

The French Shore Question, 1865-1878

by

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ABSTRACT

From 1865 to 1878 the dispute over French rights in Newfoundland included the question of Newfoundland territorial control over the French Shore as well as the older controversy concerning exclusive and concurrent rights in the fishery. This newer aspect of the French Shore Question partially resulted from the intense competition between France and Newfoundland in the fishery.

After 1815 the French had established a prosperous fishery off Newfoundland based on the Islands of St. Pierre and Miquelon and on the French Shore. This state-supported industry by creating strong competition for Newfoundland fishery products in world markets threatened the colony's one-product economy. Newfoundland had retaliated at first by legislation aimed at restricting the French fishery. When this failed, an effort was made to provide alternative sources of employment for an expanding population by developing the other resources of the island. As the French Shore was considered a prime region for development, Newfoundlanders, since about 1850, had been trying to extend government and industry to this area. Between 1865 and 1878 this effort was characterized by the demand of the Newfoundland government for the right to appoint magistrates and grant land on the shore. The Imperial government, worried over possible French reaction, at first refused both

these demands. Instead, hoping to satisfy the colonists while avoiding any dispute with France, they proposed in 1868 the resumption of the fishery negotiations which had been suspended in 1861. The French proved reluctant but eventually agreed in July, 1873. But the Miller-Boissoudy discussions which followed failed to produce any agreement. Together with the persistent agitation in Newfoundland this led the British in 1878 to make a concession in principle to the colony by appointing a magistrate on the French Shore. When F.B.T. Carter retired as Premier that year, the over optimistic impression in Newfoundland was that his negotiations with the Imperial government had solved the question of British territorial rights on the French Shore.

This thesis has been examined and approved by

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PREFACE

Since the French Shore problem permeated Newfoundland life for nearly two hundred years, any comment on its importance in the overall history of the island would be superfluous. The French Shore dispute was especially significant in the second half of the nineteenth century when the question of French rights in Newfoundland involved not only fishery matters but also the right of the Newfoundland government to exercise territorial control over the whole island. F.F. Thompson in his "Background to the Newfoundland Clauses of the Anglo-French Agreement of 1904" has provided a general history of the French Shore Question. I felt, however, that a specialized study of the period when the question of Newfoundland's territorial rights became important would form a useful subject for historical research. Abundant material was available for such a project in the official papers at the Newfoundland Archives and the Public Archives of Canada.

Because in 1865 a new Newfoundland government which was destined to press the case for colonial access to the French Shore took office in St. John's, I have taken that year as a starting point. The year 1878 provided a natural termination for in that year Newfoundland gained the first concession from the Imperial government on the matter of territorial rights.

For first citing of a place name on the island of Newfoundland I have adopted the practice of giving the name as it appears in the document, followed in brackets by the modern name and, as a guide to its location, the name of the present electoral district in which it lies. Where a name has not changed, I have simply mentioned in brackets the name of the electoral district in which it is at present included. I have written place names on the coast of Labrador as they appear in the documents. The capitalization, punctuation, and spelling in all quotations is that of the documents. The bibliography lists all materials used in the preparation of the thesis, whether or not direct reference was made to them in the text or footnotes. In general I have followed the style recommended in Scholarly Reporting in the Humanities, published by the Humanities Research Council of Canada (1958).

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P.F.N.
August 31, 1961.

ABBREVIATIONS

App.	Appendix
Britannica	Encyclopedia Britannica
c.	chapter
Canadiana	Encyclopedia Canadiana
C.O.	Colonial Office
D.N.B.	Dictionary of National Biography
ed.	edition, editor
F.O.	Foreign Office
Geo.	George
<u>Ibid.</u>	Latin <u>ibidem</u> , "in that same place." Where <u>ibid.</u> stands alone, it refers to the source, page numbers, etc., cited in the previous footnote. Where <u>ibid.</u> precedes additional information, it refers only to the source of the previous footnote.
n.d.	no date
No.	Number
par.	paragraph
p.	page
pp.	pages
Rev.	Reverend
Rev., or rev.	Revised
Vic.	Victoria
Vol.	Volume
vols.	volumes

Chapter I
THE BACKGROUND

The waters around the island of Newfoundland have been the scene of an international fishery for more than four hundred years. The fishery was the first great industry of this continent, and the struggle for its control by the leading maritime powers of Europe was one of the outstanding features of the early history of North America. The cod-fish, the symbol of early Canada, is a living reminder of that important phase in our history. The fishery, however, was only the first of the treasures of the New World. In the developing economy of North America it soon became of secondary importance and only in Newfoundland and a few other maritime areas did it continue to provide the basis of life long after the early struggle for empire had ceased. For the colony of Newfoundland the international fishery continued to be of primary importance during the nineteenth century and even today still influences the life of the new Canadian province.

