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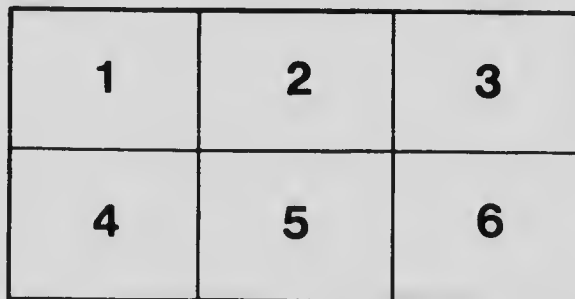
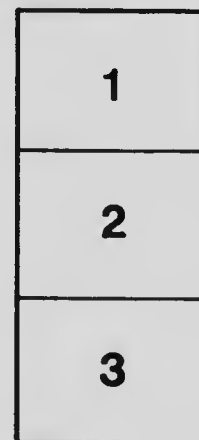
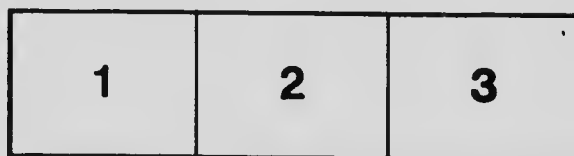
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Newfoundland.

Speech on Modus Vivendi,

DELIVERED BY

Rt. Hon. Sir R. Bond, P.C., K.C.M.G.

Prime Minister,

IN THE

House of Assembly,

Tuesday, Feb. 12,

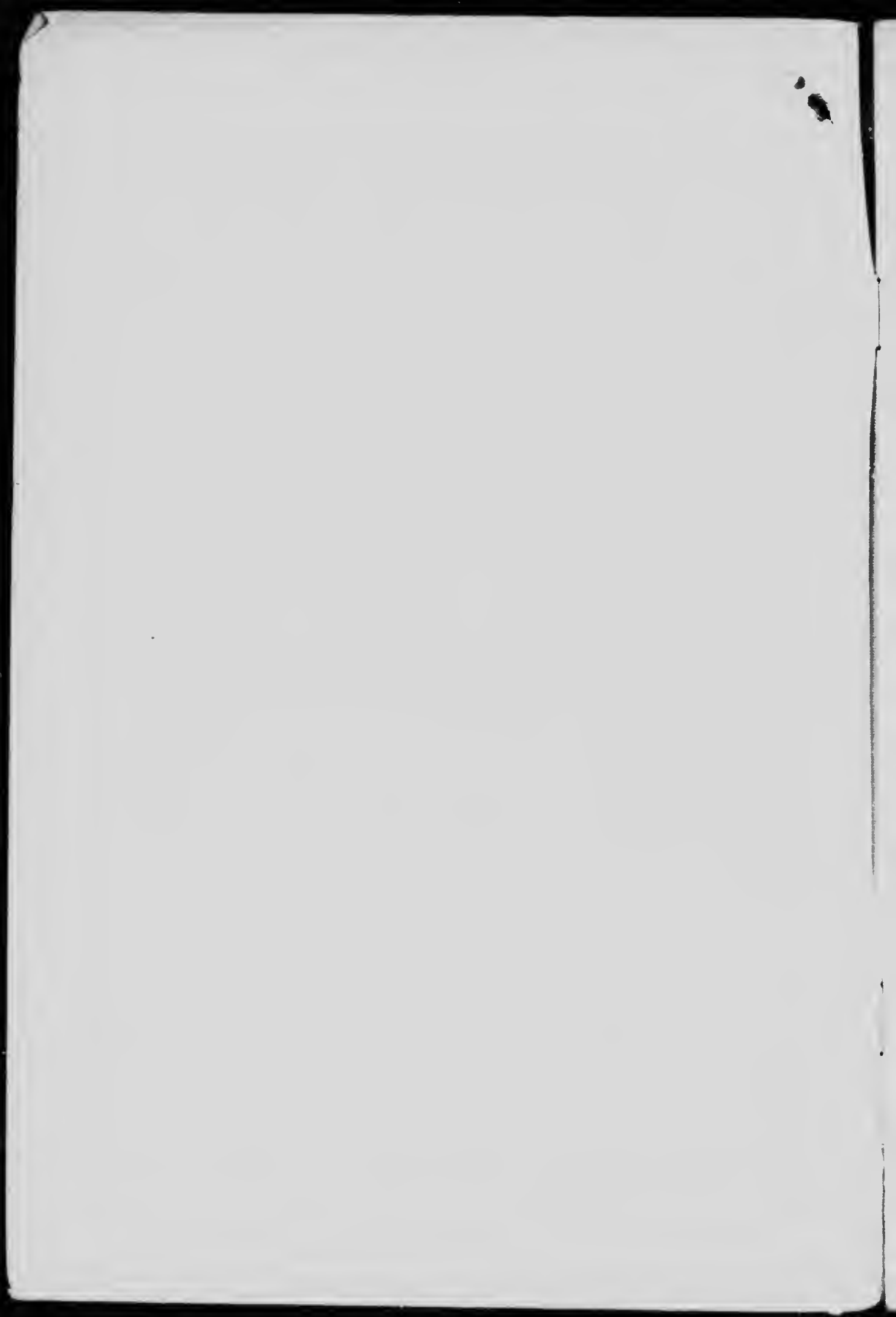
1907.

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ST. JOHN'S, NFLD.,

*The Evening Telegram print,*

1907



# THE MODUS VIVENDI.

Speech of the Right Hon. Sir Robert Bond, K.C.M.G.,  
P.C., Premier,

On the Motion to go into Committee of the Whole on Address  
to the Secretary of State for the Colonies, in relation to  
the Modus Vivendi entered into between His Majesty's  
Government and the Government of the United States of  
America respecting the Fisheries of the West Coast

RIGHT HON. SIR ROBERT BOND.  
—In moving the adoption of the address I would crave the indulgence of the House, if in doing so I am compelled to trespass upon its time and patience longer than is my custom. In dealing with this question it will be necessary for me to quote in full such despatches as I am permitted to table, and also have reference to other data that I regret to say I am not permitted to lay upon the table of this House.

This is the first opportunity that has been afforded the Government to publicly state their position in relation to the Modus Vivendi, entered into in October last between His Majesty's Government and that of the United States of America.

I have seen quotations from a local newspaper in the British press, accompanied by the statement that the extracts had appeared in my "personal organ," and were believed to have been "inspired" by me. I have no "personal organ," and I have not "inspired" anything that has appeared in the local newspapers. When I was waited on by a representative of the local press and asked for an opinion on the Modus Vivendi, I respectfully intimated to the gentleman who desired to interview me that I considered it best to refrain from giving expression to the Government's views until the Legislature met.

The time has now arrived for the Government to fully and freely set forth its position on this question. It would perhaps be too much for me to expect that my views and opinions will pass unchallenged, but I am hopeful that my statement will convince the House that the

question involved in the Modus Vivendi is not a mere party, political one, but a grave constitutional question in which this Colony and the other Colonies of the Empire are interested, and that, therefore, unanimity of action in respect thereto may be secured. There has been unanimity of action outside this Colony.

Very rarely has the press of Great Britain and of His Majesty's Dominions beyond the Seas shown greater unanimity than in its support of the action of this Government in relation to the Modus Vivendi. The extraordinary nature of the arrangement, and the extraordinary manner of its accomplishment has occasioned a feeling of indignation and alarm from one end of the Empire to the other. The leading journals of the Canadian Dominion, of the Commonwealth of Australia, of New Zealand, of South Africa and of India have given forth no uncertain expression of interest in the question that the Modus Vivendi has raised, an expression of interest in which indignation and alarm has been blended with genuine sympathy for the people of this Colony.

Someone has said that the press is the great judiciary of these modern times. The press referred to of course are those journals the wide world over whose columns are untarnished by prejudice or passion, by personalities or partizanship, and which stand for truth and justice alone. I rejoice exceedingly that the decision of this great tribunal has been in favour of the position that this Government has taken upon the question.

The question that the Modus Vivendi has raised is not one of mere local con-

vern. This Colony is primarily affected thereby, but not by any means solely affected; hence the interest that has been taken in the matter throughout His Majesty's Dominions. Principles of the highest importance are involved therein, principles which form the sub-stratum upon which the liberties of the Colonies under Responsible Government are based.

### The Real Question at Issue Is,

how far, according to the principles of the Constitution, His Majesty's Ministers have the power to set aside or limit the operation of local laws which have received the Royal assent, and dispose of the resources of the Colonies without their interests being consulted or their sanction obtained.

Let us briefly consider the subject of Responsible Government before we proceed to analyze the arrangement that we regard as in conflict with its principles.

In the year 1838 Canada was in a state of insurrection. From Prince Edward Island away West to Toronto there was discontent which found expression in deeds of violence. This was consequent upon political grievances that had for several years existed. It was at this juncture that the Imperial Government despatched the Earl of Durham to proceed there as Governor-General and Lord High Commissioner to investigate the affairs of the whole British North American provinces. In the year 1839—that following his appointment—Lord Durham presented to the Queen an elaborate report on the result of his enquiries, in which he attributed all Colonial evils to the absence of responsibility of their rulers to those whom they were called upon to govern, and he recommended as a panacea for all existing political complaints the introduction into the several British North American Colonies of the principle of local self-government. Two years later—in 1841—Responsible Government was introduced into Canada, and its success in Canada, under the presidency of Lord Elgin, father of the distinguished gentleman who is now Secretary of State for the Colonies, led to its introduction into the maritime provinces of British North America, and subsequently into the several Colonies of Australia, New Zealand and the Cape of Good Hope.

It was in the year 1855 that Responsible Government was granted to this Colony. Under and by virtue of the institution then granted to us, we, in common with those other Colonies pos-

sessing Responsible Government, enjoy the privilege of supreme authority within the limits of the Colony to provide for the peace, order and good government thereof. We possess unreserved powers to deliberate and determine absolutely in regard to all matters of local concern, and complete powers of legislation. We are free to regulate our own commercial policy as we deem best, subject only to the proviso that we may not use this liberty to the direct injury of British commerce, nor infringe upon obligations incurred by the Mother Country in her treaties with other nations. Todd, one of the best authorities upon parliamentary Government in the Colonies, says that "In granting these high and important privileges the Crown did not divest itself of its supreme authority over the Colonies, but that authority is exercised only in the appointment and control of a Governor as an Imperial Officer, and in the allowance, or disallowance, in certain cases, of the enactments of the local Legislature."

All Statutes assented to by the Governor of a Colony go into force immediately, unless they contain a clause suspending the operation until the issue of a proclamation of approval by the King in Council, or some other specified provision to the contrary, but the Governor is required to transmit a copy of all Statutes to the Secretary of State for the Colonies, and the King in Council may, within two years after the receipt of the same, disallow such Act. All Colonial enactments are submitted to the scrutiny of Counsel by the Department of the Secretary of State, and unless they are repugnant to the law of England, or inconsistent with any treaty obligation of the Crown, or prejudicial to the rights and property of British subjects residing outside of the Colony, or prejudicial to the trade and shipping of the United Kingdom or its dependencies, the extreme measure of disallowing colonial acts is seldom resorted to. In fact, the veto of the Crown has for many years fallen into disuse, and when Acts have appeared to His Majesty's Government to be objectionable they have formed the subject of correspondence with the Colony concerned in order that the Legislature thereof may apply the remedy.

Now then, having briefly reviewed our rights and privileges under Responsible Government, and also the limitations that the Crown has placed upon the same, I would observe that if we, as



colonists, had been guilty of asserting rights which do not attach to us and had persisted in disregarding solemn obligations contained in treaties, or in setting at nought Imperial Acts of Parliament, then we should have forfeited our rights under the constitution and have deserved to be over-ruled. But even under such conditions any entailment or suspension of our laws could, I submit, only take place at the hands of the Parliament of Great Britain, for Parliament alone has the power to limit, or annul the laws of this Colony when once approved by the Crown. If this is not the correct position, and His Majesty's ministers have the power by a diplomatic arrangement to set aside the statutes of this Colony and to dispose of its resources, then the constitution of which we have been so proud is something totally different from what we have believed it to be, and in very fact Responsible Government in the Colonies is a mere delusion.

If, on the other hand, it shall be shown that His Majesty's Ministers had not lawful authority to deal thus with this Colony and that the *Modus Vivendi* was an instrument entirely *ultra vires* within the jurisdiction of this Colony, then it is clear that an attempt has been made to override the constitutional rights of this people, and this Government was justified in resisting each attempt by every constitutional means at its disposal.

The question that presented itself to us was not a mere party political question; it was a great constitutional question. It was not a mere local question; it was one that touched every Colony possessing Responsible Government, and it therefore awakened the sympathy and support of all those who are deeply interested in the integrity of the Empire and who are proud of their origin and inheritance.

In order to view the present position aright it is necessary for us to have regard to the condition of things that preceded it, and for this purpose I shall rapidly review the

### History of our Relations with the United States

in respect to the fisheries since the termination of the Washington Treaty in 1884.

