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FRYE



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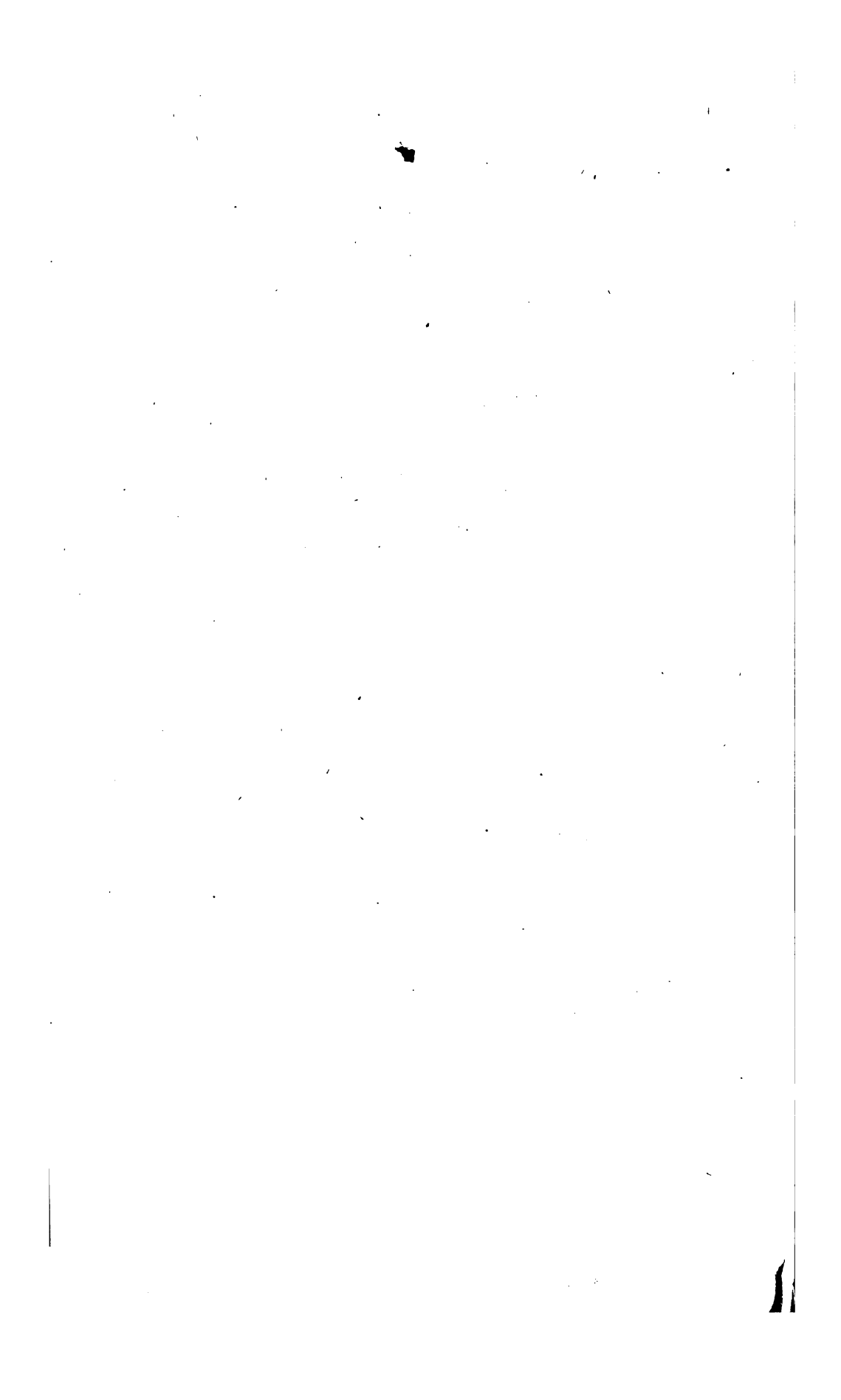
HON. WILLIAM P. FRYE,

OF MAINE,

IN THE SENATE OF THE UNITED STATES,

Tuesday, May 29, 1888.

WASHINGTON, D. C.:  
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1888.



The Fisheries Treaty.

SPEECH

OF

HON. WILLIAM P. FRYE,

OF MAINE,

IN THE SENATE OF THE UNITED STATES,

Tuesday, May 29, 1888.

The Senate having under consideration the proposed fisheries treaty with Great Britain—

Mr. FRYE said :

Mr. PRESIDENT: This is not a trifling question before the Senate to-day. It involves the dignity of a great republic and the rights of its citizens. It cannot be belittled by localization; it cannot be dwarfed by the Senator from Alabama [Mr. MORGAN] charging that it is a New England industry of but little account; that Yankee fishermen alone are interested; that the wrongs to be righted are only up in the Northeast. It cannot be obscured by the President of the United States intimating that in event this treaty is rejected he will resort to the law which Congress has enacted, not as the friends of the fishermen would require, not as they would advise, but in such way as would place in jeopardy and might destroy the business interests of the great North all along the border; nor by the President writing to his district attorney in Massachusetts and calling his attention to the fact that there have been violations of the law in the importation of Canadian sailors, when thousands of railroad laborers have been imported within the last two years into New England, complaint has been made to his Attorney-General and evidence has been filed before him, presumably known to the President, and yet he preserves a profound silence; nor by proclamations by the honorable Secretary of State, nor by interviews furnished to the *Boston Herald*, nor by letters written by him to the Manhattan Club in New York when entertaining the distinguished diplomatist from abroad, in which he declared that every man who opposed the ratification of this treaty is either controlled by personal prejudice or partisanship or profound ignorance; nor by Administration papers flippantly and jeeringly suggesting that they had better buy up the Yankee fishermen and their smacks.

Mr. President, the question before the Senate is, shall citizens of the United States, fishermen if you please, but citizens of the United States still, be protected against injustice, wrong, and outrage, inflicted by a neighboring nation emboldened to it only because it rests under the agis of a mighty power beyond the seas? That is the question to which the Senate must address itself now. Even these Yankee fishermen have entitled themselves to the respect of the United States Senate, to a lofty niche in the temple of Liberty.

Why, Mr. President, they did more to wrest from France these very waters outlined here on the two maps on the wall behind me than all the rest of the whole British Empire together, and in the war for our independence their services cannot be overestimated. They fought on every deck of every ship that Paul Jones commanded. Take that picture, drawn by General Knox, of the fishermen of Marblehead—perhaps entitled to contempt in the United States Senate because they are fishermen of Marblehead—see our Revolutionary army on the banks of the river on that bitter cold night; before them a foaming, rushing, mighty stream; high cakes of ice crashing together; Washington looking on in dismay, and finally demanding "Who shall take this army across the river?" and the fishermen of Marblehead, the fishermen of Marblehead alone to a man, stepping forward and piloting the army across the perilous pathway to glory, power, and independence.

In the war of 1812 the victories which we won on ocean and on lake were due largely to the prowess, the skill, and the patriotism of the Yankee fishermen. And in that last terrible struggle of this Republic for her life there was not a single deck of an American ship unmoistened by their blood.

Do Senators think that men who have made a history like this are entitled to be treated with contempt? Do Senators think that there is no duty on the part

of this great Republic to listen to their cry? When they ask for bread will you give them a stone; for fish, a serpent?

If we have another war it will be on the ocean. Who will man our ships? Eighty-five per cent. of the sailors on ships in the foreign trade are foreigners, owing the Republic no allegiance, willing to render her no service. These fishermen are 80 per cent. American citizens, 65 per cent. American birth; inured to hardship, constantly exposed to the perils of the sea, brave, skillful, patriotic, they would respond to a man to the bugle-call of the country. Why should not the Republic stand by them when they are in peril, when they are suffering wrong at the hands of a foreign power?

Why, Mr. President, the greatness of a nation consists largely in its jealous care for its citizens, humble though they may be. King Theodore in 1863 or 1864 took Captain Cameron, an Englishman, prisoner, incarcerated him in the fortress of Magdala, on the top of a mountain 9,000 feet above the level of the sea. The Queen of Great Britain demanded his release; the King refused. Great Britain embarked at Bombay 4,000 British soldiers and 10,000 Sepoys, landed them on the coast, marched them 400 miles through swamps and morasses, under a burning sun, led them up the mountain heights, gave battle to the enemy, battered down the wall, took that citizen like a brand from the burning, carried him down across the swamps and marshes, placed him on board a ship, and carried him home to England. What a magnificent exhibition of power for just one citizen! It cost Great Britain millions and millions of dollars; it made General Napier, Lord Napier of Magdala.

In the presence of such an incident one is so lost in admiration as almost to forget the injustice and the wrongs that same great country inflicts day by day upon her own citizens within her own borders.

There are Senators here now listening to me who can remember how their pulses quivered when they read that modest report sent by Commander Ingraham from Smyrna: "I weighed my anchor; I drew to within half a cable's length of the Austrian brig of war. Near her was a 10-gun schooner and two armed merchantmen ready to assist her. I ran up the American flag, shotted my guns, and demanded this poor fellow, who had no more American citizenship than the filing of his intention to become one, and he was surrendered."

I tell you, Senators, incidents like that kindle the blood in every patriot's heart, and yet neither country did more than her duty required. The country that neglects its citizen; that permits him to be outraged by a foreign power, has no right to call on him when her hour of peril comes.

Now, Mr. President, I declare, and I do it in all humility, that this great, powerful Republic has shamefully neglected the rights of these American fishermen, has refused to listen to their cries, has given them a stone when they asked for bread again and again.

After the war of independence we met to make a treaty of peace. There were bold, courageous men in the land who loved their country and were jealous for its honor. The result was a treaty, by the terms of which every right of every fisherman, every right of this feeble Republic was provided for; ay, more, Great Britain went even to the extent of surrendering to us the right to fish on banks that were from 40 to 300 miles from the shore. Generous Great Britain giving to us that over which she had no more control than she had over the waters of mid-ocean! She never surrendered that which was hers, nor one jot nor one tittle of it, without adequate and fully adequate compensation. But we received then in our weakness, in our infancy, all that any patriot would ask.

But the arrogance of Great Britain displayed in the conduct of those negotiations continued, and ere long we found her seizing our ships on the seas, searching them, taking off our sailors, compelling them to do her service until, in 1812, we once more declared war against her, fought the war through, and again were victorious. Again, when the war was over, we met to make a treaty of peace and Great Britain said: "You have forfeited by the war every right you ever had in these northeastern waters." We had men there, patriots, men of honor, and courage, who promptly, distinctly, and emphatically declared: "If you undertake to make that a provision in this treaty of peace, there shall be no peace." The result was that the treaty was entirely silent as to the fishery rights.

I call attention now, Mr. President, to the treaty of 1818, the provisions of which, I suppose, have been in force since the abrogation of the fishery clauses of the treaty of Washington. In the negotiation of this England evinced neither magnanimity nor sentiment, and our commissioners neither sagacity nor courage. The times were not propitious for us. Waterloo had been fought; the allies had entered Paris; Napoleon had abdicated, and England was arrogant. We deliberately surrendered our fishery rights, and a blow was dealt that industry from which it has never recovered. By its terms England laid the foundation for cease-

less demands, and invited her colonies to the enactment of penal laws and the commission of outrages in their name which would disgrace any civilization.

I call attention to Article I:

And the United States hereby renounce forever any liberty heretofore enjoyed or claimed by the inhabitants thereof to take, dry, or cure fish on or within 3 marine miles of any of the coasts, bays, creeks, or harbors of His Britannic Majesty's dominions in America, not included within the above-mentioned limits.

with a proviso that our fishermen might enter these bays, etc., for shelter or to repair damages, to purchase wood and take water, but for no other purpose whatever.

What did we secure by this treaty? It provided for a partition of rights; it provided that we should surrender, I should say, two-thirds of all the waters our men had fought for and wrested from France. But we did have courage enough to insist that if our fishermen were driven by stress of weather into any of these surrendered waters they should have shelter; if out of wood, they might purchase it; if their water-tanks were empty, they might fill them; if their vessels were out of repair, they might repair them, but we should resort to these waters "for no other purpose whatever."