France was the chief competitor of Newfoundland in the fishery during the last century. The French have had a long connection with Newfoundland and have fished off the island almost since its discovery. The sea lanes of Newfoundland were well known to the French when the St. Malo fisherman Jacques Cartier made his famous voyage of discovery in 1534. But at the start of the nineteenth century the once great French fishery was in a state of serious decline because of the long war which had begun in 1792. After the Treaty of

Paris in 1815, however, the French re-established themselves in the Newfoundland fishery basing their operations on the Islands of St. Pierre and Miquelon and on the French Shore. This revived industry continued the old technique of the "ship fishery." The French fishermen came from the ports on the west coast of France in the spring, fished during the summer, and returned home in the fall. This was the traditional pattern of the Newfoundland fishery but was in great contrast to the British fishery which by 1815 was carried on almost exclusively by people living on the island. The Napoleonic Wars had seen the end of the once dominant West Country "ship fishery."

The French government encouraged the revival of the fishing industry by continuing the system of bounties which had been begun in 1767. As the century progressed, the recovery and expansion of the French fishery became a major threat to the nascent colony of Newfoundland which had only been recognized by the British government in 1824. Since the fishery was the mainstay of the people of Newfoundland, the prospect of a growing French industry was a matter of primary consideration. The question of French rights in the fishery was one of the principal concerns of the Newfoundland governments during the nineteenth century. This thesis will review an important aspect of the French fishery at Newfoundland. It will examine issues which were prominent in Newfoundland with respect to the French Shore during the first administration

of Sir F. B. T. Carter¹ (1865-1870), the administration of C. F. Bennett² (1870-1874), and the second administration of Sir F. B. T. Carter (1874-1878), and it will discuss the negotiations between the governments of Great Britain and France concerning the French Shore during these fourteen years.

The French Shore was the name popularly given to a portion of the coast of Newfoundland on which France possessed fishing rights from 1713 to 1904. These French rights created problems which were part of Newfoundland life for nearly two hundred years. Except for the period from 1713 to 1756 there was hardly any time during the existence of the French Shore when it was not the center of some controversy. The disputes relating to the French Shore came to be collectively referred to as the French Shore Question. The

1

Carter, Sir Frederick Bowker Terrington (1819-1900). Entered politics as a Conservative in 1855. Represented Trinity, 1855-1865; Burin, 1865-1873; and Twillingate, 1873-1878. Speaker of the Assembly, 1861. Delegate to the Quebec Conference, 1864. Attorney General and Premier, 1865-1870 and 1874-1878. Leader of the Confederate Party in the election of 1869. Judge of the Supreme Court, 1878. Chief Justice, 1880. (Canadiana, II, 254).

2

Bennett, Charles Fox (1793-1883). Prominent in the commercial life of St. John's and pioneer of the Newfoundland mining industry. An appointed member of the Amalgamated Legislature, 1842-1848. Member of the Legislative Council, 1850-1855. Opponent of responsible government, 1855. Leader of the Anti-Confederate Party in the election of 1869. Premier, 1870-1874. Member of the Assembly for Placentia-St. Mary's, 1870-1878. (Canadiana, I, 369).

development of the French Shore Question was one of the dominant themes of Newfoundland history. At first, the disputes were confined to the fishery but in the nineteenth century they referred also to other phases of the Newfoundland economy. After 1850, the existence of French fishing rights in Newfoundland created obstacles which blocked the economic progress of the colony. New problems arose which were not directly connected with the fishery but rather with the development of the other resources of the island. The setting of this study is the period when these issues were becoming important.

The French Shore Question in 1865 was the product of almost one hundred and fifty years of history. Thus in order to explain the events from 1865 to 1878 it will be first necessary to examine some points in this historical background: the establishment of the French Shore, the origin of the disputes relating to it, the negotiations in the nineteenth century to settle these disputes, and the background against which these negotiations were conducted.

The French Shore was established by Article thirteen of the Treaty of Utrecht, 1713:

The Island called Newfoundland, with the adjacent islands, shall, from this time forward, belong of right wholly to Great Britain; and to that end the town and fortress of Placentia, and whatever other places in the said island, are in the possession of the French, shall be yeilded and given up, within seven months from the exchange of the ratifications of this Treaty, or sooner, if possible, by the Most Christian King, to those who

have a commission from the Queen of Great Britain for that purpose. Nor shall the Most Christian King, His Heirs and Successors, or any of their subjects, at any time hereafter lay claim to any right to the said island or islands, or to any part of it, or them. Moreover, it shall not be lawful for the subjects of France, to fortify any place in the said Island of Newfoundland, or to erect any buildings there, besides stages made of boards, and huts necessary and useful for drying of fish; or to resort to the said island, beyond the time necessary for fishing and drying of fish. But it shall be allowed to the subjects of France, to catch fish, and to dry them on land, in that part only, and in no other besides that, of the said island of Newfoundland, which stretches from the place called Cape Bonavista, to the northern point of the said island, and from thence running down by the western side, reaches as far as the place called Point Riche. But the Island called Cape Breton, as also all others, both in the mouth of the river of St. Lawrence and in the Gulph of the same name, shall hereafter belong of right to the French; and the Most Christian King shall have all manner of liberty to fortify any place or places there.¹

The original French Shore thus extended from Cape Bonavista (Bonavista South) around the north of the island to Point Riche (St. Barbe). Except for the interruption during the War of the Austrian Succession, Article thirteen of the Treaty of Utrecht remained in force until the outbreak of the Seven Years War in 1756. Article five of the Treaty of Paris, 1763, re-established the French rights in Newfoundland:

The subjects of France shall have the liberty of fishing and drying, on a part of the coasts of the Island of Newfoundland, such as it is specified in

1

In the Matter of the Boundary Between the Dominion of Canada and the Colony of Newfoundland in the Labrador Peninsula (London: William Clowes and Sons, 1927), V, 2181.