On reference to the Journals of the House of Assembly it will be found that on the first of August, 1885, a telegram was received by the Officer Administrat-

ing the Government of this Colony from the Secretary of State for the Colonies, intimating that His Majesty's Government deemed it "desirable that steps should be taken by the Government of this Colony to decide definitely on the exact nature of the proposals to be made to the Government of the United States in anticipation of the negotiations which were contemplated in view of the termination of the temporary arrangements that were made by His Majesty's Minister at Washington with the United States Government arising out of the termination of the fisheries articles of the Treaty of Washington of 1871, on the 30th June, 1835." The answer which appears to have been given by the Government of this Colony to this representation was the introduction of the Bait Act in the year 1885. That the adoption of that measure had special reference to the United States of America is clearly evidenced by a despatch from Sir G. W. DesVoeux to the Colonial Office, bearing date 25th day of May, 1886, wherein he stated that:—

"The people in Newfoundland, like those of Canada, desire to use the right to withhold a supply of bait as a means of inducing the American Government to remove the import duties on British fish,"

and again, in that remarkably able despatch from Sir G. Wm. DesVoeux to the Colonial Office, bearing date 4th of January, '87, in support of the Bait Act, wherein he stated that:—

"American fishermen are protected in the markets of the United States which take all their products by a duty of fifty-six cents per quintal, which is almost prohibitive to the results of British industry," and

"Though the measure, if allowed, would to a large extent place the fisheries in this neighborhood within the control of the people of this Colony, they have no desire to monopolise them, and I feel satisfied that they would willingly modify the provisions of the measure in favour of such Governments as would grant a proportionate reciprocity. . . . I have very good reason for believing that as regards the United States, the right of obtaining bait would be restored on the opening of the American markets to Newfoundland fish. . . . in a word, the principle that the Colonists desire to maintain is 'live and let live' and they merely object to that of 'let others live by killing us.'"

Following upon this despatch, the late Sir Ambrose Shea and the late Sir Robert Thorburn proceeded to England to urge upon His Majesty's Government the ratification of the measure for which Sir G. Wm. DesVoeux had so eloquently pleaded, and while in London, namely, on the 16th of June, 1887, Sir Ambrose Shea received a letter from the Office of Legation of the United States intimating that,—

“Should the Government of Newfoundland see fit to give notice that American fishermen be admitted to the ports of that province for the purpose of obtaining supplies the proposal will be cordially accepted and acted upon by the Government of the United States. In that event there would be no objection on the part of the United States Government to entertain suggestions for an independent agreement in respect to the fisheries of Newfoundland, and if made by the authorized agents of the Imperial Government.”

This was communicated by Sir Ambrose Shea to the Colonial Office, and also to the Government of this Colony, and I find, that, on the 3rd of August, 1887, the following Minute of Council was adopted, viz:—

“A communication was read from Sir A. Shea, enclosing a letter to him from Mr. Phelps, United States Minister in London, on the subject of negotiations for an arrangement between the United States Government and this Colony in regard to fishery questions, and to the effect that the granting of permission, during the present season, to the United States fishermen to obtain supplies in the ports of this Colony, would be regarded with favour by the Government of the United States in connection with such negotiations.

The Council are gratified at the expression, on the part of the United States Government, of a disposition on their part to enter into negotiations in relation to this important question in a friendly spirit.

The Council are of opinion that it would be greatly to the advantage of the Colony to be in a position to negotiate for an independent (“separate”) arrangement with the United States in relation to fishery and other questions, and that it is desirable that authority should be obtained from Her Majesty's Government for the purpose of opening communication with the United States Government upon the subject as soon as opportunity may appear favourable, subject to such condi-

tion as Her Majesty's Government may consider it advisable to prescribe.”

### Nothing Came Immediately of this Overture.

On the 15th of February, 1888, what is known as the Chamberlain-Bayard Treaty was signed at Washington. This Treaty provided for free fishing in exchange for the free admission of fish and fish products, the result of British catch, into the markets of the United States of America. This Treaty was approved and signed by the United States Government, but was rejected by the United States Senate, and the fishery privileges of the United States consequently reverted to those embodied in the Treaty of 1818.

In this same year, 1888, the Bait Act referred to in the despatch of Sir G. W. DesVoeux was brought into force, and under the provisions of the same, foreign fishing vessels were excluded from the inshore bait fisheries, except under license, and notices were issued to the United States Government from the Department of the Colonial Secretary of this Colony calling attention to the provisions of the said Act.

By virtue of the authority vested thereunder in the Governor-in-Council, a tax of \$1.50 per net ton was imposed upon all American fishing vessels visiting this coast in quest of bait fishes.

Our relations with the United States continued in this form until the year 1890, when, by a despatch bearing date 28th February, 1890, from Sir Terence O'Brien, Governor of this Colony, to the Secretary of State for the Colonies, the question of a direct and independent trade arrangement between this Colony and the United States of America was revived. This negotiation resulted in my being authorised to proceed to Washington to assist in bringing about such an arrangement. The result of my visit to Washington was what is known as the Bond-Blaine Convention of 1890, which was virtually upon the same lines as the Chamberlain-Bayard Treaty of 1888. This convention was approved by the United States Government, but was not ratified by His Majesty's Government owing to a protest from the Government of the Dominion of Canada, wherein it was contended that before such ratification was made the Canadian Government should be afforded an opportunity to negotiate a similar treaty on her own behalf. His Majesty's Government furnished repeated assurances to this Government that the ratification should not be indefinitely

postponed, and that when it should appear to His Majesty's Government that a reasonable time had been afforded the Government of the Dominion of Canada in which to negotiate, the assent of the Crown to the Convention would be forthcoming.

In view of the fact that the United States Government had signified its willingness to exchange a free market with us for bait privileges, and that our Convention was not held in abeyance by reason of any action or want of action on its part, the Government of this Colony extended to United States fishermen for a period of twelve years all the privileges that it was contemplated should be granted under the Convention of 1890.

During those twelve years the Government of this Colony persistently urged His Majesty's Government to fulfil its undertaking as regards the United States Convention but without avail.

In 1902 I was in England in connection with His Majesty's Coronation and the Conference of Colonial Premiers, and after those functions were over I availed myself of the opportunity of pressing upon the then Secretary of State for the Colonies—Mr. Chamberlain—the unfairness of the treatment that had been meted out to us as a Colony during the twelve years previous in relation to our proposed trade arrangement with the United States of America, and begged the privilege of being again permitted to proceed to Washington to re-open negotiations with the United States Government for an arrangement upon the lines of the Bond-Blaine Convention. That distinguished gentleman, who will ever be justly regarded as the greatest friend the Colonies have had in the Colonial Office, acceded to my request, and furnished me with the necessary authority to proceed to Washington. The result of my visit was what is known as the Hay-Bond Treaty of 1902. This convention was ratified by the Secretary of State, of the United States on behalf of his Government, and by the late Sir Michael Herbert on behalf of His Majesty's Government. It provided, as did the former Convention, for the free admission of fishery products of this country into United States markets in exchange for baiting privileges in this Colony. That convention was held in abeyance for some considerable time by the Foreign Relations Committee of the United States of America, but in the year 1904 it was reported by that Committee to the United States Senate, where it was virtually

amended out of existence at the instance of the Secretary of State of Gloucester.

Between 1900 and 1904 the privileges that had been freely extended to the United States during the twelve years previous were continued, but after the action of the United States Senate became known to this Government, in the interests of the trade and commerce of this Colony it was determined that the policy of the Government of 1885—which had been so forcibly and ably advocated by the then Governor, Sir G. W. DesVoeux, should be enforced against American fishermen.

When the Legislature met on the 30th of March, 1905,

### **His Excellency the Governor in the Speech From the Throne,**

said,—“I would observe that the serious loss occasioned the fishermen of this Colony last season by the difficulty of obtaining a full supply of bait fishes rendered it imperative for my Ministers to consider whether the very valuable bait privileges conceded to the fishermen of the United States by the Government of this Colony, in expectation of the ratification of the Convention, could be continued without detriment to our fishery interest. After very careful enquiry and consideration it was decided that, under existing circumstances, local interests would be best conserved by withholding those privileges.”

In order to more effectively carry out the provisions of the Bait Act, which had been in force for nearly 20 years against French fishermen, but which, for the reasons I have set forth, were not enforced in their entirety against American citizens, the Government introduced the Foreign Fishing Vessels Act, of 1905, whereby it was provided amongst other things that it shall be unlawful for the master of any foreign fishing vessel “to engage any person to form part of the crew of said vessel in any port or on any part of the coasts of this Island.”

The method adopted by American fishermen of conducting the herring fishery on the West Coast of this Colony had ever been by purchase or barter. The Bait Act, as it stood, enabled us to prevent a continuation of that practice, but the Government appreciated that the Americans would attempt to overcome the difficulty occasioned by the enforcement of the Bait Act by engaging local fishermen to form part of their crews and to catch the fish they required. It was for the purpose, then, of preventing this evasion of the spirit and inten-

tion of the Bait Act that the clause that I have referred to was inserted in the Act, of 1905.

At the close of the Session of 1905, this Foreign Fishing Vessels Act was assented to by His Excellency the Governor and became the law of the land.

In October of that year the autumn herring fishery on the West Coast commenced, when it was found that American fishermen were determined to ignore the provisions of the Bait Act as well as the Foreign Fishing Vessels Act, of 1905. The position was further aggravated by their refusing to comply with our Customs and Revenue laws, and to enter and clear and pay light dues as they had ever done heretofore.

Out of deference to the wishes of His Majesty's Government, this Government abstained from enforcing local statutes against American citizens, on the Treaty Coast, during the autumn fishery of 1905, thereby occasioning themselves very considerable embarrassment. They were led to adopt this course believing that during the period that would elapse before the next fishing season came round a special effort would be made by His Majesty's Government to arrive at a satisfactory solution of the difficulties that had arisen by reason of the action of United States fishermen, and failing such solution, that His Majesty's Government would strictly confine the United States to the privileges accorded its inhabitants by the Treaty of 1818.

It will be remembered that at an early period of last Session I introduced a bill to amend the Foreign Fishing Vessels Act of 1905, by declaring that the first part of Section 1, and the whole of Section 3 thereof do not apply to foreign fishing vessels resorting to Newfoundland waters in the exercise of treaty rights. This was done at the request of His Majesty's Government in order to meet objections that had been raised to the measure by the Government of the United States.

### **The Foreign Fishing Vessels Act of 1906**

also contained the provisions:—(1) that it should be unlawful for a resident of this Colony to leave it for the purpose of engaging in foreign fishing vessels intending to fish in the waters of this Colony; and (2) that it should be unlawful for the master, owner, or agent of any foreign fishing vessel to engage British subjects to fish for them within the territorial

waters of this Colony. These provisions were rendered necessary because while the Bait Act of 1887 declared that no man should take Bait Fishes within the jurisdiction of this Colony without a license, and the Foreign Fishing Vessels Act of 1905 declared that any master who attempted to engage any person to form part of the crew of any foreign fishing vessel in any port or on any part of the coast of this Island should have his vessel confiscated, in the autumn fishery of 1905 the Americans deliberately proceeded to aid and abett our fishermen in violating the Bait Act by engaging them through agents in Bay of Islands as part of their crews, taking them outside the three mile limit to formally ship and enter their service, and returning with them inside our jurisdiction to fish.

It will be observed that whereas the Foreign Fishing Vessels Act of 1905 penalized the master of any foreign fishing vessel for engaging any person to form part of the crew of said vessel within the jurisdiction of the Colony, the amending Act of 1906 penalized the master, owner or agent of such vessel who should engage British subjects either outside or inside our jurisdiction and utilize them within our jurisdiction to fish for them.

The machinery for a complete control over our own people so as to prevent them from aiding the Americans in catching such fishes was thus provided by this Legislature, but this machinery was rendered inoperative by the *Modus Vivendi*, and its promulgation by the Senior British Naval Officer on this station.

Let us now examine this

### **Extraordinary Diplomatic Arrangement Known as the *Modus Vivendi*.**

I use the term extraordinary because I have been unable to find any precedent for such an arrangement. Because while the Statute law of this Colony (which, until disallowed, is the law of the Empire) declared "Thou shalt not," the *Modus Vivendi* declared "Thou shalt," and thereby purported to legalize what the law had penalized. Because while the Constitution under which we live confers upon this Legislature supreme authority within the limits of the Colony to provide for the peace, order and good government thereof, and unreserved powers to determine absolutely in regard to all matters of local con-

cera, the Modus Vivendi purported to strip this Colony of those powers and to vest them for the time being in His Majesty's Ministers. Because in the year 1865 the Imperial Parliament passed an Act to remove all doubts as to the validity of Colonial laws, the 7th section of which provides that, —

“ All laws or reputed laws enacted or purporting to have been enacted by the Legislatures which have received the assent of Her Majesty in Council, or which have received the assent of the Governor of the said Colony in the name of and on behalf of Her Majesty, shall be and be deemed to have been valid and effectual from the date of such assent for all purposes whatever.” Because the British Parliament having thus declared the validity of our laws it alone had the power to suspend, limit or annul the same.

On the 6th of October last the Secretary of State for the Colonies announced to this Colony by telegraph the conclusion of a Modus Vivendi with the United States Government, and furnished a full text of its terms, which may be summarized as follows, viz :

1. Permission to the Americans to use purse seines during the ensuing season, the use of which instruments of capture the law of this Colony had prohibited and penalized :

2. Permission to the Americans to ship Newfoundland fishermen outside the three mile limit, which, by the law of the Colony was prohibited and penalized :

3. The undertaking on the part of His Majesty's Ministers not to bring into force the Foreign Fishing Vessels Act of 1906, an Act regarded by the Legislature of this Colony as essential in order to control the conduct of British fishermen and effectively enforce the provisions of the Bait Act :

4. An undertaking on the part of His Majesty's Ministers to limit the operation of a law of this Colony (the Foreign Fishing Vessels Act, 1905) by the non-enforcement of the first part of Section 1 and the whole of Section 3.

