A Review of the Fisheries Dispute

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The present question of dispute between Great Britain and the United States is an old and ever recurring one. It has been a bone of contention between the two countries ever since their separation in 1783. The recent attitude of Canada toward and the cruelty inflicted upon our fishing crews that have happened to come within the waters over which she claims jurisdiction has brought the question prominently before the people. The unanimity with which the most conservative body in the land, the Senate, by a vote of 46 to 1, empowered the president to declare retaliatory measure upon Canadian ships and commerce is only an expression of the indignation of the American citizen at the manner in which, at our ports of Canada, our citizens and our flag are insulted and our flag is carried to the

Since the treaty of 1818 each recurring season has brought one of continual strife and often actual collision between the fishermen of the two countries, resulting in a series of complaints which have at times brought the two countries to the
 verge of war. And the outcome of these troubles will be war if the two governments are not wise enough to prevent the pending struggle by a fair and satisfactory settlement of the points in dispute by treaty. Wrangls have resulted from fewer and weaker complaints than those made against Great Britain in the last few years. Let these conflicts between the fishing crews once result in bloodshed, and the "little jet" may result in a conflict that will shake the two continents.

The fact that this question is an old one and that the points of dispute out of which this strife between the Canadian fishermen and those of the United States has arisen have been argued fully by able men on each side in the last fifty years; and that three temporary treaties have been made for the purpose of settling these difficulties makes it becoming the American people to deal with this question calmly and with due regard to existing treaties and laws of the two countries. Local abuse and talk of war will only delay the final and equitable settlement of this question which is at present both countries desire to avoid.

In concluding the Peace of 1783, this question was a point of considerable importance. The
Right of American fishermen to fish anywhere along the Atlantic Coast was firmly held by our commissioners and the result was that this liberty of fishing was acknowledged in the third article of the treaty. The three things especially settled by this treaty were:

1. the independence of the Thirteen Colonies
2. the territorial limits of the United States
3. the right to fish in all waters which the citizens of the United States exercised as British subjects. Our commissioners claimed the privileges named in the Third Clause not as a new but an existing right. They considered that treaty as a division of the Empire. Our independence, our rights to territory and to the fisheries as practised before the Revolution, were no grants more a grant from Britain to us than the treaty was a grant from us of Canada, Nova Scotia, England, Scotland, and Ireland to the Britons. The treaty was nothing more than mutual acknowledgment of antecedent rights.

The third clause we have always held to be as perpetual and inviolable as the first and second clauses of the same treaty. In the contests of the English and French for the Newfoundland and adjacent coasts in the 17th and 18th centuries the colonies bore the brunt of the struggle. It was colonial prosperity and provisions that maintained the
49 days siege of Louisburg, the Dunkirk of America in 1745. The capture (the turning point of the war) was pronounced in the House of Commons 'an everlasting memorial to the zeal, courage and perseverance of the troops of New Eng. and in the second siege of Louisburg were to be found many boys who were afterwards Revolutionary heroes. It was a sense of having earned the right that induced the colonies to stand as firmly for this liberty of fishing on any of the coasts, and even to declare that peace would not be accepted on any terms without an acknowledgment of this right. This right to the fisheries is summed up by John Adams in the following language: 'We discovered them; we explored them; we discovered and settled the countries round about them, at our own expense, labor, risk, and industry, without any assistance from Great Britain. We have possessed and occupied exercised and practiced them from the beginning. If Conquest can give any right, our right is at least equal and common with Englishmen in any part of the world, indeed it is incomparably superior, for we conquered all the countries about the fisheries; we conquered Cape Breton, Nova Scotia, and dispose thereof the French, both hostile and neutral.' Great Britain took exception to this
right as claimed by the colonies and held that the fisheries had always belonged to
the Crown of Great Britain and that the Americans held them only as subjects of
the Crown, consequently they lost this right
when they broke away from the mother country
and Scotland, their independence. But Yankee
determination & persistence triumphed at
last over British diplomacy. The recognition,
by Great Britain in the Treaty of 1783, of the
liberty of Americans to the fishing of the fish-
eries settled the question till after the
second war with England. Nor was there any
doubt as to the intent or true question about
the interpretation of the fishing clause till
it was brought up before the British &
American peace commissioners in 1814.
The British negotiators claimed that the
war of 1812 put an end to the Treaty of 1783
respecting the fisheries and that it would
be necessary to form new treaties in reference to
them. The American commissioners, all able
representatives, J. J. Adams, Bayard, Russell
and Gallatin held that the war did not
affect the treaty, and purely not the third
clause any more than the first & second clauses
which acknowledges our independence and terri-
torial limits. This question was the principal
stumbling block in negotiating the Treaty.
The United States negotiators held to this liberty of fishing as acknowledged in the peace of 1783 with unhindering firmness. The result was that the Treaty of Ghent was framed and ratified without any reference to the fisheries. The American fishermen still had the same privileges that were granted in the original treaty. This was a disappointment to the Canadian fishermen, who recognized their inability to compete with the hardy New Englanders though they had the advantage of being the first on the ground. They at once began a policy they have carried on ever since when they looked to secure any concessions from the United States, harassing our fishermen in every possible manner, by denying them the right of commerce by refusing favors due our fishermen under the rules of comity and humanity observed between civilized nations. To settle difficulties the Fisheries Convention of 1818 was agreed upon between Great Britain and the United States. The action of this convention needs to be studied closely for it is one of the different interpretations of the treaty by each party that all these disputes concerning the rights of our fishermen have arisen. The old question as to the right of Americans to fish along Canadian coasts and the new one respecting
the effect of the war upon the former treaty were the chief points of discussion. The first point was certainly one difficult of solution; but the second argument of Great Britain that the war negatiled the former treaty stipulations concerning the British fisheries was as persistently contended for only to open up a way by which the first point could be made a question of negotiations. As to the effect of war upon treaties Field states this rule: "War does not affect the compact of a nation except when so provided in such contracts, except also that executory stipulations in a special compact between belligerents, which by their nature are applicable only in time of peace are suspended by war." This it seems to me covers the point; nor can it in any wise come under the exception. Had the fisheries been one of the causes of the war then the result of the war would have determined the validity of the clause in the former treaty respecting them. That this was not one of the causes of the war is evident from the fact that our commissioners had no instructions whatever respecting the fisheries and had not even been considered by them. Neither side yielded in its contortions to the arguments of the other. And as neither nation was eager for a continuation of the war they
was nothing left but for each to compromise her interests in part. The result was, that the United States made concessions fatal to the interests of her fishermen. On the 20th of October 1818, the following treaty was agreed to by the Commissioners. Because of its bearing upon the fisheries question since then, as upon the purport and interpretation of this treaty, the questions of dispute must be settled as far as treaties affect it, I will give the first clause provisions of this treaty:

"Whereas, differences have arisen respecting the liberty claimed by the U.S. for the inhabitants thereof, to take, dry and cure fish on certain coasts, bays, harbors and creeks of His Britannic Majesty's dominions in America; it is agreed
between the high contracting parties that the inhabitants of the said U.S. shall have, forever, in common with the subjects of His Britannic Majesty, the liberty to take fish of every kind:

1. On that part of the coast of Newfoundland which extends from Cape Ray to the Baccaro Islands
2. On the shores of the Magdalen Islands.
3. And also on the coast, bays, harbors and creeks from Nottobay on the southern coast of Labrador to and through the straits of Belle Isle, and thence northwardly indefinitely along the coast.
without prejudice however to any of the rights of the Hudson's Bay Company. And provisions that the American fishermen could dry & cure fish on certain unoccupied bays, harbors & coves in the United States heretofore enjoyed or claimed by the inhabitants thereof to take, dry or cure fish on or within (3) marine miles of any of the bays, harbors or coves or coves not within His Britannic Majesty's not included within the above mentioned limits. Provided, however, that the American fishermen shall be permitted to enter such bays or harbors (1) for the purpose of shelter and (2) of repairing damages therein; (3) of purchasing wood and (4) of obtaining water and for no other purpose whatever. But they shall be under such restrictions as shall be necessary to prevent their taking dryings of curing fish therein or in any other manner whatever abusing the privileges hereunto acceded to them.

In the Treaty of 1783 the rights of American fishermen recognized were: (1) to enjoy unmolested to take fish anywhere for the inhabitants of both countries how accustomed at any time before to fish. By the Treaty of 1818 American fishermen were restricted in their fishing to certain parts of the coast.
of Newfoundland and Labrador and the Ungava Islands. And the United States renounce forever the liberty then to for enjoyed of fishing, drying or curing within three marine miles of British coast from America not included in the above limits.

Under the execution of this treaty various questions of dispute arose. One of the first of these questions was that respecting the three mile limit, whether this line was to be drawn from headland to headland or should be an irregular line drawn so as to be nowhere within three miles of the coast. The interpretation of the Canadian authorities and its execution kept American fishermen not only away from the coast as was intended but even drove them from waters recognized as belonging to the high seas. From the wording of the treaty the Canadian interpretation seems quite untenable. Since the limits as prescribed by the treaty are three miles from any of the coasts, bays, coves and harbors surely fishing crews not within three miles of these coast, coves etc should not be restricted Canada, nevertheless, held the opposite view and attempted to enforce the restrictions. Secondly Canada held that the liberty granted to catch bays and harrows to obtain dock and shelter and to repair damages only secured them
this privilege when it was actually necessary for the safety of the crew, and did not grant the privilege to enter ports to procure wood, and repair damaged for the purpose of continuing the fishing excursions. This limitation put the Americans to great inconvenience.

The injustice done to fishing crews and the owners of our vessels by Canadians, and the condemnation of these vessels by Canadian officers, and the constant collisions of the fishing crews of the two nations threatened to bring the two countries to actual hostilities unless these difficulties were settled in some way.