Time wore on, the United States grew in power, in population, in importance, immensely in the extent of our market. Great Britain, and Canada, too, looked at that market with avaricious eyes, and deliberately determined to possess themselves of it. There was no hesitation, no question of right, no regard for decency, no obligation of hospitality, but "Your market we propose to have." What for? So that the Canadian fishery fleet may be doubled or quadrupled, so that the Canadian sailors may be increased four, six, or eight times, so that when Great Britain needs sailors she shall know where to find the bravest and the best in all the wide world.

So Canada resorted to every conceivable outrage, perpetrated every imaginable wrong and injustice; drove our vessels to sea in storms when they had sought shelter, seized and searched them on the high seas even; placed armed men on board, practically making captives of their captains and crews in their own vessels, the American flag flying over them; tried them in the colonial courts on the testimony of colonial witnesses, and confiscated one after another; and this went on until indeed the perils of the sea on these Grand Banks were no greater than the dangers of the law on the shore.

Mr. Van Buren sent an American fleet into these waters. Mr. Franklin Pierce sent men-of-war there, and in the presence of our armed vessels our fishermen were protected in their rights, but when the vessels were withdrawn then the outrages commenced again. Great Britain sent a fleet into these waters to overawe the United States of America. She accomplished her purpose. She has a wonderful facility for doing that with us. She secured the treaty of 1854, known as the reciprocity treaty, under which we were permitted to fish within her waters, her fishermen in our waters, and free entry to our markets for their fish was granted—all they wanted, and just what the Senator from Alabama [Mr. MORGAN] and the Senator from Delaware [Mr. SAULSBURY] and the Senator from Ohio [Mr. PAYNE] within two days have said on the floor of the Senate they shall have again if we do not ratify this treaty.

Mr. MORGAN. I take the liberty of denying that I said that.

Mr. PAYNE. The Senator from Maine will allow me a word.

The PRESIDING OFFICER (Mr. PALMER in the chair). Does the Senator from Maine yield?

Mr. FRYE. I do.

Mr. PAYNE. I have not said any such thing on the floor of the Senate.

Mr. FRYE. And I suppose the Senator from Alabama will say the same.

Mr. MORGAN. No; I did not say what the Senator alleges that I said.

Mr. FRYE. I say that I listened to those three Senators and certainly heard each one of them give an intimation that unless this treaty was ratified we must look out lest free fish were incorporated in our tariff laws, and the Senator from Alabama asks me if that would not settle this question, and I assured him that it undoubtedly would.

Mr. MORGAN. The Senator from Maine first makes an assertion as to what I said in executive session—of which there is no record of course—that I declared that in the event this treaty was not ratified Great Britain would make war upon the United States, that I made the threat. He then qualifies it and contradicts it, and says he understood me as intimating such a thing might take place. I leave the Senator with his own declaration as my vindication.

Mr. FRYE. I say the Senator talked about free fish, and asked me if that would not solve the question.

Mr. MORGAN. Because I had frequently heard the Senator from Maine say that it would.



Mr. FRYE. Now, does the Senator stand in his place and say that he did not intend that what he said about free fish should be regarded by us as an intimation that fish should be put on the free-list if the treaty was rejected?

Mr. MORGAN. I did not think it ever liable to happen, and I think you are opposed to it.

Mr. FRYE. Did not the Senator intend it for that purpose?

Mr. MORGAN. For the purpose of doing what—putting fish on the free-list?

Mr. FRYE. For the purpose of covertly making a threat that it would be done if the treaty was not ratified.

Mr. MORGAN. I said this, and I say it here in the Senate again and the Senate have all heard me say it, that the Senator from Maine himself had asserted on frequent occasions that putting fish on the free list, admitting them free of duty into this country, would solve the whole of this difficulty. I said, "Oh, no," that I had not made up my mind to vote for a proposition of that kind, but there were certain considerations that weighed in favor of fishermen which I thought did not apply to any other class of people at all, and I went on to define what they were. I admonished that side of the Chamber, and I respectfully do it again, that if you present the question to the people of the United States of going to war with Great Britain against the question of letting in fish free of duty, you have a dangerous issue before you. That is all.

Mr. FRYE. Precisely; and I ask no different reply than that from the Senator from Alabama.

Mr. MORGAN. You have got it now. That is all right.

Mr. FRYE. I say they obtained by the treaty of 1854 all they were after—free fish. That treaty continued in existence for twelve years. Our fleet in that time lost 100,000 tons and more than two thousand men; and their fleet increased over 160,000 tons, and their men, sailors, over three thousand in numbers. When the twelve years had passed we abrogated that treaty by more than a two-thirds vote in both Houses.

Mr. President, the moment the treaty was abrogated Canada adopted the license system. The first year she placed a tax upon our vessels of 50 cents a ton, to do what? Fifty cents a ton to enjoy every commercial privilege we ever asked for. Fifty cents a ton to fish in every foot of British waters at a time when the best mackerel-fishing in the whole world was found there, at a time when we only fished with hook and line, and when most of our mackerel were taken in the Gulf of St. Lawrence, the Bay of Chaleurs, Fortune Bay, and these other bays; and yet the Senator from Alabama in his three days' speech called our attention to the generous, magnanimous, magnificent present Great Britain had just proffered us in the *modus vivendi*, and the President of the United States bowed before Great Britain in humble thankfulness and gratitude that she bestow this immense favor upon our people. And what is the *modus vivendi*? You pay one dollar and a half a ton, and you shall have what? The right to fish in our waters? Oh, no, not all. You shall have commercial privileges which you are entitled to to-day under the laws of Great Britain and the United States, commercial privileges which Secretary Bayard has insisted for two years we were entitled to, commercial privileges which their vessels have enjoyed in every part of the United States for the entire two years during which they have been committing these outrages on us.

Generous *modus vivendi*! They found that some of our fishermen paid the 50 cents, and next year they doubled it; a few paid that, and the next year they doubled it again; then the fishermen refused to pay. Once more the dogs of war were let loose; once more commenced these outrages; once more the poor, helpless fishermen, driven in a storm upon those shores, were treated with every conceivable act of inhumanity. They continued this course in season and out of season; there was no let-up; and the Congress of the United States was just on the point of passing a retaliatory law in response to a memorial from the fishermen of New England when once more we resorted to diplomacy in the treaty of 1871.

The treaty of 1871 was not to settle fishery difficulties primarily. It was entered into for what was regarded as a larger purpose even than that. We had a terrible conflict, and Great Britain clearly desired that this country should be cut in twain, that the experiment of a republic should fail forever. She wanted the Southern market, and without the slightest hesitation, without any regard for right, she went for it, knowing that she could only obtain it by dividing the Republic. She hastened to recognize belligerent rights on the part of the South. She joined with France in undertaking to build up a monarchy in Mexico which should be a perpetual menace to the Republic. She gave us ten days' notice in which to return Mason and Slidell, and started troops of war for Canada. She built cruisers, armed them, equipped them, manned them, sent them out upon the ocean to prey upon our commerce and to drive it from the seas. She prolonged the war at least two years from her unfriendliness to us, to us as a republic. When the war was over,

and General Grant was President of the United States, our people who had been damaged by her cruisers sent in claims, and the President presented them.

Great Britain refused to pay, and our mighty, peace-loving President sent a message to his people saying to them, "Send me your bills and I will collect them in time;" and then negotiations for a treaty were entered upon, and the Alabama claims were its foundation. The fishery matter was subsidiary. The treaty was made finally; in it an article providing that if there was any balance due Canada for the privileges given us—the right to fish in her waters—we should pay, and that commissioners should be appointed to determine how much the payment should be. The treaty also provided that Canadian fish should have free entry to our markets. This of course, for it was the one thing Great Britain and Canada coveted.

The fishery part of the treaty was due to Canadian outrages, while the Alabama claims part came from England's own acts of injustice. That treaty endured for twelve years. But before going on with that, I wish to go back a bit. I said we appointed a commission, and I will say a few words in relation to that. We had for a commissioner a weak old man, no more fit to cope in diplomacy with Sir John A. Macdonald than Secretary Bayard was with Joseph Chamberlain and Sir Charles Tupper.

Mr. MORGAN. Who appointed him?

Mr. FRYE. A Republican President. The umpire appointed was Mr. Delfosse, a Belgian, practically controlled by Great Britain, as she well knew when he was appointed. They went to Halifax, as these plenipotentiaries sat here. They investigated and found that we must pay Great Britain or Canada \$5,500,000 as the balance in her favor under the treaty. Mr. Delfosse determined it. He was the umpire with the casting vote. We paid it, but after paying it and within a very short time asked Great Britain to let us abrogate that treaty, and she refused, though we had paid the \$5,500,000 for the whole twelve years. She still had a very good bargain, and would not give it up.

What more? During the twelve years we remitted in duty to Canada over \$6,000,000, making \$11,500,000 we paid for that attempt at diplomacy. What did we gain from it? We, during the twelve years, captured in British waters about \$700,000 worth of fish, and to catch them cost us \$1,200,000. The last three years of the treaty there were not a dozen American fishermen in British waters fishing, notwithstanding we had a right to go where we pleased.

Time fortunately rolled on, and the day came when notice could be given to terminate this iniquitous treaty so far as the fisheries were concerned. I believe I had the honor to recognize the fact that the day had come, and offered a resolution in the Senate instructing or requesting the President to give the requisite two years' notice for the abrogation of the fishery clauses. It passed the Senate unanimously. The President gave the notice, and in 1885, on the 1st day of July, we had no treaty for the fisheries except that of 1818; all were abrogated.

If we had taken a manly course at that moment, if this great Republic of 60,000,000 people had simply stood on its rights then and there, there would have been peace, there would have been quiet, all the rights we were entitled to we should have been enjoying to-day; but Secretary Bayard could not permit it. He has an itching palm for diplomacy. It delights his very soul to be engaged in a diplomatic correspondence. He was profoundly ignorant of the fishery matter then, as could be proved without the slightest difficulty if I had the time to do it. I suppose he would admit it himself. There was a gentleman here, Sir Lionel West, the British minister, who was not ignorant, and he easily persuaded Secretary Bayard, honestly, too, so far as the Secretary was concerned, that it would be six months before Congress met, that it was right in the midst of a fishing season, that there would be conflict between the fishermen of the United States and of Canada, and very likely that might lead to a war with Great Britain, and he said, "What can I do? Anything you say," and he made a *modus vivendi*, clearly without any right to do it under the Constitution, which gave us the right for six months to fish in the British waters and them the right to fish in ours for the same length of time. But that was not the nub of the arrangement. It was this:

And the President of the United States shall recommend to Congress the appointment of a commission to settle fishery rights.

The President of the United States, in obedience to the behest of his Secretary of State, sent in his message to Congress the moment it met, recommending that Congress provide for a commission to settle fishery rights. I believe I then had the honor to offer another resolution that it was the sense of the United States Senate that we wanted no commission to settle fishery rights. I suppose the Senate then believed it had enough of treaties, that the last one had given us sufficient not to desire another right away. That was sent to the Committee on Foreign Relations, reported unanimously, came back to the Senate, was discussed, deliberately acted upon, and unanimously passed, I believe.

Mr. MORGAN. That was not what was declared.

Mr. FRYE. I am not giving the exact language of the resolution; I am only giving from memory the spirit of it. If the Senator has the exact language I am entirely willing to adopt it.

Mr. MORGAN. It was entirely the other way. All that was declared in the resolution was that Congress had no right to appoint such a commission.

Mr. FRYE. That cannot be so. I drew the resolution myself.

Mr. MORGAN. The Senator has forgotten about it.

Mr. FRYE. I have not forgotten about it. I know that is not a correct statement of the resolution I offered.

Mr. MORGAN. Will the Senator allow me to read it?

Mr. FRYE. I have it for myself now. I offered the following resolution.

Mr. MORGAN. I am talking about what the Senate passed.

Mr. FRYE. The resolution is as follows:

*Resolved*, That in the opinion of the Senate the appointment of a commission, in which the Governments of the United States and Great Britain shall be represented, charged with the consideration and settlement of the fishing rights of the two Governments on the coasts of the United States and British North America, ought not to be provided for by Congress.

Mr. MORGAN. Yes; "by Congress."