In return for these concessions the American Government consented, —

1. To advise American fishermen to obey the law of this land and “ not to fish on Sunday ” :

2. To direct that Americans should “ comply with the Colonial law as to reporting at Customs House and paying light dues when physically possible.”

It is important to note at this point

that prior to the year 1905 the Americans had always entered at the Customs and paid light dues, and had not fished on the treaty coast in contravention of the Sunday law.

The entirely one-sided nature of the agreement will be thus apparent to this House.

A few years ago President Roosevelt, whose high ideals of public and private duty and service have won for him the admiration of the best men the world over, made a demand in favour of what he termed

### “ A Square Deal all Round.”

Now that is precisely what the Government of this Colony has been contending for, and it is precisely what has not been experienced. There has not been “ a square deal all round,” but the correspondence published for the information of the Imperial Parliament, which I have tabled, only reveals this in part. This Government requested that the whole of the correspondence in relation to the Modus Vivendi be tabled, but His Majesty's Government have not deemed it expedient that such should be done. In order, however, that this House should arrive at a proper understanding of the matter, I shall, with the aid of the notes that I have made, outline what has really transpired.

The origin of the Modus Vivendi may be found in the speech with which His Excellency the Governor opened this House in March, 1905, which was his Ministers declaration of policy. I have already quoted the paragraph of that speech, which was a notice to all parties concerned of the intention of this Government to discontinue to American fishermen the privileges which had been gratuitously extended to them for a period of fifteen years, and to confine them to their strict rights under the Treaty of 1818.

Following upon this notice was the introduction of the Foreign Fishing Vessels Act of 1905, the main object of which was to supply defects in the Bait Act of 1887 and enable the Government to rigidly enforce it against foreign fishermen.

In the month of October, 1905, American fishing vessels commenced to put in an appearance on our coast, and very soon afterwards most misleading reports as to the conduct of the fishery were sent in to the American Government. Where they were sent from or who they were sent by I am not prepared to say, for I do not know. I do know, however, that

they were communicated to Sir Mortimer Durand, the British Ambassador at Washington, by the United States Government, and by him to the Government of this Colony, under date 13th of October, 1905. The character of the complaints will be seen on reference to the correspondence which has been tabled. They were entirely fictitious and unwarranted.

On the 20th of October, 1905, this Government forwarded a reply, which has not been published, expressing their surprise that His Majesty's Ambassador had been misinformed as to the attitude of the Government of this Colony towards American fishermen, inasmuch as they were aware that representatives of the American Government on board the American cruiser *Growpus* had been for some time, and were then, at Bay of Islands, and therefore could not but be fully cognizant of the fact that there had been no attempt whatever on the part of the Government of this Colony or the people of the Colony to interfere with the rights of American fishermen under the Treaty of 1818.

A few days later the complaints took on a more definite form, and on the 25th of October a telegram was received from the Secretary of State asking "for what purpose this Government had required United States vessels to produce United States fishing licenses; why United States vessels were required to obtain licenses from this Government, and by what law and in what circumstances to enter and clear at Customs House." On the following day, the 26th, a reply was sent to these queries:—

1. That the Government of this Colony had not required United States vessels to produce United States fishery licenses.
2. That United States vessels had not been required to obtain licenses from the Government of this Colony.
3. That in respect to entering and clearing the Government of this Colony considered that under the Customs Act, 1898, particularly Section 22, 61 Vic., Cap. 13, which provides that,— "the master of every vessel coming from any port or place out of this Colony, or coast-wise, and entering any port in this Colony, whether laden or in ballast, shall go without delay when such vessel is entered or moored, to the Custom House for the port or place of entry where he arrives and shall make a report in writing to the Collector or other proper officer, of the arrival and voyage of such vessel," etc. United States vessels

are not exempt; and that neither are they exempt by the Convention of 1818. They submitted that when the Sovereign Power granted fishing privileges to the United States under the said Convention it retained its inherent rights of sovereignty, such as the right to enforce the treaty within its own dominion, and to make and enforce all laws not inconsistent with the same; that one of the inherent rights of sovereignty is to prevent smuggling and crimes of all kinds; that the Government, by virtue of the Constitution granted to them by His Majesty, is the paramount power within the three mile limit of the coasts of the Colony, and that it is their inherent right to decide what measures shall be adopted to protect the revenues of the Colony from smuggling, and that one of the measures adopted is the obligation of all vessels to enter at the Custom House.

They pointed out that the correctness of this position was not questioned by American fishermen until two days previous to the receipt of the telegram from the Secretary of State, when the masters of the United States schooners "H. M. Stanley," "Senator Gardner," "Tattler," and "Maxine" refused to make a formal report to the Sub-Collector at Bay of Islands, informing him that they were advised by wire while at Sydney not to do so. They further pointed out that in January 1900 two United States schooners were fined respectively \$100.00 and \$180.00 for non-report; that in June, 1902, two other United States schooners were fined respectively \$160.00 and \$100.00; but with these exceptions United States vessels had always entered and cleared at the Customs. They concluded their reply to the Secretary of State by intimating that out of deference to the wish expressed by His Majesty's Government they would refrain from any action likely to cause friction with the United States; that up to the moment of transmitting this reply

### No Steps Had Been Taken to Vindicate the Law.

but the Government felt confident that His Majesty's Government would concur with the view that however embarrassing it might be the majesty of the Law should be upheld by legal proceedings provided in such case.

On the same day, namely, the 26th of October, 1905, His Majesty's Government was advised that a formal notice had been handed to Inspector O'Reilly by agents

of the United States vessels at Bay of Islands that "members of crews of American vessels whose homes were in the Bay of Islands, and who had been shipped in North Sydney, would commence on the following day to use certain boats and nets belonging to them and then at their homes, in catching herrings for the said American schooners," which the Government regarded as a deliberate intention on the part of United States fishermen to aid and assist the subjects of His Majesty in evading or violating the statute law of the Colony, namely, Cap. 129, Consolidated Statutes, and Regulations made thereunder, and His Majesty's Government were moved to notify the United States Government that should the violation be attempted the Government of this Colony would take all proper steps to prevent the same. On the following day a cable was transmitted to the Secretary of State in support of the position set up in the despatch of the previous day, and wherein it was contended,—

1. That the Government of this Colony has complete authority in its own territory to carry out the Bait and Foreign Fishing Vessels Acts;

2. That the Foreign Fishing Vessels Act stipulates that any attempt "to engage any person to form part of the crew of the said vessel in any outport or on any part of the coasts of this Island" shall subject the vessel to forfeiture;

3. That the employment, therefore, of the fishermen of this Colony in catching herrings, at Bay of Islands, for Americans would be a violation of Section 1 of said Act.

4. That the said Act further provides that no foreign fishing vessel shall enter the waters of this Colony "for any purpose not permitted by treaty or convention for the time being in force;"

5. That the employing, shipping, or hiring of the people of this Colony by the United States fishing vessels for the purpose aforesaid is not permitted by treaty, and therefore amounts to a violation of the paragraph above quoted;

6. That the privileges granted to the United States under the Treaty of 1818, were to the inhabitants of that country alone, and the people of this Colony who proceed outside the three mile limit and engage or hire themselves to catch herring for United States vessels are not *bona fide* inhabitants of the United States and therefore are not privileged by the Convention, of 1818, nor does the mere

hiring of themselves to United States citizens exempt them from the penalties to be imposed upon British subjects for a violation of the law of this Colony.

7. That the catching of herrings by men so engaged would be a clear violation of the Bait Act, which had been in force for many years, and they concluded this despatch by reiterating that, while out of deference to the desire expressed by His Majesty's Government that all possible cause of irritation and friction with the United States might be avoided, they felt that the daily violations of the laws of the Colony by United States citizens, then in the harbours of the Treaty Coast, could not be longer permitted without the demoralization of the Civil Service of the Colony and the engendering of disrespect on the part of the people of the Colony for all constituted authority.

After the fishing season of 1905 had closed and the Americans had been permitted to do as they pleased,

### **The Correctness of this Position.**

it will be found on reference to the correspondence tabled, was upheld by His Majesty's Government, (see despatch, Foreign Office to the U. S. Ambassador, of Feb. 2, 1906), and was concurred in by the American Government, as will be seen on reference to the enclosure in Sir Mortimer Durand's despatch to Sir Edward Grey, of date January 18, 1906, yet in the face of this His Majesty's Government subsequently receded from its position, and ignoring the representations of this Government granted this privilege to the Americans by that special instrument known as the *Modus Vivendi*.

As I have stated out of deference to the desire of His Majesty's Government, the Government of this Colony refrained from enforcing the laws, and American fishermen openly and defiantly and with impunity violated throughout the season of 1905 the Customs, Revenue and Fishery laws of the Colony. This Government having pointed out to His Majesty's Government what they regarded as both lawful and just, accepted the responsibility for the non-enforcement of the law against American fishermen, content to bear the embarrassment and censure that might attach thereto, in the hope and expectation that during the twelve months that would ensue before another fishing season came around, diplomacy or a strict interpretation of American rights under the Treaty of 1818 by His Majesty's

Government, would lead to a recognition of the rights of this Colony and of the validity and sanetity of its laws.

It is important to note at this point that ten months prior to the date when His Majesty's Government intimated to the United States Government its willingness to enter into a Modus Vivendi, it was in possession of the views of this Government in respect to each privilege subsequently granted to the United States under that instrument.

By reference to the copy of correspondence presented to the Imperial Parliament, and which has been laid upon the table of this House, it will be observed that under date 18th of July last, Sir Mortimer Durand, the British Ambassador at Washington, forwarded a despatch to the Foreign Office covering two enclosures, being two newspaper clippings. These have a special significance. Enclosure one is a letter from Congressman Gardner, representative of the fishery interests of Gloucester, Massachusetts, to the Gloucester Board of Trade, dated July 7th, 1906, and published in the *Boston Herald*, of July 9th, in which he declared that he had received a letter from the Secretary of State of the United States, and that the "State Department held that local regulations (Newfoundland law) prohibiting purse-seining, is unreasonable as against American fishermen," and that if said fishermen undertook to exercise their rights in that way the State Department would do everything in its power to help them. It also dealt with the shipping of local fishermen. Enclosure two is an extract from the *Boston Traveller*, of July 9th, in which it was declared that "seining is in direct violation of the local law of Newfoundland, yet Secretary Root in his report is expected to say that not only have American vessels the right to seine along the Treaty coast, but they will be protected in these rights. This winter the State Department will be represented in Newfoundland waters, but it will not be on the deck of a sailing vessel but a Government vessel of some kind, to see that the rights of American citizens are well looked after."

It does not appear from the published correspondence that these threats formed the subject of either enquiry or remonstrance, but it does appear that the United States Government pressed upon His Majesty's Government the demand for the right to use purse seines, and received the sanction of His Majesty's Government; and that the United States

Naval Reg. *Potomac* was sent to Bay o Islands and remained there during the whole fishing season

In the light of subsequent events, it is not unreasonabale to conclude that these two articles were intended to pave the way for what followed a month later, namely, the Modus Vivendi, which contained a complete surrender of the rights of this Colony to regulate the conduct of its inshore fishery and abrogated the law of the Colony in the interests of American fishermen.

### The Subjects of His Majesty have rarely had Forced upon Them Greater Humiliation.

The process of humiliation could scarcely have been forced to a greater extreme than when the law respecting people of this Colony, men who looked up to the flag that flouts over them as the symbol of greatness, majesty, power and justice, were compelled to witness foreign agents entering the coves, creeks and harbours of this Colony collecting together the lawless ones to bid defiance to the laws of this Colony, under the protection of U.M.S. *Brilliant*.

The question of the use of seines by Americans in the prosecution of the herring fishery had arise: the year previous, and under date 25th of October, 1905, the attention of His Majesty's Government was drawn to this matter. His Majesty's Government was then advised that this Government proposed to prevent the use of seines by United States vessels as being contrary to the law enacted for the preservation of the fishery, and calculated to entail serious loss to the people of this Colony by the barring of herring to the exclusion of our people. It was submitted that it could not successfully be contended that the Newfoundland law against seining is in any sense antagonistic to the treaty obligations of His Majesty's Government to the United States, which stipulates that the inhabitants of the United States have forever "in common" with the subjects of His Britanic Majesty, the liberty to take fish of any kind on that part of the Southern and Western coasts of Newfoundland, as defined in the treat; that as the prohibition of the use of seines applies equally to British subjects, who are obliged to conform thereto, it could hardly be successfully contended that United States subjects, who have the right to fish "in common" with British subjects, are exempt from such regula-



tions as have been deemed necessary by the Legislature of this Colony, for the preservation of the fisheries in the Treaty waters. In reply to this representation this Government was informed that the United States Government did not concur in their view as respects the use of seines.

An attempt has been made to justify what has been done on the ground that a majority of the fishermen of Bay of Islands were not in sympathy with the policy of this Government. I deny this upon the authority of Fishery Inspector O'Reilly, who has informed the Government that the great majority of the people of Bay of Islands and the West Coast are in full sympathy with the Government's policy. I deny it upon the authority of statistics, which show that out of more than 2000 local fishermen that were engaged in the herring fishery during the past season, only 640 shipped to American masters, and that number was obtained from various parts of the Colony.

But suppose that the whole population of Bay of Islands were opposed to the policy of this Government—could that form a justification for the *Modus Vivendi* and its accompaniments? Unless I am mistaken

### **The Duty of the State in all Circumstances**

is to look beyond the individual or the section, and look towards the general advantage, and that it is the essence of statesmanship that burdens should be distributed and benefits shared, for the interests of all are interwoven. The policy of this Government was in the interests of the whole people of this Colony.

