

Law
Internat
F5376

[20.11]

Review of the Fisheries Treaty (Washington, 1888) by Mr. William L. Putnam, one of the United States Plenipotentiaries.

358568
16. 12. 38

(Reprinted from Boston Post, April 20th, 1888.)

In considering the treaty just negotiated, it will be plain to every honest reader of it that the "protocol" or "*modus vivendi*," providing temporarily relief for our vessels from certain custom house regulations and also annual licenses, was merely received by our plenipotentiaries and passed along to the Senate for its information, with no reply except expressions of gratification at the friendly disposition which it exhibited. It was not "accepted" either expressly or impliedly nor submitted to the Senate to be "accepted." It forms no part of the treaty, and the treaty is not to be construed with reference to it.

There is no allusion in the treaty to tonnage tax except an exemption of our vessels therefrom; and the licenses which our vessels may receive under some circumstances for the purchase of supplies and provisions must be issued "promptly on application, without charge therefor." Yet so eager were those who were predetermined against any treaty to misrepresent it, that the New York Tribune in its issue of Feb. 22 said unblushingly: "By the provisions for tonnage dues to be paid the Canadian officials, Secretary Bayard arms them with new facilities for operating against American fishermen"; and J. C. Tarr, vice-president of the fishery association at Gloucester, condemns the whole in the following despatch: "Tonnage tax for privileges offered is an outrage. Hope the Senate will not ratify such a treaty." Somewhat similar licenses were issued in A. D. 1886, though they also covered the privilege of fishing within the marine belt. Four hundred and fifty-four were taken in that year by our vessels; but the use of them gradually diminished until they were abolished in A. D. 1870. There certainly can be no harm in the Canadian Government tendering them again, and our vessels can take them if they wish. The result may be the Dominion will receive a practical object lesson to the effect that we do not estimate the privileges offered at the price which Canada puts on them.

In this connection may be considered the fifteenth article of the treaty tendering certain privileges whenever Congress puts fish on the free list. Nothing in the treaty binds the United States to the acceptance of this proposition: but it is left entirely free for the favorable or unfavorable action of Congress, if any should ever be taken. One thing further may be said as to it: In A. D. 1870, while our fishing vessels were being seized and condemned for purchasing bait, while we were refused admission into Dominion ports for any supplies, while we were compelled to submit to the most rigorous provisions of the Canadian customs laws, while our fishermen had been practically driven from resorting to Canadian bays and harbors, and when, indeed, the American flag was not only pulled down, but was insolently set under the English Jack, a Republican House of Representatives with Mr. Blaine as Speaker, and a Senate presided

over by Schuyler Colfax, with the approval of a Republican President, enacted the law by which to-day more than half of the Canadian fish entering in the United States comes in duty free. Nothing whatever was received in exchange for that great boon to foreign fishermen. The privileges contemplated by the fifteenth article are certainly not less than nothing; and if estimated as now asserted by those who declare hostility to the treaty, they are of very great value. So that in any event under this article we shall not see repeated the complete throwing away of the purchasing power of our tariff which took place in the act of July 14, A.D. 1870.

Having thus laid aside what is not relevant to the substance of the obligatory part of the treaty, we will examine its provisions with reference to the larger principles involved, and afterwards consider the practical benefits which it affords our fishermen.

The existing conventional relations concerning fishing in Dominion waters are found in article one of the Treaty of 1818. This provides that our fishermen may enter the bays and harbors therein specified for shelter, repairing damages, purchasing wood and obtaining water, "and for no other purpose whatever," and also that they shall be under "such restrictions" as may be necessary to prevent their fishing unlawfully "or in any other manner whatever abusing the privileges reserved to them." It has also been somewhat contended that under the twenty-ninth article of the Treaty of 1871 our vessels have a right to tranship their catch in Dominion ports. It never has been claimed that they had any treaty right to bait, or to any supplies whatever beyond obtaining wood and water. Whatever there may be on this point is governed by the rules appertaining to the general comity of nations.

Canada and Great Britain have always maintained that the words "for no other purpose whatever" have a very extensive effect, that fishing vessels are *sui generis*, and that as they receive special rights, under the Treaty of 1818, as to entering Canadian bays and harbors, they expressly exclude themselves by conventional agreement, from the privileges to which other vessels are entitled, and therefore that the Dominion may shut them out, except when coming in for the express purposes named, without such exclusion being justly regarded as unfriendly. They strengthen their claim by the assertion that under the treaties with France, British fishing vessels submit to like exclusion from French ports without complaint on the part of England. It is apparent that this extreme claim is now yielded.

The "restrictions" which the Convention of 1818 says may be imposed on our vessels have always heretofore been determined by the exclusive action of Great Britain, or of Canada, without consultation with the United States. Statute after statute has been passed for that purpose, beginning as early as A. D. 1819 and ending with the statute of A. D. 1886, all of which remain in force; and though the United States in A. D. 1844 or 1845 remonstrated against the earlier statutes nothing was ever accomplished with reference to them. Now for the first time we have obtained a hearing as to such restrictions, and the precedent is established which will enable the United States to be further heard in the event in the future if other obnoxious regulations are attempted.

The Treaty of 1818 contained the negative words "and for no other purpose whatever." These words have formed the basis of many of the contentions between the United States and Great Britain. In the treaty just negotiated no such negative expressions can be found. Certain privileges are granted our vessels, but nowhere is it stated that, if future changes of circumstances should justly entitle the United States to other privileges, we would be barred from asking therefor.

