THE

# FISHERY QUESTION;

— OR —

# AMERICAN RIGHTS

— IN —

# CANADIAN WATERS:

— BY —

WILLIAM HASTINGS KERR,

ADVOCATE.

MONTREAL:

PRINTED BY DANIEL ROSE, 431 NOTRE DAME STREET.

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# FISHERY QUESTION.

PREVIOUS to the American Revolution, the inhabitants of the British Colonies in North America exercised the right of fishing in all the bays, harbors, creeks and rivers of the present Provinces of Quebec, Ontario, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland.

The treaty of 1783, by which the independence of the United States was recognized, provided, amongst other things, that American subjects should have the right of fishing on the Banks of Newfoundland, along such coasts of the same Island as were used by British Seamen, in the Gulf of St. Lawrence, and on the coasts, bays, and creeks of all other British dominions in North America; as well as the right of drying and curing fish in any of the unsettled bays, harbors, and creeks of Nova Scotia, the Magdalen Islands and Labrador, so long as they should continue unsettled; but not the right of drying and curing on the Island of Newfoundland. (1)

After the War of 1812, the treaty of Ghent containing no provisions respecting the fisheries, the British Government contended that the treaty of 1783, by which alone the right of inshore fishing on the coasts of the British North American Provinces had been granted, had by the war of 1812 been absolutely annulled, and that consequently such right of inshore fishing no longer existed. On the part of the United States Government, it was pretended that the rights granted by that treaty were in their nature perpetual, and consequently were not affected by the breaking out of the war.

In 1818 a compromise was effected by convention, and it was thereby agreed between the contracting parties "that the inhabitants of the said United States shall have, forever, in common with the subjects of His Britannic Majesty, the liberty to take fish of every

(1) Vide Appendix No. 1.

kind on that part of the southern coast of Newfoundland which extends from Cape Ray to the Ramean Islands on the Western and Northern coast of Newfoundland, from the said Cape Ray to the Quirpon Islands; on the shores of the Magdalen Islands; and also on the coasts, bays, harbors, and creeks from Mount Joly on the southern coast of Labrador to and through the Straits of Belleisle, and thence northwardly indefinitely along the coast; without prejudice, however, to any of the exclusive rights of the Hudson Bay Company: and that the American fishermen shall also have liberty, forever, to dry and cure fish in any of the unsettled bays, harbors, and creeks of the southern part of the coast of Newfoundland here above described, and of the coast of Labrador; but so soon as the same, or any portion thereof, shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such portion so settled, without previous agreement for such purpose with the inhabitants, proprietors, or possessors of the ground. And the United States hereby renounce forever any liberty heretofore enjoyed or claimed by the inhabitants thereof to take, dry or cure fish on or within three marine miles of any of the coasts, bays, creeks or harbors of His Britannic Majesty's dominions in America, not included within the above mentioned limits. Provided, however, that the American fishermen shall be admitted to enter such bays or harbors for the purpose of shelter and of repairing damages therein, of purchasing wood, and of obtaining water, and for no other purpose whatsoever. But they shall be under such restrictions as may be necessary to prevent their taking, drying or curing fish therein, or in any other manner whatever abusing the privileges hereby reserved to them."(2)

Discussions as to the interpretation of the Convention were entered into as early as 1823 between the British and American Governments, the former claiming in favor of its subjects the exclusive right of fishing not only in the bays on the coasts of Nova Scotia and New Brunswick, and that portion of Canada to the south of the River and Gulf of St. Lawrence, and to the westward of Mount Joly on the north, but also within three miles of lines drawn from headland to headland of all such bays, including specially those of Chaleur and Fundy. The latter Government insisting that in those bays its fishermen had a right to fish at any distance over three miles from the land. For-

(2) Appendix No. 2.

tunately the Reciprocity Treaty, concluded in 1854, adjusted the difficulties which had arisen between the two Governments on the Fishery question. By its first article it was agreed, "that in addition to the liberty secured to the United States fishermen by the above named convention of 1818, of taking curing and drying fish on certain coasts of British North American Colonies, therein defined, the inhabitants of the United States shall have in common with the subjects of Her Britannic Majesty, the liberty to take fish of every kind, except shell fish, on the sea coasts and shores of those Colonies, and in the bays, harbors, and creeks of Canada, New Brunswick, Nova Scotia, Prince Edward Island, and of the several islands thereunto adjacent, without being restricted to any distance from the shore, with permission to land upon the coasts and shores of these Colonies and the islands thereof, and also upon the Magdalen Islands, for the purpose of drying their nets and curing their fish. . . . ."