Article XIII, of the treaty of Utrecht; which Article is renewed and confirmed by the present Treaty (except what relates to the Island of Cape Breton, as well as the other islands and coasts in the mouth and in the Gulph of St. Lawrence). And His Britannic Majesty consents to leave to the subjects of the Most Christian King the liberty of fishing in the Gulph of St. Lawrence, on condition that the subjects of France do not exercise the said fishery, but at the distance of three leagues from all the coasts belonging to Great Britain, as well those of the continent, as those of the islands situated in the said Gulph of St. Lawrence. And as to what relates to the fishery on the coasts of the Island of Cape Breton out of the said Gulph, the subjects of the Most Christian King shall not be permitted to exercise the said fishery, but at the distance of fifteen leagues from the coasts of the Island of Cape Breton; and the fishery on the coasts of Nova Scotia or Acadia, and every where else out of the said Gulph, shall remain on the foot of former Treaties.¹

By Article six of the same Treaty Great Britain ceded the islands of St. Pierre and Miquelon to France to serve as a shelter for French fishermen.² France agreed not to fortify these islands.

The arrangement made by the Treaty of Paris did not prove to be satisfactory and disputes soon arose.³ The rights of Great Britain and France in Newfoundland were again defined by the Treaty of Versailles, 1783. Article four confirmed British sovereignty in Newfoundland:

¹
Ibid., 2181-2182.

²
Ibid., 2182.

³
A. H. McIntock, The Establishment of Constitutional Government in Newfoundland, 1783-1832 (London: Longmans, Green, 1941), pp. 41-43.

His Majesty the King of Great Britain is maintained in His right to the Island of Newfoundland, and to the adjacent Islands, as the whole were assured to Him by the Thirteenth Article of the Treaty of Utrecht; excepting the Islands of St. Pierre and Miquelon, which are ceded in full right, by the present Treaty, to His Most Christian Majesty.¹

Article five redefined the French rights in the island:

His Majesty the Most Christian King, in order to prevent the quarrels which have hitherto arisen between the two Nations of England and France, consents to renounce the right of fishing, which belongs to Him in virtue of the aforesaid Article of the Treaty of Utrecht, from Cape Bonavista to Cape St. John, situated on the eastern coast of Newfoundland, in fifty degrees North latitude; and His Majesty the King of Great Britain consents on His part, that the fishery assigned to the subjects of His Most Christian Majesty, beginning at the said Cape St. John, passing to the north, and descending by the western coast of the Island of Newfoundland, shall extend to the place called Cape Raye situated in forty-seven degrees, fifty minutes latitude. The French fishermen shall enjoy the fishery which is assigned to them by the present Article, as they had the right to enjoy that which was assigned to them by the Treaty of Utrecht.²

The new French Shore thus extended from Cape St. John (White Bay South) around the north of the island to Cape Ray (St. George's). These were the limits of the shore during the period of this study. The articles of the Treaty of Versailles were supplemented by a declaration in the name of King George III of Great Britain and a counter-declaration in the name of King Louis XV of France. The British declaration, which later

¹ In the Matter of the Boundary, V, 2182.

² Ibid.

proved to be of major importance, outlined French rights on the Treaty Shore:

Declaration of His Britannic Majesty.

The King having entirely agreed with His Most Christian Majesty upon the Articles of the Definitive Treaty, will seek every means which shall not only insure the execution thereof, with His accustomed good faith and punctuality, and will besides give, on His part, all possible efficacy to the principles which shall prevent even the least foundation of dispute for the future.

To this end, and in order that the fishermen of the two nations may not give cause for daily quarrels, His Britannic Majesty will take the most positive measures for preventing His subjects from interrupting, in any manner, by their competition, the fishery of the French, during the temporary exercise of it which is granted to them, upon the coasts of the Island of Newfoundland; and He will, for this purpose, cause the fixed settlements which shall be formed there, to be removed. His Britannic Majesty will give orders, that the French fishermen be not incommoded, in cutting the wood necessary for the repair of their scaffolds, huts, and fishing vessels.

The Thirteenth Article of the Treaty of Utrecht, and the method of carrying on the fishery which has at all times been acknowledged, shall be the plan upon which the fishery shall be carried on there; it shall not be deviated from by either party; the French fishermen building only their scaffolds, confining themselves to the repair of their fishing vessels, and not wintering there; the subjects of His Britannic Majesty, on their part, not molesting, in any manner, the French fishermen, during their fishing, nor injuring their scaffolds during their absence.