The treaty is perhaps without precedent for the extent and number of rights and privileges which it guarantees the vessels of one nation in the waters of another. The purpose of the first eight sections is to mark so clearly the line within which our vessels cannot fish, as to bar disputes and prevent so far as practicable our vessels from being caught through mistake. One congressional critic assumes to say, as reported in the Boston Journal, that he does not make much of these provisions, that they are secondary, that there is no real controversy over this point, that it has been many years since the Canadians have really insisted on the "headland" theory, and that none of the vessels which have been seized were seized on that ground. This is true so far as actual seizures of late are concerned; but Great Britain has never before conceded the "headland" claim which shuts in not only bays but great sinuosities of the coast. During the last two years these extreme claims have been on several occasions practically enforced against us. The policy of the United States—before A. D. 1885—has been to permit our vessels to contend at their own expense in the Canadian courts over all the controverted fishery issues between two governments; and while to-day the claim may not be practically enforced, to-morrow the un-
 wary fisherman is seized in consequence of it, dragged before the Vice-Admiralty Court at Halifax, and his vessel condemned, or the issues which two great nations should have settled between themselves are tried out at a cost to him quite equal to the value of his vessel. There has been in the history of the fishery disputes more discussion and more "bad blood" over this matter than over any other issue whatever; and though it may happen that at the present, vessels are not being seized in consequence thereof, a wise and far-seeing statesmanship requires that the controversy should be disposed of for all the future. Even the Boston Advertiser is forced to admit that the "treaty's definition of fishing limits has the merit of being clear and specific, and the claim in general, if not in nice details, is within bounds recognized by standard authorities and international law."

The Convention of 1818 requires us to keep three miles away from the "bays" of the British dominions. What those bays were was not defined. In the United States, Chesapeake Bay, Delaware Bay and Long Island Sound are regarded as within our dominions. In 1818 various bodies of water like Chaleur, the shores of which were then substantially uninhabited, were common waters, which with the present condition of population would perhaps be regarded as territorial bays. Barring Chaleur and a few other minor bays, the rule adopted by the treaty is that of ten miles in width, the same as in the treaties between France and England and in the North Sea Treaty between England, France, Denmark, Germany and Swe-

den. Looking at our enormous range of coasts and our rapidly increasing population and industries, the United States in this matter of delimitation cannot afford to establish a precedent except of a liberal character; and the application of the ten-mile rule to bays not only follows the consensus of Europe, but anticipates only a little the necessity of increasing the marine belt, which the increasing projectile force of modern artillery will soon impose on all nations.

The Bay of Fundy, Fortune Bay and the other great bays of Newfoundland, and more important than all, George's Bay, which have heretofore been claimed by the Dominion, are now, with the exception of wholly non-essential portions, set off to us. No practical fisherman can be found who will carefully examine the special delimitation named in the treaty and complain of the waters which have been reserved. To be sure, one Senator objects that we are shut out from Sir Charles Hamilton Sound, Barrington Bay and the Bay of Miramichi; but specifications like these merely illustrate the haste or inattention of the person making them.

Likewise the Boston Advertiser gives great space the false allegation that the lines drawn in Fortune Bay exclude our fishermen from purchasing frozen herring therein; when the terms are clear that this matter of delimitation has no reference whatever to any such pursuit.

As to the Bay of Chaleur, the counsel for the United States at Halifax stated as follows:

"Then comes the Bay of Chaleur, and in the Bay of Chaleur whatever fishing has been found to exist seems to have been within three miles of the shores of the bay in the body of the Bay of Chaleur. I am not aware of any evidence of fishing, and it is very curious that this Bay of Chaleur about which there has been so much controversy heretofore, can be so summarily dismissed from the present investigation. I suppose that a great deal of factitious importance has been given to the Bay of Chaleur from the custom among fishermen, and almost universal a generation ago, of which we have heard so much, to speak of the whole of the Gulf of St. Lawrence, by that term. Over and over again, and particularly among the older witnesses, we have noticed that when they spoke of going to the Gulf of St. Lawrence, they spoke of it by the term 'Bay of Chaleur'; but in the Bay of Chaleur proper, in the body of the bay, I cannot find any evidence of any fishing at all. I think, therefore, that the Bay of Chaleur may be dismissed from our consideration."

Since A. D. 1857 there has been no change; and the Bay of Chaleur is admittedly at the present time of no substantial consequence to our fishermen except for shelter, the right to which is by this treaty in no way affected.

The opponents of the treaty undertake to sneer at its expressions concerning the Gut of Canso. Ordinary caution would seem to require that in a treaty of delimitation there should be some expression which should shut out of the possibility of prejudicing our rights of navigation through that narrow strait. Moreover, this has always been kept by Great Britain an open question, and therefore like all others which have heretofore been met at the expense of

our fishermen, ready to fall on some of our vessels at an unexpected time and to be contested at their expense. In the view of the enemies of the treaty who have nothing at stake, it is not wise statesmanship to foreclose such disputes; but if any of them had been an owner of one of the seventy vessels and more, seized from time to time during the last half century, he would wisely prefer that Canso should be disposed of as it has been in this treaty, and not at some future time at the cost of some private purse.

