

THE NORTH AMERICAN FISHERIES.

S P E E C H

OF

HON. LEWIS CASS, OF MICHIGAN,

DELIVERED

IN THE SENATE OF THE UNITED STATES, AUGUST 3, 1852.

A message having been received from the President in relation to the fisheries, on the coasts of the British possessions, with accompanying documents, and Mr. Cass having moved to refer the same to the Committee on Foreign Relations—
MR. CASS said :

MR. PRESIDENT: I have looked with some care into this question of the fisheries since it was first brought before us, and as there seems to me to be some important errors prevalent, I desire to take this opportunity, before the just cause of our country is prejudged, to correct them.

The ocean, which unites, while it separates the nations of the earth, is at once their highway, and a liquid field, whose abundant supply of food for man, is among the most wonderful and beneficent dispensations of Nature. No nation can appropriate it to itself. For the purpose, of mutual convenience and of proper internal police, it seems to have been understood, that the authority of every country may control the shores of the ocean within one marine league, or three miles, of its coasts. But within this distance, vessels may navigate the seas, though they ought not to violate the municipal laws, passed for revenue and for other proper purposes.

When the United States asserted their independence, and entered into negotiations with England for its recognition, the question of the fisheries was one of the most important, whose adjustment was required by the new relations, existing between the two countries. England contended that we were in the condition of any other foreign Power, and that, consequently, we had no rights but such as every nation possessed by virtue of its sovereignty. Our revolutionary patriots contended, and justly and successfully, that the colonists were among the first to carry on the fisheries; that they did their full share, and more, too, in defending and acquiring them from the French; and that, as a portion of the common empire, which possessed them, they had a right to enjoy their just proportion, as well when separated, as while united. And we learn, both from the traditional accounts and from diplomatic and historical documents, that in the very darkest period of the struggle there was no waver-

ing upon this point, but that our conscript fathers held on to it with as much tenacity as their Roman predecessors held on to the rights and honor of Rome when the enemy was at the gates of the capital. That sturdy patriot, John Adams, told the story in his old age—and an eventful one it is—valuable both as an encouragement and as an example. It is contained in a letter to William Thomas, dated

MONTEZILLO, August 10, 1822.

DEAR SIR: The grounds and principles on which the third article of the treaty of 1783 was contended for on our part, and finally yielded on the part of the British, were these: First, that the Americans and the adventurers to America were the first discoverers and the first practisers of the fisheries; secondly, that New England, and especially Massachusetts, had done more in defence of them than all the rest of the British empire; that the various projected expeditions to Canada, in which they were defeated by British negligence—the conquest of Louisiana in '45—the subsequent conquest of Nova Scotia, in which New England had expended more blood and treasure than all the rest of the British empire—were principally effected with a special view to the security and protection of the fisheries; thirdly, that the inhabitants of the United States had as clear a right to every branch of the fisheries, and to cure fish on land, as the inhabitants of Canada or Nova Scotia; that the citizens of Boston, New York, or Philadelphia, had as clear a right to those fisheries, and to cure fish on land, as the inhabitants of London, Liverpool, Bristol, Glasgow, or Dublin; fourthly, that the third article was demanded as an ultimatum, and it was declared that no treaty of peace should ever be made without that article. And when the British ministers found that peace could not be made without that article, they consented—for Britain wanted peace, if possible, more than we did; fifthly, we asked no favor, we requested, more than we did; and would accept none. We demanded it as a right, and we demanded an explicit acknowledgment of that right as an indispensable condition of peace."

The war of 1812, and the peace that followed it, left this important right in a disputed and precarious condition. No arrangement could be made at Ghent in relation to it; and the effort was closed by the peremptory declaration made on the 10th of November, 1814, by the American to the British commissioners, "that they were not authorized to bring into discussion any of the rights or liberties which the United States have heretofore enjoyed in relation thereto, [the fisheries.] From their nature, and from the peculiar character of the treaty of 1783, by which they are recognised, no further stipulation has been deemed necessary by the Government of the United States to entitle them to the full enjoyment of all of them."

After the peace, during some years, difficulties and troubles arose, threatening serious consequences

from the almost hostile pretensions of the parties, that finally led to the negotiations of Messrs. Gallatin and Rush, which terminated in the existing convention of 1818.

There were strange claims in those days, as well as now. An effort was made to exclude us from coming within twenty leagues of the colonial coasts; though the act was finally disavowed by the British Government, wherever the design may have originated.

And Mr. Monroe said, in his instructions to the commissioners at Ghent, that the Administration "had information, from a quarter deserving attention," that a demand would be made to surrender our right to the fisheries, to abandon all trade beyond the Cape of Good Hope, and to cede Louisiana to Spain.