In 1854 after 36 years of continual strife a treaty of reciprocity was made. This treaty was to be binding for ten years and after that could be terminated by either nation after one year notice. Canada, though the diplomacy of her negotiators, Lord Elgin, Governor of Canada, secured a decided commercial advantage in that all her raw material was admitted free while our manufactured articles were taxed with heavy duties. In 1866 this treaty was terminated by the United States without having been given & this intention one year previous. The treaty of 1818 was then in force till 1871 when by the Treaty of Washington the rights of each to fish on the coasts of the other nation were fixed substantially the
same as in the reciprocity treaty of '54, Fish and fish oil were to be admitted into each country free of duty. This clause was of decided advantage to Canada. But overestimating the advantage of free fisheries to the United States the British commissioners demanded an additional return for these privileges. The U.S. commissioners considered that free fish and fish oil would be more than an equivalent return to Canada for the free fisheries. They also intimated that $1,000,000 was the largest sum the United States would pay for the benefit of the inshore fisheries and not admit fish and fish oil free duty. Unable to agree that the privileges granted by each were reciprocally equal or what would equalize them, the matter was referred to the consulting the XXII article, which provided that inducement as Great Britain asserted that the privileges accorded the United States were greater than those granted in return to Great Britain. And that the U.S. denies this, that a special commission be appointed to determine what if anything was compensation due Great Britain from the United States. But it failed to state that the U.S. claimed that the advantage was in favor of Great Britain. It seems to have been from carelessness on the part of our commissioners that this clause was so worded as to be a decided advantage
to Great Britain, an advantage not at all foreseen by our commissioners and better than could have been expected by the Brits. This was a burdensome provision both as to how the commissioners should be appointed and what they should do after assembled. The result of the Halifax Commission, as it was called, was that the United States were adjudged debtor to England the sum of $6,000,000 in addition to the seven millions duties paid for the use of the British inland fisheries for the twelve years previous.

The treaty of Washington respecting the fisheries was terminated by Act 3 & S. 3d. July 1st, 1886. And so far as treaties affect the present affairs that of 1818 is the only authority. The present difficulties arise from the unneighborly and in some cases inhuman action of Canadian authorities toward our fishing vessels. The strict letter of the treaty of 1818 is enforced according to Canadian interpretations. Our crews have been refused the commercial privileges that we grant Canadian vessels in our ports. Trade and commerce is entirely forbidden our fishing vessels in their ports. Wood and water actually needed not to pursue their fishing excursions but to take them to our ports has been refused. This action of Canada can be explained only
on the ground that she expects to drive
the United States as she has done twice before
to enter into a reciprocity treaty of commerce.
Our Minister to England, Mr. Phelps, says in
his letter to Lord Cockburn, June 2, 1836, respecting
some seizures of vessels reported: "It seems to me
impossible to escape the conclusion that
this and other similar seizures were made by
the Canadian authorities for the deliberate
purpose of harassing and embarrassing the
American vessels in pursuit of their lawful
employment. The real source of the
difficulty that has arisen is well understood.
It is to be found in the irritation that
has taken among a portion of the Canadian
people on account of the termination by
the United States Government of the Treaty
of Washington on the 14th of July last, whereby
fish imported from Canada into the United States,
and which, so long as that treaty remained in
force, was admitted free, is now liable to
the import duty provided by the general rev-
ence laws, and the opinion appears to have
gained ground in Canada that the United States
may be driven, by harassing and annoying
their fishermen, into the adoption of a new
treaty by which Canadian fish shall be free
admitted free of duty."
These actions of the Canadians were not done
necessarily. In 1886 the Canadian Parliament passed a bill, which was approved by the Queen and Council, making lawful and encouraging the seizure by Canadian authorities of any American vessels which shall enter a Canadian port in violation of the local laws, and the Canadians themselves to be the sole judges of what is in violation of their laws. It also confers the right of search upon the high seas and provides for the punishment of the captured crew by fine, and besides confiscating the vessel. This extraordinary action had been treated rightly by the United States when the last Congress empowered the President to retaliate upon Canadian trade by forbidding all or part of the Canadian trade with this country. The interdiction of trade with Canada will fall more heavily upon Canada than upon the United States. And even if it did, the Americans will sacrifice the few pennies when the honor of the country is at stake. It was no idle blow of Senator Douglas when he said that this dispute must be settled by diplomacy or war.

Any final adjustment of these difficulties will be of great advantage to both countries in the next negotiation must be settled the questions as to the three-mile limit, and that of commercial privileges and all the other
questions that have arisen out of the ambiguity of the treaty of 1818. It is to be hoped that recent action of the United States will bring Great Britain to a sense of the unjust actions of the Canadian authorities and that it is incumbent upon Great Britain herself to secure the merchantmen and vessels of a friendly nation against the injustice of local laws that are in violation of treaty and of international commercial privileges.

Not only this but also that the most vexatious questions between Great Britain and the United States may be finally and satisfactorily settled not by force but by negotiation.
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