The King of Great Britain, in ceding the Islands of St. Pierre and Miquelon to France, regards them as ceded for the purpose of serving as a real shelter to the French fishermen, and in full confidence that these possessions will not become an object of jealousy between the two nations; and that the fishery between the said Islands, and that of Newfoundland, shall be limited to the middle of the channel.¹

¹

Ibid., 2182-2183.

The French counter-declaration expressed satisfaction with these arrangements:

Counter-Declaration of His Most Christian Majesty.

The principles which have guided the King, in the whole course of the negotiations which preceded the re-establishment of peace, must have convinced the King of Great Britain, that His Majesty, has had no other design than to render it solid and lasting, by preventing as much as possible, in the four quarters of the world, every subject of discussion and quarrel. The King of Great Britain undoubtedly places too much confidence in the uprightness of His Majesty's intentions, not to rely upon His constant attention to prevent the Islands of St. Pierre and Miquelon from becoming an object of jealousy between the two nations.

As to the fishery on the coasts of Newfoundland, which has been the object of the new arrangements settled by the two Sovereigns upon this matter, it is sufficiently ascertained by the fifth Article of the Treaty of Peace signed this day, and by the Declaration likewise delivered to-day, by His Britannic Majesty's Ambassador extraordinary and Plenipotentiary; and His Majesty declares that He is fully satisfied on this head.

In regard to the fishery between the Island of Newfoundland, and those of St. Pierre and Miquelon, it is not to be carried on, by either party, but to the middle of the channel, and His Majesty will give the most positive orders, that the French fishermen shall not go beyond this line. His Majesty is firmly persuaded that the King of Great Britain will give like orders to the English fishermen.¹

The French fishing rights in Newfoundland were abrogated because of British naval supremacy when Britain and France went to war in 1792.² They were briefly restored by the Peace of Amiens in 1802 but were revoked again when the war

¹
Ibid., 2183-2184.

²
A. M. Fraser, Newfoundland Economic, Diplomatic, and Strategic Studies, ed. R. A. MacKay (Toronto: Oxford University Press, 1946), p. 277.

was renewed in 1803.¹ Article thirteen of the Treaty of Paris, 1814, once again returned the fishery rights to France:

The French right of fishery upon the great bank of Newfoundland, upon the coasts of the island of that name, and of the adjacent islands in the Gulph of St. Lawrence shall be replaced upon the footing in which it stood in 1792.²

The brief return of Napoleon in 1815 and the recommencement of the war nullified this Treaty.³ The French fishing rights were finally restored by Article eleven of the Definitive Treaty of Paris, 1815:

The Treaty of Paris, of the 30th of May, 1814, and the final Act of the Congress of Vienna, of the 9th of June, 1815, are confirmed, and shall be maintained in all such of their enactments which shall not have been modified by the Articles of the present Treaty.⁴

The articles relating to the Newfoundland fishery had not been modified in the Definitive Treaty. Thus the most important documents in the establishment of the French Shore and therefore for this study were the Treaties of Utrecht and Versailles. The Treaty of Utrecht set-up the French Shore and the Treaty

1

D. W. Prowse, History of Newfoundland (London: Macmillan, 1895), p. 377.

2

In the Matter of the Boundary, V, 2184.

3

Fraser, p. 277.

4

In the Matter of the Boundary, V, 2184.

of Versailles established its permanent boundaries. The British declaration accompanying the Treaty of Versailles, although the subject of great controversy in later years, was the clearest statement ever made of French rights on the Treaty Shore. The articles of these Treaties remained in force until the Anglo-French agreement of 1904 which ended French rights on the coast of Newfoundland.

In 1836, Count Sebastiani,¹ the French ambassador in London, in a letter to Viscount Palmerston,² the British Foreign Secretary, claimed for France the exclusive right of fishing on the French Shore.³ He requested the British government on the basis of its declaration of 1783 "to disavow the claim of British subjects to a right of fishery upon the coasts in question concurrent with the right of the subjects of France." Palmerston denied this French claim.⁴ He wrote

¹ Sebastiani, Horace Francois Bastien (1772-1851). French ambassador to Great Britain 1835-1840. (Britannica, XX, 255).

² Temple, Henry John, third Viscount Palmerston (1784-1865). Secretary of State for Foreign Affairs, November, 1830, to December, 1834, in the Grey Ministry, and April, 1835, to August, 1841, in the second Melbourne Ministry. Prime Minister, February, 1855, to February, 1858, and June, 1859, to October, 1865. (D.N.B., XIX, 496-513).

³ Journal of the Assembly, 1857, Palmerston to Sebastiani, July 10, 1838, App., pp. 175-179.

⁴ Ibid.

to Sebastiani that although in practice the British had recognized as an exclusive right the French privilege of drying fish on the Treaty Shore during the fishing season, they had never recognized any French exclusive right of fishing off the shore:

But the British Government has never understood the Declaration to have had for its object to deprive British subjects of the right to participate with the French in taking fish at sea off that shore, provided they did so without interrupting the French Cod-fishery; and although in accordance with the true spirit of the Treaty and Declaration of 1783, prohibitory proclamations have from time to time been issued, on occasions when it was found that British subjects, while fishing within the limits in question, have caused interruption to the French fishery; yet in none of the public documents of the British Government... does it appear that the right of French subjects to an exclusive fishery, either of Cod-fish, or of fish generally, is specifically recognised.