On the whole, the delimitation provided by the treaty is practical and not unjust; and therefore with reference to it, each party can be said to have made substantial gain with no important loss.

Article 10, it is believed, meets thoroughly all the difficulties which our vessels have encountered, arising from the customs laws of Canada, and also relieves them from dues of all kinds when entering for the purposes of the Treaty of 1818.

Of course, when availing themselves of such of the privileges enumerated in article 11 as have not heretofore been treaty rights, and which are extended only by comity, they become justly subject to the same laws and dues to which trading vessels are subject—no more and no less. So long as they enter only for the purposes guaranteed by the Treaty of 1818, they may go in and depart freely. Canada, like the United States, has a protective tariff and the severe regulations incident thereto. The difficulties which this system made for our fishing vessels arose from the fact that the customs laws of Canada require vessels to report "forthwith." In this respect article 11 conforms the practice substantially to our own statute, requiring a report after twenty-four hours, the language of which it substantially adopts. This applies, however, only to vessels entering for shelter and for such repairs as can be made aboard the vessel, and does not apply to any vessel landing within the limits of an established port of entry. It is just that all vessels thus communicating with the shore should conform to the laws of the locality, whatever they may be. This article relieves our vessels from the annoyance of petty harbor dues charged them at some ports in the Dominion, the larger pilotage dues claimed of them at Halifax and the still larger light dues which they have been paying in Newfoundland. It also protects from further annoyance vessels touching in for shelter at such points as the outer ports of Shelburne, Nova Scotia, or of Georgetown or Malpeque in Prince Edward Island.

But it is said that all this is nothing, and that it is only what we are entitled to by the laws of humanity. For a "nothing" it has occupied a large portion of the time of the Government of the United States, whose records are spread with letter after letter complaining of these exactions and obstructions. No case can be found in the whole record which has more engaged the attention of the foreign offices of both Great Britain and the United States than the "Marion Grimes," which vessel was seized on a subsequent voyage for not reporting when putting into the lower harbor of Shelburne, heavily laden and homeward bound. Is it "nothing" to have these things remedied by a solemn abandonment of the claim to do them, and to prevent by treaty obligation their repetition in the future? Or in order to have the credit of accomplishing results, was it

necessary that they should be obtained at the end of all those commercial disturbances, inevitably following a process of retaliation which would be so especially injurious to the commerce of Portland and her steamboat and railroad lines to the eastward?

Our Treaty of 1818 was with Great Britain, and in our commercial relations we know only her. If she has violated the one or disregarded the proprieties of the other, shall we follow the lead of those who would make a cowardly and noisy paper war on Canada? Or should we with courage make our demands on England herself, seeking first the amicable adjustment which we have now obtained, and preparing next for the just consequences which might have followed if it had been refused? We think our fathers would have blushed for shame at the suggestion, that for wrongs done them by Great Britain they should avenge themselves by a Chinese war of clamor against one of her minor dominions. The tail-twisters of to-day manage to keep a safe distance from the lion.

Article eleven treats substantially of two matters: The first paragraph is an enlargement of the rights guaranteed by the Treaty of 1818, and contains a complete and thorough provision for cases of stress of weather and other casualties. The latter paragraph of the article is additional to treaty rights, provides for furnishing provisions and supplies without limit to vessels homeward bound, and such "casual or needful" provisions or supplies as are ordinarily granted trading vessels whether homeward bound or otherwise. It further directs that licenses for these purposes shall be granted "promptly upon application and without charge," and is explicit against the tonnage tax which false critics are determined to affix to the treaty.

In an interview published in the Boston Journal, in following out an apparently common purpose of certain gentlemen to depreciate this treaty at every hazard, a member of Congress stated unequivocally that while we can go into Canadian ports for shelter and repairs we can remain there only twenty-four hours. This is an absolutely incorrect construction of the treaty. He also said that the Canadians have conceded to us just what they were willing to concede before the conference met, and nothing more. The diplomatic correspondence of the United States for the last two years, as well as the reports of the committees, both of the House and Senate, show, on page after page, constant refusal to permit all and each of the matters covered by articles ten and eleven. He also said we can go into Canadian ports for shelter and for repairs, and for provisions on the way home; that is to say, "we have exactly the same rights and privileges which we had before set forth a little more clearly, and that is all." We find this erroneous allegation constantly and persistently made.

The Boston Advertiser, in an editorial article, says that the trading privileges of chief value to fishing vessels are still withheld, except in cases of distress, and except "casual and needful provisions and supplies for the homeward voyage strictly"; and a Senator in an interview, published in the Boston Herald, says: "It is all intended and limited simply to enable our fishermen to get home, and none of the supplies which can be purchased are to be used in fishing. Nothing is to be procured except for the homeward trip."

How it is possible for these things to be said by any person who has read this treaty honestly and carefully would be beyond conception, except that there is no limit to the power of party spirit to blind the mental vision of human beings. It is just that they should be noticed here, as they have been skilfully and extensively used to prejudice the popular mind.

The testimony taken by the Senate Committee on Foreign Relations in A. D. 1886, of which Senators Edmunds and Frye were the most active members, is uniform to the effect that our vessels fit out at Gloucester and Portland better than in Dominion ports, and, in fact, Dominion vessels go to Gloucester for that purpose. No case is reported where any of our vessels desired to fit or refit in the Dominion ports within the last two years; and no case can be supposed where they would ever desire to do this unless possibly at times in the Gulf of St. Lawrence in connection with the transhipment of fish in bond if our fishing vessels had that right, which, as will be seen hereafter, they do not possess.