It was further provided by one of its articles, that the treaty should remain in force ten years from the date of its coming into operation, and further, until the expiration of twelve months after either of the high contracting parties should give notice to the other of its wish to terminate the same. (3)

The notice so required was given by the United States Government and the Reciprocity Treaty terminated on the 17th March, 1866.

So many different opinions have been expressed as to the rights of American subjects to fish within three miles of the coasts of the British North American Colonies, that it becomes necessary in the first instance to inquire whether those rights are given by treaty, or whether they spring from the principles of International Law alone.

The dominion over certain portions of the open sea has at different periods been claimed by several of the nations of the world. Spain, Portugal, Holland and England have in turn, since the discovery of America, endeavored to arrogate to themselves sovereign power over portions of the sea, but nowadays it seems to be almost universally admitted that the maritime territory of a State extends solely to the distance of three marine miles seawards from its coasts. (4) Some

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(3) Appendix No. 3.

(4) 1. Hautefeuille tit. 1, c. 3, § 1, p. 92. Laurence's Wheaton, pt. 2. c. 4, §6. Martens Precis 6, 4, c. 4, § 4 and 10, (three leagues according to him.) Heffter § 75. 1 Twiss § 172. 1 Azuni pt. 1, c. 2, § 15. Kluber § 129. Vattel § 289. 1 Phil. § 19.

difficulty, however, still exists on the subject, owing to the different modes by which States establish the line of their sea coasts. It is admitted by all that the actual line of the shore, with its indentations, bays, and promontories, cannot be followed without producing the greatest confusion and doubt as to the limits of the maritime territory of each State, and consequently straight lines running from headland to headland of bays, not exceeding six miles in width, are taken as the actual line of coast from which the three marine miles of marine territory of the State to which the headlands belong are to be measured. (5) If a bay exceed six miles at its entrance, with islets belonging to the State that owns the shore of the bay, either outside or inside, at a distance of six marine miles or less from the headlands and from each other, the bay is the property of the State to which the headlands and the islets belong, and the boundary landwards of its maritime territory, is the line drawn from headland to headland, resting on the different islets, which give the greatest distance seawards, within six miles of each other, or of one of the headlands, the said line lying perfectly straight between each pair of its resting places, and being also straight between each headland and its nearest resting place. (6) Thus an island or islet lying off the coast of a State at a distance of six miles or less, is considered as part of the land territory of that State, and if another island lies at a distance of six miles or less from the first, seawards, or in the entrance of a large bay, such second island also forms part of the land territory of that State, and such is the rule, no matter what may be the number of links in the chain of Islands, so long as each island lies within six miles of the coast, or of the neighboring islands in the chain.

The exclusive right of fishing within maritime territory belongs to the State. No person has any right, according to the principles of International Law, to fish within the maritime territory af any country or State, but that of which he is a subject. (7) Such right to

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(5) 1 Hautefeuille supra. 1 Ortolan 158. 1 Azuni Part 1, c. 2, § 17. Laurence's Wheaton supra. Vattel § 291. 1 Phillimore § 199. Abdy's Kent, p. 116.

(6) The Anna. 5 Rob. 385. 1 Ortolan Dip. de la Mer. p. 145.