Mr. FRYE. There is no stress on that "by Congress," and nobody ever dreamed that the words "by Congress," were of any importance.

Mr. MORGAN. I will take the liberty of saying to the Senator here that that was the express ground on which it was placed in the debate; that it was the President's constitutional right to conduct negotiations, and that Congress had no right to settle questions that belonged to diplomacy. The resolution would not have gone through in any other form.

Mr. FRYE. For six months we had peace because we had the *modus vivendi*, but after that resolution was passed by the Senate the peace was at once interrupted, and in the next year and a half one hundred and twenty American vessels were seized in those waters on every conceivable pretense; they were driven to sea in storms; they were refused hospitality; they were treated so barbarously that your Democratic Secretary of the Treasury declared the treatment to be "brutal;" they were so brutal that every Senator here was at once an American; they were so brutal that every member of both Houses of Congress was an American, and party lines disappeared in the twinkling of an eye.

Now, in this open session, addressing the people as well as the Senate, I feel it necessary to reproduce a few of the outrages committed by Canada on our fishermen. I am not certain that if Senators on that side of the Chamber listen to the recitals once more they will feel conscience-stricken and vote to reject the treaty. They would have done it then. Now, see what Canada was doing to us in 1886. In the month of July, as the American schooners Shiloh and Julia Ellen were entering the harbor of Liverpool, Nova Scotia, the Canadian cruiser Terror, Captain Quigley, fired a gun across their bows to hasten their coming to, and placed an armed guard on board each vessel, who remained there until the vessels left the harbor, and that was when they were more than 4 miles from the shore and under no pretense whatever of fishing. Seventy-five years ago, if that had not been apologized for, there would have been a declaration of war.

More than 4 miles from shore an armed guard put on board, our captain and our sailors made prisoners of war on an American vessel with the American flag at the masthead.

The schooner Rattler, of Boston, fully laden and on the voyage home sought shelter from stress of weather in Shelburne Harbor, Nova Scotia, was compelled to report at the custom house and have a guard of armed men kept on board, there being no suspicion that she was intending to fish within the 3-mile shore-line. Sixty million people, a great, magnificent Republic, and a little country of 5,000,000 people putting an armed guard on board under the American flag without any suspicion of any violation of the law!

In August the Mollie Adams, of Gloucester, on the homeward voyage, full laden with fish from the fishing banks was compelled to put into Port Mulgrave for water, and duly made report and entry at the custom-house. The water-tank had burst on the voyage by reason of heavy weather. The captain asked leave to purchase two or three barrels to hold a supply of water for the crew on their homeward voyage of about 300 miles. The application was refused and his vessel threatened with seizure if barrels were so purchased. In consequence the vessel was compelled to put to sea with an insufficient supply of water, and, in trying to make some other port to obtain a supply, encountered a severe gale, which swept away a deck-load of fish and destroyed two seine boats.

Is any comment necessary? If that vessel under the same circumstances had penetrated any part of the waters of the Fiji Islands would they have refused her a tank of water?

Again: In July the schooner A. R. Crittenden, of Gloucester, on the homeward voyage from the open-sea fishing-ground, while passing through the Strait of Canoe, stopped at Steep Creek for water. The customs officer at that place boarded the vessel and notified the captain that if he took in water his vessel would be seized. He was compelled to sail without obtaining the needed supply and to put his crew on short allowance during the homeward voyage, notwithstanding the treaty of 1818 gave him a clear right to take water, and notwithstanding the dear Lord has given us all the right to take water—"a cup of cold water." Driven to sea because the poor fellow wanted water!

In October the collector at Shelburne, Nova Scotia, refused to allow Captain Rose, of the steamer Laura Sayward, to buy sufficient food for himself and crew to take them home, and retained his papers unnecessarily, thus compelling him to put to sea with an inadequate supply of provisions. The crew was put on half rations. Why, you may go to one of the islands off the coast of China and say to those half-civilized people, "I am out of food, give me something to appease my hunger;" and you would not expect to find men barbarous enough there or anywhere else in the wide world to refuse. Yet these men were compelled to put to sea on short allowance.

In October Captain Tupper, of the schooner Jennie Seaverns, of Gloucester, was prevented by Captain Quigley, of the Canadian cutter Terror, from landing to visit his relatives in Liverpool, Nova Scotia. His relatives were forbidden to go on board his vessel by Captain Quigley, and an armed guard was placed on board to insure that he should not see his relatives nor they him, making him practically a prisoner on his own vessel with the American flag floating at its masthead. No charge that he was fishing, no charge that he was violating the law.

Now take the Novelty. She is a fishing steamer, I should say of about 200 tons burden. She had been out to the Banks fishing. She came into Canadian waters, not to fish there. Her coal fell short; she went in to purchase; the officer refused to allow her to do so; the captain appealed to the terms of the treaty; the reply was, "The treaty said 'wood,' not 'coal.'" And they would not let him have any coal. He appealed to the authorities in Ottawa, to whom a right of appeal is reserved in this wonderful treaty now under consideration, and the authorities at Ottawa replied that the treaty said "wood," and "you cannot have coal." They threatened seizure, and the captain went home, giving up his trip entirely. Wood, not coal! There was not a vessel sailed the sea in 1818 that did not use wood, and hardly a vessel sails to-day that does. Fishermen do not use wood; they all use coal; and yet because the treaty of 1818 said "wood" they could not buy any other kind of fuel; and in this treaty which the President has sent here to the Senate, and heralded as generous and equitable, our commissioners have left "wood" to stand, and to-day, notwithstanding everybody uses coal, no one can get any in the Dominion of Canada for his fishing vessel. They might have obtained that concession for fuel, one would have supposed.

Take the case of the Caroline Vought. She was a fishing schooner from Boothbay, Me. In August, being on mackerel grounds, short of water, she ran into the port of Paspébiac, New Brunswick. A government steamer or cruiser was there. Captain Reid, ordered on board, stated his necessities; was directed to leave at once on penalty of seizure. Fortunately a storm came on and he caught sufficient rain-water to save his crew from death. He carried the American flag.

Now, take another case, and this is a very remarkable one, that of the Mollie Adams, commanded by Captain Solomon Jacobs. When off Mal Peque, Prince Edward's Island, in a heavy blow she fell in with the Canadian schooner Neekelita in distress. The Mollie Adams had her full load of fish. She stopped as humanity demanded; she rescued seventeen men from the British schooner, took them on board, placed what material on the schooner she could save for them, what clothing they could, and sailed for a Canadian port. She was three days about this humane work, feeding seventeen men, British, besides her own. Captain Jacobs then ran into the harbor of Mal Peque. The captain of the Canadian cruiser Critic, which was lying there, boarded the Adams and was informed of the facts of the wreck and the condition of the crew. He refused to lend any assistance whatever.

Captain Jacobs asked permission to land some of the wrecked material he had on board, but was refused by the captain of the cruiser, who told him if he did so he would seize him. None of the people on the shore would take the wrecked crew. They were still on Captain Jacob's hands. Captain Jacobs finally took from his own pocket \$60 and gave it to the crew to get home with.

But there is a bar in Mal Peque where a vessel drawing over 14 feet of water cannot pass. Captain Jacobs's vessel drew 14 feet, and he was compelled to lay there some eight or ten days until a tide would come that should be sufficient to float his vessel over. The result was that when the opportunity came for Captain Jacobs to sail he had not a pound of flour on his vessel. These British sailors had

eaten it all up. He put into Port Medway and asked permission of the collector to purchase half a barrel of flour or enough provisions to take his vessel and crew home. This was absolutely refused, and the collector threatened to seize his vessel if he purchased anything whatever. Captain Jacobs left without obtaining anything, went home, a distance of 300 miles, on short rations, and the last day he had not a single thing on his vessel for his crew to eat.

In the nineteenth century, nineteen hundred years almost after our dear Lord was born, by a country that claims to be civilized and Christianized, this terrible act of inhumanity was committed, and committed for but a single purpose, to get our markets and free fish; and the Senator from Alabama may wish to give it to them under stress like that.

One more case. I am not citing these cases because I think the Senators on the other side have never heard of them. I am citing them because I wish the American people to weigh your treaty with the threats and the outrageous acts which produced it. Take the Marion Grimes. In October the American vessel Marion Grimes, of Gloucester, Mass., Captain Landry, put into Port Shelburne in a terrible gale, anchored in the outer port, anchored in the first place she had safety in, 6 or 8 miles from the custom-house port, without the slightest intention of going into that. She laid there nearly the whole night. The storm abated. She hoisted her sails and started out for sea, when Captain Quigley of the cruiser Terror, fired a shot across her bows, brought her to, went on board, took possession of her, told her that she must go to port, make entry, and report. He took her 6 miles out of her way when she had not been within 3 miles of the shore, and Captain Quigley knew that she was in there to escape the storm and for no other purpose whatever. He told them if she did not go in and report and enter she should be fined \$400. She was fined \$400 as it was, and the money was deposited to pay the fine.

Mr. PAYNE. It was remitted afterwards by the court in Canada.

Mr. FRYE. I doubt it. I do not know.

Mr. GRAY. Yes, it was.

Mr. PAYNE. Most of them have been remitted.

Mr. FRYE. No, sir; most of them have not been remitted.

Mr. PAYNE. I hope the Senator will be fair when he states these cases. He omits to state that the several acts were not committed by the direct authority of the Government of Canada, and that when they were brought before the Council of Canada in every instance they were either apologized for or remitted, so that the Government was not responsible for any act of outrage except under the general customs laws.

Mr. FRYE. There is not a case that I have here that the Government of Canada is not responsible for, and there is only one that she has ever apologized for.

Mr. PAYNE. We shall see.

Mr. FRYE. We shall see about it. I know the facts about as well as the Senator from Ohio. I am pretty familiar with them.

The Marion Grimes was fined \$400. This fine was imposed by the urgency of Captain Quigley, of the Terror, and Captain Landry was informed that he would be detained at the port of Shelburne until a deposit to meet it was made.

While the vessel was in custody of Captain Quigley, Captain Landry hoisted the American flag, hoisted it on an American vessel, on his own, as he had a right to do, and Captain Quigley ordered this American citizen to haul it down.

Mr. PAYNE. Please follow it up.

Mr. FRYE. Do not interrupt me now. I decline to be interrupted.

Mr. PAYNE. That is not fair.

Mr. FRYE. Captain Quigley ordered the American flag hauled down, and it was hauled down. Then, shortly afterwards, when Captain Landry was ready to sail, he hoisted the American flag once more on that American ship, as he had a right to do, and Captain Quigley came on board and with an oath took the hal-yards in his own hand, hauled down your flag, and you to-day, sir, are apologizing for him in the United States Senate. [Manifestations of applause in the galleries].

Mr. PAYNE. That is not true.

The PRESIDING OFFICER. The galleries must preserve order.

Mr. FRYE. The Senator wants me to say that an apology was made for that. A weak apology, readily accepted by a weak Administration, was made, but Captain Quigley kept his office as captain of the ship. He sailed afterwards through those waters and seized vessels as he met them bearing the American flag. Seventy-five years ago, if Captain Quigley had not been immediately displaced by his Government there would have been a declaration of war. We made the declaration of war in 1812 for no offense that was any greater than that. They seized our vessels, I admit; they searched them and took our sailors; but they seized this vessel without right of law, and they tore down with their own hands the emblem of the sovereignty of a republic of sixty million people.

These were the outrages the American people were invited to in 1886. What was the result? You instructed your Committee on Foreign Relations to investigate this fishery matter. They investigated; they reported in due time a law for the protection of American citizens. It was reported to the Senate; the Senate considered. It was a retaliatory law; it is just as well to call it so. The Senate considered it, deliberated upon it, discussed it. The Senator from Maryland [Mr. GORMAN] thought it was not sufficient. He proposed an amendment. He thought that under the circumstances we ought to have a law by which we could declare in a moment of time absolute non-intercourse with Canada. There was not a Senator in the American Senate who dreamed of voting against that law. There was not a Senator who did not believe that it ought to be enacted and enforced.

The only difference of opinion was that the law did not go far enough in the opinion of some Democratic Senators.