A perusal of the correspondence tabled will reveal the fact that the first intimation the Government received respecting the *Modus Vivendi* was by a telegraphic despatch of date 8th August, from the Earl of Elgin to the Governor of this Colony, announcing that His Majesty's Government were then informing the United States Government that they were prepared to negotiate a provisional agreement dealing with the conduct of the approaching fishery, and requesting the Governor of this Colony to report whether his Ministers had any suggestions to offer as to the nature of that arrangement. It will be observed that His Majesty's Government had pledged themselves to a *Modus Vivendi* dealing with the fisheries of this Colony, without

first consulting this Government; that it was only after this pledge had been given that this Government was asked if it had any suggestions to offer. This was regarded by my colleagues and myself as a note of menace, and we, therefore, immediately transmitted a telegram to the Right Hon. the Secretary of State for the Colonies stating that a full reply to his telegraph despatch of the 8th August, would be transmitted without unnecessary delay, and in the meantime we relied upon the assurance contained in Mr. Labouchere's despatch of the 26th March, 1857, that "the consent of the community of Newfoundland would be regarded by His Majesty's Government as the essential preliminary to any modification of our territorial or maritime rights;" and they assumed that His Majesty's Government would not submit any proposals to the Government of the United States that would be at variance with that engagement. What little effect this despatch had with His Majesty's Government I shall presently indicate.

It has been asserted in some quarters that unnecessary delay occurred between the receipt of Lord Elgin's cablegram of the 8th August and the Government's reply thereto. If reference is had to Lord Elgin's cable despatch of that date it will be noticed that His Lordship stated that copies had been forwarded to His Excellency the Governor by last mail of communications that had passed between His Majesty's and the United States Governments in reference to the matter of the conduct of the fisheries. Before this Government could intelligently deal with this important telegraphic despatch they had to await the arrival of the correspondence referred to. This was received by His Excellency the Governor on the evening of the 14th of August, and was immediately sent by His Excellency to me for the consideration of his Ministers.

### **It Proved to be Secretary Root's Memorandum**

to the Foreign Office in which he put forward the conditions:—

1. That there should be no interference on any grounds by officers of the Newfoundland Government with American fishermen;
2. That the Convention of 1818, justifies no interference;
3. That the fishery laws of the Colony are not binding upon United States fishermen; and

4. That American fishermen are not obliged to conform to our Revenue and Customs laws.

This important memorandum, and the telegraphic despatch of Lord Elgin of date 8th August which referred to it, were taken into consideration by Committee of Council the following day, and a full reply thereto was forwarded to His Excellency the Governor for transmission to the Right Hon. the Secretary of State for the Colonies that same evening, as follows:—

August 15th, 1866. The Committee of Council have had under consideration the telegram received by His Excellency the Governor from the Right Honorable the Secretary of State for the Colonies of date the 8th instant, together with his despatch, Confidential, of the 6th instant, and its enclosure. They observe the contention of the United States Government and its request to His Majesty's Government "to prevent any interference upon any grounds by officers of the Newfoundland Government with American fishermen when they go to exercise their Treaty rights upon the Newfoundland coast during the approaching fishery season."

Ministers feel that the contention and the request cannot but have been regarded by His Majesty's Government as entirely unreasonable, and such as neither His Majesty's Government nor the Government of this Colony can concur in.

The contention "that the Convention of 1818 justifies no interference, reasonable, or unreasonable, with the exercise by America of the fisheries" in the waters of Newfoundland, is equivalent to a Declaration that seven hundred miles of the territorial waters of this colony were by that instrument, reserved from British jurisdiction, and set apart as an area within which American citizens were exempt from the operation of statute law, and free to use any fishing implements, no matter how injurious, in the conduct of the fishery. In "the exercise by America of the fisheries" in the waters of this colony there have been in the past very grave violations of statute law, such as murder, assaults, robberies, and smuggling. The offenders were punished in accordance with the law relating to each particular offence, and this was a reasonable interference to which the United States Government now appear to take exception.

If it be stated in explanation that the contention only had reference to the fishery regulations now in force in this colony. Ministers would observe that such

regulations are as much the statute law as the chapters under which the above-recited offenders were dealt with, and that they apply to all persons, irrespective of nationality, who operate the fisheries within the territorial waters of the colony.

These fishery Regulations were adopted by the Legislature with a view to the preservation and continuance of the fisheries.

Most of them have been in force for years, and their necessity is made evident by the fact that they have resulted from petitions to the Legislature sent in by the fishermen of the colony, who were prepared to submit to restrictions and limitations being placed upon their own labor in order to secure a continuance of the industry upon which they solely depended for a livelihood.

That such fishery Regulations or laws have heretofore been regarded by the United States Government as not only reasonable but desirable, will appear on perusal of a circular that issued from the Department of State, Washington, to the Collector of Customs at Boston, dated the 28th March, 1856, and which was quoted in full by Lord Salisbury in his despatch to Mr. Hoppin under date the 3rd April, 1880.

The United States Government, as far back as that date (1856), ordered that it should be made known to the masters of fishing vessels that, as there were certain "Acts of the Colonial Legislature, as also, perhaps, Executive Regulations, intended to prevent the wanton destruction of the fish which frequent the coasts of the colonies and injurious to the fishing thereon, it is deemed reasonable and desirable that both United States and British fishermen should pay a like respect to such laws and Regulations which are designed to preserve and increase the productiveness of the fisheries on these coasts. Such being the object of these laws and regulations, the observance of them is enforced upon the citizens of the United States in a like manner as they are observed by British subjects. By granting the mutual use of the inshore fisheries neither party has yielded its right to civic jurisdiction over a marine league along its coast. Its laws are as obligatory upon the citizens or subjects of the other as upon its own."

The Committee of Council would also have reference to the despatch from Mr. Bayard, of the Department of State, Washington, to Sir Lionel West, bearing date 10th May, 1886, wherein Mr. Bayard stated: "Since 1818 certain important

changes have taken place in fishery which have materially modified the conditions under which the business of inshore fishing is conducted, and it must have great weight in any present administration of the Treaty." . . . "Everything will be done by the United States to cause its citizens engaged in fishing to conform to the obligations of the Treaty and prevent an infraction of the fishing laws of the British provinces."

Again, in a despatch from Mr. Bayard to Sir Lionel West of date 20th May, 1886, that gentleman stated that he was desirous that due and full observance should be paid by citizens of the United States to local laws and commercial regulations of the ports of the British provinces. In view of the foregoing, and of the fact that the Government of the United States has long been aware of the necessity of reference to the Colonial Governments in matters affecting their inshore fisheries, the objection or the contention now set up by the United States is somewhat remarkable.

If the fishery regulations or laws of this Colony had been so framed and executed as to make any discrimination in favor of British fishermen, or to impair the rights conveyed to the United States fishermen by Treaty then there would be sufficient justification for the position taken by the Government of the United States, the fishery granted to the United States under the Treaty of 1818 being a fishery "in common" with His Majesty's subjects.

It will not be disputed that British sovereignty on the Treaty Coast is limited in its scope to the extent implied by the words "in common;" but, on the other hand, it is submitted that if, as is the case, the fishery regulations or laws of this Colony as framed and executed do not make any discrimination in favor of British fishermen, then the obligation on the part of United States fishermen to observe them, in common with His Majesty's subjects, attached from the date that the Treaty of 1818 came into force.

It has to be remembered that by the signing of the Treaty of 1818 Great Britain was not the recipient of sovereignty to which attached conditions. She was the possessor of prior existing sovereignty, conveying to American fishermen a certain right of fishing in common with the subjects of His Majesty. It will hardly be disputed that in point of law fundamental rights connected with the said Treaty are prior to and take precedence

of derivative rights—in other words, that rights and sovereignty are superior to special rights granted from them.

It would be an inversion of this well-recognized principle to suppose that His Majesty's Government in granting to American fishermen a fishery "in common" with British subjects conceded any other fishery, much less an exemption from the laws governing the territory in which the privileges were to be exercised.

Even if the Treaty were of doubtful meaning in respect of matters in dispute, the recognized principle of international law would demand that the doubt should be resolved in favour of the Sovereign Power. But it is submitted that Article I of the Convention expressly recognizes the sovereign right of Great Britain to make and enforce laws in connection with the fishery that she had granted to the citizens of the United States of America, in common with her own subjects.

It would appear that

### **The Position Now Taken by the United States Government**

is that the fishery and other laws passed by the Legislature of this Colony and enforced by its officers are not binding upon American fishermen exercising in the waters of the Colony their Treaty rights.

This is the first time, so far as the Committee of Council is aware, that the right of the Newfoundland Legislature to legislate for the protection of its fisheries and its revenues, and the validity of such legislation as against the citizens of foreign countries, has been called in question, and they feel sure that His Majesty's Government will not fail to point out that such legislation, unless it is disallowed by His Majesty, becomes part of the law of the Empire.

While it is the first time in the history of this Colony that this position has been set up, we have evidence that it was more than once advanced by the United States Government in relation to Canada.

In a Report by the late Sir John Thompson, Minister of Justice of Canada in 1886, it is stated as follows, namely:—

"The efforts made on the part of the Government of the United States to deny and refute the validity of colonial statutes on this subject (fisheries) have been continued for many years, and in every instance have been set at naught by the Imperial authorities and by the Judicial Tribunals." (See Inclosure B in despatch of

Mr. Bramston to Sir Julian Pauncefote, (dated 1st December, 1886.)

The contention of the Government of the United States that the Convention of 1818 justifies no "unreasonable" interference with the exercise by Americans of the fisheries on the Treaty Coast is so self-evident that it was entirely unnecessary to advance it, unless it has been made to appear to the Government of the United States that the Government of this colony has exercised or attempted to exercise "unreasonable" interference. It would be a matter of profound regret to Ministers if any officer of the Newfoundland Government attempted any "unreasonable" interference with Americans exercising their rights of fishery on the Treaty Coast.

Every possible precaution has been taken by the Government of this colony to prevent such unreasonable interference, and during the last autumn fishery on the Treaty Coast, when public feeling ran exceedingly high on account of the unlawful procedure of American fishermen, which has formed the subject of previous Minutes of Council, dated the 26th and 27th October, 1905, no single case of "unreasonable" interference by either the officers of this Government or the fishermen of the colony was reported to the Government, or, so far as Committee of Council is aware, occurred throughout the whole season. They are aware that it was reported to the Department of the Secretary of State of the United States from some source unknown to them that there had been an "unreasonable" interference with the exercise by American citizens of their right of fishery, namely, that their nets had been destroyed by certain fishermen of this colony, but on hearing of this alleged offence a rigid inquiry was instituted, which resulted in a complete refutation of the charge, seven captains of American fishing vessels making affidavit before the Commissioner, J. O'Reilly, J.P., that no nets or gear belonging to American fishermen were destroyed by Newfoundlanders, and that if any such damage was committed it was done "by the crews of the American vessels against one another, and not by Newfoundlanders." The said affidavits further set forth that American fishermen were treated "in the best possible manner by the people of Newfoundland, and were not interfered with in any way by them."

What is meant by the reference of the United States Government to Lord Salisbury's note to the United States Ministry, dated the 3rd of April, 1880, is not entire-

ly clear, but if the United States Government desires it to be inferred that the words of Lord Salisbury limited the operation of the municipal law to that which was at the date of the signature of the Treaty of Washington in force, the Committee of Council are of opinion that there is no justification for such an inference, for the words "in common" clearly meant that there was to be equal enjoyment of the fisheries, and there could not be equal enjoyment or fishing in common if American fishermen could prosecute the fishery on Sunday while British fishermen were prevented by municipal law from so doing.

The presumption that light dues were not levied in 1818 is no doubt correct, for the very good reason that the Colony had not at that time, nor until a much more recent date, any system of marine lights on that coast. Such lights have, however, been established out of the revenues of the Colony, and they have to be maintained from the same source.

It is therefore difficult to imagine that a foreign nation, actuated by a desire for justice alone, would contend that, while British fishermen are under the necessity of submitting to taxation for the maintenance of lighthouses, foreigners should be permitted to participate in their benefits without contributing anything to the expense.

### **The Committee of Council Noticed the Reference to 15 Geo. III.**

Cap. 31, but they fail to observe in that Statute any justification whatever for the position taken by the United States Government.

Since that Statute was passed others have been enacted, approved and enforced that rescinded the provisions referred to, and the latter enactments, the Committee of Council hold, are binding upon American citizens in common with the subjects of His Majesty, provided that it cannot be shown that any invidious distinction is drawn between the subjects of the two nations.

The Revenue and Customs Laws were not adopted in order to increase the extent of the restrictions of the Treaty of 1818, neither were the Fishery Regulations framed to limit the privileges of American citizens.

They were adopted by the local Legislature and approved by His Majesty's Government for the purpose of protecting the revenues of the Colony and the fisheries of the Colony. In enforcing these laws the

Government were only acting within their constitutional rights, and doing what the Government of the Dominion of Canada have been and are still doing; and in view of the injury which would result to the revenue and fishery interests of the Colony if any facilities not expressly authorized by the Treaty of 1818 were conveyed to American fishermen, the Committee of Council deem it their duty, so long as the relations of Newfoundland with the United States are regulated by that Convention, to insist upon a strict observance of its provisions in this respect.