(7) 1 Ortolan b. 2, c. 8, p. 161. 1 Cussy b. 1, t. 2, § 52, p. 129. 1 Rayneval Institutions 1, 2, c. x. § 12. 1 Cauchy. p. 39. 1 Philimore § 188. Lawrence's Wheaton pt. 2, c. 4 § 8. Petrushevecz, art. 6.

fish within three miles then of the coast of one State by the subjects of another, must be founded upon the provisions of some treaty between such States in force at the time of such fishing. Consequently it must be regarded as clear law, that American subjects have no right to fish within the maritime territory of the British North American Colonies other than that conferred upon them either by the Treaty of 1783 or the Convention of 1818.

It becomes necessary, owing to the peculiar ideas entertained in the United States upon this question, to consider, in the first place, whether that portion of the Treaty of 1783 having reference to the fisheries was put an end to by the breaking out of the War of 1812 between Great Britain and the United States.

In the month of April, 1866, Mr. Raymond, in the United States House of Representatives, introduced a report and resolution relative to a proposition made some days previously to send armed vessels to the fishing grounds adjacent to the British Provinces for the protection of American fishermen. In the course of his remarks he made use of the following expressions: "It will become a question under what treaty we are now to enjoy the right of fishing on these coasts. The British claim, that by the Treaty of 1814, the preceeding Treaty of 1783 was annulled. I do not think that claim can be maintained, but if it should be maintained, it seems to me equally clear that the Treaty of 1818 must have been annulled by the Treaty of 1854. We are, therefore, thrown back either upon the original admission of 1783, or if that was annulled by the Treaty of 1814, then we are thrown back upon the rights which we enjoyed previous to that time."

It is hardly possible to suppose that any man occupying the position of a member of the Committee on Foreign affairs of the United States House of Representatives, could make such a public exhibition of his ignorance of the elements of International Law as is apparent to every one in the foregoing extract from Mr. Raymond's speech. The first blunder apparent is, that he wishes to fasten upon the British Government the reproach of pretending that the Treaty of 1783 was annulled by that of 1814. Such an untenable pretension was never in fact advanced by that Government, for the Law Officers of the Crown always enunciated the opinion, that the Treaty of 1783 had been annulled by the breaking out of the War of 1812, and that

opinion was based upon recognized principles of International Law, viz., that all treaties, (save and except, perhaps, those made to govern their conduct during war, or expressly made perpetual), concluded between two States, expire on the breaking out of hostilities between them. (8)

This principle, as applicable to the Treaty of 1783, is expressly recognized by a recent American authority. (9)

Mr. Raymond then proceeds to argue, that if the Treaty of 1814 had the effect of annulling that of 1783, the Convention of 1818 was annulled by the Treaty of 1854. The error committed by him in the first instance of confounding the effect of the War of 1812 with that of the Treaty of 1814, here leads him into the greater absurdity of stating that the Treaty of 1854, by which Great Britain conferred on American subjects great privileges in addition to those enjoyed by them under the provisions of the Convention of 1818, had the effect of annulling that Convention, and then he caps the climax by saying that by the expiration of the Treaty of 1854. the Americans are thrown back upon that of 1783, if not annulled by that of 1818, and if annulled, upon the rights they enjoyed previous to 1783. Now it must be remarked, that in the Reciprocity Treaty, great care was taken not to interfere with the provisions of the Convention of 1815, so far as the rights of the Americans were concerned, the only portion of the Convention which was temporarily suspended, was that in which they renounced forever the right of inshore fishing off certain portions of the coast of the British North American Colonies. The Convention itself was in its nature perpetual. It set at rest forever, the rights of the two contracting States. The Reciprocity Treaty merely gave the Americans during its continuance the privilege of fishing where, by the Convention of 1818, they had expressly forever renounced the right to fish. Such privilege or permission, was based upon such provision in the treaty; it lasted so long as that treaty lasted, and no longer, and when the treaty expired, the privilege became extinct, and the rights of the parties are those admitted and granted by the Convention of 1818. It is unnecessary to enter into the question of the rights of the Americans to fish within the limits

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(8) Heffter § 99. L's Wheaton pt. 3, c. 2, § 9. Abdy's Kent, p. 420, 3 Phil. § 532 to 538.