This reply did not deter the French. They continued to press for an exclusive right to the fishery on the Treaty Shore while the British continued to deny this claim and demand for British subjects the right to fish concurrently with the French. Palmerston's letter to Sebastiani remained the definitive statement of British policy on the French Shore Question throughout the nineteenth century. Disputes between English and French fishermen on the coast of Newfoundland were the inevitable result of such conflicting interpretations of the treaties. The further history of the French Shore Question is therefore concerned with the negotiations between the two powers in an effort to resolve

the dispute.

The issue was not merely one of words. The dispute over the French Shore and the meaning of the treaties was intimately connected with the rise of the French fishery at Newfoundland after 1815. The negotiations with France to settle the question of exclusive and concurrent rights were carried on in the atmosphere of a vigorous French challenge to the struggling colony of Newfoundland. It is impossible to interpret these negotiations properly without a clear understanding of the impact of the French fishery on the economy of the island.

The Newfoundland Assembly claimed in an address to the Secretary of State for the Colonies in 1857 that between the peace of 1783 and the outbreak of war in 1792 the fishery on the Treaty Shore had practically become exclusively French:

Proclamations from time to time issued in Newfoundland in conformity with this declaration, and under the authority of 28th Geo. 3rd, cap. 15th, and the practice of the French, permitted by the British Government, of forcibly preventing British subjects from fishing at the French stations... practically converted the concurrent fishery into one exclusively French, and the colony was thus, by the act of the Parent State, deprived of the fairest portion of its fishery grounds.¹

When this was combined with the fact that a strong French fishery inevitably meant that Newfoundland fishery products would meet with strong competition in world markets, it must

¹ Ibid., February 26, Address from the Assembly to the Secretary of State for the Colonies, pp. 45-52.

have seemed that troubled times lay ahead. While allowance must be made for the partisan feelings of the Newfoundland Assembly, this statement of the circumstances existing in the island between 1783 and 1792 may be accepted as substantially correct.

The full implications of the situation, however, had not been realized in Newfoundland until after 1815. The brief period of peace between 1783 and 1792 had not given the French fishery sufficient time to recover completely. The interruption of the French fishery by the start of the war in 1792 had entirely removed any possibility of French competition.¹ As long as the hostilities had continued, the British fisheries, now carried on by residents of the island, had prospered, and St. John's had become the center of a thriving industry.² The war had seen the end of the great British "ship fishery" at Newfoundland.³ The number of ships coming out from England had decreased from two hundred and seventy six in 1792 to only forty eight in 1817.⁴ St. John's had now become the commercial center of the Newfoundland

¹
Ibid.

²
Ibid.

³
McLintock, pp. 78-105.

⁴
In the Matter of the Boundary, IV, 1941.

fishery. In 1815, "not fewer than four hundred sail of British ships, of which a very large portion were fitted out from St. John's and the adjacent ports, fished upon the Banks, and not fewer than one hundred thousand quintals of fish were exported by British subjects to France alone."¹ This happy situation had soon changed.

After the Napoleonic Wars the French had returned in force to Newfoundland waters. Their system of bounties which had been started as early as 1767 to encourage the fishery at Newfoundland and to build up the navy had been extended. Another passage from the Journal of the Newfoundland Assembly, 1857, provides an interesting commentary on these developments:

After the peace of 1815, the French resorted to the Banks, and to the coast of Newfoundland in great numbers, and being supported by enormous bounties, the quantity of British caught fish rapidly lessened, and its prices in Foreign and Colonial markets fell. The British and Colonial Bank fishery consequently declined, and in 1845, became extinct, and the fishery on our eastern shore, once so productive, was so much injured by the French Bank fishery, that the greater part of those engaged in it have of late years been obliged to fish at Labrador or on the south coast of the Island.²

By mid-century the French competition was being severely felt in Newfoundland as evidenced by an address to the Queen from the Assembly in 1852:

¹
from the Journal of the Assembly, 1857, February 26, Address
to the Secretary of State for the Colonies,
pp. 45-52.

²
Ibid.

For many years after the peace, the produce of the French fisheries was not greater than the requirements of their own Home markets; and while this continued, we experienced but the primary loss of the best portions of our fishing coast. Of late, however, the increasing growth of their operations has given them a large surplus above what the French markets require, and this finds its way into places which formerly were supplied by our produce. From some of our oldest markets we have been driven altogether; and in most of those on which we chiefly rely, our interests are weakened to a degree that menaces the integrity and foundations of our trade. The evils of this unequal competition have been progressively developing themselves for some years; but in the past season we experienced them to an alarming degree, a large quantity of our fish having been disposed of in the European ports at one-half its actual cost. It must be borne in mind that this amount, with the bounty they receive, is a compensating price to the French, and as their Fisheries are annually increasing, we have the prospect of a larger supply at the rate referred to being forced by them into the markets on which we have to depend - a state of things that must necessarily be accompanied by a corresponding decline of British prosperity in this colony.