The eleventh article will be found on examination to cover every case of provisions and supplies, whether for the homeward voyage or outward voyage, except bait, and other peculiarly fishing outfits which will be spoken of hereafter, excluding only the right of general fitting, which, as already said, no vessel desires except in case of maritime disaster. In such case everything is permitted. The first part of article eleven plainly gives vessels in case of maritime distress the right of replenishing bait and shipping men, and also of transshipping cargo when necessary as incidental to repairs. The latter part of the article gives neither of these; and it is therefore complained against the treaty that although it may secure all the usual facilities for provisions and ordinary supplies it fails to secure for fishing vessels those peculiar advantages falsely called "commercial privileges" or "trading rights," which are especially helpful to enable fishing vessels to carry on deep sea fisheries, using Nova Scotia as the base of their operations.

Heretofore Great Britain and Canada have strictly construed the treaty of A. D. 1818, and held the words therein "for no other purpose" to mean the abandonment of every privilege except those therein distinctly specified, maintaining as already stated, that fishing vessels by virtue of the guarantees of that treaty received peculiar advantages permitting them to enter everywhere for the purposes named, and that in consideration thereof they gave up the general comities appertaining to trading vesssels. So far as this claim deprived our fishermen of any rights now enjoyed by other craft with reference to obtaining supplies, this treaty supersedes it; but it makes a just distinction between the ordinary outfit of trading vessels and the peculiar privileges which would enable our fishing vessels to so avail themselves of the propinquity of Nova Scotia to the fishing waters, as to give our fishermen in all respects equal advantages in Nova Scotian ports. It is certainly not in accordance with any just rules of the law of nations to compel any people in this way to share with aliens its peculiar opportunities, and moreover, while such just rules require that one nation should yield to another ordinary hospitality, there is none which permits one to compel the other to sell, or dispose of in any way except according

to its own free will, any article having a peculiar or special value, or as to which it adopts a peculiar and special policy with reference to all the world. This is precisely the condition of Nova Scotia as to her bait, her ice, her fishing supplies, shipping of men and all those other things which nature has given her in connection with her proximity to the fishing grounds as a partial offset for the sterility of her shores. We cannot in this matter justly assert a principle in violation of the ancient policy of Massachusetts and the district, now the State of Maine, with reference to the peculiar local control maintained over our own shellfish; and we have also been brought face to face with the statute which Newfoundland has been compelled to pass for protection against French fishermen, who, by the aid of bounties, are excluding her from her accustomed foreign markets.

Newfoundland is a large customer of the United States, receiving from her annually about \$2,000,000 of goods, we purchasing of her in return only about \$200,000; and if we lawfully could, we ought not aid to cripple her by breaking down a system of regulations in a matter of this nature intended for her own protection. If the French, driven from the waters of Newfoundland, should demand of us the right to exhaust by purchase or otherwise, our clam bait in Maine and Massachusetts in violation of our local regulations, we should not submit.

A late issue of the Concord (N.H.) Monitor prints an editorial, said to be written by Senator Chandler, in which he denounces the treaty as a "cowardly, disgraceful and humiliating surrender of the American position." Any one who knows the Senator also knows that when he is talking on a matter as to which he has convictions he does not use adjectives so abundantly. We do not, however, stop to comment on this. Both because he is in constant communication with other opponents of the treaty and because what he says is in line with what these others have said, we refer to his concluding paragraph as summarizing on this point the alleged grounds of objection, namely: That "a treaty has been agreed upon in which the idea of reciprocity, which was the basis of the retaliation acts, is completely ignored."

But we are met by the fact that "reciprocity" is what our Canadian neighbors desire and what our fishermen oppose. To give our vessels in catching fish all the advantages of the propinquity of the Maritime Provinces to the fisheries, and to refuse Nova Scotia fishermen for the sale of fish equal advantages with our own in our own markets, is not reciprocity.

The only reciprocity which can be justly demanded is that ascribed to Mr. Dingley in a late interview, namely: Maritime reciprocity, that is, a reciprocity of maritime privileges. The present treaty secures this to the utmost. The privileges of purchasing bait and transshipping cargoes are not of this nature. The latter is never enjoyed except in accordance with treaty grant; the former is a commercial privilege like the purchase of any other product of the country, exercised by our own commercial vessels in the Dominion ports with the utmost freedom. The distinction is perhaps illustrated in this way: The sale of bait and of other special subjects of trade, in the absence of treaty stipulation, may be prohibited

by general law, and yet the prohibition cannot justly be held as unfriendly to foreign nations. The sale, however, of the usual supplies for provisioning crews and the like cannot be forbidden except in violation of general comity. The laws of Canada prohibiting sale of bait to fishing vessels do not discriminate against the United States, but have application to all foreigners. As we ship clam bait by the cargo to Canada, so Canada and Newfoundland ship frozen herrings, which are sometimes used for bait, by the cargo to the United States. Either nation could justly prohibit this traffic for sufficient local reasons. Neither would tolerate that the other should compel its involuntary continuance. Of what avail, then, to insist by treaty stipulation, that we shall have the right to purchase bait when Canada can lawfully and justly defeat the stipulation by prohibiting its sale to all foreign vessels whatever?