The Committee on Foreign Affairs of the House of Representatives, Democratic in its make-up, with a Democratic chairman, reported another retaliatory bill at the same time, more drastic, more far-reaching, in which absolute non-intercourse could be declared in the twinkling of an eye. It was reported to the House. A distinguished Senator, sitting right here by me [Mr. REAGAN], advocated the passage of that, or else of the earlier law some six months before, and while he is not a prophet nor the son of a prophet he saw with a vision then of an inspired one, for he told that House we wanted no diplomacy, that every time we had resorted to it—I am not giving the Senator's words—we had been cheated by Great Britain; and certainly if we resorted to it once more we should be cheated once more. It was a prophet's vision. It has been resorted to once more, I say to the Senator from Texas [Mr. REAGAN], and once more we are cheated.

That bill passed the House of Representatives with only one dissenting vote. The Senate was more conservative; believed then, as the Republican Senators believe now, that all that was necessary to stop these outrages was just to say to the Canadians: "If you do not let our vessels go into your ports we shall not let your vessels come into ours." That is all that the Republican side of the Senate wanted at any time. It is all that they ask now; and if that could be granted to-day it would stop the troubles on the Canadian coasts.

A committee of conference was had, and finally we reported a bill. It passed both Houses with one dissenting vote in each, the one in the Senate only by a mistake. That law provided that if Canada did not allow our vessels to go into her waters, the President should proclaim that they could not come into ours. That is all there was about it; all we wanted; all that we asked. The law went further, and allowed the President to go further. I admit that he can take that law as it stands on the statute-book, if he pleases; disregard the advice of all the men who understand this matter and what is required, and absolutely stop all intercourse by car or otherwise between us and Canada, and jeopardize the business interests of the whole northern border.

There is one thing he ought to do if this treaty is rejected; use so much of that law as in the judgment of an honest man, not a partisan, in the judgment of an honest President, ought to be used to protect the people in those northeastern waters from outrage and injustice.

He in fact proceeded not at all under the law, though the outrages continued; on the contrary, the first thing we knew plenipotentiaries were appointed to make a treaty with Great Britain about these fishery matters, Mr. Bayard, Mr. Putnam, and Mr. Angell on our part. They proceeded to consider the question submitted. They sat here in Washington month after month, and I am not afraid to declare that they never consulted any fisherman or anybody who knew about the fisheries industry or was connected with it from the beginning of that negotiation down to its very close, though the American Fishery Union was here by an agent every day during the progress of the negotiations.

Mr. GRAY. You are mistaken, nevertheless.

Mr. FRYE. Can the Senator inform me what fishermen they consulted? Will he do so?

Mr. GRAY. No; I will not now. I cannot give you the names; but I shall do so when the time comes.

Mr. FRYE. Did they consult the Fishery Union, which was located here in Washington during the whole time?

Mr. GRAY. I cannot answer exactly as to that.

Mr. FRYE. They considered these questions for month after month here in the city of Washington. Mr. Chamberlain came over here from England, a perfect adept in the arts of diplomacy. He brought two other gentlemen as skilled as he. Sir Charles Tupper was here, one of the shrewdest and most cunning men on the American Continent; a man who knew everything that Canada wanted; knew it himself as a boy knows his A B C's; and what followed? I never heard of any

New England Representative or Senator being called in consultation or asked about this matter by these plenipotentiaries.

Mr. PAYNE. Will the Senator allow me?

Mr. FRYE. With pleasure.

Mr. PAYNE. I should like to know what the Senator has to say about Mr. Putnam?

Mr. FRYE. Why should I say anything about Mr. Putnam?

Mr. PAYNE. Was he not one of the negotiators?

Mr. FRYE. Yes. Why should I say anything about him?

Mr. PAYNE. Why should you not? You say the commission did not consult any person who knew anything about the fisheries. I am told that Mr. Putnam was very well acquainted with all that class of persons; that he had acted as attorney in suits for fishermen; and that probably no man in New England knew the fishery question better than Mr. Putnam, who is a lawyer of very high standing.

Mr. FRYE. That induces me to say something about Mr. Putnam. I think I know him a great deal better than the Senator from Ohio, and I think I esteem him a great deal more highly than the Senator does. Mr. Putnam and I have been close and warm friends for years. I had the honor to recommend him for circuit judge to a Republican President, and the Senator from Massachusetts [Mr. HOAR] joined with me in the recommendation. So the Senator dares not charge me with undertaking to do any injustice to Mr. Putnam.

Mr. PAYNE. No, I do not charge it, but you insinuated it.

Mr. FRYE. In regard to Mr. Putnam's knowledge of the fishery business I did not say anything. I said the commission never consulted any man who was familiar with the fishery question, nor any Senator or Representative from New England. I do not admit that Mr. Putnam was a man who knew more about the New England fisheries than any other man, and, in the presence of the treaty he agreed to, I deny it emphatically.

Mr. PAYNE. He was counsel in the David J. Adams case.

Mr. FRYE. Ah, yes; Mr. Putnam was counsel in the case of the David J. Adams, where one single question was presented—that of the right to buy bait. He was employed by the Democratic Administration as its attorney. How much general knowledge of this question he gained as attorney of the United States in one case I do not know. How far his investigation extended as to these waters I am not informed. What he knew about the headland theory I do not know. I could readily conceive that a lawyer might conduct a case where the one question was in regard to buying bait without knowing much about the great fishing questions of the Northeast. I have only to say further about Mr. Putnam that he is an honest man, a good lawyer, and the Democratic candidate for governor of Maine. I am sorry for him that he is going to be beaten, and that this issue will do as much to that end as anything else.

Mr. PAYNE. You are sorry?

Mr. FRYE. I said I am sorry for Mr. Putnam that he is going to be beaten. I am not expressing any sorrow over the prospective defeat of the Democratic party in my State. Its defeat there and in the country ought to produce only joy.

Mr. President, the commissioners occupied elegant positions here in Washington for two or three months; they were ornaments to society; orchids worth ten dollars apiece graced their magnificent tables; they lived like princes; they seemed to have much elegant leisure; indeed, as the Senator from Massachusetts [Mr. HOAR] suggests, they had so much leisure that they could hold up at any time for Sir Charles Tupper to go home and consult the Canadians as to what he had better do.

Mr. PAYNE. He went home for the holidays.

Mr. FRYE. The Senator from Ohio seems to have a very familiar knowledge of the inside working of the commission. I am afraid he has joined the British party in this matter.

What was the result? There it is. The mountain labored; there is the mouse. I have to say about that treaty that it is the most disgraceful, humiliating, and cowardly surrender the American Republic has ever been called upon to submit to, not excepting the treaty of 1818.

I propose now, Mr. President, to call the attention of the Senate to the terms of the treaty itself.

The first eight articles relate entirely to delimitation. Who asked for delimitation? Who entered complaint that the fishermen in the Northeast could not tell where the 3-mile shore-line was or where bays 6 miles wide at their mouth were? Did this commission ever hear of any complaint? I am aware, sir, that Great Britain, about 1823, in the pursuit of her aggressiveness towards us, declared that these bays were to be measured from headland to headland. But I am equally

aware that in less than six months after the claim was made she sent instructions to the colonial officers not to enforce it, and for the whole seventy years it never has been enforced, except in two instances, that of the *Argus* and the *Washington*. The *Washington* was seized in 1843 in the Bay of Fundy fishing outside of the 3-mile shore-line. I am equally well aware that subsequently, when we made claim, and on the seizure of the *Argus*, the two seizures, the whole matter was referred to arbitrators; and, that after hearing, they determined that neither the *Argus* nor the *Washington* was within British waters. In other words, they determined that the claim made by Great Britain was not sustained by the law or by the treaties, and that this 3-mile shore-line and 6-mile bay were to control.

Mr. GRAY. I ask the Senator for information where I can find the arbitration or other proceedings where the case of the *Argus* was settled?

Mr. FRYE. I will refer the Senator to excellent authority.

Mr. GRAY. I do not desire to interrupt the Senator, but I ask for information.

Mr. FRYE. December, 1886, there was an *ad interim* arrangement proposed by the United States.

Mr. GRAY. On what page, please?

Mr. FRYE. Page 56; and there is the reply of Canada to it; and there also in the same column is the reply of Secretary Bayard to the Canadian reply. On page 59 Secretary Bayard says:

In delivering judgment in the case of the *Washington*, the umpire considered the headland theory and pronounced it "new doctrine." He noted among other facts that one of the headlands of the Bay of Fundy was in the United States, but did not place the decision on that ground. And immediately in the next case, that of the *Argus*, heard by him and decided on the same day, he wholly discarded the headland theory and made an award in favor of the owners. The *Argus* was seized, not in the Bay of Fundy, but because (although more than 3 miles from land) she was found fishing within a line drawn from headland to headland, from Cow Bay to Cape North, on the northeast side of Cape Breton Island.

Very excellent authority, entirely satisfactory to Secretary Bayard in 1887; it settled Secretary Bayard's opinion after a year and a half of these outrages and after all these discussions touching the headland theory had ended.

Mr. President, I say further that this theory of the headlands was never promulgated by Great Britain more than twice afterwards, and that I have given the only two instances in which it was ever enforced in seventy years. I am justified in affirming in the presence of the American people that it never was anything but a theory; and that when they undertook to make it anything higher than that they were beaten by a court agreed upon, and that settled it, and it should have remained settled forever, and would if Secretary Bayard somewhere or other, no man knoweth where, had not obtained new light later. I wish to call attention to another thing. In July, 1853, President Pierce sent a fleet into these waters, and Secretary Dobbin gave his instructions, and I presume he had as much light as anybody had then. President Pierce was certainly as good a lawyer as has ever been in the Presidential chair, and he came from New England, where they knew something about these matters. Secretary Dobbin gave his instructions to Commander Shubrick. I read from those instructions:

This restrictive construction on the part of Great Britain—

That is, the headland theory—

This restrictive construction on the part of Great Britain, you will perceive from a glance at the map, if strictly enforced, would exclude our fishing vessels from George's Bay, the Bay of Miramichi, the straits of Northumberland, and the large Bay of Chaleur, where the best mackerel are annually caught.

This proposed treaty excludes us from the whole.

Now, these are large, open bays, much more than 6 marine miles wide, and our fishing vessels can, with ease, enter and fish without ever approaching within 3 marine miles of the coast. The treaty does forbid their taking fish within 3 marine miles of the shore; and that restriction, unfavorable and inconvenient as it is to our fishermen, must be faithfully submitted to as long as this treaty exists. But the President entertains the opinion that our citizens, under the convention of 1818, have a right to enter the bays and harbors and to take fish there, provided they do not approach within 3 marine miles of the shore; and he further entertains the opinion that the clause which authorizes expressly the entering into bays and harbors "for the purpose of shelter, etc.," precludes the idea that it therein alluded to large, open bays, such as the Bay of Chaleur, which afford but little better "shelter" than the open sea, and confirms him in his opinion that the restriction was designed to be applicable to narrow, small bays and harbors, in which an entrance could not be effected without approaching "within 3 marine miles of the shore," but within which it was natural and proper that our fishermen should have the liberty to enter "for the purpose of shelter, etc."

The Senate must remember that the instructions Secretary Dobbin gave Commander Shubrick were given when a British fleet was in those waters, when he was sending an American fleet there, and when the President of the United States would not dare take any responsibility unless he had settled by careful observation the ground upon which he was standing, because if the commander of the British fleet was instructed to enforce the headland theory, and Commander Shubrick was instructed under President Pierce's views, then conflict was inevitable, and war between the two countries would come. No better opinion, no opinion



more carefully scrutinized can possibly be conceived than one given by the President of the United States under three circumstances.

The Senator from Alabama [Mr. MORGAN] says that there have been more than four hundred outrages in the history of this whole affair between us and Canada.

Mr. MORGAN. Seizures.

Mr. FRYE. 'Well "seizures."' I beg the Senator's pardon. I ought not to have called them outrages in view of the position of Senators on that side now. The Senator from Alabama said there had been more than four hundred seizures. There have been out of the four hundred only two made for fishing outside of the 3-mile shore line and bays 6 miles wide in the whole seventy years. Does the Senator from Alabama suppose that these Canadians would not resort to seizures outside of the 3-mile shore line if they believed that there was any such thing as the headland theory to be reduced to practice, or they believed there was anything at all in the headland theory?