"These rights," said the Secretary, by order of the firm and patriotic Madison, "must not be brought into discussion. If insisted on, your negotiation will cease."

And even after the convention, a claim was made to run a line from Cape Granby to Cape North, across the whole northeast coast of Cape Breton, not less than one hundred miles, including within the *tabooed* region numerous bays and harbors.

The history of that period of pretension teaches lessons that no independent State, mindful of its own self-respect, or solicitous of the respect of the world, should forget or disregard. Those were the days of impressment, when British officers took whom they pleased from American ships, and when two great belligerents, animated with the spirit of the highwayman, robbed us of our property wherever they could find it on the ocean, each alleging as its justification, that the other had set the example. Hereafter let us meet the first intentional insult or injury—by intentional I mean one directed or justified by a foreign Power—let us meet it, as it should be met, by the armed hand, and by the whole force of the nation. Submission and acquiescence will conduct us only to contempt and dishonor.

We learn from the report of the Commissioners of 1818, that the important provisions in the present convention were the result of an ultimatum submitted by them, and which was followed by an arrangement. That arrangement was in some respects different from the treaty of 1783. By that treaty the American fishermen were acknowledged to have the right to fish on the Grand Bank and all the other banks of Newfoundland, and also in the Gulf of St. Lawrence, and at all other places in the sea where the inhabitants of both countries were at any time before used to fish; and also on the coasts of Newfoundland, and on the coasts, bays, and creeks of all the other colonial possessions; and the right to cure and dry fish on all the colonial coasts except Newfoundland.

The new convention restricted the right to fish—that is, to fish within three marine miles of the coasts—to the lines and points enumerated in that instrument, and the right to dry fish on the coast of Labrador, and to a portion of the coast of Newfoundland, which was substituted for a more extended recognition in the original treaty.

The consideration on the part of the United States for entering into this convention was the amicable arrangement of a perplexing and danger-

ous question, which, while it was open, was at any time liable to lead to war, and the security of a large portion of the rights claimed by them, which placed this great fishing interest in a prosperous condition. The consideration on the part of England was the same permanent establishment of the amicable relations of the two countries, and the relinquishment by the United States of some part of what they had previously claimed. Each party, therefore, surrendered something to the other—rights and claims arising out of the relations they had previously occupied, as portions of one common empire. But their rights, as sovereign States, having no reference to previous connexion, were neither touched, nor designed to be touched, by this convention. We did not ask of England, nor did she ask of us, the privilege of fishing in the ocean three marine miles from each other's coasts. No treaty was needed for that purpose, nor did either Government dream of it. What we wanted was the enjoyment of a right we had possessed since the settlement of the country, to fish near to the coast when necessary, without reference to the question of jurisdiction, and to dry the fish in proper places; and what England wanted was to reduce these claims within the narrowest limits she could induce us to accept; and the result was the existing arrangement.

We did not get the right to fish on the ocean from England, nor from any other earthly power. We got it from Almighty God, and we mean to hold on to it, through the whole extent of the great deep, now in the days of our strength, as our fathers held on to it in the days of our weakness. Should we abandon this attribute of independence, even in any extremity which human sagacity can foresee, we should prove recreant both to the glories of the past and to the hopes of the future, to the deeds of our fathers, and to the just expectations of our children. I know but little of the character of my countrymen if they would not reject, with indignation, any proposition thus to tarnish their history and to write their own dishonor upon it.

What, then, I repeat, have we secured by the convention? The right to take fish within three miles, and the right to come ashore to dry them, and the right of shelter in certain coasts, harbors, creeks, and bays. In what bays do we possess rights? for there arises the controversy.

This word bay, as a geographical designation, is very indefinite in its application. Neither the form, size, nor position of the various expanses of water, to which it is applied, has any such strict relation as to give to the term a fixed definition. We have designated that great interior sea, under the Arctic circle, named from the enterprising mariner, Hudson, as a bay, though with its various indentations it extends through twenty degrees of latitude, and as many of longitude. And the few miles at the mouth of the North river, forming the harbor of New York, is equally entitled to the same appellation. Baffin's bay is another prodigious indentation of the ocean, covering, with Davis's straits as far as Cape Farewell, a greater area than the Gulf of Mexico and the whole Caribbean sea. The Bay of Biscay—whose headlands, according to the new doctrine, may be said to be near Brest, as my honorable friend from Louisiana

(Mr. SOULE), well knows, on the northeast, and Corunna on the southwest, giving an arc of near five hundred miles—is another of these mighty sheets of water with a comparatively humble name; and so is the Bay of Fundy, though less, and the Bay of Chaleur, from both of which we are sought to be excluded. The same uncertainty prevails as to gulfs and seas, for we have them of all sizes and forms, from the Gulf of Guinea and the Mediterranean sea down to the Gulf of Patras, and to the far-famed but diminutive Marmora, renowned in history, but insignificant in geography.