The real source of the difficulty that has arisen is well understood; it is to be found in the irritation that has taken place among the fishermen of Gloucester on account of the termination by the Government of this colony of the privilege of purchasing bait fishes—a privilege which was gratuitously permitted to them for the past fifteen years in anticipation of the ratification of a Trade Convention negotiated in 1890, then approved by the Government of the United States, and a second time approved in 1902.

This Government has given indisputable proof of its earnest desire to cultivate and extend commercial relations with the United States, and it is assuredly from no fault on the part of this Government that the conduct of the fisheries has now been relegated to the Convention of 1818.

In view of the rejection by the United States Senate of the fishery arrangement between this country and the United States, which was approved by the late Secretaries of State (Blaine and Hay) on behalf of the Government of the United States, it is not unreasonable that the Colony should insist upon the rights secured to her by Treaty, and withhold those privileges which were freely and gratuitously extended to United States fishermen for the past fifteen years until that arrangement is confirmed.

The exercise of such claims as those that are now set up by the United States Government, namely:—

1. Exemption from the laws of this Colony or from their enforcement by officers of the Newfoundland Government; and
2. The use of fishing appliances, such as seines, which is prohibited in the waters of this Colony, would involve in their consequences the deprivation of the people of the Colony of a valuable maritime industry, the ultimate extinction of a present source of wealth to its people, and

the virtual transfer of the sovereignty within certain territorial waters of the Colony to a foreign Power.

### For more than a century this Treaty Coast was barred to British Enterprise

by an anomalous and intolerable condition of affairs that arose out of French claims, and it was only within the last two years that the Colony was relieved from that condition. If the claims now set up by the United States Government are acquiesced in, the latter condition of things will be worse than the first.

Against any recognition of such claims the Committee of Council respectfully and earnestly protest, and they cannot be consenting parties to any relaxation of the Statute Laws of the Colony in favor of American citizens who come to the Treaty Coast to exercise in common with the subjects of His Majesty a right of fishery.

They would strongly deprecate any provisional arrangement, such as is suggested by His Majesty's Government in the despatch under reference, which would relieve American citizens of a proper recognition of these Statute Laws. It is submitted that the interests of the Empire, and not those of Newfoundland alone, require that the right of sovereignty within its own dominion should be maintained inviolate, and the Committee of Council cannot accept the view that any foreign Power has a status or consultative claim in the matter of the framing, or adoption, or the carrying out of laws for the government of any portion of this Colony.

The quotation from the speech of the Premier of this Colony, contained in Mr. Root's communication to Mr. Whitelaw Reid, of date 30th June, 1906, is wrongfully applied, and this will be immediately apparent to His Majesty's Government on a perusal of the said speech. Up to the date of the approval of the Bill therein referred to, American fishermen, by the courtesy of this Government, were permitted to freely purchase bait supplies all round the coast of this Colony. This was a privilege gratuitously extended to them for fifteen years, dating from the signing of what is known as the Blaine-Bond Convention of 1890.

The Premier's remarks had reference only to the determination of the Government of this Colony to terminate that privilege and to confine American fishermen to such rights as they possessed under the Convention of 1818.

It is observed that the closing paragraph of Mr. Root's communication aforesaid has reference to the Foreign Fishing Vessels Act of 1905.

At the instance of His Majesty's Government that Act was amended during the present year, and in order that there shall be no misunderstanding as regards the intention of the Legislature of the Colony, and to prevent such a complaint as that contained in Mr. Phelps' despatch to Lord Rosebery of date 2nd June, 1886, that restrictions were about to be enforced without notice, the Committee of Council would advise that a Proclamation do issue bringing into operation the Foreign Fishing Vessels Act of 1906.

They believe that its early issue will operate as a deterrent, and prevent the necessity for that interference by officials of this Government that the United States' Government evidently anticipate."

His Excellency the Governor most promptly advised the Secretary of State for the Colonies of the receipt of this Minute, and intimated that a copy would be forwarded at the earliest opportunity.

On the 17th of August His Excellency the Governor received a cablegram requesting a summary of the Minute, and this was forwarded by His Excellency, as will appear on reference to the correspondence, on the 19th of August.

It will be observed, then, that

### **No Unreasonable Delay Occurred in Formulating a Reply**

to the Secretary of State's despatch of the 8th of August or in transmitting it.

This Minute called forth a cable despatch from the Secretary of State under date 3rd September in which he expressed "much disappointment at the attitude assumed by this Government, and the opinion that this Government failed to appreciate the serious difficulty in which their policy had placed both them and His Majesty's Government." They were reminded of Lord Kimberly's speech in the House of Lords in 1891 when discussing the course taken by Lord Salisbury's Government on the French Shore question, and were informed that His Majesty's Government had decided to act on the principle indicated in Lord Kimberly's remarks and were accordingly proposing to the United States Government a *modus vivendi* in which the Foreign Fishing Vessels Act, passed by the Legislature in 1906, was to be held in abeyance; the first part of Sec. 1 and the whole of Sec. 3 of the Foreign Fishing Vessels Act, 1905, were to be held

not to apply to United States fishing vessels, and the payment of light dues was to be waived. On the other hand the United States vessels should report at Customs on entering and clearing, and United States fishermen were to comply with the colonial fishery regulations. It was hoped that the United States would accept these proposals, but the Secretary of State wished to warn this Government that some further concessions might be necessary. It will be seen later that the United States Government culled from this proposal everything that was advantageous to them, discarded what was not, and then demanded and received far greater privileges.

There was also a second despatch received from the Secretary of State for the Colonies under date 3rd September, in which His Majesty's Government requested to be informed "whether this Government, in the event of negotiations for a *Modus Vivendi* breaking down, would be prepared to indemnify His Majesty's Government against any claims for compensation that might be preferred by the United States Government, and which it might not be possible, consistent with

### **A Fair Interpretation of Treaty Rights.**

to avoid; also, whether in the event of a reference to arbitration becoming, in the opinion of His Majesty's Government, necessary or desirable, this Government would agree to such reference and undertake to meet the expenses of arbitration and pay the award, if any."

In reply to these despatches, under date 5th September, this Government regretted to observe that their minute of the 15th ultimo, had been received by His Majesty's Government with much disappointment. They had hoped that the reasonableness of the position they set up and the argument adduced in support of the same would have found favour with His Majesty's Government. They could not conceive how their policy in respect of American fishermen visiting the coast of this colony in quest of bait fishes, outlined in the Foreign Fishing Vessels Act of 1905, could have placed His Majesty's Government in any serious difficulty, for it involved no breach of any treaty obligation, neither did it interfere with any rights heretofore exercised by American citizens under the Treaty. The policy that they had adopted was intended to prevent the sale of bait fishes to American vessels by fishermen of this Colony, and to prevent said fishermen from assisting the crews of American vessels in catching

such fishes; to enforce the revenue and customs laws so as to prevent smuggling; and to secure compliance with the Colonial fishery regulations that had been framed with a view to the protection and continuance of the fisheries. With regard to the prohibition of the sale of bait fishes to American vessels and of the capture of such fish by the fishermen of this Colony, when intended for sale to foreigners, this Government observed that the principles involved in such restrictions were approved by His Majesty's Government in 1887, when the Bait Act came into operation, and the principle had been carried into practice for many years against the subjects of France who visited the coasts of this Colony to engage in the fisheries, exception only being made in certain localities when it was made manifest to the Government that an injury would accrue to the fishermen of this Colony by a strict enforcement of the Act. The revenue and customs laws were ever enforced against American vessels entering the territorial waters of the Colony to engage in its fisheries up to last year, when for the first time the Captains of American vessels objected to complying with these laws, and out of deference to the wish expressed by His Majesty's Ministers this Government abstained from enforcing them. Up to 1905, with but few exceptions, American vessels had conformed with our fishery regulations, and, as had been pointed out in a previous Minute of Council, the State Department at Washington by official instruments had enjoined on United States fishermen the duty of respecting these regulations. It was submitted, therefore, that there was nothing in the policy of this Government that was new or novel, or that should occasion difficulty or embarrassment to His Majesty's Government. This Government further pointed out that the Foreign Fishing Vessels Act, 1906, which was passed in order to meet the views of His Majesty's Government in respect to Sections 1 and 3 of the Act of 1905, as well as to enable the Government of this Colony to restrain the fishermen of this Colony from engaging themselves to Americans to catch bait fishes, would, by being brought into force by proclamation, remove that which appeared to be the principal, if not the only objection to the 1905 Act, and obviate the necessity of the proposed *Modus Vivendi*, the main provisions of which, as set forth in the despatch from the Secretary of State of the 3rd September, dealt with Sections 1 and 3 of the 1905 Act.

### This Government Further Pointed Out

that the Colony had never exacted duties in respect of goods on board United States vessels necessary for the prosecution of the fishery and support of the fishermen during the voyages to and from the fishing ground, and neither was any such action contemplated. It was respectfully submitted that the extract from Lord Kimberly's speech in the House of Lords in 1891, justifying the *Modus Vivendi* with France, was scarcely applicable to the case under discussion. Lord Knutsford, in introducing that measure, and Lord Kimberly, in supporting the same, had set forth that it was impossible to avoid such legislation, "first and principally because it had been discovered that in fact that there existed at the time no lawful mode of enforcing His Majesty's treaty obligations in Newfoundland," the Act which gave the necessary power having been allowed to lapse. Further, the right of British subjects to erect permanent structures on the Treaty Shore had been questioned. Great excitement and bad feeling had been aroused by the removal and destruction of such properties, and it was by reason of these circumstances that the *Modus Vivendi* of 1891 was regarded by both political parties in England as absolutely necessary. This Government pointed out that no such condition of things appertained in the case under discussion, the real questions at issue being (1) as to the right of the inhabitants of the United States to purchase bait fishes within the territorial jurisdiction of this Colony, and (2) as to the right to engage people of this Colony to procure such supplies for the fishery. There was, in the case under discussion, no question of the lapse of Imperial authority to enforce treaty obligations, no question as to territorial rights, nor any excitement or bad feeling in connection with the conduct of the fishery, such as was held to warrant the *Modus Vivendi* of 1891. This Government assured His Majesty's Government that it was exceedingly anxious to assist the efforts of His Majesty's Government in obviating the difficulties and dangers they considered were to be apprehended in the course of the approaching autumn and winter fishery, and that having full knowledge of the local conditions which it was impossible for His Majesty's Government to possess, it was considered that such assistance could be best rendered if they were

empowered to call into force the Foreign Fishing Vessels Act of 1906, which would convey to them the authority to deal with the fishermen of the Colony as they could not do under previous laws. The Government further intimated that if His Majesty's Government would consent to the Foreign Fishing Vessels Act of 1906 being proclaimed and decided that the Government of this Colony could be justly held liable for an arbitration which in the opinion of His Majesty's Government might be rendered necessary by the ambiguity of a treaty that this Colony is in no way responsible for, then the Committee of Council would consider the question of such liability, as well as that of any damages arising out of the ambiguity of the treaty and that might accrue from the enforcement of the Foreign Fishing Vessels Act of 1906.

In drafting this reply I did not fail to recognize that it must be admitted as a general principle that

### **Existing Treaties Ought to be Strictly Construed,**

and that this Colony would only have the right to apply for redress if we could establish that Americans had exercised privileges that the Treaty of 1818 does not justify.

Nothing further was heard from the Secretary of State for the Colonies until the 13th of September, when a cablegram was received by His Excellency the Governor informing him that the proposal of a Modus Vivendi, including the suspension of the Foreign Fishing Vessels Act of 1906 had been made to the United States Ambassador on the 3rd of September. To this communication the following reply was transmitted by cable the following day, viz.: "That the Government had learned with profound regret that without reference to this Colony His Majesty's Government had proposed to the United States Ambassador as one of the terms of the Modus Vivendi the suspension of the Foreign Fishing Vessels Act of 1906, which was only adopted after consultation with His Majesty's Government and with a view mainly to enable the Government of this Colony to deal with local fishermen and to secure the peaceable conduct of the fishery during the approaching autumn. They submitted that any arrangement embracing the suspension of that Act interfered with the internal affairs of the Colony, and would therefore be a violation of the pledge furnished by Lord Salisbury through the British Parliament on May

5th, 1897, during debate on the Newfoundland Fisheries Bill, to the effect that the Government of this Colony possessed unlimited power to deal with its internal affairs. They had hoped and expected that if a Modus Vivendi were proposed to the United States Government a full text of the same would have been submitted and thus have afforded an opportunity for suggestion or remonstrance. The reasonableness of this expectation, they also submitted, was warranted by the statement of Lord Salisbury in debate on Newfoundland Fisheries Bill, April 28th, 1891 and they concluded by stating that the suspension of the Foreign Fishing Vessels Act of 1906 rendered them entirely powerless to carry out their fishery policy."

On the 19th of September a cablegram was received from the Secretary of State for the Colonies stating that the United States Ambassador had presented a memorandum on the subject of the Modus Vivendi, expressing appreciation of the readiness of His Majesty's Government to waive the Foreign Fishing Vessels Bill of 1906, and pointing out that this and other restrictive legislation had compelled American fishermen to use purse seines; acknowledging the cordial disposition evinced by the offer of His Majesty's Government not to apply the first part of section 1 and the whole of section 3, of the act of 1905, stating that the Americans would gladly pay light dues if not hindered in their rights to fish, and were not unwilling to comply with customs' regulations when physically possible to do so, but that it was sometimes physically impossible to break through ice for that purpose; that the United States Government were convinced that purse seines were no more injurious to common fishery than gill nets, and that the small amount of purse-seining could not materially affect the fishery for the season; besides, a number of

### **American Fishermen Had Already Sailed With Purse Seines,**

and others had provided themselves with them; that the use of purse seines was not the free choice of American fishermen, but that they had been driven to it by local legislation." His Majesty's Government strongly urged the acceptance of this solution, intimating at the same time that they proposed to consent to the use of purse seines. In reply to this a cablegram was transmitted to the Secretary of State the following day that for reasons which had been fully set forth in previous despatches this Government regretted its inability to become consenting parties to the modus



vivendi with the United Government; that they entirely dissented from the views expressed by that Government in respect to the use of purse seines, and the effect of the same upon the herring fishery. This was followed the same day by a lengthy and comprehensive minute which dealt with the memorandum of the United States Ambassador communicated to the Foreign Office under date 11th July. This memorandum has not been published, nor has my reply thereto, and I am precluded from tabling the same.