But we will look closer at the matter of buying bait, shipping men and transshipping cargoes. The Committee on Foreign Relations of the Senate, through a subcommittee consisting of Senators Edmunds, Frye, Morgan and Saulsbury, took, in the summer of 1886, a vast amount of testimony at Gloucester, Portland and elsewhere, and made their report to the Senate as to the result thereof, signed by Senator Edmunds for the committee. That report said as follows :

“As regards the obtaining of bait for this class of fishing (that is, for catching cod and halibut, the testimony taken by the committee in its inquiries clearly demonstrates that there is no necessity whatever for American fishermen to resort to Canadian waters for that purpose.”

Luther Maddocks, now enlarging at Washington, stated in the Lewiston Journal last October :

“We have nothing to lose by being deprived of bait, even if commercial privileges are denied us. There is much talk about the disadvantages to American fishermen by being deprived of bait; but it is made largely to influence legislation.”

Mr. George Steele of Gloucester, president of the American Fishery Union, who is now complaining of the treaty because it did not secure a right for bait, over his own hand in June last, wrote to the Boston Journal :

“Gloucester, Provincetown and Portland never felt better than now their ability to do without Canadian bait; and the Ottawa Government will find that its measures of retaliation and exclusion have injured its own fishermen without doing the least damage to the United States.”

He also testified before the Committee of Foreign Relations as follows :

“Q. Taking the cod fishery, then, what in your opinion is the value to the American fishing interest of the right to get bait on British shores? A. Nothing whatever.

“Q. You would not care anything about it? A. No, sir.

“Q. In your halibut fishery you carry the ice out from here always, do you not? A. Yes, sir.

“Q. And stand right straight off for the halibut fishing ground? A. Yes, sir. We take twenty-five to forty tons to a vessel.

"Q. Taking the cod-fishery, the mackerel fishery and the whole thing together, how far do you regard as of any practical value to American fishing interests the right to go ashore or inside the three-mile limit, except for shelter and for fresh water? A. I should not think it was of any value whatever."

Mr. O. B. Whitten of Portland, vice-president of the Fishery Union, said, November last, in a local paper, that Canada has nothing to give us to offset free trade, "no privileges, bait or fish."

He also testified before the Committee of Foreign Relations as follows:

"Q. In fishing in Canadian waters for halibut—I do not mean in waters within their jurisdiction, but off their coast on the banks—what necessity is there for our fishermen to go into their ports for bait? A. Not any whatever.

"Q. Is there any necessity of going into the ports of Canada to get fresh bait? A. It is not necessary; they can get it here and take it with them. There are thousands and thousands of barrels caught no further off than Wood Island.

"Q. Do you consider valuable the privilege of going into Canadian ports to buy bait? A. I do not consider it of any value at all.

"Q. Then so far as the Canadian ports are concerned, other than for purposes of shelter, water, wood and repairs of damages, it would be better for the fishermen of Maine if they were not permitted to go in at all? A. I think so."

Mr. Charles A. Dyer of Portland, than whom no gentleman is more experienced, also testified before the same committee as follows:

"Q. From your experience in the fishing business do you think that our fishermen from Maine on the Banks off the Canadian shores, the Grand Banks and others, have any necessity for going into port to buy bait? A. I should think not.

"Q. In your opinion, what is the privilege of buying bait in Canadian ports worth to the Maine fishermen? A. Not a cent.

"Q. Whether or not you concur with Captain Whitten that, as a rule, the voyages would be more successful if they did not touch in Canadian ports at all for any reason? A. I think they would.

"Q. Is there anything that you know of that is desirable for our fishermen that Canada can give us? A. Nothing."

And in the formal answer of the United States filed before the Halifax Commission it was said:

"The various incidental and reciprocal advantages of the Treaty of 1871, such as the privileges of traffic, purchasing bait and other supplies, are not the subject of compensation; because the Treaty of Washington confers no such rights on the inhabitants of the United States, who now enjoy them merely by sufferance, and who can at any time be deprived of them by the enforcement of existing laws or the re-enactment of former oppressive laws. * * * Moreover, the treaty does not provide for any possible compensation for such authorities, and they are far more important and valuable to the subjects of Her Majesty than to the United States."

J. L. Stanley, to whose objections to the treaty the Boston Advertiser gives much space, stated as follows:

"To begin with, consider for a moment the question of bait! By article 15 our vessels will be accorded the privilege of purchasing bait; but this is a matter about which we care very little. * * * The question of bait will regulate itself, and we care but little about it any way."

Citations of this nature can be extended indefinitely; and they show that, until it became necessary to make an attack on the treaty, the so-called privilege of purchasing special fishery supplies was contemptuously thrown away as of no value whatever. How utterly devoid of consistency and truthfulness to deride a treaty because it makes no provision for what was loudly, openly and constantly proclaimed as valueless! And why complain of commissioners who had a right to assume that the position so taken was honestly taken, and to act accordingly?

Notwithstanding the constant misrepresentations of the eleventh article already referred to, in cases of distress it meets every possible desire; and for all else it secures without compensation therefor the privilege of purchasing all such provisions and ordinary supplies as are obtained by trading vessels, and this alike for the homeward or the outward voyage, or when in for shelter, or when putting in especially for the "casual and needful supplies" to which it refers. In fact, it meets every condition except that of original "fitting out" for a fishing voyage, or a general "refitting" for an extension of cruise.