Now, sir, it is preposterous to run a line from one projecting point of these vast expansions to the other, and claim for the State which holds the coast, even if it is the whole of it, exclusive jurisdiction over great arms of the ocean, with the right to prevent any other nation from enjoying them, either for the purpose of fishing or of navigation.

That there are many land-locked indentations, which constitute portions of the territory of the country whose coasts surround them, is indisputable. It is not necessary to enter into the public law, made such by general consent, which regulates that subject. No doubt cases may arise where rights are claimed and resisted, which are not easy of adjustment in consequence of the absence of fixed principles. When such controversies occur, they must take their own course of settlement.

But, independent of these general considerations, applicable to the larger bays and gulfs of the fishing region, there are others, which fix the meaning of the word bay, as employed in the convention, beyond reasonable doubt or dispute—beyond all cavil, but a determination to resort to interest rather than to reason for the signification of a term. The convention, by indicating the use of the bays, sufficiently indicates their nature. They are for the purpose of affording shelter, &c. Now, what shelter can the storm-beaten mariner find in the Bay of Fundy or in the Gulf of St. Lawrence? Both of these seas are among the most dangerous that our hardy seamen are compelled to encounter, whatever may be their pursuits, or wherever they may range the ocean. They are proverbially perilous and deceitful, and the right to find shelter upon their tempestuous waves would not be worth the paper on which it might be written.

The Montreal Herald, indeed, in a late number, while accusing the Americans of standing “upon any advantages they may possess,” cuts this Gordian knot with great ease by the discovery and announcement that “there is, after all, no real ground for considering this as an insult; for the bays and straits, where the British men-of-war are stationed, are as exclusively British as the British channel.” Quite cool, this claim over the great highway, which separates France from England, twenty-one miles broad in its narrowest part. This is going backward, indeed, to the days of Selden, the advocate of this pretension, and to the reign of Charles, who hoped to establish it. The knowledge and modesty of the editor are equally commendable.

The bays of the convention are classed with harbors and creeks—a classification significant of the object. They are defined as bays “of his

Britannic Majesty’s dominions,” over which the British Government has jurisdiction, as it has over the land that encircles them. That such was the understanding of our negotiators is rendered clear by the terms they employ in their report upon this subject. They say, “it is in that point of view that the privilege of entering the ports for shelter is useful;” &c. Here the word “ports” is used as a descriptive word, embracing both the bays and harbors within which shelter may be legally sought, and shows the kind of bays contemplated by our framers of the treaty. And it is not a little curious that the Legislature of Nova Scotia have applied the same meaning to a similar term. An act of that Province was passed March 12, 1836, with this title: “An act relating to the fisheries in the Province of Nova Scotia and the coasts and harbors thereof;” which act recognises the convention, and provides for its execution under the authority of an imperial statute. It declares that harbors shall include bays, ports, and creeks. Nothing can show more clearly their opinion of the nature of the shelter secured to the American fisherman.

The general views of Messrs. Rush and Gallatin are shown in the following extract from their report, and I introduce it because it has an important bearing upon the whole subject before us:

Messrs. Gallatin and Rush to the Secretary of State, October 20, 1818.

“It will also be perceived that we insisted on the clause by which the United States renounced their right to the fisheries relinquished by the convention, that clause having been omitted in the first British counter-project. We insisted on it with the view—1st. Of preventing any implications that the fisheries secured to us were a new grant, and of placing the permanence of the rights secured and of those renounced precisely on the same footing. 2d. Of its being expressly stated, that our renunciation extended only to the distance of three miles from the coast. This last point was the more important, as, with the exception of the fishery in open boats within certain harbors, it appeared from the communication above mentioned, that the fishing ground on the whole coast of Nova Scotia is more than three miles from the shore; whilst, on the contrary, it is almost universally close to the shore on the coast of Labrador. It is in that point of view that the privilege of entering the ports for shelter is useful, and it is hoped that with that provision a considerable portion of the actual fisheries on that coast (of Nova Scotia) will, notwithstanding the renunciation, be preserved.