Now, take the Halifax commission. It is entirely evident that the Canadians before that commission resorted to the grossest exaggeration to increase the award of those arbitrators. In fact it has been charged by their own people that perjury was committed over and over again to that end. Why did they not claim that we were to be excluded from all the great bays from headland to headland, and then claim damages for not enforcing that exclusion? It would have doubled the amount of the award if that could have been sustained; and yet in all the proceedings before the Halifax commission no Canadian ever dreamed of making that claim; they confined it to the 3-mile shore-line and to bays 6 miles wide at their mouth.

Again, Sir Charles Tupper says in a speech to the Canadian Parliament, in which he was discussing the treaty:

For every word that I say in defense of the treaty to which I have put my hand and to which I ask the sanction of this House with the utmost confidence, every word that I say in support of it may be used to-morrow in the Senate of the United States, where support to the treaty may be more difficult to obtain than it is in the House of Commons of Canada. The House will therefore understand that on this occasion it cannot be expected from me that I shall point out very elaborately the advantages accruing to Canada under the treaty to which we have placed our hands.

Having made that declaration to the Canadian Parliament, that his lips were practically closed against naming the advantages to Canada, as a matter of course they would not have been closed to stating the advantages which we had gained. Now, what does he say about the headland theory?

Mr. GRAY. What is the date of that? I am sorry to interrupt you, I am almost afraid to do so.

Mr. FRYE. April 10, 1888. I am not a very dangerous gentleman. Sir Charles Tupper says about the headland theory:

The Americans have maintained that what we termed our exclusive right to shut them out of all bays was not well founded in the treaty. They have maintained that they had an indefeasible right under that treaty to approach within 3 miles of the shore of any bay or indentation. My honorable friend—

Referring to Mr. Mitchell—

shakes his head, but I hold in my hand authorities, and I could give them to him by the score, in which they have again and again maintained that position and demanded that right.

Mr. Mitchell interrupted him, when Sir Charles Tupper said:

I can only say that nobody knows better than my honorable friend that Great Britain induced him to recall his regulations and instructions after he had issued them, and restricted his jurisdiction to within 3 miles of the shore.

There was also a dispatch from Lord Granville June 6, 1870, in reference to which Sir Charles Tupper said:

Now, under the pressure of this, as my honorable friend has stated, he changed his instructions in reference to the 10 miles and put in 6 miles, and forbade his officers to interfere with the American fishermen, not as in the first instructions he gave, if they were within 3 miles of the mouth of the bay, but only if they were within 3 miles of the shore, and he [Lord Granville] says:

"Until further instructed, therefore, you will not interfere with any American fishermen unless found within 3 miles of the shore, or within 3 miles of a line drawn across the mouth of a bay or creek, which, though in parts more than 6 miles wide, is less than 6 geographical miles in width at its mouth.

Here is the dispatch:

"Her Majesty's Government are fully aware that no step should be taken which should prejudice the question."

I want to draw the attention of the House to the fact that this was not a settled or concluded question; that it was not a question upon which the Governments of Great Britain and the United States had agreed or on which they had arrived at a common interpretation; and I want to draw my honorable friend's attention to the doubt that Her Majesty's Government had upon the subject.

Then he cites what they say. Sir Charles Tupper says again:

I think I have satisfied my honorable friend that, as far as Her Majesty's Government were concerned, while they maintained the abstract right under the treaty, they were unwilling to raise the question of bays, and the result is, as my honorable friend knows, that for the last thirty-four years—certainly since 1854—and I will not go further back than 1854—there has been no practical interference with American fishing vessels unless they were within 3 miles of the shore, in bays or elsewhere.

Again he says :

Therefore, as I said, we made the concession, not of anything that had been enforced practically by Canada, but the abstract right to exclude from bays that were more than 6 miles wide,

Here is a little item from the *St. John Sun* :

Every foot of coast waters over which Canada has ever exercised conclusive jurisdiction is confirmed to us by a treaty which the President's own commissioners have accepted as correct. Not only this, but certain bays from which Mr. Mitchell and other ministers did not exclude American fishermen are now admitted to be exclusively Canadian.

There are official instructions—I have three I might read—given by the officers of Great Britain to the Canadian officers that they must not undertake to enforce the headlands theory, but must deal strictly with violations of the law within 3 miles of the shore-line and within bays and harbors 6 miles wide.

Now how about the treaty, which the President says is such an excellent one? At the very outset our commissioners made a proposition, the same contained in Article III, as follows :

The 3 marine miles mentioned in Article I of the convention of October 20, 1818, shall be measured seaward from low-water mark ; but at every bay, creek, or harbor, not otherwise specially provided for in this treaty, such 3 marine miles shall be measured seaward from a straight line drawn across the bay, creek, or harbor, in the part nearest the entrance at the first point where the width does not exceed 10 marine miles.

Secretary Bayard in 1887, in a citation which I have made, expressed the opinion explicitly that there was no ground on which the headland theory could rest, and yet in this diplomatic controversy our commissioners, says Sir Charles Tupper, made the proposition themselves that this should include bays 10 miles wide and 3 miles outside of that line ; thus, so far as bays are concerned, actually duplicating the amount of excluded waters.

What next? After we had commenced yielding there was no point for our commissioners to stop at. Sir Charles Tupper pressed them, and what did he secure? He secured a provision which made excluded waters as follows :

Bay Chaleur, where the line is 16 miles. This bay is about 69 miles deep to where it narrows to 6 miles ; good places in there to seine, and to hook and line mackerel ; a herring fishery there ; the British catch some cod there.

That is this great bay [indicating on the map]. There are places in it over 30 miles wide. I have been in places in it where you can see neither shore. I frequent this river emptying into the bay, and here the Senator from South Carolina { Mr. HAMPTON } has experienced that most blissful of all sensations, the capture of the king of fish, a salmon, with a fly and a fly-rod. That bay is over 70 miles long and averages 20 miles wide. Sir Charles Tupper induced our commissioners to make that excluded water.

Next the Bay of Miramachi, where the line is 14 miles long. In this bay we are cut off from miles of depth.

Egmont Bay, 15 miles long. The depth of bay we are excluded from is 7 miles.

Offstanes Bay, 19 miles long. The depth above the 3 miles from shore we are excluded from is 6 miles. Mackerel and halibut are in this bay. It is a good place for herring and squid for bait.

Fortune Bay, in Newfoundland. The line is 14 miles long between points. The depth we are excluded from is 46 miles. Herring and turbot are found here.

St. Charles Hamilton's Sound. The line is 16 miles long ; depth of bay closed is 20 miles.

Barrington Bay, in Nova Scotia. The line is 10 miles ; 3 miles outside will be 15 miles ; depth of bay is about 3 miles. Fish : herring, halibut, mackerel, and squid are found there.

Chedabucto and St. Peter's Bay. The line is 10 miles in each case, or 20 miles in all ; the 3-mile limit is the same ; the depth we are excluded from is 26 miles. Fish : herring, squid, mackerel are there.

Mira Bay. The line is 7 miles. Three miles seaward is 8 miles ; the newly excluded depth is 4 miles. Fish : halibut, codfish, herring, mackerel ; a good place.

Placentia Bay, in Newfoundland. Length is to Red Island 9 miles ; to Merasheen Island and mainland 11 miles, making 20 miles, 3 marine miles seaward, about the same ; depth we are excluded from is 19 miles.

Long Island and Bryar Island, at St. Mary's Bay. The passage between Long Island and Bryar Island is a mile ; from Bryar Island to St. Mary's shore is 10 miles ; Bryar Island to there is 9 miles. The 3-mile line would be 2 miles longer. The depth excluded is 15 miles and over. Fish : mackerel, herring, codfish, pollock, and halibut.

This exclusion takes almost every bay around the whole Canadian coast of any manner of value. It does not take the Bay of Fundy, I admit, but, it takes every other except two or three on the east coast of Newfoundland. What does that mean? Our fishermen never go near the eastern shore of Newfoundland, and Sir Charles Tupper knew it. Therefore he did not press for that exclusion ; but if our fishermen had been in the habit of going there, Sir Charles would have obtained from these pliant commissioners every bay on the eastern coast without the slightest difficulty. It does not stop there. What then? Article 5 of the treaty is as follows :

Nothing in this treaty shall be construed to include within the common waters any such interior portions of any bays, creeks, or harbors as cannot be reached from the sea without passing within the 3 marine miles mentioned in article 1 of the convention of October 20, 1818.

Does the Senate know how many bays that takes? Does any Senator suppose that the commissioners knew how many bays that excludes us from? Sir Charles

Tupper declines to say how many to the Canadian parliament, and only uses one for illustration. I suppose under his theory it would not do to state the advantages Canada gained. It might be used in the United States Senate against the ratification of the treaty. That is a locality where the tides are all the way from 30 to 60 feet, sweeping in and out every six hours with the power of Niagara, with swift currents in the one direction and then in the other. Great bays are more likely there to have channels on either shore than in any other locality I know.

I say no Senator here knows how many bays that takes or from how much water it excludes us; but it is fair to presume, as Sir Charles Tupper says that was put in at his request, that he knew what advantage he was gaining by it.

But, say the Senators on the other side, especially the Senator from Delaware, your fishermen testified before the committee taking evidence that they had no desire to fish within the 3-mile shore-line, and therefore this delimitation is fairly excusable. The conclusion is an inference unwarranted. I have to say in relation to that that no fisherman testified before our committee that he had no desire to fish within those delimited waters; no fisherman appeared before our committee who dreamed that America could ever furnish commissioners who would consent to the delimitation agreed upon in this treaty. No fisherman was ever asked the question whether or not he wished to fish in the Bay of Chaleur or in Miramichi or in Chedabucto Bay. No man can tell to-day how valuable fisheries may be next year or the year after in those bays. No man can tell to-day how soon the United States may determine that no fishing shall be done with the giant purse-seine. Then we should be compelled to go back to the old manner of fishing, hook and line, and these very waters might be made as valuable as they were thirty five and forty years ago. To-day the bays 6 miles wide are utterly worthless to us.

But let me tell the Senators that there is something more serious in this delimitation than this mere question of whether or not we shall fish in the excluded waters. You have another article in this treaty which provides that if you put fish, etc., on the free-list we may have commercial rights. Senators know just as well as I do that the whole contest for seventy years has been for our market. Senators know as well as I do that all the outrages for the last fifty years have been committed for no purpose except to get our market. Your treaty does give it to them. If Congress refuses to do it the same cause for outrages and insults will be left that existed the last two years, and what have you done by this treaty? You simply increase the peril; you simply have moved out the danger line. Every bay 10 miles wide and 3 miles outside of that, every one of the great bays named is made dangerous grounds. It may be very easy for a fisherman to tell whether he is within the 3-mile shore-line or to discover whether or not he is in a bay not more than 6 miles wide; but let me say to Senators that when a bay is 10 miles wide and the line is 3 miles outside of that, when that bay is like the Bay of Chaleur, 17 miles wide or 21 miles wide, it is an entirely different thing for the fisherman to determine whether or not he has crossed that line and entered the perilous waters. It is almost an impossibility for him to do it. Six months of the fishing season there is a fog prevailing all over that section of the waters, not a dense fog, but a fog that would prevent any fisherman from seeing more than 4 to 5 miles at sea.

Now you adopt a tariff, leaving the duty on fish as it stands to-day; let the temptation to obtain our market still continue, the Canadians will repeat the outrages of 1886 and 1887, and you have given them by this treaty an opportunity tenfold greater to outrage and insult our fishermen, to seize and confiscate their vessels, than they had before.

Now I come to the ninth article.

#### ARTICLE IX.

Nothing in this treaty shall interrupt or affect the free navigation of the Strait of Canso by fishing vessels of the United States.

And the President of the United States congratulates us in his message that at last the Strait of Canso is free and open. Why, sir, it never was closed in the history of the world, and no nation ever dared to close it, and no nation ever dreamed of closing it. It is the highway between the Gulf of St. Lawrence and the Atlantic Ocean. We have the right secured to us since 1783, ours to-day, around the Magdalen Islands, rights on the easterly shores of the Gulf, and certainly we have rights in the broad Atlantic Ocean, and this strait is the open highway connecting our rights in the ocean and our rights in the bay. I say it never was closed and no one ever dreamed of closing it.