(9) Woolsey § 55.

of the maritime territory of the British American Provinces previous to the American Revolution, for up to that time the rights they so enjoyed were based solely on the fact of their being British subjects. Having, by their successful rebellion, thrown off allegiance to the British Crown, they lost the character of British subjects, and consequently the basis of their fishing rights having been destroyed by themselves, their previous right of fishing in the maritime territory of the British dominions terminated. (10) Moreover, as already mentioned, the Convention of 1818 was in its nature a settlement of the conflicting claims of the Government of Great Britain and the United States.

The Convention of 1818, therefore, must be taken as the deed of compromise by which alone the rights and privileges of American subjects to fish within the maritime territory of the British North American Provinces are to be measured and ascertained.

Under that Convention, American fishermen have no right to fish within three marine miles of any of the coasts, bays, creeks, or harbors of Canada, on the whole of the south shore of the River and Gulf of St. Lawrence, nor further to the west, on the north shore, than Mount Joly, the exclusive rights of the Hudson's Bay Company to the eastward and northward of that point being reserved. They have the right to fish on the shores of the Magdalen Islands, and also to dry and cure their fish on the now unsettled portion of the coast of Labrador, and by agreement with the inhabitants, proprietors or possessors of the ground on any settled part of that coast. They have, moreover, the right of entering all bays and harbors of the Provinces for the purpose of shelter, of repairing damages therein, of purchasing wood, and of obtaining water.

With respect to Nova Scotia, New Brunswick and Prince Edward Island, American fishermen have no right to fish within three marine miles of any of the coasts, bays, harbors or creeks of those Provinces, nor have they a right to dry or cure fish on any portion or portions of their coasts.

They have no right to fish within three marine miles of the coast of Newfoundland, save from Cape Ray to the Rameau Islands on the southern, and from Cape Ray to the Quirpon Islands on the western and northern coast, and they have the same rights and privileges of

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(10) Phil. § 395-6.

drying and curing fish on the southern coast of the island, between Cape Ray and the Rameau Islands, as they have on the coast of Labrador to the east of Mount Joly.

But though the intention of the governments contracting was to avoid the possibility of any difficulty arising on the subject of the rights of citizens of the United States to carry on fishing operations within the maritime territory of the British Provinces, yet barely five years had elapsed from the making of the Convention of 1818, when discussions took place as to the meaning of the word bays, therein made use of. The American contended that the signification attached to the word by the greater number of the States of the civilized world should be accepted as defining the bays included in the renunciatory clause; whilst, on the other hand, the British insisted, that having from time immemorial claimed and possessed sovereign power over all bays on the coasts of the dominions of the Crown in all parts of the world, and the Government of the United States having also claimed and exercised such sovereign power over all the bays on the coasts of the United States, the extended meaning attached generally by the two governments to the word "bay" should be held to be the one intended in the convention to apply to that word when used therein.

As already mentioned, the principle of International Law relied upon by the American Government, as to the measurement of the maritime territory seawards of a State, is pretty generally recognized, and if it be not clearly shown that both Great Britain and the United States have refused to admit that principle, and have in fact recognized another by which bays of a greater width than six miles from headland to headland are looked upon as included within the line of coast from which the maritime territory of the State to which the headlands belong is to be measured seawards, but little difficulty should be experienced in deciding against the pretensions of Great Britain. If, on the other hand, the United States, and Great Britain, up to the date of the Convention of 1818, had attached such wider meaning to the word "bay," the American claim must be pronounced unfounded.