Now, sir, it appears to me, on a careful review of this whole question, that the conduct of England is equally unfriendly and unjust. Indeed, I find it difficult—I might almost say impossible—to ascertain her true motive, or the length to which she is prepared to go; and more especially so, since her Government at home and her officers abroad have heralded her proceedings to the world, the instructions of the Secretary of State and the orders of the admiral having been equally communicated through the medium of the press, and are now on their way through Christendom. Where her prudence, after these disclosures, will prompt her to stop, or how far in this dangerous career her pride, or whatever other motive dictates her course, may impel her onward, I am at a loss to conjecture. Nations, before they take such ground, and take it so openly, should be very sure of their rights, and fixed in their determination to maintain them. Mr. Monroe was equally puzzled in 1815, under not dissimilar circumstances, and I commend to attention the remarks in his letter to Mr. Adams, of July 21, of that year:

Extract of a letter from Mr. Monroe to Mr. Adams, dated July 21, 1815.

It can scarcely be presumed that the British Government, after the result of the late experiment, in the present state of Europe, and under its other engagements, can seriously contemplate a renewal of hostilities. But it often happens with nations, as well as with individuals, that a just estimate of its interests and duties is not an infallible criterion of its conduct. We ought to be prepared at every point to guard against such an event. You will be attentive to circumstances, and give us timely notice of any danger which may be menaced.

When the honorable Senators from Maine and Massachusetts, (Mr. HAMLIN and Mr. DAVIS,) attributed the course of England in this matter to a design to effect a reciprocity arrangement for her colonies by a manifestation of energy and display of force, I could not concur with them at all in the opinion. I thought it was impossible that England would hazard such an experiment upon our forbearance, not to say timidity. I could not believe, that any British statesman could so far mistake our national character, as to suppose that such a course would extort our consent to any measure, whether obnoxious or not. I thought we had lived in the world so long, and grown to be one of its great powers, under circumstances so often requiring energy and resolution, that no nation would regulate its demands against us upon the presumption, even if they were made with boldness, they would be granted with the alacrity of fear. I am well aware, that England, and other powers, indeed, have measured their own rights for themselves, and have compelled reluctant States to do them justice. And this is, justifiable where the demand is incontestable, and voluntary satisfaction becomes hopeless. But this generally occurs with comparatively small States; for with powerful ones such a course would be the signal of war. But I did not believe we were in this category in the estimation of the British administration, nor that the experiment would ever be made of firing a gun on the Potomac in time of peace, to secure any demand whatever, because such an act had succeeded on the Tagus. I do not mean, that the display of an unusual force in neighboring waters is as indicative of a belligerent attitude as would be its appearance upon our own coast; but it is well calculated to give offence, especially when coupled with the avowed determination of so turning the circumstances, as to procure commercial arrangements which, it is not certain we shall ever make.

Now, sir, recent statements in the colonial papers justify the conjecture of the Senators from Maine and Massachusetts, and indicate pretty clearly one of the objects of this new movement. I will refer to some of them:

[From the New Brunswickeer.]

We have no doubt but an attempt will be made by the American Government to obtain a modification of the strict letter of the fishery treaty between Great Britain and the United States; but failing, as we believe they will, in this, they will then offer as an equivalent reciprocity in certain articles of domestic growth and produce for the privilege of fishing within the prescribed limits. The unlimited sway which American fishermen have heretofore enjoyed along our coasts, left them little or nothing to wish for; and when these colonies wished a reciprocity in some of their staple articles, they were treated with the utmost indifference. Our neighbors had so long trampled upon our privileges, that they imagined they had a perfect right to our fishing grounds for their benefit. Did they possess such a valuable source of wealth, British subjects would not be permitted to take a single fish. The strictest surveillance would be exercised to keep off all intruders.

[From the St. John Morning News.]

The recent movements of the British with respect to the American fishermen, have caused some sensation in the United States, and serious troubles between the two Governments are anticipated, consequent upon the strict interpretation of the fishery treaty by Earl Derby's government. It is not at all improbable that the determination of this Ministry to enforce the treaty has been conceived with a view to the success of the negotiations for reciprocal free trade, and that the American Government will be glad to make terms.

[From the Montreal Herald.]

THE FISHERIES RECIPROCIETY.—The Americans are always disposed to stand upon any advantages they may possess, and refuse to yield favors to others, even when themselves are likely to gain by the bargain, without a distinct and apparent compensation. When, after abolishing the differential duties, we asked the small return of reciprocity in raw materials, we were immediately met with the question, what have you got to give in return? The fisheries were suggested by the Americans as something that might be thrown in on our side; but eventually they seemed to have become impressed with the conviction that, as they were enjoying them without any formal concession of privilege, they might as well still refuse what the colonies asked. It was quite time to show them that we had something which we could withhold as well as they; and though we know not whether the desire to obtain reciprocity has not been one of the grounds for the present somewhat sudden action on the part of the Imperial Government, we hold that such a desire would be a perfectly legitimate ground for such action.