That Article IX was put in the treaty because in this delimitation Sir Charles Tupper had induced the American commissioners to consent to yield the Bay of Chedabucto. That bay lies right across the mouth of the strait, and thus shuts out the Strait of Canso. And yet the President of the United States congratulates the American people that at last the Strait of Canso is free!

There were two vessels seized in the Strait of Canso in 1886, but the excuse was promptly given that they were lying-to and they thought they were preparing to fish.

ARTICLE X.

United States fishing vessels entering the bays or harbors referred to in Article I of this treaty shall conform to harbor regulations.

I should think they always had.

They need not report, enter or clear, when putting into such bays or harbors for shelter, or repairing damages.

Is not that an immense privilege to be granted to us? When a United States fishing vessel, under the treaty of 1818, puts into a harbor or bay for shelter she need not report and enter! There can not be found in the history of any civilized maritime nation in the whole world an instance where a vessel putting in for shelter was compelled to report and enter. No vessel is compelled to report and enter until she communicates with the shore, until she lands a man or a cargo or goes to the shore to buy or to ship or do something of that kind.

Mr. GRAY. Will the Senator allow me to interrupt him a moment, to say that the laws of the United States require vessels to make entry and clear that have been within the limits of a port of entry over twenty-four or forty-eight hours.

Mr. FRYE. I supposed every Senator would understand that I referred to the twenty-four hours named in the article. I repeat again that there is not an instance to be found in the history of the civilized nations of the world where in less than twenty-four hours a vessel putting in for shelter is compelled to report, enter, and clear. In the United States I never knew of but one instance in forty-eight hours where it was compelled to be done, and that was in Boothbay after the Canadians had been committing these outrages on our vessels.

The treaty provides:

They shall not be liable in any such bays or harbors for compulsory pilotage; nor, when therein for the purpose of shelter, or repairing damages, or purchasing wood, or of obtaining water, shall they be liable for harbor dues, tonnage dues, buoy dues, light dues, or other similar dues.

Now, what an immense gain is contained in this concession! A poor fishing vessel driven by stress of weather for shelter into a Canadian port or harbor shall not be compelled to pay pilotage nor harbor dues, nor light dues.

Sir Charles Tupper said in relation to that, "This is not much of a concession I admit, as we have no light dues in the Canadian Dominion." But the idea of compelling a vessel seeking shelter to pay pilotage!

Mr. GRAY. They have to pay it in our bays.

Mr. FRYE. That is what I wanted to know, because we are relieved from paying compulsory pilotage by this article; and in another article, XII, all privileges that are conferred upon us in Canadian waters they are to enjoy in ours.

Now, let us see how it will turn out. In the Dominion of Canada there is no such thing as compulsory pilotage for vessels under 80 tons burden. The average fishermen are 80 tons and under. So our vessels of that size cannot be compelled to pay compulsory pilotage fees in Canadian waters anyway. I never yet heard of a fisherman paying it in Canadian waters. I am not afraid to declare that no Senator on this floor ever heard any complaint that a fisherman of ours was compelled to pay compulsory pilotage in Canadian waters. Now, the vessels from Maine entering the harbors of the ten Southern States are compelled to pay compulsory pilotage, our coasters and our fishermen. Here is an article which relieves our fishermen, who never did pay compulsory pilotage, from it in Canadian ports, and another article giving Canadians the same rights and privileges in our ports. The result is that the Canadian vessels can enter ours, paying no pilotage, while our vessels of the same size entering the same ports must pay compulsory pilotage.

Article XI provides:

United States fishing vessels entering the ports, bays, and harbors of the eastern and northeastern coasts of Canada or of the coasts of Newfoundland, under stress of weather or other casualty, may unload, reload, transship, or sell, subject to customs laws and regulations, all fish on board, when such unloading, transshipment, or sale is made necessary as incidental to repairs, and may replenish outfits, provisions, and supplies damaged or lost by disaster; and in case of death or sickness shall be allowed all needful facilities, including the shipping of crews.

Sir Charles Tupper does not think that can be considered much of a concession to the United States. He says:

What would be the thought of Canada if a vessel of the United States loaded with fresh mackerel or fish of any other description were driven by stress of weather, and perhaps in a sinking condition, and compelled to resort to a Canadian port, and if, instead of allowing her to transship her cargo, or sell it on paying the duty and go upon a marine slip for repairs, we said, "No, you must throw overboard the whole of your cargo, because we find you are not allowed to bring your fish into Canada?"

Sure enough, what would be said of Canada? And yet we have been compelled to make it an article in this treaty as a concession to the United States that when a poor fisherman driven by stress of weather to a Canadian port for repairs, with

a mast or a spar blown away, part of her cargo thrown overboard in the storm and the rest liable to be destroyed by the weather, she can land the cargo and shall not be compelled to throw it away. Oh, that is valuable? I know the President congratulates his people that they have obtained this concession finally from Canada, and when I remember the poor Mollie Adams and her experience I think perhaps he may be right. But there is not a civilized nation on the face of this earth, and no Senator can name one, in which it is necessary to make that a treaty obligation. It is a disgrace to a nation to-day in the nineteenth century that such should be an obligation or a right under a treaty.

Indeed, Articles X and XI give us that which no civilized nation on the face of the earth would deny to the vessel of any nation in distress. They give to us that which it is discreditable to any nation to make a right under a treaty. They give to us that which humanity and civilization as well as common decency demand shall be given without let or hindrance. They give to us no more than nor so much as the people on the islands off the coast of China recently gave our wrecked vessels, for which Congress returned them thanks; no more nor so much as the Esquimaux have given us again and again of their own free will and pleasure. They give to us almost in words what we compelled Algiers, piratical Algiers, seventy years ago to grant. I call your attention to Articles IX and X of the treaty with Algiers made in 1815:

Vessels of either of the contracting parties putting into ports of the other, and having need of provisions or other supplies, shall be furnished at the market price; and if any such vessel should so put in from a disaster at sea, and have occasion to repair, she shall be at liberty to land and re-embark her cargo without paying any customs or duties whatever; but in no case shall she be compelled to land her cargo.

Should a vessel of either of the contracting parties be cast on shore within the territories of the other, all proper assistance shall be given to her crew; no pillage shall be allowed; the property shall remain at the disposal of the owners; and, if reshipped on board of any vessel for exportation, no customs or duties whatever shall be required to be paid thereon, and the crew shall be protected and succored until they can be sent to their own country.

More favorable, better terms were secured from barbaric Algiers in 1815, than our commissioners secured in Articles X and XI of this treaty in this year of our Lord 1888.

Article XII provides:

Fishing vessels of Canada and Newfoundland shall have on the Atlantic coast of the United States all the privileges reserved and secured by this treaty to United States fishing vessels in the aforesaid waters of Canada and Newfoundland.

What does that mean? Have they a right to fish in our bays that are outside of the 10-mile line? Can it mean anything else? It leaves the question in doubt. If they are to enjoy the same privileges here, then they have secured what they never had before. We limited them in the treaty of 1854 and in that of 1871 They could not fish below the thirty-sixth or thirty-ninth parallel of latitude. There is no limitation here. Have we opened up our bays to them? Is the Delaware Bay opened up to them? Is the Chesapeake Bay? We excluded them in 1854 and 1871 from our shell fisheries. We do not here. I am not at all sure that there are not privileges extended to them we shall find exceedingly troublesome in Delaware Bay, the Chesapeake Bay, elsewhere.

Article XIII provides:

The Secretary of the Treasury of the United States shall make regulations providing for the conspicuous exhibition by every United States fishing vessel of its official number on each bow; and any such vessel, required by law to have an official number, and failing to comply with such regulations, shall not be entitled to the licenses provided for in this treaty.

We determine by law how our vessels shall be recognized. We give to one vessel a register, to another an enrollment, to another a license, and it is our privilege to give to the registered vessel a license or an enrollment, and to the licensed vessel a register, and no nation has the right to say to us you cannot do this thing. It is a matter for us to determine for ourselves; and yet these commissioners in this treaty have surrendered that right and have declared that our fishing vessels shall be known by a great mark on the bow which can be seen at a distance, enabling them more easily to be pursued and harassed if you do not give free fish. It was a shame for our commissioners to do that thing.

Article XIV contains all the legal amenities which have been commended to us. I wish to call the attention of Senators to them and see how they like them. The article provides that where a United States fishing vessel is fishing within the 3-mile shore limit the only penalty shall be forfeiture of the vessel and her cargo. They shall not hang the captain nor crucify the men. The Highland Light, the only vessel in the last two years taken for violating the law and fishing within the 3-mile shore-line, was tried and condemned; and what did she do? She caught enough mackerel within the 3 mile shore-line for a breakfast for the crew, and to-day she is a Canadian cruiser. So the first amenity under the treaty is that if one of our fishermen worth about \$10,000, with a cargo worth perhaps \$3,000 more, is caught within these delimited waters, the Bay of Chaleur, Fortune Bay, or any 10-mile bay, catching mackerel enough for the crew's breakfast, the crime shall

not be punished by any greater penalty than the forfeiture of the \$10,000 vessel and the \$3,000 cargo. This is an amenity of the law. No wonder that the President and Secretary Bayard commend it!

One step further. If he is found within the 3-mile line preparing to fish, even though not fishing, even though not found catching, but only baiting his hook, only mending a seine, no greater penalty shall be exacted than the forfeiture of the vessel and the confiscation of the cargo. Is not that a blessed concession to us? Ought we not to be grateful for that?

Then it provides further that when the vessel and the cargo are in the hands of the seizing officer no bail shall be required—\$10,000 worth of property in their hands and no bail for costs shall be required! Would not the Senator from Georgia think that the vessel and cargo were ample for costs?

Another amenity of the law is that the criminal shall have a speedy trial. Is there a civilized nation in the world that to-day does not provide in its laws for the speedy trial of criminals? That is an amenity.

Again it provides that "reasonable bail shall be accepted." Why did you not agree that unreasonable bail might be required? The idea of inserting in the article of a solemn treaty that only reasonable bail shall be required!

Mr. President, I wish now to consider—

#### ARTICLE XV.

Whenever the United States shall remove the duty from fish-oil, whale-oil, seal-oil, and fish of all kinds (except fish preserved in oil), being the produce of fisheries carried on by the fishermen of Canada and Newfoundland, including Labrador, as well as from the usual and necessary casks, barrels, kegs, cans, and other usual and necessary coverings containing the products above mentioned, the like products, being the produce of fisheries carried on by the fishermen of the United States, as well as the usual and necessary coverings of the same, as above described, shall be admitted free of duty into the Dominion of Canada and Newfoundland.

And upon such removal of duties, and while the aforesaid articles are allowed to be brought into the United States by British subjects, without duty being reimposed thereon, the privilege of entering the ports, bays, and harbors of the aforesaid coasts of Canada and Newfoundland shall be accorded to United States fishing vessels by annual licenses, free of charge, for the following purposes, namely:

1. The purchase of provisions, bait, ice, seines, lines, and all other supplies and outfits;
2. Transshipment of catch, for transport by any means of conveyance;
3. Shipping of crews.

Supplies shall not be obtained by barter, but bait may be obtained.

This is the gist of the whole matter. The Canadians have greatly increased the perilous waters, the chances for seizure, etc. Now they propose to give us certain commercial privileges if we will pay for them by surrendering our market. If we ratify the treaty and do not make fish, etc., free, they still have such advantages that they feel sure to gain the prize.

What have we been contending for for a large number of years? What have we asked for in these waters? We have not contended since the abrogation of the treaty of 1871, and no man can be found to contend, that we have a right to fish within the 3-mile shore-line. No contention of that kind has been made by anybody, and the only vessel caught fishing within that line, the Highland Light, shows that we have not been there much. We have contended that since 1830, by proclamation of Andrew Jackson, by order of the British Council, we have been entitled to commercial rights and privileges in these bays, in these harbors. We have asked and they have refused absolutely to yield them the last two years.