A treaty, or convention between States, is but a contract subject to the rules of interpretation applicable to contracts between individuals. Custom in many instances exercises a controlling influence over a contract, changing the meaning of a word from one which it bears almost universally to another which is entirely different, and its influ-

ence is allowed when it can be said that both parties must have used the words in the sense attached to them by custom, and that each party had good reason to believe that the other party so understood them. (11)

Great Britain immemorially has claimed and exercised exclusive property and jurisdiction over the bays or portions of sea cut off by lines drawn from one promontory to another and called the King's Chambers. (12) A similar property and jurisdiction is and has been claimed by the United States over the Delaware Bay, and other bays and estuaries forming portions of their territory. (13) Chancellor Kent in his commentaries says: "It is difficult to draw any precise or determinate conclusion amidst the variety of opinions as to the distance to which a State may lawfully extend its exclusive dominion over the sea adjoining its territories, and beyond those portions of the sea which are embraced by harbors, gulfs, bays and estuaries, and over which its jurisdiction *unquestionably* extends. .... The executive authority of this country, in 1793, considered the whole of Delaware Bay to be within our territorial jurisdiction; and it rested its claim upon those authorities which admit that gulfs, channels and arms of the sea belong to the people with whose lands they are encompassed." In 1806, the United States Government insisted that the extent of neutral immunity, terms equivalent to maritime territory, should correspond with the claims maintained by Great Britain around her own territory, and that no beligerent right s ould be exercised within "the chambers formed by headlands, or anywhere at sea within the distance of four leagues, or from a right line from one headland to another." (13)

It is to be remembered also, that the United States have inherited from Great Britain the principle now maintained in this affair by the latter State. The doctrine of bays, no matter of what size, being subject to the territorial jurisdiction of the State owning the headlands and shores was fully admitted in Great Britain previous to the

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(11) 2 Parsons on Con., pp. 55 and 56. Gorrissen *vs.* Perrin, 2, C. B. N. S. 681. Vattel pref. p. lxv. § 26. 2 Phillimore § 73. Heffler § 94, 95. Petrushevecz art. 68, 69. 12 Phil. § 73.

(12) 1 Phillimore § 199. Heffter § 76. Abdy's Kent p. 114.

(13) L's Wheaton, pt. 2, c. 4, § 7. 1 Attys Gen. op. p. 33. 1 Kent p 30.

(15) 1 Kent p. 30.

American Revolution, and as all the other principles of International Law recognized by the mother country at that time were adopted by the Americans after the recognition of their independence, is it not the only deduction that can be drawn from the history of the two nations, their diplomatic correspondence, and the opinions of their jurists, that in the Convention of 1818, the word "bay" was used, not in the restricted sense recently applied to it by other States, but as applying to all indentations in the coasts of the British North American Provinces, denominated as, or known under the designation of bays?

The bays, with respect to which difficulties, judging from the past, may be expected to arise, are those of Fundy and Chaleur. The Bay of Fundy may, perhaps, be regarded as open throughout its whole extent to within three miles of lines drawn from headland to headland of bays, not exceeding six miles in width, and resting upon islands, belonging to New Brunswick, as hereinbefore set out, to the fishing operations of American vessels. The umpire to whom had been referred the question of the condemnatien of an American fishing vessel, captured whilst fishing in that bay, held, "that the Bay of Fundy was not a British bay, nor a bay within the meaning of the words used in the Treaties of 1783 and 1818." (16)

The decision of the umpire in that case was accepted by the Government of Great Britain, and the award of damages paid. Great Britain's right to claim that bay as a portion of the maritime territory of the Province of New Brunswick was, in fact, the question submitted for decision, and the ruling of the umpire in favor of the American pretension has the force of a precedent so far as the Bay of Fundy is concerned. But it is to be remembered that one of the headlands of that Bay belongs to the State of Maine, and the award cannot be held to apply to the Bay of Chaleur, inasmuch as the question submitted had no reference to the proprietorship of the latter bay, (17) and as both its headlands belong to British North America.

With the single exception then of the Bay of Fundy, American vessels have no right whatsoever to fish within three miles of the line stretching from headland to headland of the bays on the coast of Brit-

(16) L's Wheaton, pt. 2, c. 4, § 8, n. 106.

(17) 3 Phil. § 3. Vattel, b. 2, § 329.

ish North America, within the limits hereinbefore set out.—their rights are strictly defined by the Convention of 1818, and must be confined within the limits therein specially mentioned. The general rules of International Law, the provisions of the Treaty of 1783, and the privileges extended to them by that of 1854. cannot be invoked in order to liberate them from the terms of the compromise of 1818, construed and interpreted according to the then established custom and usage of the British and American Governments.