I understand, also, that similar views were expressed in Parliament during some recent allusion to this subject. I trust, for the permanent welfare of both countries, that this effort, as a compulsory means of effecting an arrangement, will be abandoned.

Apart from this conjecture—for it is only such—what does England intend to do? I see it stated in many of our journals, as a reason for sitting still, that we do not know what is the exact object of England. Well, sir, that is precisely one of our most serious grounds of complaint. A great movement is going on in a part of the ocean where we have immense interests at stake. A powerful armament has arrived there; rumors are rife that a new policy is to be adopted; the British minister here, and the British Secretary of State, and the British admiral, talk of our "encroachments;" and the whole tenor of the preparations show, that what is thus termed is to be resisted; and yet we have no information, official or even authentic, as to what England designs to do. A very able and respectable journal of this city, which I generally read with pleasure and often with profit, (the Intelligence,) and for whose editors I have much personal regard, gives us the following information:

"Nor has the present proceeding by the British authorities been so sudden, or so entirely without notice, as seems to be supposed. We are informed, upon the best authority, that about the 7th of this month the minister of Great Britain notified our Government that measures had been adopted by the British Government to prevent the repetition of the complaints which had so frequently been made of the encroachments of vessels belonging to citizens of the United States and of France upon the fishing-grounds reserved to Great Britain by the convention of 1818; that urgent representations had been addressed to the Government of Great Britain by the governors of the British North American provinces in regard to those encroachments, to the effect that the colonial fisheries were most seriously prejudiced; and that directions had been given by the Lords of the Admiralty for stationing off New Brunswick, Nova Scotia, Prince Edward's Island, and in the Gulf of St. Lawrence, such a force of small sailing vessels and steamers as should be deemed sufficient to prevent further infractions of the treaty:

"The minister of Great Britain at the same time also informed our Government that it was the command of his Government that the officers employed upon this service should be specially enjoined to avoid all interference with vessels of

friendly powers, except when they were in the act of violating existing treaties; and on all occasions to avoid giving ground of complaint by the adoption of harsh or unnecessary proceedings where circumstances compelled the arrest or seizure of such vessels."

I have no doubt but this is substantially correct. Now, I disagree with the Intelligencer as to the use or friendly spirit of this communication. What does it amount to as a correct means of judging the true state of things, either present or prospective? What are these "encroachments?" and what is this "infracton" thus to be forcibly prevented? Fair dealing required we should be told; but the matter is involved in Delphic obscurity.

Do these complaints, thus to be remedied by one of the parties alone, relate to palpable violations of the treaty, which our Government would not defend—such as fishing within the clearly excluded limits, attempts to smuggle, or other indefensible acts—or do they relate to the large open bays, which we contend we have a right to enter, and which is in fact, the only real subject in dispute?

Sir John Packington, the British Secretary of State for the Colonies, in a letter to the colonial governors, employs the same word "encroachment," and leaves us equally in the dark as to its application. This is his letter:

Copy of a letter from Sir John Packington, Secretary of State for the Colonies, to the governors of the British North American Colonies, dated

MAY 28, 1852.

Her Majesty's ministers are desirous of removing all grounds of complaint on the part of the colonies in consequence of the encroachments of the fishing vessels of the United States upon those waters, from which they are excluded by the terms of the convention of 1818, and they therefore intend to despatch, as soon as possible, a small naval force of steamers, or other small vessels, to enforce the observance of that convention."

In the meantime the colonial papers are in raptures, looking forward to the advent of a golden age, by the adoption of their construction of the treaty, and by the determination of the home Government to maintain it. There is a prodigious flourish of trumpets upon the occasion, and it is obvious, that every colonist believes that this large force has been assembled for far more important purposes than to watch smugglers or the common trespasses of fishermen.

Now, what are these "encroachments" thus denominated and denounced by the British Government, and by their representative here? There are not wanting the means of answering this question.

For a series of years the colonial authorities have complained of our fishermen for fishing in all the large bays—in the Bay of Fundy, the Gulf of St. Lawrence, the Bay of Chaleur, and elsewhere. In 1842 these complaints assumed quite an imposing appearance, and a resolution passed the legislature of Nova Scotia, embodying their supposed grievances in a distinct form, with a view to decisive action. A case was stated by the governor, embracing all the points they contended for, which was transmitted to the Government, with a request that the opinion of the Advocate and of the Attorney General might be taken upon the various questions propounded. Among these questions was the following:

"3d. Is the distance of three marine miles to be computed from the indents of the coasts of British America, or from the extreme headlands, and what is to be considered a headland?"