If our vessels had the right of transshipping mackerel in the Gulf of St. Lawrence, the latter privilege would undoubtedly be occasionally of value; but an original fitting or indeed, except for those special cases in the gulf, a general refitting would never be attempted except at the home ports, as was clearly proven before the Senate Committee of Foreign Relations. Mr. Stanley, in the interview already referred to, unwittingly concedes on this point as follows:

"Vessels' supplies are generally bought here, where they are cheaper. We buy our seines and lines here, and also sell to the Nova Scotians; so that privilege is of no account. No one goes to a Canadian port for supplies except in case of emergency or when coming home. So far as shipping is concerned, the men come here to ship. Cod-fish are never shipped home except in case of distress."

All these contingencies named by him are fully provided for by the various articles of the treaty.

Next is the matter of shipping men. Mr. Stanley seems to dispose of this question, but it is well to examine it a little more carefully. The three leading fishing ports in Maine and Massachusetts are Portland, Gloucester and Provincetown. Portland and Gloucester sail their vessels generally, if not entirely, on shares; so that, except in case of death, sickness or other misfortune, which is fully provided for by the treaty, they have rare occasion to run in to Dominion ports for men, as stated by Mr. Stanley. This is also fully explained by Captain John Chisholm of Gloucester, in his testimony before the Committee on Foreign Relations, as follows:

"Q. What is the nationality of the majority of the people on your vessel, these ten men you have? A. Four are from the Provinces; the rest are from the State of Maine and Gloucester.

"Q. Did you pick up those four provincial men in the Provinces? A. No, sir; I shipped them here; I sent them money in the spring to pay their passage here; so as to ship with them.

"Q. Are they people you know? A. Yes, sir. I knew them before.

"Q. Did you send for them to take them on board up there, or because it was more convenient for your purposes to ship them here. A. We would rather ship them here, and so I sent them money to bring them here. We are never short of men here; we can ship men here at any time."

It is understood that the system of Provincetown is otherwise, and at that port the shipper engages the fishermen at so many round dollars either for the trip, the season or the month; and thus our American fishermen may be brought directly in competition with the lower paid fishermen of Nova Scotia.

In A. D. 1886 the whole number employed in the cod, halibut and mackerel fisheries of New England were 13,400, of whom 9,374 were citizens of the United States, 2,252 were from the British Provinces and 1,774 appear as foreigners of other nationalities, though probably a great many of the last two classes were residents of Maine or Massachusetts.

Several witnesses from Provincetown went before the Committee of Foreign Relations, who explained freely and fully the matters covered in this part of this statement. James Gifford, deputy collector of Provincetown, testified that the wages paid a British crew, meaning probably for the season, was from \$75 to \$82 per man, and those paid the American crew was from \$125 to \$190 per man. It is understood that Provincetown fits out for the Grand Banks about half as much tonnage as Gloucester, and three times as much as Portland.

We have had loud proclamations that the fishermen of New England are to be protected; yet the matter of freely shipping men in Nova Scotia is not in the interests of fishermen, but of the owners of fishing vessels. No one ought to object to justly aiding the latter, and on the other hand, all ought to be willing to encourage them by all reasonable methods. Neither should anyone oppose the free ingress to the United States of the residents of the Maritime Provinces, who in their own homes are a kind-hearted and honest people; but it is a strange thing to ask, in the pretended interests of our fishermen, the exercise of the power of our government in forcing a policy whose sole object is to bring them in direct and easy competition with the cheaper paid Nova Scotians.

Only one thing remains to be considered, and that is the matter of transshipment of fish in bond; and this, so far from being the sole cause, or indeed a prominent cause of the difficulties, was heard of only once, and then not from a fisherman in regular line, but from a steam vessel, the "Novelty." It cannot be doubted that the privilege is one of value; but it cannot be demanded as a right. It is not one recognized by the ordinary comity of nations, and as already said, it never has been asserted except when granted by express treaty provisions. These propositions are too clear to need argumentation. Therefore its only alleged basis would be the twenty-ninth article of the Treaty of A. D. 1871. Apparently in the

view of the commissioners the article did not sustain that construction; and in the argument of the Hon. Richard H. Dana, counsel of the United States at Halifax in A. D. 1877, at a time when the matter came fairly in issue, he asked the question: "Does the Treaty of 1871 give the United States the right to buy bait, ice, provisions, supplies for vessels and to tranship cargoes within the British Dominion?" He himself answered: "I say the Treaty of Washington has not given us these rights." Moreover, the action of the commission in construing this article was of very little consequence, because the article is terminable by two years' notice by either Government. If the construction put on it is not satisfactory to the United States, Congress can denounce it; and if a different construction had been adopted unsatisfactory to the Dominion of Canada, it would have in like manner been denounced by Great Britain.

The intelligent Washington correspondent of the Boston Journal, while criticising the treaty in other respects, was forced to say as follows:

"What our fishermen wanted were in the main two things: The right to go into Canadian ports to buy bait, ice and all other supplies, and the right to ship their fish to the United States from a Canadian port in bond. The latter was a privilege and could not be claimed as a right. It could only be secured by negotiation and presumably by some concessions on our part."