The consequences of the losses experienced in the past year are now being seriously felt. The Merchants are naturally alarmed at the prospect of embarking their means in a trade which seems withering beneath the gigantic influences with which it has struggled to cope, and they are curtailing their operations as far as possible. It is needless to remark that a decline of the population must keep pace with a diminution of the means of employment, and it will be a matter of serious reproach if, in a colony like this, with inexhaustible resources in its Fisheries, the present small population should want for employment, where foreigners are acquiring wealth and importance in prosecuting the like pursuits of industry.¹

One of the main objections of the Newfoundlanders was that government assistance in the form of bounties stimulated the

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Journal of the Assembly, 1852, May 28, Address from the Assembly to the Queen, pp. 220-222.

French fishing industry and encouraged the fishermen to use large scale methods:

The French carry on their fishery by means of large seines and bultows; with the former, which are generally two hundred fathoms and upwards in length, by thirty-five or forty in depth, they sweep the ground where they are used, taking and destroying great quantities of fish; - with the bultows also (which are lines moored in the water each sometimes a mile in length, and containing several hundred baited hooks, which, except at stated intervals to take off the fish, continue in the water day and night) they attract and detain the fish in the locality where they are placed and take numbers of them. Large seines and numerous bultows, however, can only be tended and handled where there are large crews, - these the French, by means of their bounties, can command. - British Fishermen, without such support, can use only the hook and line, and at best small Cod Seines of one hundred fathoms long by eleven deep; the result must inevitably be that the French will, within the same space, take a much larger quantity of fish than our men can...

By the aid of their large bounties, in short, the French are enabled to carry on their fishery in a manner that speedily gives them the command of the whole ground to which they may resort, and in a short time, makes a nominally concurrent fishery exclusively their own.¹

The state supported French industry was out-producing and out-selling the British fishery which was still based on the system of private enterprise. The address of the Newfoundland Assembly while condemning the French system seems to invite the British government to join in exactly the same type of state support. The Newfoundland complaints about the fishing methods being used by the French were probably groundless.

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Journal of the Assembly, 1857, February 26, Address from the Assembly to the Secretary of State for the Colonies, pp. 45-52.

The system of catching fish used by the French in the nineteenth century could hardly be compared with the large scale methods which are used today without any depletion of the supply of fish.

St. Pierre, far away from the French Shore, was the center of the French fishery. Ships came from France to St. Pierre in the spring, and during the summer months made three trips to the Banks, using in turn, herring, caplin, and squid bait.¹ Ships were also employed in the fishery by fish companies on St. Pierre and Miquelon.² The islands saw a steady expansion in population during the century. In 1820 their population had been eight hundred but by 1870 it was nearly five thousand.³ In 1858 six mercantile houses at St. Pierre and Miquelon were involved in the fishery.⁴ Captain Loch of H. M. S. Alarm visited St. Pierre in June, 1848, and found it to be a bustling port: "I found the outer roads and the inner harbor filled with shipping. There were one hundred and thirty-three French vessels averaging from one hundred to three hundred and fifty and four hundred tons;

1

Harold A. Innis, The Cod Fisheries (rev. ed.; Toronto: University of Toronto Press, 1954), p. 377.

2

Ibid., p. 378.

3

Ibid.

4

Ibid.

one hundred of these were Bankers, chiefly brigs, lately returned with cargoes."¹ He reported that altogether three hundred and sixty vessels and sixteen to seventeen thousand seamen were employed in the French Bank fishery. Their catch in the "Great Bank Fishery" averaged a million two hundred thousand quintals annually. Twelve thousand other French fishermen were using the French Shore. Loch's conclusion, "that the French had established and systematised a large fleet of vessels, which now no unaided individual enterprise can successfully compete with, "was certainly one of the fundamental facts of Newfoundland economic life in the nineteenth century.

The French challenge did not go unanswered. Successive Newfoundland governments retaliated against the French competition in three ways: by attempting to restrict the French supply of bait, by attempting to prevent French encroachments in Newfoundland territorial waters, and by resisting any further expansion of French fishing privileges.

Much of the bait used in the French fishery was obtained from Newfoundland fishermen living on the south coast of the island. It was obvious that the Newfoundland Government could influence the output of the French fishery by controlling the supply of bait since bait is essential for the fishery.

1

Journal of the Assembly, 1848-49, Report of Captain Granville G. Loch on the Fisheries of Newfoundland in a letter to Right Hon. Thomas Earl of Dundonald, App., pp. 408-424.