The statement that it is sometimes impossible for American ships to break through the ice for the purpose of reporting at Customs is an absurdity, inasmuch as American vessels do not come upon this coast to engage in the fishery when the ice is upon the coast, and as a matter of fact, as soon as there is evidence of ice presenting an obstacle to their progress American vessels quit these shores.

The statement that purse seines are no more injurious than gill nets is equally preposterous, as is evidenced by the fact that their use by Americans in connection with the mackerel fishery is well known to have very seriously injured that fishery and their use upon the Canadian coast has been prohibited by the Dominion Parliament for years owing to their injurious effect upon the fisheries.

On the 29th of September, the Secretary of State intimated to His Excellency the Governor that His Majesty's Government were much disappointed by this reply, and felt that there was no alternative to the course indicated in his telegram of the 19th inst., and that the United States Ambassador was informed accordingly on the 25th September:—

“That His Majesty's Government consent to the use of purse seines, and at the same time express the hope that recruiting just outside territorial waters would not be resorted to this year.”

On the same date a cablegram was forwarded from this Government to the Secretary of State, informing him that an American schooner had arrived at Bay of Islands equipped with purse seines and had declined to pay light dues, and requesting that this Government might be informed promptly as to the exact position of affairs, and whether they were free to enforce the Customs and Fishery Laws of this Colony against American fishermen. To this the reply was received under date 1st October, that—

“An answer would be given as soon as possible.”

On the 4th October a cablegram was forwarded to the Secretary of State by His Excellency the Governor advising him that this Government were anxiously awaiting a reply to their communication of the 29th ultimo, and in which they strongly deprecated any arrangement consenting to the use of purse seines by American fisheries and the engagement of Newfoundland fishermen to work for Americans in the conduct of the fisheries of the Colony, and they concluded by praying that His Majesty's Government would permit the proclaiming of sections 6 and 7 of the Foreign Fishing Vessels Act of 1906. On the 6th of October the Secretary of State cabled that His Majesty's Government had concluded a Modus Vivendi with the United States Government, and that its terms were embodied in

### A Note from the United States Ambassador.

as follows:—

LOXNOX, October 6, 1906.

(To Mr. Whitelaw Reid to Sir Edward Grey.)

“Sir,—

“I am authorized by my Government to ratify a Modus Vivendi in regard to the Newfoundland fishery question on the basis of the Foreign Office Memorandum, dated the 25th ultimo, in which you accept the arrangement set out in my memorandum of the 12th ultimo, and consent accordingly to the use of purse seines by American fishermen during the ensuing season, subject of course to due regard being paid in the use of such implements to other modes of fishery, which, as you state, is only intended to secure that there shall be the same spirit of give and take, and of respect for common rights between the users of purse seines and the users of stationary nets as would be expected to exist if both sets of fishermen employed the same gear.

“My Government understand by this that the use of purse seines by American fishermen is not to be interfered with, and the shipment of Newfoundlanders by American fishermen outside the 3-mile limit is not to be made the basis of interference or to be penalized; at the same time they are glad to assure His Majesty's Government, should such shipments be found necessary, that they will be made far enough from the exact three-mile limit to avoid any reasonable doubt.

“On the other hand, it is also un-

understood that our fishermen are to be advised by my Government, and to agree, not to fish on Sunday.

It is further understood that His Majesty's Government will not bring into force the Newfoundland Foreign Fishing Vessels' Act of 1906, which imposes upon American fishing vessels certain restrictions in addition to those imposed by the Act of 1905, and also that the provisions of the first part of section 1 of the Act of 1905, as to boarding and bringing into port, and also the whole of section 3 of the same Act, will not be regarded as applying to American fishing vessels.

It also being understood that our fishermen will gladly pay light dues if they are not deprived of their rights to fish, and that our fishermen are not unwilling to comply with the provisions of the Colonial Customs Law as to reporting at a custom house when physically possible to do so.

I need not add that my Government are most anxious that the provisions of the *Modus Vivendi* should be made effective at the earliest possible moment. I am glad to be assured by you that this note will be considered as sufficient ratification of the *Modus Vivendi* on the part of my Government.

I have, etc.,  
(Sgd.) WHITELEW REID."

On the 11th this Government transmitted a despatch to the Secretary of State by cable in which they desired to record their regret that His Majesty's Government had seen fit to ignore their representations and entreaties and to conclude an arrangement which, they submitted, was subversive of the constitutional rights of the Colony and calculated to work severe injury to the fisheries of the Colony. They intimated that they had to regard with alarm the consent of His Majesty's Government to an arrangement which was apparently intended to overrule Statutes that had received the Royal assent, and they expressed the hope that the arrangement was not beyond reconsideration by His Majesty's Government and that by annulling the same the Colony might be saved from the humiliation and danger that threatened.

I desire it to be understood that when it was said that His Majesty's Government had ignored the representations and entreaties of this Government, we were not unmindful of the fact that His Majesty's Government had given the legal and constitutional position set up by this Government their careful attention, for it was

with no small degree of gratification that they observed in the reply of His Majesty's Government to the note of the Secretary of State of the United States of date 19th of October, 1905, on the subject of the rights of fishery, that nearly every such position advanced by this Government had been concurred in by His Majesty's Government and contended for as both right and reasonable and in no way inconsistent with the terms of the treaty of 1818.

The representations and entreaties which were alleged in the Minute of Committee of Council of the 12th October last as having been ignored were,—

(a) That no *Modus Vivendi* was necessary in order to obviate the difficulties and dangers which His Majesty's Government considered were to be apprehended in the course of the autumn fishery. This opinion was based upon a complete knowledge of local conditions which it was absolutely impossible for His Majesty's Ministers to possess.

(b) Their representation that the only thing necessary to ensure harmonious conduct of the fishery was a Proclamation bringing into force the Foreign Fishing Vessels Act of 1906, enabling this Government to deal with local fishermen.

(c) Their guarantee in respect to the peaceable prosecution of the fishery if such proclamation issued.

(d) Their earnest protest against the use of purse seines, as instruments calculated to destroy the herring fishery on that coast to deprive the people there resident of a valuable maritime industry.

(e) Their earnest entreaty that His Majesty's Government would not concede to United States fishermen a right to hire local fishermen, in violation of the Statute law of the Colony.

It may be stated that Imperial or public expediency was a weighty factor and one that of necessity would be considered by His Majesty's Government.

### Imperial or Public Expediency

Under certain circumstances or conditions may be a weighty factor in dealing with public questions, but I am unable to admit that such expediency could form sufficient justification for the abrogation of Colonial Statutes which had received the Royal assent or for the inflicting upon a community any injury or loss without compensation.

If it were admitted for the sake of argument that from the standpoint of Imperial or public expediency His Majesty's

Government had some abstract right in their favor, such right, in my opinion, could not be properly pleaded as a justification for the course adopted in the matter under review. There are rights which, in their exercises under certain circumstances, are the most odious of all wrongs, and the most vexations of all injustice. In this instance we have to ask ourselves, what were the circumstances under which this expediency arrangement was entered into?

(1) There had not been any breach of the peace committed by either American or Newfoundland fishermen.

(2) His Majesty's Government had received the most positive assurance from American fishermen themselves—in the form of affidavits made before a Justice of the Peace and of which His Majesty's Government was apprised by Minute of Council of date 15th of August last—as to "the friendly and generous disposition" displayed towards them in the year 1905 by the fishermen of this Colony.

(3) Nothing had occurred during the past year to change that relationship.

(4) The Government of this Colony had guaranteed the "peaceable conduct of the autumn fishery" provided His Majesty's Government did not interfere with them in enforcing the Statute Law of the Colony among the fishermen thereof.

It can hardly be seriously contended that in these circumstances there was anything to warrant an expediency arrangement such as the present *modus vivendi*. But, it may be answered, there were other circumstances appertaining, and they were—

1) A demand from American fishermen to engage the people of this colony to catch fish for them in defiance of a statute law which makes it a penal offence for local fishermen to "take, catch or haul, or to assist in taking, catching or hauling bait fishes, without a license."

(2) A demand from American fishermen that the people of this colony engaged by them should use purse seines in the conduct of the fishery in defiance of the statute law of the Colony, which penalizes the use of such seines, and,

(3) The Government of this Colony had refused to be consenting parties to this proposed violation of the law.

It was under these circumstances, then, that His Majesty's Government decided to execute an instrument intended to override the decision of the Legislature of this Colony as well as the Statute Law of the Colony, and it is under such circumstances as these that the rights which Imperial or

public expediency may be supposed to confer become the most odious of all wrongs and the most vexations of all injustice.

Viewing the question from either a constitutional, legal or expediency standpoint, it is difficult to conceive how any justification can be found for such an unexampled proceeding. If, however, for Imperial or public reasons, which do not appear in the despatches, the demands of the United States Government, on behalf of the fishermen, had to be acceded to, then, I submit, justice required that the injury and loss about to be inflicted upon the people of this Colony should have been provided for by a measure of compensation that would equalize the tax imposed by the United States Government upon British fish entering American markets. Had this course been pursued this Colony would have been spared the painful humiliation to which it has been subjected, and His Majesty's Government much adverse criticism and no doubt embarrassment, for under such circumstances as these this Government would have felt themselves warranted in exercising the powers conveyed to them by Parliament and have limited the operation of the Bait Act for that season, so that it should not apply in the case of those local fishermen who might elect to engage themselves to fish for the Americans.

It has been exceedingly distasteful and painful to my colleagues and myself to oppose the action of His Majesty's Government, and it was only a firm belief in the truth of the maxim:—

**"He Serves the King Best Who Directs His Endeavors to the Preservation of the Rights and Privileges of the King's Subjects."**

that nerved us for the performance of the very unpleasant duty that developed upon us as Ministers of the Crown. We regard the *Modus Vivendi* as oppressive, as well as subversive of the constitutional rights of His Majesty's subjects in this Colony. For us, therefore, to passively bear with oppression committed within the radius of our jurisdiction would be, in truth and reason, for this Government to be an accomplice in the abuse.

We have to realize in the first place that the enforcement of the Bait Act against American fishermen, as it has been enforced against French fishermen, is required by the people of this Colony at the hands of their representatives. The matter of a change in the policy of

the Government of this Colony towards American fishermen was submitted to the people at the polls in my Manifesto of 1864, and a mandate was received from the people to effect that change.

The law which we are required to enforce has been upon the Statute Book for nearly 20 years, and it was only relaxed for a time, in the case of Americans, because the Government of the United States of America had entered into a trade convention with His Majesty's Government on behalf of this Colony, which provided for such relaxation and the ratification by the United States Senate of the said Convention. The United States Senate having failed to ratify the Convention the obligation on the part of this Government ceased, and the law allowed to become active.

While it was and is quite competent for the Government of this Colony to suspend or limit the operation of the Bait Act, or if sufficient and extraordinary reasons could be adduced for the Imperial Parliament to suspend the operation of the Act in defiance of this Government, I humbly and respectfully hold that no power of suspension, limitation or abrogation of this law, or of any law of this Colony which has received the Royal assent, is vested in His Majesty's Ministers, or even in the Crown itself, and therefore if the *Modus Vivendi* "pledges His Majesty's Government to the Government of a foreign power" in the matter of such suspension, limitation or abrogation, it is an illegality to which His Majesty's Ministers in this Colony cannot consent to become parties.

The Bill of Rights—"An Act declaring the Rights and Liberties of the Subject"—very clearly sets forth:—

"That the pretended power of suspension of laws, or the execution of laws, by Royal authority without the consent of Parliament is illegal."

I can well believe that the proceedings upon which this Government have entered may prove very embarrassing to His Majesty's Government, but while I sincerely regret that any action of ours should occasion such embarrassment, or even contribute towards the same, I cannot conceive that it would have been consistent with our duty to abstain from what we regard as a proper course on that account. One fact is clear and indisputable. The embarrassment that is occasioned, or that will be occasioned, is not by reason of the wrong-doing of this Government. On the contrary, they have endeavored to the utmost of their ability, consistent with their

sense of duty to those they represent, to prevent it, by faithful representation; by humble and respectful protest; but they have failed. If His Majesty's Government have acted justly towards this people and within their powers then no embarrassment can possibly ensue from the action of this Government. If, on the other hand, they have acted unjustly, or if there are reasonable grounds for concluding that they have so acted, then I am confident that the House will agree that the course adopted by this Government was entirely proper. We entered upon this policy with no desire to embarrass His Majesty's Government, but with a firm resolve to assert the Colony's rights. I feel certain that it will be admitted as a general principle that

### **Treaties Ought to be Strictly Construed**

and that the Colony has a right to apply for redress if it can be established that the Americans are exercising privileges which the Treaty of 1818 does not justify, and that no mere diplomatic agreement can give them; also, that when England has granted a Constitution her honor is as much concerned in the maintenance of the Constitution as in any other way. Both these questions are involved in the issue before us.