Mr. President, I am not aware that during the whole history down to two years ago commercial privileges have been refused to us. There have been spasmodic attempts. Nova Scotia passed a law at one time, but it never was enforced. Newfoundland passed a law eight or ten years ago, providing that we should not buy bait. Great Britain refused to approve of it; and I am not aware that during the whole period down to the proclamation of the Canadian minister of marine, March 5, 1886, commercial privileges have been refused to us since they were accorded them in our ports under the proclamation of 1830. But since that proclamation of March 5, 1886, we have been denied all commercial privileges, and nearly all the seizures during the last two years have been made because our fishermen were trying to enjoy them.

Now, Mr. President, I must weary the Senate with some citations. The Canadian claim is that while by the treaty of 1818 we can go into their bays and harbors to obtain wood and water, for shelter and repairs, and for no other purpose whatever, the words "no other purpose whatever" absolutely exclude our fishing vessels from the commercial privileges which they yield readily to our commercial vessels. Our reply to that is: First. That our fishermen are commercial vessels. Long before the treaty of 1818 was made we had a law on the statute-book which provided for the equipping of our fishing vessels with "permits to touch and trade." Those papers gave them commercial character and entitled them to commercial privileges.

Secondly, I go further. I say that under the proclamation of Andrew Jackson, under the British order in council, under the act of Parliament of July, 1849, under the proclamation of President Taylor in 1849 or 1850, all vessels of the United States have the same rights and privileges in these Canadian waters, subject to the customs regulations of Canada, as their vessels have in our ports, etc. Without the "permit" they may not engage in merchandising, but they would not be excluded from buying flour or any other of the necessaries of life even under the treaty of 1818. Why? Because in 1818 there was no such thing known as a commercial privilege in a Canadian port. There was not a commercial vessel in the whole United States that could press the waters there with her keel.

The only vessels that were permitted to go in there at all were fishing vessels; the only vessels that had any rights there were fishing vessels; the only ones that even had the right to go in for shelter, for wood, for water, for repairs, were American fishing vessels. Those were privileges granted to them over and above all other vessels of the United States and secured to them by the treaty of 1818; and therefore when we said "for no other purpose whatever," we did not yield up commercial privileges. We could not yield what had no existence in law or fact. That was an impossibility. They existed neither in law nor in fact, and they were not yielded by the treaty of 1818.

This is the view taken by Mr. Bayard. Secretary Bayard, May 10, 1886, in a statement of the case to Sir Lionel West, said:

But since the date of the treaty of 1818, a series of laws and regulations importantly affecting the trade between the North American Provinces of Great Britain and the United States have been, respectively, adopted by the two countries, and have led to amicable and mutually beneficial relations between their respective inhabitants.

This independent and yet concurrent action by the two governments had effected a gradual extension, from time to time, of the provisions of Article I of the convention of July 3, 1815, providing for reciprocal liberty of commerce between the United States and the territories of Great Britain in Europe, so as gradually to include the colonial possessions of Great Britain in North America and the West Indies within the results of that treaty.

President Jackson's proclamation of October 5, 1830, created a reciprocal commercial intercourse, on terms of perfect equality of flag, between this country and the British American dependencies, by repealing the navigation acts of April 18, 1818, May 15, 1830, and March 1, 1823, and admitting British vessels and their cargoes "to an entry in the ports of the United States from the islands, provinces, and colonies of Great Britain on or near the American continent, and north or east of the United States.

Again, Mr. Bayard said:

I ask you to consider the results of excluding American vessels, duly possessed of permits from their own Government, to touch and trade at Canadian ports as well as to engage in deep-sea fishing, from exercising freely the same customary and reasonable rights and privileges of trade in the ports of the British colonies as are freely allowed to British vessels in all the ports of the United States under the laws and regulations to which I have adverted.

Among these customary rights and privileges may be enumerated the purchase of ship-supplies of every nature, making repairs, the shipment of crews in whole or part, and the purchase of ice and bait for use in deep-sea fishing.

Concurrently, these usual rational and convenient privileges are freely extended to and are fully enjoyed by the Canadian merchant marine of all occupations, including fishermen, in the ports of the United States.

The question therefore arises whether such a construction is admissible as would convert the treaty of 1818 from being an instrumentality for the protection of the inshore fisheries along the described parts of the British American coast into a pretext or means of obstructing the business of deep-sea fishing by citizens of the United States, and of interrupting and destroying the commercial intercourse that since the treaty of 1818, and independent of any treaty whatever, has grown up and now exists under the concurrent and friendly laws and mercantile regulations of the respective countries.

I may recall to your attention the fact that a proposition to exclude the vessels of the United States engaged in fishing from carrying also merchandise was made by the British negotiators of the treaty of 1818, but being resisted by the American negotiators was abandoned. This fact would seem clearly to indicate that the business of fishing did not then, and does not now, disqualify a vessel from also trading in the regular ports of entry.

And so on; and yet Secretary Bayard has signed a treaty by which he compels us for those privileges which we have a right to, to pay at least a million dollars a year.

Again, the Secretary of State, December 8, 1886, says:

It will be observed in the course of this correspondence that notification has not failed to be duly given to the Government of Great Britain that compensation is expected for the loss and damage caused to American fishermen by the unwarrantable action of the local authorities of the Dominion of Canada, not merely by the summary seizure of their vessels and the exaction of heavy fines in advance of hearing or judgment, but for the curtailment of privileges to which they were justly entitled under commercial regulations as well as treaty stipulations, and the consequent interference with their legitimate voyages, whereby the natural profits of their industry were seriously diminished, and in many cases wholly destroyed.

Again, April 9, 1886:

I expect to attain such an understanding as will relieve our fishermen from all doubts or risk in the exercise of the ordinary commercial privileges of friendly ports, to which, under existing laws of both countries, I consider their citizens to be mutually entitled free from molestation.

Again:

DEPARTMENT OF STATE, *Washington, June 7, 1886.*

SIR: I have to-day received your letter dated the 5th instant, accompanied by the affidavit of the master of the fishing schooner Alice M. Jordan, of Gloucester, Mass., alleging the refusal by the col-

lector of customs at the port of St. Andrews, New Brunswick, to allow the entry of said vessel, duly documented as a fishing vessel, with permission to touch and trade at any foreign port or place during her voyage, the object of such entry, as stated by the master of the schooner, being the purchase of certain merchandise.

Although not disclosed by the affidavits, I suppose the merchandise in question was fresh fish for use as bait in deep sea fishing.

I have made instant representation, accompanied by earnest protest, to the British minister at this capital, of *this unlawful withholding of commercial rights* from an American vessel and her owners, and of the loss and damage thereby sustained, for which, as I have informed him, the Government of Great Britain will be held responsible.

On the 5th day of November, 1886, in a letter to Minister Phelps making propositions for negotiations, Mr. Bayard said:

The present memorandum also contains provisions for the usual commercial facilities allowed elsewhere for the promotion of legitimate trade, and nowhere more fully than in British ports and under the commercial policy of that nation. Such facilities cannot, with any show of reason, be denied to American fishing vessels when plying their vocation in deep-sea fishing grounds in the localities open to them equally with other nationalities. The convention of 1818 prohibits the "taking, drying, or curing fish" by American fishermen in certain waters and on certain coasts, and when these are effected the inhibitory features are exhausted. Everything that may presumably guard against an infraction of these provisions will be recognized and obeyed by the Government of the United States, but should not be pressed beyond its natural force.

By its very terms and necessary intentment the same treaty recognizes the continuance permanently of the accustomed rights of American fishermen in those places not embraced in the renunciation of the treaty to prosecute the business as freely as did their forefathers. No construction of the convention of 1818 that strikes at or impedes the open-sea fishing by citizens of the United States can be accepted, nor should a treaty of friendship be tortured into a means of such offense, nor should such an end be accomplished by indirection. Therefore, by causing the same port regulation and commercial rights to be applied to vessels engaged therein as are enforced relative to other trading craft, we propose to prevent a ban from being put upon the lawful and regular business of open-sea fishing.

Take the case of Alice M. Jordon, prohibited from buying bait. Mr. Bayard, under date June 7, 1886, says:

I earnestly protest against this unwarranted withholding of lawful commercial privileges from an American vessel and her owners, and for the loss and damage consequent thereon the Government of Great Britain will be held liable.

Again, July 10:

Such inhibition of usual and legitimate commercial contracts and intercourse is assuredly without warrant of law, and I draw your attention to it in order that the commercial rights of citizens of the United States may not be thus invaded and subjected to unfriendly discrimination.

Again, when the right to buy coal was denied the Steamer Novelty, July 7, 1886:

Against this treatment I make instant and formal protest as an unwarranted interpretation and application of the treaty by the officers of the Dominion of Canada and the province of Nova Scotia, as an infraction of the laws of commercial and maritime intercourse existing between the two countries, and as a violation of hospitality, and for any loss or injury resulting therefrom the Government of Her Britannic Majesty will be held liable.

The Mollie Adams; September 10, 1886, Mr. Bayard says:

This inhuman, indeed inhuman, conduct on the part of the customs officer in question should be severely reprimanded, and for the infraction of treaty rights and commercial privileges compensation equivalent to the injuries sustained will be claimed from Her Majesty's Government.

Now consider a few extracts from the statement of our case made by our minister to England, Mr. Phelps, touching the seizure of the David J. Adams for buying bait, to Lord Roseberry, under date of June 2, 1886:

Recurring, then, to the only real question in the case, whether the vessel is to be forfeited for purchasing bait of an inhabitant of Nova Scotia, to be used in lawful fishing, it may be readily admitted that if the language of the treaty of 1818 is to be interpreted literally, rather than according to its spirit and plain intent, a vessel engaged in fishing would be prohibited from entering a Canadian port "for any purpose whatever" except to obtain wood or water, to repair damages, or to seek shelter. Such a literal construction is best refuted by considering its preposterous consequences. If a vessel enters a port to post a letter, or send a telegram, or buy a newspaper, to obtain a physician in case of illness, or a surgeon in case of accident, to land or bring off a passenger, or even to lend assistance to the inhabitants in fire, flood, or pestilence, it would, upon this construction, be held to violate the treaty stipulations maintained between two enlightened maritime and most friendly nations, whose ports are freely open to each other in all other places and under all other circumstances.

If a vessel is not engaged in fishing she may enter all ports; but if employed in fishing, not denied to be lawful, she is excluded, though on the most innocent errand. She may buy water, but not food or medicine; wood, but not coal. She may repair rigging, but not purchase a new rope, though the inhabitants are desirous to sell it. If she even entered the port (having no other business) to report herself to the custom-house, as the vessel in question is now seized for not doing, she would be equally within the interdiction of the treaty. If it be said these are extreme instances of violation of the treaty not likely to be insisted on, I reply that no one of them is more extreme than the one relied upon in this case.

He cites recognition in British official documents of the right of our fishermen to commercial privileges, as follows:

The exclusion of American fishermen from resorting to Canadian ports, except for the purpose of shelter, and of repairing damages therein, purchasing wood, and of obtaining water, might be warranted by the letter of the treaty of 1818, and by the terms of the Imperial act 59 George III, chapter 38, but Her Majesty's Government feel bound to state that it seems to them an extreme measure, inconsistent with the general policy of the Empire, and they are disposed to concede this point to the United States Government under such restrictions as may be necessary to prevent smuggling, and to guard against any substantial invasion of the exclusive rights of fishing which may be reserved to British subjects.

Judicial authority upon this question is to the same effect. That the purchase of bait by American fishermen in the provincial ports has been a common practice is well known. But in no case, so far as I can ascertain, has a seizure of an American vessel ever been enforced on the ground of the



purchase of bait, or of any other supplies. On the hearing before the Halifax Fisheries Commission in 1877 this question was discussed, and no case could be produced of any such condemnation. Vessels shown to have been condemned were in all cases adjudged guilty either of fishing or preparing to fish within the prohibited limit. And in the case of the *White Fawn*, tried in the admiralty court of New Brunswick before Judge Hazen in 1870, I understand it to have been distinctly held that the purchase of bait, unless proved to have been in preparation for illegal fishing, was not a violation of the treaty, nor of any existing law, and afforded no ground for proceedings against the vessel.

June 18, 1886, Mr. Bayard warmly indorsed this presentation of our case.