In 1786, English subjects in Newfoundland had been forbidden by law to sell bait to foreigners.¹ A further attempt to control the bait trade was made in 1845 when an export tax of three shillings per hundredweight was placed on bait fish.² The tax had little effect.³ Instead of French ships coming to Newfoundland ports for bait, Newfoundland fishermen carried it to St. Pierre. The bankers which Captain Loch counted at St. Pierre in 1848 were there waiting to be supplied with Newfoundland bait:

They had taken in their salt, and were waiting for bait (caplin), which they told me would strike into the Bays of St. Pierre's and Miquelon in a day or two. This prophecy (whether likely to prove true or not) was merely mentioned to deceive me, as it is well known the supply afforded round their own Islands is insufficient to meet the great demand. The next morning I observed boats discharging caplin into the Bankers, which I ascertained had been brought over from our own shores during the night in English Boats.⁴

This experience led Captain Loch to an inevitable conclusion:

¹
14, XV, 21. Imperial Statutes at Large, 26 Geo. III, c. 26, par.

²
(1843-53). Statutes of Newfoundland, 8 Vic., c. 5, par. 3, II

³
June 9, 1856, App., pp. 225-228. Journal of the Assembly, 1857, Darling to Labouchere,

⁴
to Right Hon. Thomas Earl of Dundonald, App., pp. 408-424. Journal of the Assembly, 1848-49, Report of Captain Granville G. Loch on the Fisheries of Newfoundland in a Letter

It is obvious that by withholding from the French the supply of bait from our own shores, their success upon the Grand Bank would sensibly diminish, and the advantages the fish merchants at present derive from their bounty granted by their Government over other competitors, could not increase the trade beyond the limits controlled by the comparatively very scanty supply of Caplin afforded by their own coasts and islands.

The theory was simple but the enforcement of such laws on the rugged coast of Newfoundland was another matter. It was advantageous for the Newfoundlanders living on the south coast of the island to engage in the lucrative bait trade. Consequently the attempts of the Newfoundland government to control this trade were not very successful. A significant portion of the south coast fishing population was drawn out of the economic orbit of St. John's and into that of St. Pierre. French merchants on St. Pierre would give Newfoundland fishermen provisions in return for bait and dried cod-fish.¹ The St. John's merchants were completely excluded from this trade. In 1855 provisions and clothing could be obtained sixty to seventy per cent cheaper at St. Pierre than in Newfoundland.² The House of Assembly in 1857 attributed the continuance of the bait trade to the inability of the Newfoundland government to maintain a sufficient force to

¹ Journal of the Assembly, 1856, Report of Commander R. Purvis on the Fisheries on the South West Coast of Newfoundland, App., pp. 91-92.

² Ibid.

prevent it.¹ The question of the bait supply to the French was still an important issue in the 1860's. It is interesting to note in passing that Burin and other districts on the south coast of the island continue to be well outside the orbit of St. John's as shown in the 1948 confederation referenda and subsequent elections. French St. Pierre, no doubt, has continued to be a factor in this situation.

Newfoundland tried also, with some measure of success, to prevent French fishing encroachments on her territorial waters.² These efforts were intensified after the French bounties were increased in 1851.³ Successive Newfoundland governments by exerting every possible influence on any Anglo-French fishery negotiations tried to prevent the British from agreeing to any extension of French fishing privileges. But the main body of French fishing rights, those guaranteed by the Treaties of Utrecht and Versailles, had been granted before Newfoundland had been recognized as a colony and were beyond the control of the Newfoundland government.

Superior fishing techniques and government encouragement through the use of bounties had enabled the French to

¹Journal of the Assembly, 1857, February 26, Address from the Assembly to the Secretary of State for the Colonies, pp. 45-52.

²Innis, pp. 392-395.

³Ibid.

establish a prosperous fishing industry at Newfoundland in the early nineteenth century. This French fishery by creating competition for the products of Newfoundland in world markets and thus threatening the one crop economy of the colony had stimulated retaliatory measures on the part of the Newfoundland government. This retaliation was all the more intense because the French fishery was undermining the very basis of the Newfoundland economy. But the first attempts of the Newfoundland government to control the French threat, which were described above, were not very successful. This study will be concerned with the retaliatory measure to which the colony turned when all these others seemed to have failed - development of the other natural resources of the island. This was a much more subtle and indirect approach to the problem than trying to cut off the French bait supply but nevertheless it can be easily distinguished as nothing more than a new solution to the old dilemma. It must not be thought, however, that French competition was the only factor involved. To support its expanding population Newfoundland would have had to turn eventually to its other resources anyway. French competition in the fishery only hurried the process. The irony of the situation was that when the colony turned to develop new sources of employment the same French fishing rights that had helped make them necessary now blocked their progress.

Harold A. Innis¹ in The Cod Fisheries has used the rise of the French fishery and its impact on the Newfoundland economy to explain some of the most significant events of Newfoundland history in the nineteenth century:

The expansion of the French fishery under the bounty system and through the use of trawls led to the adoption of defense measures in Newfoundland which comprised the rise of responsible government, control of the fisheries, the adoption of conservation measures including bait legislation, and the extension of a customs administration on the Labrador. The growth of the Newfoundland fishery and the increasing importance of resident commercial interests brought to an end the influence of the West Country ports, even in the Labrador, and established government machinery designed to stimulate agriculture, industry, and trade by such developments as steamships services, the beginnings of railway construction, and the adoption of tariff protection.²

It would be impossible in a study of this kind to explore all phases of such an hypothesis and thereby confirm or deny its validity. But by examining the events with reference to the French Shore Question from 1865 to 1878 against the background of an expanding French fishery and a threatened Newfoundland economy, certain aspects of it may be profitably used and tested.