It will be noticed on reference to the papers that have been tabled that in his despatch of the 6th of October the Secretary of State expressed the desire that this Government would issue instructions to the fishermen on the Treaty coast to observe the *Modus Vivendi*. This Government did not give such instructions; neither did they promulgate the *Modus Vivendi* in any manner whatsoever. They did not do so because they had informed His Majesty's Government repeatedly that they could not be parties to it in any way. They declined to aid in carrying it out because they regarded it as unlawful and unjust: as an abrogation of our constitutional rights, and as overriding our law, and they proposed to test its validity in the Supreme Court of this Colony. On the 25th of October His Majesty's Government were advised accordingly.

The embarrassment occasioned this Government by the announcement of the conclusion of the *Modus Vivendi* was aggravated and greatly intensified by the remarkable conduct of the Senior Naval Officer on this station. H.M.S. *Brilliant* arrived at Bay of Islands on the 19th of October, and the same evening a meeting of the fishermen in Birchy Cove was

conveyed on board that ship. At that meeting the Senior Naval Officer, Capt. Anstruther, read to them the note of ratification of the *Modus Vivendi* and discussed an agreement that he proposed to bring about between the fishermen of the two nations. Subsequent to that meeting he visited the Canadian fishermen who were in the harbor, and afterwards Mr. Alexander, who was on board the U. S. Naval Tug *Potomac*, as the representative of the American fishermen, and drew up a form of agreement to which he obtained the consent of "all the commodores of the American schooners." This agreement was made without consultation with the Governor of this Colony, who, as Commander-in-Chief, is his superior officer, or directly or indirectly with this Government. Under date 26th October, His Excellency the Governor communicated this fact to me, and I immediately entered a protest with His Excellency against the conduct of the Senior Naval Officer. I pointed out to His Excellency the seriousness of the incident that was referred to, inasmuch as no authority was vested in Capt. Anstruther to make any agreement such as he had ventured upon. He had not merely undertaken to interpret laws and treaties, but had assumed to make an arrangement or international agreement, as appeared on reference to the copy of the agreement which accompanied His Excellency's communication. I pointed out further that even if this arrangement could be regarded as declaratory of what is undoubted law, it would still be objectionable and improper when issued by a Naval Officer in his capacity as such, and especially so when proclaimed in a harbor where a Stipendiary Magistrate resides. It would be exceedingly difficult to find any precedent for such a remarkable procedure. The ratification of the *Modus Vivendi* had just been announced to us by His Majesty's Government, it had just been promulgated by the Senior Naval Officer on this station, and no sooner was this done, than without reference to either the Governor or his Ministers a new agreement, or international treaty, or *Modus Vivendi*, was entered into between His Majesty's Senior Naval Officer on this station and the representative of the American fishermen at Bay of Islands. I pointed out to His Excellency the Governor that the agreement was invalid and incapable of enforcement, the Governor in Council, to whom under the law relating to Marine and Fisheries the Legislature had deposed

authority, being the sole constitutional power to regulate and control the fisheries of this Colony. Naval Officers on this station derive all the authority they possess in relation to fishery matters in which American and Newfoundland fishermen are jointly concerned under the Imperial Statute of 1819, 59 George III. Cap., 38, and any Orders-in-Council made thereunder. Neither in that Statute, nor in any Order of which I am aware, are Naval Officers empowered to make such an agreement as Capt. Anstruther enterprised, and which was intended to limit and control the fisheries of this Colony. There was no occurrence or sufficient ground to warrant the Naval Officer's action and adjudication, nor did it appear that there was any desire manifested by Americans to invoke his assistance in the maintenance of their treaty rights. The Senior Naval Officer could not have been unaware that his action was calculated to affect the policy of this Government, and to impair the Government's influence and that of the representative of Justice at Bay of Islands, in the carrying out of law and order on that coast, and it is surprising, therefore, that he should have entered upon such a course of action. This unique piece of naval statecraft fell through, apparently because our astute American friends recognized that it was incapable of enforcement. It might reasonably be supposed that the protest entered by this Government with His Majesty's Government against these proceedings would have prevented a repetition of such conduct, but such was not the case, for a few weeks later we find this same Naval Officer, without reference to His Excellency the Governor of this Colony or his Ministry, addressing a circular letter to American, Canadian and Newfoundland fishermen requesting suggestions from them "as to the best method of settling the fishery dispute between Newfoundland and the United States of America." By this conduct the Senior Naval Officer on this station again trampled upon the rights essential to the security of Colonial liberty and usurped functions that solely attach to responsible ministers of the Crown. It is difficult to conceive of a greater affront being offered to the Governor of this Colony or those who have the honour to be His Majesty's Ministers in this Colony.

The fishery for this season is now ended, and the wrongs that have been inflicted cannot now be remedied, but we can at least hope that the recital of them, the exposure of them, will prevent a repetition.

What I have written I have written, and reviewing it in the cold black type of the papers that have been tabled I see no reason to regret one word of what has been recorded. In dealing with this question the Government did what they believed was right, and ventured to point out respectfully but firmly what the country desired. We did not cloak or dissemble what we assumed, it was for the interest of this people should be made plain. We set forth our views frankly and freely, feeling that many of the difficulties with which this Colony has had to contend in the past might be traced to a want of frankness.

In the correspondence that has been exchanged I have had the hearty co-operation and loyal sympathy and support of my executive colleagues. We have done everything possible to uphold the dignity and the honour and the rights of those who sent us to this House to represent them. We could not do more. I want it to be distinctly understood that the difficulty that has arisen has not been by reason of any attempt on the part of this Government to deny to Americans their full rights under treaty, for such an attempt has not been made. It has arisen out of the determination of this Government to enforce those laws within the jurisdiction of the Colony that have received the approval of the Crown, and also through His Majesty's Government allowing the Americans privileges not possessed under Treaty.

Am I to be told that under the Treaty of 1818 Americans are exempt from our local laws? If so, I deny it. I deny it upon the authority of those great American statesmen who fifty years ago gave it as an instruction to Americans exercising treaty rights on our coast "that the laws of this Colony are as obligatory upon the citizens of the United States as upon our own people."

I deny it upon the authority of the late Sir John Thompson, statesman and lawyer, one of the ablest men that the Dominion of Canada has produced, who declared that, "the efforts made on the part of the Government of the United States to deny and refute the validity of Colonial Statutes on the subject of the fisheries have been continued for many years, but in every instance have been set at naught by the Imperial authorities and by the judicial tribunals."

I deny it upon the authority of the law officers of the Crown, Messrs. W. Asherton and Roundell Palmer, who, on the 10th of January, 1863, declared as follows:—

"That in our opinion inhabitants of the United States, fishing within waters in the territorial jurisdiction of the Legislature of Newfoundland, are bound to obey and are legally punishable for disregarding the laws and regulations of the fisheries enacted by or under the authority of the provincial Legislature. The plain object of the treaties above referred to was to put the inhabitants of the United States as regards the 'liberty to take fish' within the parts described of the British Dominions on the same footing as 'subjects of His Britannic Majesty,' 'in common with whom,' under the terms of the Treaty, such liberty was to be enjoyed. The enactments subsequently passed would not confirm the treaties and provide for the suspension during the operation of those treaties of such laws, etc., as were or would be inconsistent with the terms and spirit of the treaty, which 'terms and spirit' are, it appears to us, in no respect violated by the regulations bona fide made by the Government for the conduct of the fishery and applicable to British subjects so employed."

I would also point out that by the Conventions of 1890 and 1902 it was provided that Americans should only be subject to our customs and revenue laws and to such regulations as governed our local fishermen. Therefore by necessary implication these treaties concede the right of this Colony to subject United States fishing vessels to our municipal law.

### **If for Reasons That do Not Appear to Us**

it was necessary to give way to the demands of the American Government, then Ministers of the Crown in this Colony should have been fully and frankly apprised of this fact and have been invited to repeat what they did last year at the instance of His Majesty's Government, viz.: to refrain from enforcing the law. If we had declined to do this then it would have been within the competency of the Imperial Parliament, which is supreme throughout the Realm, on being satisfied of its necessity, to have suspended the law, but the course adopted by His Majesty's Ministers was most humiliating and unjust to the people of this Colony, as well as a menace to every Colony possessing Responsible Government. What we desire—what we expect—is a strict interpretation of the Treaty of 1818. No allusion is made in that treaty to the laws of nations as furnishing canons for its interpretation, and it has therefore to be inferred that its meaning is to be gathered alone from its

context and the circumstances that attended its adoption. On a former occasion I have contended that the Treaty of 1818 did not grant to American fishermen the right to take fish in the harbors between Cape Ray and Quirpon Islands, and I see no reason whatever to change that view. On the contrary, the more closely I have studied this question the more convinced am I as to the correctness of the position. I submit that if the question is to be decided on the words of Article I of the Treaty of 1818 and without reference to what may be advanced as the conduct of the parties thereunder, and according to rules of construction which govern an English Court of Law in the interpretation of a contract, there is ample justification for the view that I have expressed, viz.: that the Article conveys no such right. There is a prima facie presumption that the word "coast" is used throughout the Article in the same sense, and as, in the expression "coasts, bays, harbours and creeks," it obviously does not include "bays, harbours and creeks," it would follow that it does not include them when used in connection with *Nfld.* It may be observed that while the word is used in connection with Newfoundland in the singular, it is used in connection with the Labrador both in the singular and plural, and it is only as used in the plural that it is contrasted with "bays, harbors, and creeks." I am ready to admit that but for the difficulty arising from the expression "coasts, bays, harbors and creeks" a right to fish on the coast would prima facie mean a right to fish on any part of the coast, including bays, harbors, &c., but it seems to me that the construction of the article evidences that there was abundant reason for inserting the word "coast," and I think that if the words of the article be taken by themselves the interpretation that I have placed upon them is free from doubt. It may possibly be held that the expression is ambiguous, and that when an ancient document is ambiguous the conduct of the parties thereunder must be referred to for the purpose of explaining the ambiguity, and that this principle is peculiarly applicable to treaties. Granting this to be correct, what has been the conduct of the parties? The conduct of the parties has been, that the Americans (1) have been accustomed to visit the bays, harbors and creeks of the West Coast to obtain cargoes of herring, not by the capture of such fish by the crews of their vessels, but by purchase; their vessels have never been manned with the necessary crews or equipped with the necessary ap-

pliances to enable them to catch fish, and they have ever relied upon Newfoundland fishermen to supply for cash such bait fishes as they required. (2) Newfoundland fishermen have at all times supplied American vessels visiting the "bays, harbors and creeks" for herring or other fish with the desired quantities for cash or barter.

If, then, I am correct in the opinion that the construction to be placed upon Article I of the Treaty of 1818 is that which I have advanced, provided that the words of the Article be taken by themselves, a reference to the conduct of the parties thereunder has only the effect of strengthening my position. Again, over 100 years prior to the Treaty of 1818, namely, in 1713,

### Great Britain Had Entered into a Treaty with France

granting certain privileges of fishing upon the West or Treaty Coast of this Colony. Subsequently, in 1783, Great Britain entered into another treaty with France, known as the Treaty of Versailles, under which a change was made in respect to the localities in which the French might exercise a right of fishery, and in the declaration of His Britannic Majesty in respect to this Treaty of Versailles it was clearly stipulated that the French should not be interrupted in any manner by competition in the enjoyment of their fishery. The outer coast line referred to in the two treaties that I have mentioned is precisely that upon which fishing privileges were granted by His Britannic Majesty to the United States of America in 1818. But there is no question whatever but that the French exercised exclusive rights of fishery in many of the bays, harbors and creeks which form the inner coast line. Following upon the declaration of the Treaty of Versailles they entered into those bays, harbors and creeks and held possession of them to the exclusion of all parties up to two years ago, when they relinquished what they termed their rights for a consideration. Is it not probable that the Treaty of 1818 was worded as it is in order to avoid infringement of those French treaty rights and concessions.

May not this be the explanation of the distinction—so difficult otherwise to understand—made between the South Coast, with the right to enter bays, harbors and creeks to dry fish, and the Western and Northern Coasts, with no such rights? Had it been otherwise, would not the framers of the Treaty of 1818 have included them together in one

clause? They were unable to do this, it seems to me, because the British Government, having already contracted not to allow competition with the French on the Western and Northern Coasts by British subjects, had no power to allow it to the inhabitants of the United States. They could give the right of fishing on the open coast, but could not grant it in the bays, harbors and creeks where the French exercised their fishing, and where the fishery area being limited they would certainly have been interfering with the French, who claimed and exercised with the consent of the British Government a monopoly of the fishing therein. I have seen in one of the leading London reviews that an able writer has declared that but for a map which was put in by the Newfoundland Government, during the proceedings of the Halifax Conference in 1876, my reading of the Treaty might, perhaps, have stood. My answer to that is, that if the Treaty of 1818 was expressly worded so as to exclude the Americans from the bays, harbours and creeks of the West Coast, no implied admission by the Newfoundland Government at the Halifax Commission would have any effect, but the treaty would have to be rigidly construed in relation to the French rights. Viewed historically, it seems to me that the Americans were intentionally excluded from the bays, harbors and creeks of the West Coast, and that they never had any rights of fishing in either Bonne Bay, Bay of Islands, or Bay of St. George.