Another question which has been frequently raised in connection with the fisheries, is the right of Great Britain to close the Gut of Canso against American vessels.

The Gut of Canso is "a strait in British North America, dividing Cape Breton from Nova Scotia and forming a secure and much frequented passage from the Atlantic into the Gulf of St. Lawrence; it is about twenty-one miles long and varying from one mile to one mile and a half broad." (18)

Taking it for granted that it forms a part of the maritime territory of Canada, still being a means of communication formed by nature between the Atlantic Ocean aud the Gulf of St. Lawrence, both, portions of the common property of the nations of the world, it follows as a consequence, that the right of peaceable passage exists in favor of vessels of every nationality. The right being one based on the principles of International Law and exercised independently of Great Britain, that power cannot prevent the passage of United States vessels through that Strait. (19)

Writers on International Law are divided in opinion upon the subject, but the greater number espouse the side of the question opposed to the pretensions of Great Britain. Moreover, the general principles of law, and the current of modern opinion as expressed in Treaties, clearly indicate the fallacy of the idea that the right of peaceable passage does not exist in favor of foreign vessels through the Gut of Canso.

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(18) Imperial Gazetteer.

(19) Abdy's Kent, p. 116. Laurence's Wheaton, pt. 2, c. 4 § 9. 1 Hautefeuille, pp 97 & 99. 1 Phillimore § 178. 1 Cauchy, p. 42. 1 Cussy, b. 1, tit. 2, § 41. 1 Azuni, pt. 1, c. 3, art. 2 § 1. 1 Ortolan, b. 2, c. 8, p. 146. Vattel, b. 1, c. 23, § 292. Rayneval b. 2, c. 9, § 7. Heffter § 33, 76. Petruschevecz, art. 9.

Contra—1 Twiss, § 174. Kluber, § 130. Martens Précis, pp. 171-168.

# APPENDIX.

## No. 1.

The definitive Treaty of Peace and Friendship between his Britannic Majesty, and the United States of America; signed at Paris, the 3d of September, 1783.

ART. III.—It is agreed, that the people of the United States shall continue to enjoy, unmolested, the right to take fish of every kind on the Grand Bank, and on all the other banks of Newfoundland: also in the Gulph of St. Lawrence, and at all other places in the sea where the inhabitants of both countries used at any time heretofore to fish. And also that the inhabitants of the United States shall have liberty to take fish of every kind on such part of the coast of Newfoundland as British fishermen shall use, (but not to dry or cure the same on that island,) and also on the coasts, bays, and creeks of all other of his Britannick Majesty's dominions in America; and that the American fishermen shall have liberty to dry and cure fish in any of the unsettled bays, harbors, and creeks of Nova Scotia, Magdalen Islands, and Labrador, so long as the same shall remain unsettled; but so soon as the same, or either of them, shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such settlement without a previous agreement for that purpose with the inhabitants, proprietors, or possessors of the ground.

## No. 2.

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

ART. I.—Whereas differences have arisen respecting the liberty claimed by the United States, for the inhabitants thereof, to take, dry, and cure fish, on certain coasts, bays, harbours, and creeks, of His Britannic Majesty's Dominions in America, it is agreed between the high contracting parties, that the inhabitants of the said United States, shall have, forever, in common with the subjects of His Britannic Majesty, the liberty to take fish of every kind, on that part of