There are two curious facts in connexion with this proceeding worthy of a passing notice.

The first is, that in the case stated by the Nova Scotia Government it is asserted, that at the peace of 1783 a treaty was entered into between the United States of America and Great Britain, by which the people of the former country obtained the right "to take fish on the Grand Bank," &c. A greater historical error could hardly be committed in this matter, which the treaty itself, as well as all contemporaneous accounts, contradicts. What influence the statement may have had upon the subsequent opinion, I know not. It certainly leaves but little respect for the careful action of those, who prepared the document.

The second curious fact, though of a different nature concerns the governor, (Lord Falkland,) who gravely tells the Secretary of State, while sending him this paper that "the people of the colony have not been wanting in efforts to repel the incursions of the NATIVES of the United States upon these fishing-grounds," &c. This dignitary seems to have supposed that the aboriginal population yet possessed our country, as the term *natvies* is by common consent applied to the primitive inhabitants of a region.

The case thus stated was referred by the home Government to the Advocate and Attorney General, who decided every point in favor of British, or rather of colonial, interests. It is probably well for the peace of the two countries, if the course of England is to be guided by the views of these functionaries, that nothing more was asked; for I suppose a negative upon such questions of national interest could have hardly been expected from these legal expounders. On the main point the following was the opinion:

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

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

This decision goes for the whole; but it is accompanied with two remarks little creditable to those high juris consults, and which shake our faith in their opinion.

The first is, that "the term HEADLAND is used in the treaty to express the part of the land we have before mentioned," &c. Unfortunately for their accuracy and their reputation, the word headland is not to be found in the treaty, from one end of it to the other.

The second drawback upon their intelligence is of a much graver nature, and utterly destroys all confidence in their views. They say, that "the prescribed distance of three miles is to be measured from the headlands, or extreme points of land next the sea of the coast, or of the entrance of the bays," &c. Here we have two kinds of headlands—one of the sea of the coast, and the other of the entrance of the bays. The former expression, if it means anything, means that from headland to headland along any coast, however straight and however unbroken such coast may be, resting upon the broad ocean itself, a line may be drawn, and exclusive jurisdiction claimed within it. This is more than the Nova Scotians asked, and more than the law officers of the English Crown could give. It is preposterous. The Bay of Fundy is not named specifically in this opinion, but it was evidently intended to embrace it. Now, this bay is not within the exclusive dominion of England, as part of the coast belongs to Maine; and it has no marked entrance, nor any distinct headlands on the north-eastern side, being almost a straight line, both in Maine and New Brunswick. It wants all the characteristics of a bay, as defined in this opinion. It is, in fact, an open, exposed arm of the ocean, running along the coast of Maine more than one hundred miles. Geographers consider the Bay of Fundy as separated from the Atlantic ocean by a line from Cape Sable, on the southern coast of Nova Scotia, to the islands in the Penobscot bay; and in the discussions respecting our northeastern boundary, it was contended on the part of England, that the rivers east of Penobscot bay all emptied into the Bay of Fundy. This diagonal line would be little short of two hundred miles in length. It is impossible to be definite in such any inquiry; but these facts indicate the great extent of this oceanic indentation, and how far it is from being a sheltered sheet of water separated from the ocean and protected from it by marked projecting headlands. It averages probably about fifty miles in width, and includes within its circuit numerous bays, such as Penobscot bay, Frenchman's bay, Passamaquoddy bay, and Machias bay, in Maine, and the bay of Mines, Chignecto bay, and bay Verte, in Nova Scotia and New Brunswick; together with several others. Such an expanse of waters is geographically and politically a part of the Atlantic ocean.

But, sir, this is a strange way of settling great international questions of jurisdiction—by referring them to the decisions of the law officers of a Government. Such questions involve the most important and delicate points of foreign intercourse, and should be the subject of negotiation, not of legal reference.

We thus arrive, sir, at what the British authorities consider the "encroachment" of our fishermen, and for which they have recently made provision. No doubt occasional infractions of the treaty occur, which the ordinary force in those regions is compe-

tent to prevent or to punish. No one defends such acts, nor will our Government make any reclamation in relation to them. But the complaint of throwing out offal and furnishing bait to the fish, and other grievances of a similar nature, are rather small matters to become the subject of controversy between two great nations. If the British colonists would imitate the industry, and skill, and enterprise of our fishermen, it would be far better for them, than these eternal complaints because a neighboring people seek to obtain a portion of that beneficent bounty, which is offered to the human race. Their proximity to the places of fishing and their possession of the whole coast would give them advantages, which ought to insure their superior success, if they would put their shoulders to the wheel, instead of calling for help across the Atlantic. And, besides, the rigid pursuit of this object where our fishermen are concerned, is in singular and unfriendly contrast with the conduct of the British Government, towards the French and Dutch fishermen even in time of war. The former is marked with a spirit approaching persecution, while the latter is characterized by just moderation.