Had Congress approved the commission recommended by the President before the beginning of these troubles, the concession thus indicated could perhaps have been formulated, and with the consent of Congress, in some way made good otherwise than at the cost of our fishermen. That they are not now obtained, is the work of those who opposed that commission, and in no way the fault of the present negotiators. These had no proper jurisdiction over matters calling for barter, and no just power under present circumstances to bind Congress to pay for such concessions either in money, by reduction of duties, or in any other manner.

What has been acquired by this treaty, and this examination of its provisions must show that very much has thus been acquired, has been obtained without any consideration whatever moving from the United States, beyond the arguments persistently put forward that Canada must ultimately be an enormous loser by continuing the unfriendly course which she had heretofore marked out. The result of the provisions of articles ten and eleven are justly and moderately described by the Daily Citizen, at Ottawa, as follows:

"The people of Canada, however, will not be misled; they may not have got all they wanted, but in reality they want only what they got. The Treaty of 1818 in many particulars had outlived its usefulness; the commercial intercourse between Canada and the United States has become closer year by year; the traffic in fish has become immense, and the ties between England, Canada and the United States have gradually ripened into what may not unreasonably be termed an English speaking alliance, whose interests are peace, the promotion of trade and a desire to utilize every element thereof to the best possible advantage. Modern progress demanded a more specific definition of the old treaty, and acting upon this

Great Britain and Canada have agreed to an amelioration of certain clauses, with a view to the prospective establishment of more widened commercial intercourse."

At this point we are in a position to review the progress marked by the treaty; and for this purpose we copy here the published interview with Senator Frye, which took place at Lewiston in October, 1886, immediately after the Committee of Foreign Relations had closed the taking of evidence, to which we have referred. He is reported to have said as follows:

"The testimony of the owners and fishermen taken at Gloucester, also at Boston, Provincetown and Portland, was entirely agreed on the following points:

"First—That there is no necessity at all for our fishing vessels to enter ports of Canada for any purposes except those provided for in the Treaty of 1818, viz., for shelter, wood, water and repairs; that while the Canadians admit our right to these privileges, they are unnecessarily and without excuse interfering continuously with our enjoyment of them. If one of our vessels runs into a Canadian port in a storm for shelter they insist upon immediate entry, no matter how inconvenient it may be to the captain of the vessel. They will not permit him to land a man, though he be a citizen of that country, send his clothing ashore, send for treatment in sickness, purchase anything whatever. A score of our fishing vessels have already been seized by them and fined \$400, for what they determined to be infraction of the peculiar rules and regulations of their customs laws, which have been obsolete for more than forty years. In fact, they do not permit us to enjoy any of the rights which they admit to be secured to us by the Treaty of 1818, without putting us to more inconvenience and trouble than the right is worth.

"Second—They refuse our fishermen absolutely and unqualifiedly all commercial rights whatever, and refuse to recognize as valid our customs permits to touch and trade. Their ports are almost as effectually closed against all our fishing vessels as if there was to-day a condition of war between us and Great Britain. The fishermen also concur in saying that these commercial privileges are of no value. It has been generally understood that the right to purchase bait was a very valuable one; but the testimony not only shows that it is of no value, but the preponderance of testimony is that the right exercised does more harm than good, that the time consumed in going into and out of the port, and going thence to the banks again, cost the fishermen more than the value of the bait.

"Third—Both fishermen and owners agree with great unanimity that they require absolutely nothing of Canada other than the treaty rights of 1818; that it is better for them when they start on their cruises to provide their vessels with everything that is necessary for the cruises, bait and all, than to leave anything to be provided for in Canada.

"Fourth—They agree that the privilege of fishing inside of the three-mile limit is absolutely worthless, and has been for fifteen years; that nearly all the fish, both mackerel and cod, have been taken outside; that fishing with purse seines within three miles of the shores never brings compensation enough to make up for the damage to the seines in the shoal water and on the rocks.

"Fifth—There seems to be no difference in opinion about the result of a treaty with Canada which would give them our markets or alter our tariff by making fish free. They believe it would be certain to destroy in ten or fifteen years the fishing industry of New England and transfer to Canada the fishing fleet; that there is nothing which Canada can give them as a compensation for this.

"Sixth—Their remedy for existing troubles with their business is a higher duty on salt fish, also a duty on fresh fish."

These remarks were made near the close of the first season of these fishery troubles, and also at the close of the great mass of testimony taken by the committee, of which the Senator was a member. He stood then in a position to observe what had taken place in the past, and what was needed for the future. The only recommendation he made was a higher duty on salt fish and a duty on fresh fish. This, if just, and if the time has now come to reverse the action of the Republican Congress and the Republican President in A. D. 1870, when the duties on fish were fixed as they stand to-day, is a matter for the legislative and not for the treaty-making power.

We invoke the most careful examination of every word contained in this statement, which was apparently prepared with care, and we challenge the pointing out of a single mischief stated therein as of consequence which this treaty does not entirely dispose of.

The fourteenth article must prove very beneficial. Of our vessels heretofore seized for unlawful fishing, by far the greater number have been condemned, and in some cases the owners found it more expensive to defend than to permit them to be sold, purchasing them back at the sales. The proceedings have been in the vice-Admiralty Courts, where they are unusually expensive; and this is now remedied. The mere matter of relief from giving bonds for costs is of real importance; because, although on this point there has been no discrimination against fishing vessels, and the practice in the Canadian courts has been somewhat as in our own, yet before bonds can be given, so that the cases may be brought to trial, skipper and sharesmen are scattered and the owners find it expensive and sometimes quite impossible to collect the proofs again. This section provides that the penalty for unlawful fishing may extend to the forfeiture of the vessel and cargo aboard at the time of the offence, subject as in all other cases of penalties to revision by the Governor in Council, thus giving the vessel the possibility of the benefit of all mitigating circumstances.

