, shall not embrace in their law enacted for carrying this Treaty into effect, the Colony of Newfoundland, then this Article shall be of no effect; but the omission to make provision by law to give it effect, by either of the legislative bodies aforesaid, shall not in any way impair the remaining Articles of this Treaty.