There is also a decided contrast between the force now employed and the force called out upon former and similar occasions. In 1817 one vessel only—the *Dee*—was ordered upon this kind of service, when strong remonstrances were made by the colonies.

In 1836 Lord Glenelg informed the Governor of Nova Scotia, in answer to his representations, that the British Minister at Washington had been instructed to ask the friendly co-operation of the American Government, and to inform them that one small vessel would be sent to Nova Scotia, and another to "Prince Edward's islands." But times have changed. Whether the change is to go on remains to be seen. Certainly a just comity would have dictated a similar guarded course under existing circumstances. Here is an active, powerful squadron close to our shores, and in waters where we have a deep interest, and to this day our Government learn nothing of the real designs of that of England. We have barren generalities leading to no useful results, and report tells us that seizures are daily making, and that many more are anticipated.

I have no doubt but that some of the Senators from the Eastern States will give to the Senate full statistical details of this important branch of national industry. I have been struck with its magnitude from a statement recently made in the papers, and which represents that we have 30,000 seamen, among the best in the world, and 2,000 vessels engaged in the various branches of the fisheries. This is an interest that no just Government can neglect, and one that would expose us to the severest reprehension of the American people, should we neglect it.

The Gut of Canso, which is the passage from the main ocean to the Gulf of St. Lawrence, and which avoids a long detour round the island of Cape Breton, is also to be shut to us, as is that great gulf itself, if the decision of the law officers of England is to be carried into effect. This pretension opens some of the gravest maritime questions, as to narrow communications between vari-

ous arms of the sea, and as to the right of jurisdiction over large expansions of the ocean. I shall leave them for other inquirers.

There are two episodes, if I may so term them, in this drama, which deserve a brief remark.

The first is the declaration of Lord Stanly, now Lord Derby, and the present head of the British ministry, made in 1842, in a letter to the governor of Nova Scotia, acknowledging the receipt of the case stated for the consideration of the Advocate and Attorney General, and transmitting the decision of those officers. The whole subject was then before him, and he thus communicates the determination of the British Government:

"We have, however, come to the conclusion, as regards the fisheries of Nova Scotia, that the precautions taken by the provincial legislature appear adequate, (alluding to the law before referred to,) and that such being practically acquiesced in by the Americans, no further measures are required."

Now, this is significant enough. The home Government refuses to endorse the exorbitant demands of the colonies, even fortified, as they are, by high legal opinions, and puts the whole case upon the question of the practical acquiescence of the Americans. Now, no one will contend that at any time—then, or before, or since—did our Government or citizens practically, or virtually, or in any other manner, acknowledge this pretension to exclude us from the great bays of that region; and of course such a claim is actually surrendered by the terms of the declaration. The second assurance is found in the admission of Lord Aberdeen to Mr. Everett that the Bay of Fundy would not be shut to us; and more distinctly in the despatch of Lord Stanly to the governor of Nova Scotia. Here it is:

DOWNING STREET, 30th March, 1845.

To Sir William Colebrook:

SIR: I have the honor to acquaint you, for your information and guidance, that her Majesty's Government have had under their consideration the claim of the citizens of the United States to fish in the Bay of Fundy—a claim which has hitherto been resisted, on the ground that that bay is included with the British possessions.

Her Majesty's Government feel satisfied that the Bay of Fundy has been rightly claimed by Great Britain as a bay, within the treaty of 1818; but they conceive that the relaxation of the exercise of that right will be attended with mutual advantage to both countries—to the United States as conferring a material benefit to the fishing trade, and to Great Britain and the United States conjointly and equally, by the removal of a fertile source of disagreement between them. It has accordingly been announced to the United States Government that American citizens would henceforward be allowed to fish in any part of the Bay of Fundy, provided they do not approach, except in cases specified in the treaty of 1818, within three miles of the entrance of any bay on the coast of Nova Scotia or New Brunswick.

I have, &c.,

STANLEY.

Now, Mr. President, I take it for granted, that no one, who knows the course of British statesmen, and the instincts of the British people, upon all questions touching territorial rights or interests, will doubt for an instant, that this concession, as they call it, but recognition as we consider it, was made in the conviction, that the right was with us; at any rate, in the full persuasion that the pretension of England was so doubtful, that they ought not to hold on to it. And, as Mr. Everett justly remarks, the principle of this acquiescence applies with equal force to the other larger bays, and particularly to the great estuary of the St. Lawrence; and it is pretty clear, that the British ministers suf-

fered themselves to be driven from their proper course in the application of their own principle elsewhere, in the other bays and waters, by the unreasonable clamor and remonstrance of the colonies.