In order to discover what the rights of United States citizens, under the Treaty of 1818, are, it may be useful to have reference to anterior records. Before the Revolution the inhabitants of all the British Colonies in North America possessed, as a common right, the right of fishing on all the coasts in British North America. At the end of the Revolution and by the Treaty of Peace of 1783, which adjusted the boundaries between the Dominions of the two Powers, it was agreed that the people of the United States shall continue to enjoy undisturbed the right to take fish of every kind on the Grand Banks and on all the other Banks of Newfoundland; also in the Gulf of St. Lawrence, and at all other places in the sea where the inhabitants of both countries used at any time heretofore to fish, and also that the inhabitants of the United States shall have the liberty to take fish of every kind on such part of the Coast of Newfoundland as British fish-

ermen shall use (but not to dry or cure the same on that Island), and also on the coasts, bays, harbours and creeks on all other of His Britannic Majesty's Dominions in America." (See Article 3.) From 1783 until the war of 1812, between the two countries, citizens of the United States continued to enjoy the rights secured to them by the Article which I have quoted. At the close of the war of 1812-15 the British Government took the position that in consequence of the war the fishery privileges granted to citizens of the United States, by Article 3 of the Treaty of 1783, had become abrogated and that the citizens of the United States had therefore no longer the right to fish in any of the British North American waters. This led to the conclusion of the Treaty of the 20th of October, 1818, Article 1 of which defines the present fishing privileges of the citizens of the United States in the waters of this Colony. The intent and meaning of that Article may be gathered from the instruction which issue to the American negotiators of it.

On the 20th of July, 1818, Mr. Adams, Secretary of State for the United States, instructed Mr. Rich and Mr. Gallatin, the American negotiators, as follows:—

"The President authorises you to agree to an Article whereby the United States will desist from the liberty of fishing, and curing, and drying fish **within the British jurisdiction generally**, upon the condition that it shall be secured as a permanent right, not liable to be impaired by any future war, **from Cape Ray to Rameau Islands and from Mount Joly on the Labrador Coast, through the Straits of Belle Isle, and indefinitely North along the coast**; the right to extend as well to curing and drying the fish as to fishing."

This instruction, I submit, clearly sets forth the demand of the United States, and leaves no room whatever for doubt but that the Treaty of 1818 was intended to conform to it and to the principles involved in it. If this is admitted, then the construction that I have placed upon Article One of the Treaty is the correct one.

I have seen an attempt made to argue that the terms of the Washington Treaty and the Treaty of 1818 were identical, and that the contentions and admissions of the British Counsel acting on the Halifax Commission of 1877 must have an important bearing on the construction



of the Treaty of 1818. I cannot conceive how any such view can be seriously put forward. The Treaty of Washington was negotiated and entered into in order to secure to the contracting parties privileges in excess of those enjoyed by virtue of the Treaty of 1818. The Halifax Commission was an international arbitration convened to decide whether the United States had received a greater benefit under the Washington Treaty than had Great Britain. The British had claimed a large money consideration for privileges which they alleged the United States had enjoyed under the Washington Treaty in excess of what the British had. All kinds of loose arguments could be and were used by Counsel on both sides, but surely it will not be seriously contended that the arguments of Counsel before the Halifax Commission can affect the interpretation of the Treaty of 1818. The lawyers engaged on that case were doing their best in the interests of their respective clients, and it is not improper or difficult to conclude that the respective Counsel would have argued right opposite to what they did if retained by the opposite side. The Treaty of 1818 was one which gave foreigners certain rights on British soil, rights which should be strictly construed, and no admission, or statement or argument used by Counsel on the Halifax Arbitration could, I submit, have the smallest bearing on the interpretation of the Treaty.

The Treaty of 1818 defines four territorial privileges given by Great Britain to American citizens, viz.:-

(1) The liberty to take fish of every kind on that part of the Southern coast of Newfoundland which extends from Cape Ray to Ramea Islands.

(2) To take fish on the Western and Northern coast of Newfoundland from Cape Ray to Quirpon Islands.

(3) To take fish of all kinds on the coasts, bays, harbors and creeks from Mount Joly on the Southern coast of Labrador to and through the Straits of Belle Isle and thence Northwardly and indefinitely along the coast.

(4) The liberty forever to dry and cure fish in any of the unsettled bays, harbors and creeks on the Southern part of the coast on Newfoundland above described, and on the coast of Labrador.

These words cannot be twisted or turned into giving Americans the right to ship men, buy bait fishes, or trade in our waters. Such privileges were not

included in the Treaty and therefore expressly prohibited.

However, this question did not come into the recent dispute, and I only refer to it at this time to express the hope that when the question of the rights of American fishermen under the Treaty of 1818 is being determined, due consideration may be given by His Majesty's Government to the point that I have raised.

The Treaty of 1818, we may suppose, was made in the interests of the Empire. It certainly was not made in the interests of this Colony. History records the severe criticism with which its terms were received at the time of its ratification. It was assailed with great force by the leading press of England, which declared that the Imperial maritime interests of the British Empire had been sacrificed to American greed. Remonstrances and denunciations poured in from all the Colonies concerned. A full account of the reception that attended its publication can be seen in Rush's work, entitled "Residence at the Court of London." It will be remembered that Richard Rush was at that time American Minister to the Court of St. James, London, and consequently an eye-witness of all that happened in relation to the treaty, and therefore his account of its condemnation is all the more interesting. This Colony could only protest when its rights were sacrificed in 1818. It can only protest today, when, added to that sacrifice, is the humiliation of the *Modus Vivendi* that has arisen out of it.

Are our protests to be in vain? Is British justice only extended to those whose numerical strength gives force to their appeal? These questions are suggested by the declaration of certain influential English journals, which, while supporting the attitude of this Government in relation to the *Modus Vivendi*, declare that "federation with the Dominion of Canada seems the only way out of the difficulty." A great Dominion, they assert, if it "cannot dictate to the Mother Country, is not likely to go down before the requirements of a foreign power, for a foreign power is hardly likely to press humiliation on a great Dominion or to invite Great Britain to do this unpleasant work." What does this declaration mean? Does it mean that the treatment that has been meted out to this Colony was intended as a compelling force towards union with the Canadian Dominion, or does it mean that by attaching ourselves to the five million people of the Canadian Dominion we can

force justice from the Mother Country? I should regret exceedingly to believe that either is the correct conclusion, for both positions are entirely non-British.

Why should this Colony be forced into a union that she considers would be incompatible? Why should she become absorbed if she prefers to retain her autonomy? If she takes a pride in her position as the oldest Colony in the realm, why should she be robbed of that pride? If she prefers to work out her own destiny under the genius of the Constitution, why should she be thwarted in so doing?

### **Has Newfoundland Shown Herself to be Unworthy of the Constitution she Enjoys?**

If she has, then there might be some excuse for pressure being brought to bear upon her to relinquish it. But has she shown such unworthiness? It will not be difficult to prove the contrary. For centuries the people of this Colony have been handicapped by the operation of treaties along two thousand miles of her coast line—treaties made in the interests of the Empire—treaties that were oppressive at the time of their ratification, and that have become obsolete and doubly oppressive by reason of the altered circumstances of the times in which we live. The national bounties of France and the protective duties of America have placed Newfoundland in a most unfavorable position and subjected her to unfair competition. Hundreds of French vessels have come into our territorial waters and subjected our people to a species of competition in which the advantages were all on one side, yet in spite of this, the manner in which she has extended her fisheries, the hardy, independent race she has reared upon her coast, the value of her shipping and of her exports, speak volumes for the enterprise and industry of her people. Wonderful as has been Canada's progress, Newfoundland is now keeping step with her. In the past six years Canada's commerce has increased 25 per cent.; Newfoundland's commerce has shown an advance of 30 per cent. within the same period. During the same period Newfoundland has had a yearly surplus of revenue over expenditure aggregating \$480,000. 28 per cent. of that surplus has gone into a reserve account to meet unforeseen demands that may come upon the Treasury through the stress of bad times, and 72 per cent. of surplus has been returned to the peo-

ple in additional grants for public works. During the same period the reduction of taxation has amounted to \$670,000. I know of no Colony in the Empire that has displayed a more heroic policy in relation to railway enterprise, and I think I am correct in stating that, with the exception of Australia, the Government of this Colony has built and owns to-day more miles of railway according to population than any other part of the Empire. The credit of the Colony abroad stands as high as that of the most prosperous Colony of the Empire, and its securities are as eagerly sought after. From this brief summary I do not believe that it can be successfully contended that we have shown ourselves unworthy of such privileges as we enjoy under Responsible Government.

Again, if there be advocates for a coercive policy being applied to this Colony in respect to Union with Canada, are they quite certain that the Government of the Dominion would take in an unwilling partner? I am quite certain that the present Government would not. Sir Wilfred Laurier is far too able a statesman to admit within the circle of Canadian influence any element which would bring about discord. I also feel quite confident that if union ever takes place between this Colony and the Canadian Dominion it will have to be a marriage of the affections. To attempt to force this Colony into a union that she does not desire would be worse than useless. I do not believe that any such motive prompted the treatment of which we complain; neither do I believe that it is necessary for this Colony to enter into Union with Canada in order to obtain justice from His Majesty's Government. I prefer to believe that that great diplomat and statesman, Lord Dufferin voiced the sentiments of every man worthy to be called a British statesman, when, as Governor-General of Canada, he declared in addressing the people of British Columbia:—

"Your numerical weakness as a community is your real strength, for it is a consideration that appeals to every honest heart. Far-  
 distant be the day when an acre of soil over which floats the flag of England mere material power, brute political preponderance, should be permitted to decide such a controversy as we are now discussing. Who, outside the Government or the statesman who, because its inhabitants are few in number and politically of small account, should disregard the issue or carelessly dismiss the representations, however bluff, boisterous or downright, of the feeblest of the distant colonies."

The great British statesman who uttered these words of wisdom and warning is dead, but the measure of justice that he contended

for, I rejoice to believe, still lives. The manner in which the great journals the Empire over have taken up our cause declares to this effect.

There have been a few newspapers on the other side of the Atlantic that have described our conflict with His Majesty's Government as "much ado about nothing." The writers of such articles surely could not have understood the seriousness of the situation. There are 55,000 men with their wives and children in this colony whose daily bread depends upon the successful prosecution of the fisheries. The continuance of these fisheries depends upon the manner in which they are conducted, and therefore this Legislature has from time to time passed laws to prevent the pollution of the waters of the bays, harbours and coves around the coasts of this colony and of the Labrador; to regulate the seasons during which certain fish may be caught, and to determine the instruments of capture that may be employed by the fishermen. Within the fishery areas of this colony the Imperial Government has granted to the citizens of foreign nations (France and the United States of America) certain rights of fishing "in common" with British subjects. If the words "in common" meant anything, I submit they conveyed to foreigners the right to fish side by side with British fishermen within the prescribed areas set out in the treaty or grant, at the same seasons, with the same implements of capture, and subject to the same regulations. If this was not the meaning of the words then the foreign fishermen were free to destroy the fishery by polluting the waters, by using improper instruments of capture, and by fishing at all seasons of the year. We cannot conceive of a Government consisting of sane men granting rights to the subjects of a foreign power to destroy the living of its own subjects and the food supplies of millions of other human beings. Yet that is the contention of the United States Government, and in that contention His Majesty's Government has at least temporarily acquiesced by ratifying the Modus Vivendi. The American Government have contended that under the treaty of 1818 they are not subject to our fishery and municipal laws, and by ratifying the Modus Vivendi His Majesty's Government has not only temporarily approved that assertion but has attempted to protect the citizens of the United States from the consequences of a violation of our laws. Let us follow this contention to its logical conclusion, and not only must we look forward to the destruction of our West Coast fishery, but to the Labrador fishery as well, and Americans have greater rights on the Labrador than they have on the West Coast of

this colony. Can any member of this House contemplate such a possibility without feelings of alarm? Can they regard the action of this Government in relation to the Modus Vivendi as "much ado about nothing?" Would any section of the British press regard things in that light if the inshore fisheries of Great Britain were to be invaded by foreign fishermen who set the statute laws at defiance? I think not. The laws of this land when approved by the Crown are the laws of the Empire. It should not be forgotten that England's honor is as much at stake in upholding those laws as it passed by the Imperial Parliament.

England in the past has had to look to the fisheries of this Colony as a nursery for her navy. Turn back to the record of the Great Naval struggles in which she conquered! Appeal to the heroes of that great naval warfare which laid the foundations of that great Colonial Empire which has brought to England during the present century both wealth and power! Ask them who were the companions of their victories! The answer will come back through the centuries that Newfoundland fishermen sealed the proudest of their victories with their blood. England is looking to this Colony for material for her Navy. Seven years ago an appeal was made to the young fishermen of Newfoundland to enter her Naval Reserve. The appeal was answered with enthusiasm. Hundreds of brave young fishermen have pledged their lives to the Empire, and hundreds more are willing to do so. Be it known that this is the only Colony of the Empire whose sons may be called upon by the Admiralty in time of war. I regret to learn that recently a large number of Reservists decline to re-enroll. I do not know the reason for their so doing, but I cannot imagine that the episode with which I have been dealing was calculated to inspire enthusiasm or to intensify the loyalty of the fisherfolk of Newfoundland.

It has been stated by His Majesty's Government, that the Modus Vivendi is for one season only—a period sufficiently long for the operation of such an unprecedented and humiliating agreement. I think, however, that after this House has given consideration to the papers which have been tabled and to the circumstances to which they relate, it will be regarded as necessary that this humble and respectful address to the Right Hon. the Secretary of State for the Colonies do pass, praying that if the rights of this Colony cannot be attained by diplomatic negotiation, then His Majesty's Government will proceed on a strict definition of the Treaty of 1818.