Since A. D. 1819 this forfeiture has been imposed, not only on vessels illegally fishing, but on vessels preparing to fish. It has also been claimed that vessels purchasing bait intended for the deep sea fisheries were liable to forfeiture; and it was so decided in A. D. 1870 by the Vice-Admiralty Court at Halifax in the case of the "J. H. Nickerson." This vessel was alleged guilty of no offence except of purchasing bait with the view of fishing on the Banks; and yet she was seized and condemned, the United States furnishing no assistance in her defence and obtaining no reparations for the owners. The validity of that decision has been contested anew in the cases of the "Adams" and "Doughty," mainly at the expense of the United States.

In order that there might be no question with reference to future seizures, the Dominion Parliament in 1886 enacted a statute imposing the extreme penalty of forfeiture, not only on vessels purchasing bait, but on all entering the Dominion waters in cases not expressly authorized by treaty, thus imperilling our fishermen with the danger of forfeiture under innumerable circumstances. This law was severe, yet it was not more unjust in some respects than statutes passed in A. D. 1836, 1868 and 1870, the repeal and modification of none of which was ever secured by our government, and all of which have been permitted to stand as a continual threat to our fishermen and a constant peril to their property. This article permits no enlargement of any penalty in excess of those heretofore constantly imposed. As already stated, it consents to a forfeiture of the vessel for illegal fishing, but carefully limits it to the value of the cargo at the time of the offence. It does not deny a like maximum punishment for illegally preparing to fish, but clearly restricts this to cases where the preparation was within the waters of the Dominion and the fishing was intended also to be within the same jurisdiction; so that by its terms proceedings like those against the "Adams" and the "Doughty" would be impossible. Having in view also the somewhat indefinite meaning of the words "preparing to fish" and the varying degrees of criminality which that expression implies, it demands that the court shall take into consideration all the circumstances and modify the penalty accordingly. Had the commissioners been working new ground, strong reasons might have been urged for refusing to recognize any penalty for illegally preparing to fish; but in view of the fact that since A. D. 1819 this has been an offence according to the statutes of Great Britain with the practical acquiescence of the United States, it is very plain that the only question was whether the punishment could be ameliorated.

As to all other matters the statute of 1886 is cut up by the roots; and any vessel alleged to be guilty of violation of the fishery laws of Canada, aside from illegally fishing or illegally preparing to fish, is at the most exposed to a penalty not exceeding \$3 per ton. This, of course, does not apply to proceedings under the customs laws; it would have been beyond reason to have sought by a treaty to modify the penalties of the customs laws of any foreign country.

Such are the beneficent provisions of this treaty. The principle running through it is not one of barter. The privileges granted by it are only those which we were justly entitled to ask as among neighboring States, but they were the same which have been constantly refused to us from the time of the Convention in 1818. It was not within the jurisdiction of the commission to offer a price, in the way of money, concessions of duties or other valuable considerations, to enable our fishermen to share all the peculiar advantages appertaining to those resident in Nova Scotia; but it is for them an assurance of peace and it is hoped will enable them to pursue their occupations unharassed and unvexed. It is, however, a great misfortune that, in addition to the attacks to which the treaty is subject from partisan sources, the losses against which our fishing interests have struggled for the last two years, have left them in no suitable condition to weigh justly whatever may be tendered

them. It is singular that, while they expected from the denunciation of the reciprocity treaty a race of prosperity, the seasons of 1886 and 1887 have been most disastrous for them. The remedy proposed by some who assume to speak in their behalf is a refusal of all treaties and a perpetuation of the present difficulties until retaliation leads to an embargo on Canadian fish. The Boston Advertiser distinctly shadows this by saying:

“In retaliation for the withholding of the rights of friendly vessels in these waters, and in compensation to boycotted fishermen, a stimulus should be given to the American fishing industry by excluding Canadian fish from our market.”

Also the correspondent of the Boston Journal says:

“It is among the probabilities that now that the commission has completed its work Congress, may take steps to secure the execution of the retaliation act of a year ago. The closing of the ports of the United States to the vessels of Canada until the Dominion is willing to grant commercial privileges to American fishermen would probably settle the question.”

So long as the question was the one raised by the events of the last two years, that is, of justice, it was proper that the whole power of the nation should be put in motion, as it has been, to require, not of Canada, but of Great Britain, the rights to which our vessels are entitled; but when England responds with the treaty now offered, in which all honest demands are satisfied, is it not time to halt? Are we not then to have regard to other interests? Shall we thereafter enter on a blind course of retaliation for the purpose of giving “a stimulus to the American fishing industry by excluding Canadian fish,” breaking up therefore the lines of communication between New England and especially between Portland and the Maritime Provinces, and perhaps all Canada, hastening further the visible “drying up” of the maritime business of our city already so rapid, and entailing upon our social, political and economical relations consequences the magnitude of which no one can foresee? No fisherman who thoughtfully and carefully considers the situation will refuse a just and favorable response.

WILLIAM L. PUTNAM.

Feb. 29, A. D. 1888.