Now, sir, this acquiescence in our practical construction of the treaty was an absolute surrender of the point in dispute; and it is too late in the day to recal the step. Nations cannot safely play the game of fast and loose, of give and take at pleasure, with one another, in the practical exposition of their conventional arrangements. It will not do. Nothing is gained; on the contrary, things are made worse by such temporary recognitions, to be resumed or changed, when the opposite party is most strongly convinced by time and usage of its rights. England had just the same interest in our exclusion from the great arms of the ocean in 1845, which she has at this time; and her surrender of the point then implies her own views of the case, and the seven years, which have since intervened, unquestioned, have been enough to place our rights beyond dispute.

An attempt has been made to show a difference between *our rights* and *liberties*—designations first used in the treaty of 1783, and transferred from that instrument to the convention of 1818—and thereby to establish the pretension, that the one is more indefeasible than the other. And I regret to see, sir, that this effort is countenanced by the views of some of our own journals—honestly I have no doubt, but erroneously, I am satisfied. I do not suppose that an Englishman can be found from Johnny Groat's house to the Lands End, who will not firmly believe in the claim of England in this case, as he believes it in all others. No man will accuse the English people of a want of patriotic ardor; and it is rare, indeed, that their demands upon foreign nations are not supported by the almost unanimous sentiment of the country. I wish we had a little more of this feeling—not enough to blind us to the truth, but enough to render it a source of congratulation to find our government in the right. In looking back upon our past history, I recollect no case, where we had not found doubts and opposition among our own citizens in our controversies with foreign powers. I hope this case will yet prove an exception, as the right is so manifestly with us, and that we shall be found united in feeling and in action. Such an exhibition of patriotism would be worth more and do more than "an army with banners."

Now, sir, no man, it appears to me, can read the letter of Mr. John Quincy Adams to Lord Bathurst, written, I believe, in 1816, without being satisfied that our claims are not in the least affected, either in their strength or duration, by the use of one or the other of those words, *rights* or *liberties*; and the subject is placed beyond dispute by Mr. John Adams in the letter to which I have already referred, and in which he explains the origin of the difference, and shows that it had no relation to the pretensions of the parties:

Further extract from the letter of Mr. John Adams before referred to.

"And the word 'right' was in the article as agreed to by the British ministers, but they afterwards requested that the word 'liberty' might be substituted instead of right. They said it amounted to the same thing; for liberty was right, and privi-

lege was right, but the word *right* might be more displeasing to the people of England than *liberty*; and we did not think it necessary to contend for a word."

And I cannot refrain from asking the attention of the Senate to the able and interesting letter of Mr. Stevenson, then our Minister in England, to Lord Palmerston, dated March 27, 1841. It is written with great force and with a full knowledge of this whole subject, and Mr. Stevenson successfully combats what the Republic of this city well terms the *preposterous pretension of England*.

The danger and impropriety of transferring the course to be pursued in such delicate questions to the colonial authorities, locally interested in the establishment of their own construction, is well shown in this letter; and I am glad to see that Mr. Webster, in some recent remarks at Marshfield, advances views similar to those of Mr. Stevenson. The colonial legislatures are authorized to pass laws and to make regulations upon the matter, and these laws and regulations carefully follow the words of the convention, but in their administration, colonial interests are kept prominently in view, and the peace of two great countries is put to hazard by petty interests, as exemplified in the complaints about offal and fishing bait.

Mr. President, I said on a recent occasion, and I repeat emphatically, that I desire no war with England. Far from us and them—from the world, indeed—far be such a calamity. No two countries on earth have stronger inducements, moral and political, to remain in amity with each other, than have the United States and England, and we be to either of them, which voluntarily changes the pacific relations, that now hold them together. But, sir, the way to avoid war is to stand up firmly but temperately for our clear rights. Submission never yet brought safety, and never will. To yield, when clearly right, is to abandon at once our interests and our honor, and to show to the world how the finger of scorn can be best pointed at us. I am one among the feeblest of the sentinels placed upon the watchtowers of the country, and perhaps the one among all others, the tenure of whose interest in our common property is, from my age, the most precarious. But I shall not cease to raise my voice when I believe danger approaches, unmindful of the senseless charge so often made against me, that, because I am jealous of the honor and rights of my own country, I am therefore hostile to all others. I shall defend myself against no such idle clamor.