the southern coast of Newfoundland, which extends from Cape Ray to the Ramean Islands, on the western and northern coast of Newfoundland, from the said Cape Ray to the Quirpon Islands, on the shores of the Magdalen Islands, and also on the coasts, bays, harbours and creeks, from Mount-Joly, on the southern shore of Labrador, to and through the Straights of Belleisle, and thence northwardly indefinitely along the coast, without prejudice, however, to any of the exclusive rights of the Hudson's Bay Company: and that the American fishermen shall also have liberty, for ever, to dry and cure fish in any of the unsettled bays, harbours, and creeks, of the southern part of the coast of Newfoundland hereabove described, and of the coast of Labrador; but so soon as the same, or any portion thereof, shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such portion so settled, without previous agreement for such purpose, with the inhabitants, proprietors, or possessors of the ground. And the United States hereby renounce forever, any liberty heretofore enjoyed or claimed by the inhabitants thereof, to take, dry, or cure fish on or within three marine miles of any of the coasts, bays, creeks or harbours of His Britannic Majesty's Dominions in America, not included within the above mentioned limits; provided, however, that the American fishermen shall be admitted to enter such bays or harbours, for the purpose of shelter and of repairing damages therein, of purchasing wood, and of obtaining water, and for no other purpose whatever. But they shall be under such restrictions as may be necessary to prevent their taking, drying, or curing fish therein, or in any other manner whatever abusing the privileges hereby reserved to them.—*Hertslet Treaties, Vol. II.*

No. 3.

Treaty between Great Britain and the United States, relative to Fisheries, Commerce, and Navigation, signed at Washington, June 5, 1854:

ART. I.—It is agreed by the High Contracting Parties, that in addition to the liberty secured to the United States fishermen by the above mentioned Convention of October 20, 1818, of taking, curing, and drying fish on certain coasts of the British North American Colonies therein defined, the inhabitants of the United States shall have, in common with the subjects of Her Britannic Majesty, the liberty to

take fish of every kind, except shell-fish, on the sea-coasts and shores, and in the bays, harbours, and creeks of Canada, New Brunswick, Nova Scotia, Prince Edward's Island, and of the several islands thereunto adjacent, without being restricted to any distance from the shore; with permission to land upon the coasts and shores of those Colonies and the islands thereof, and also upon the Magdalen Islands, for the purpose of drying their nets and curing their fish: provided that in so doing they do not interfere with the rights of private property, or with British fishermen in the peaceable use of any part of the said coast in their occupancy for the same purpose.

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

No. 4.

The inshore fisheries of a country are the heritage of the inhabitants of its coasts, sufficient in nearly every instance to provide them with all the necessaries of life; but like all other supplies vouchsafed by nature to man, if a system of over cropping be persevered in, the water, like the land, becomes barren.

Mackerel have been driven off the coasts of the United States by over-fishing, and their vessels are now forced to seek in Canadian waters the fish which their own maritime territory no longer affords them. For many years past, from four to five hundred American vessels per season fish in the Gulf of St. Lawrence and the Bay of Fundy. Their take is equal to three-fourths of the whole Cod and Mackerel fishery of the United States, and is valued at $12,000,000. It must be remembered, moreover, that they fish almost exclusively within three miles of the Canadian coast.

(See *Year Book of Canada*, 1868, p. 90. Letter from Secretary of Treasury in answer to Resolution of House of Representatives of 7th February, 1868. Ex. Doc. 240, pp. 12 and 13.)

The United States Tariff imposes a duty of $2.00 a barrel upon foreign caught fish. Last year the license fee levied by our Government upon United States vessels fishing in Canadian waters was fifty cents a ton. This year the fee is to be $2.00 per ton. Last year the tonnage of such vessels fishing in Canadian waters was estimated

at 19,000 tons; supposing that the same vessels this year fish in our waters, we shall for the paltry sum of $38,000 allow them to take $12,000,000 worth of our property. In other words, we levy on our fish, caught and exported by American vessels, a duty of $1.25 on every £100 worth.

Can it be wondered at that our fishermen starve. Shut out from the markets of the United States, overwhelmed by the numbers and wealth of the foreigners, who monopolize their fishing grounds, seeing year by year fish becoming scarcer, and they themselves becoming poorer and poorer, is it too much to say that ere long their patience will be exhausted, and that they will ask for that protection elsewhere which here alas has never been extended to them.

Verily the people of the New England States are justified in laughing at our folly. For a mess of pottage we consent to sell our birthright, and allow our neighbors to reap the harvest placed by Providence ripe for the sickle at our doors.