I call attention now to the report of the Foreign Affairs Committee of the House of Representatives, of which Mr. BELMONT was chairman. He says:

Your committee is of the opinion that the rightful area of our "American fisheries" has been reduced, and the quantity of fish—fresh, dried, cured, or salted—landed in the United States free of duty has been diminished, by the conduct of local officers in Canada. That conduct has been not only in violation of treaty stipulations and of international comity, but during the fishing season just passed has been inhuman, as the message of the President clearly establishes.

Again:

Unless English words were in 1818 used in that article in an unusual sense, there is not a sentence or word therein that has reference to anything else than taking, drying, or curing fish by American fishermen on or within certain coasts, bays, creeks, or harbors therein described. No word or phrase mentioned alludes or refers to deep sea fishing or ordinary commercial privileges. The restrictions refer only to fishing, or drying, or curing "in such bays or harbors."

The entire article referred to inshore fishing. No right and no liberty whatever, that might concern deep-sea fishermen, did the United States, by the treaty of 1818, renounce.

Again:

The treaty of 1818 furnishes no more excuse for the exclusion of a deep-sea fisherman from the port of Halifax, or any other open port of the Dominion of Canada, than for the exclusion by the Secretary of the Treasury of a deep sea fisherman from entering the port of New York according to the forms of law and for the ordinary purposes of trade and commerce. The exclusion, if made, must be justified, if at all, for other reasons than any yet given by Canada.

I call attention to what the Secretary of the Treasury, Mr. Manning, said after an exhaustive examination of the subject; and I believe if Secretary Manning had lived this treaty never would have seen the light of day. He had both wisdom and courage. Secretary Manning, in September, 1886, said:

But the Canadian act, thus having the royal approval, was intended, as has been openly avowed, to forfeit any American fishing vessel which is found having entered Canadian waters or the port of Halifax to buy ice, bait, or other articles, or for any purpose other than shelter, repairs, wood, or water. The plea is that the treaty of 1818 permits and stipulates for such legislation. That we deny, and reply that such legislation is a repeal and annulment by England of the arrangement made in 1830 and to that repeal we are entitled to respond by a similar repeal of our own law, and by a refusal hereafter, and while debate or negotiation goes on, to confer hospitality, or any other privileges whatever in our ports, on Canadian vessels or boats of any sort. A violation of comity may be looked upon as an unfriendly act, but not a cause for a just war. England may judge for herself of the nature and extent of the comity and courtesy she will show us. In the present case we do not propose retaliation; we simply respond: We, too, suspend comity and hospitality.

I call attention now to a statement if possible very much more important than any of these. July 12, 1887, after Secretary Bayard had had a year and a half in which to consider all these questions, after he had obtained all possible information, after he knew of the proclamation of the Minister of Marine of March 5, 1886, denying the commercial privileges, after he had fully investigated the right of the Minister of Marine to issue the proclamation, after he had investigated all the Canadian laws, all their acts—after a full, careful, complete consideration of everything touching the contention, he wrote to Mr. Phelps as follows:

DEPARTMENT OF STATE, Washington, July 12, 1887.

SIR: On March 24 last the Marquis of Salisbury made reply to your note to him of December 3, 1886, and communicated the views of the Canadian Government upon the *ad interim* arrangement proposed by the Government of the United States, under date of the 15th of November preceding, for the settlement of the fishery disputes.

This reply of his lordship and the "observations" of the Canadian authorities upon the proposal for an arrangement were conveyed in Mr. White's dispatch of March 33, and received at this Department April 11 last, when it had my immediate consideration.

And then he called his attention to his (Bayard's) observations on the Canadian observations, made at any rate as late as May or June, if not later, of 1887. I wish to call the careful attention of the Senate to what Mr. Bayard said. I want the Senate to hear it because it is the final judgment of the Secretary of State.

The Secretary read as follows:

#### REPLY TO "OBSERVATIONS" ON PROPOSAL.

ART. IV. The treaty of 1818 related solely to fisheries. It was not a commercial convention, and no commercial privileges were renounced by it. It contains no reference to "ports," of which, it is believed, the only ones then existing were Halifax, in Nova Scotia, and possibly one or two more in the other provinces; and these ports were not until long afterwards opened, by reciprocal commercial regulations, to vessels of the United States engaged in trading.

The right to "obtain" (i. e., take or fish for) bait was not insisted upon by the American negotiators and was doubtless omitted from the treaty because, as it would have permitted fishing for that purpose, it was a partial reassertion of the right to fish within the limits as to which the right to take fish had already been expressly renounced.

The purchase of bait and other supplies by the American fishermen in the established ports of entry of Canada, as proposed in article 4, is not regarded as inconsistent with any of the provisions of the treaty of 1818; and in this relation it is pertinent to note the declaration of the Earl of Kimberley, in his letter of February 16, 1871, to Lord Lisgar, that "the exclusion of American fishermen

from resorting to Canadian ports, except for the purpose of shelter and of repairing damages therein, purchasing wood, and obtaining water, might be warranted by the letter of the treaty of 1818 and by the terms of the Imperial act 58, George III, chapter 38; but Her Majesty's Government feel bound to state that it seems to them an extreme measure inconsistent with the general policy of the empire and they were disposed to concede this point to the United States Government under such restrictions as may be necessary to prevent smuggling and to guard against any substantial invasion of the exclusive rights of fishing which may be reserved to British subjects."

It is not contended that the right to purchase bait and supplies or any other privilege of trade was given by the treaty of 1818. Neither was any such right or privilege stipulated for or given by the treaty of 1854, nor by the treaty of Washington; and the Halifax commission decided in 1877 that it was not "competent" for that tribunal "to award compensation for commercial intercourse between the two countries, nor for purchasing bait, ice, supplies, etc., nor for permission to tranship cargoes in British waters." And yet this Government is not aware that during the existence of the treaty of 1854 or the treaty of Washington question was ever made of the right of American fishermen to purchase bait and other supplies in Canadian ports, or that such privileges were ever denied them.

Mr. FRYE. That was the deliberate conclusion of Secretary Bayard, as I say, after he had had a year and a half in which to consider all the laws and all the facts, and as such final judgment it was communicated by him to his minister in England, Mr. Phelps. It is a distinct, bold, brave declaration that, we are entitled now to commercial rights and commercial privileges in all the ports and all the harbors of the Dominion of Canada; and yet, in less than six months from the utterance of that declaration we find him agreeing to a treaty in which it is declared that we may have those privileges or a part of them by the payment of at least \$1,000,000 a year!

Why do I say a million dollars a year? Under the treaty of 1871, where Canadian fish were admitted free of duty, the last year, 1884-'85, the duties we remitted on Canadian fish amounted to \$700,000, and the business has been increasing ever since. Next year, with the same law, the duties would amount to a million dollars at least, and it will grow in all the future of the treaty under consideration, and yet we are to pay that million or million and a half of dollars every year for a permit to buy bait, ice, sails, cordage, etc., in Canadian ports.

Mr. MORGAN. The Senator from Maine says we are entitled to these commercial privileges. Are we entitled to them under the treaty or as a matter of comity?

Mr. FRYE. I mean that a sense of honor on our part and a recognition of reasonable duty to our citizens ought to compel us either to demand of Canada commercial rights and privileges in their ports or to refuse them the same privileges in ours. I admit it is no treaty right, and I have already stated how commercial privileges were provided for.

Mr. MORGAN. Why did not the Senator, for his party and himself, demand those rights to which we are entitled in 1878, instead of leaving it distinctly to the President? They left it to his discretion to demand them. The Senator from Massachusetts says, *sotto voce*, he never dreamed that the President would interpret the act in that way, and yet the President and the Secretary of State now for fifty-odd years have done the same thing.

Mr. STEWART. Mr. Bayard did not do the same thing last summer.

Mr. MORGAN. And that, too, with the statute of 1850 on the statute-book authorizing them to demand reparation and retaliation.

Mr. FRYE. Mr. President, the lateness of the hour reminds me that it is about time for me to conclude. I have mislaid a paper which I wish to cite. I will ask the consent of the Senate that I may insert it in my remarks.

Mr. President, we do not acquire commercial privileges by this treaty unless we buy them. Now this is a complete surrender of the position which we have occupied for more than fifty years. We claimed these privileges and these rights. We have insisted upon their enjoyment. We have enjoyed them up to two years ago; and now here is a treaty which admits that Canada's refusal has been right and that we have been wrong; which admits, if we desire to enjoy these privileges, we must buy them of Canada instead of claiming them under the laws of Great Britain and of the United States.

Now, Mr. President, what will be our attitude with Canada hereafter? Can we ever retrace these steps? Can we ever go back to the position we occupied before these plenipotentiaries met? We stood then squarely on the American doctrine. Can we ever stand there again? The President says that the treaty is right. The Secretary of State, in his letter to the banquet in New York, declared that he obtained all that he desired and all that he sought.

What has become of our claims for damages presented to Great Britain over and over again by Secretary Bayard? This treaty drops out the very foundation of most of them. With what face can we ever again insist that, under Article XXIX of the treaty of Washington, we have the right to transship in bond, rights Canada is to-day enjoying to the fullest extent under the same article, to her immense benefit and to our loss? How we are to be handicapped hereafter!

Here is what the *St. John Sun* said a week ago in relation to this:

The privileges of purchasing bait and transshipping cargo, the denial of which last year was characterized as gross brutality by the United States Cabinet minister, are no longer claimed by the United States Government.

The advantages of our present position will be sufficiently evident when the next controversy arises, which will be when the first American fisherman is prevented from doing something he wants to do. Should he be prevented from purchasing bait, forwarding supplies, or shipping a crew on our coast, the usual outcry will be raised, charges of brutal treatment and of uncivilized conduct will be made, and the President will be invited to retaliate by proclaiming non-intercourse. It will then be open to Mr. Foster to remind the Secretary of State that he has himself admitted the right of Canadians to do these things, and has agreed to a formal treaty recognizing that right. Nor will it be longer open to Mr. Bayard to use the language which he has rather freely employed heretofore, and which more clamorous politicians and less responsible men of his nation have used more freely than he. The President may retaliate, but if he does he will be retreating to a nation which is doing what the President and his Cabinet and the President's chosen commissioners have admitted to be within the right of that nation to do.

The *Montreal Gazette* says of the treaty:

We secure every right for which we have contended in the correspondence of the last two years. The Americans are debarred from the "touch and trade" and transshipping privileges. We have obtained everything we ever claimed—the right to deny trading privileges to American fishing vessels, to prohibit the purchase of bait, ice, seines, lines, tackle, and other fishing outfit, the transshipment of cargo, and the shipping of seamen.

Again it says, under date of March 1:

If we have to revert to the condition of things which prevailed in 1886 and in 1887 there will be general regret, but at least Canadians can have this satisfaction, that in reverting to the treaty of 1818 we do so with our position infinitely strengthened by the formal acknowledgment on the part of President Cleveland and his Government that all our contentions are right.

Can there be any mistake about that position? Can they not, if we undertake to protect our fishermen, say to us, "Your own President and Secretary of State have declared in a treaty that you have no right to demand of us these privileges?" And there is something more serious than that. A year ago in the Senate and the House we were Americans, we were united for the rights of our citizens. No one dreamed of raising a political issue in relation to this question. No one discussed it as a party man. And where are we to-day? The President taking the side, practically, of the Canadians in this matter, the Secretary of State close by him if not a little ahead in the controversy, the great Democratic party of the country being arrayed on the side of the Canadian and against the American fishermen.

Mr. President, a most grievous wrong has been wrought by this treaty-making power. False steps have been taken which can never be retraced, and in the long future we shall never be permitted to stand where we stood one year ago in the Senate, asserting with one voice that we would defend the rights of American fishermen against Great Britain or any other power on the face of the earth. We surrender their rights. We have said in the solemn language of proclamation and message that the treaty here which yields them is just and fair, all that ought to be asked, and hereafter and forever our mouths are closed.

Again, Mr. President, I declare that this treaty is a dishonorable, humiliating, and cowardly surrender.

Mr. President, I thank the Senate for its generous indulgence and for its courteous attention. If, in the heat of speech, without notes, I have been betrayed into any intemperate words, I tender sincere apology.