The first attempt at negotiating a settlement of the conflicting British and French views of the treaties came

¹ Innis, Harold Adams (1894-1952). Canadian political economist and historian. (Canadians, V, 278-279).

² Innis, pp. 384-385.

in 1844 when the French government proposed that discussions be held in London.¹ A preliminary conference was arranged at which France was represented by Captain Adolphe Fabvre and Great Britain by William Thomas, President of the Newfoundland Chamber of Commerce and a member of the Newfoundland Executive Council.² Thomas was appointed by Governor Sir John Harvey of Newfoundland.³ The preliminary conference was held in Newfoundland during the summer of 1844.⁴

At the start of the meeting Fabvre proposed "that a concurrent right of fishing should be admitted by the French on all the French coasts to the westward of this Island, and that a like concurrent right of fishing should be granted to the French on that part of the Labrador coast which is situate in the Straits of Belle Isle, immediately opposite to Newfoundland."⁵ Thomas arguing on the basis of the British claim to a concurrent right of fishing on the French Shore

¹
Fraser, p. 278.

²
Journal of the Assembly, 1857, Harvey to Thomas, July 10, 1844, App., pp. 181-183.

³
Ibid.

⁴
Ibid., Minutes of the conference between Captain Fabvre and William Thomas, App., pp. 183-184.

⁵
Ibid.

"decidedly objected" to this offer. Instead, he proposed to give the French the exclusive right of fishing on "a line of coast extending from Bonne Bay to Cape St. John" in return for exclusive British fishing rights on the rest of the Treaty Shore. Fabvre felt that such an arrangement might be made if in addition the French were given exclusive possession of Cod Roy (Codroy, St. George's), Red Island (Port au Port), Port au Port (Port au Port), and Lark Harbour (Humber West), and were guaranteed that British fishermen would not be restricted in exporting bait from Newfoundland to St. Pierre. Thomas replied that the addition of these four ports in such an arrangement would give the French the best fishing grounds on the whole west coast of the island. It would also tend to encourage competition and increase the danger of collisions between British and French fishermen. His final proposal was to give the French the exclusive right of fishing on the portion of coast he had already suggested, to allow the French the exclusive right of fishing at Belle Isle, and to permit British fishermen to export to St. Pierre any bait they had in addition to their own needs. Fabvre did not reject this proposal but he did not consider himself authorized to accept it. The conference thus ended without any definite agreement. The final proposal made by Thomas in the summer of 1844 was a very liberal one when compared with the later offers of the Newfoundland government.

In his report to Governor Harvey, Thomas noted that if the original proposal made by Captain Fabvre was accepted

Great Britain would be giving France the right of fishing on the Labrador coast without receiving anything in return.¹ He believed that his suggestion to divide the French Shore into exclusive British and French areas was a good one. It would help to prevent disputes between the fishermen and would make "British subjects...amenable to the laws of their own country." He saw the main object of Captain Fabvre's negotiation to be the obtaining of "an unrestricted supply of bait for the use of the French fisheries carried on from St. Pierre and Miquelon." He cautioned the Governor that in any future treaty the export trade in bait from Newfoundland should be strictly regulated. Thomas astutely saw the importance in the British position of the bait supply to the French. He wondered "whether, in affording any further advantages to the French than those they now enjoy for the supply of bait, it would be possible to make any stipulations as to the markets to which they should send their fish, or as to the abolition or modification of their bounties."

The Fabvre-Thomas preliminary meeting led to further negotiations. A commission consisting of Sir Anthony Perrier for Great Britain and Captain Fabvre for France met in Paris in March, 1846.² Fabvre now proposed "a reciprocal right of

¹ Ibid., Thomas to Harvey, July 27, 1844, App., pp. 185-186.

² Ibid., Memorandum on the Newfoundland Fisheries Negotiations by Sir Anthony Perrier, July 21, 1852, App., pp. 193-195.

fishery on the west coast of Newfoundland, and on the coast of Labrador opposite, subject to regulations to be enforced by Government Cruisers of both nations." This suggestion denied the British claim to a concurrent right of fishing on the French Shore and was rejected for the same reason that Thomas had rejected the original offer made by Fabvre in 1844. Perrier then offered to the French delegate the final proposal that Thomas had made in Newfoundland. Fabvre now definitely rejected this but promised a new French proposal. However, the French Minister of Foreign Affairs apparently would not agree to a new offer and so the negotiations ended in May, 1847.

In July, 1851, the French ambassador in London suggested that negotiations should be renewed.¹ A new commission consisting of Sir Anthony Perrier for Great Britain and Monsieur de Bon for France met in Paris in June, 1852. De Bon proposed that France should relinquish her exclusive right of fishing in St. George's Bay and allow British subjects to inhabit the Bay and fish in common with the French. For this concession Great Britain would allow the French to obtain herring and caplin on the south coast of Newfoundland "without being subject to any tax or retribution whatsoever;" allow the French to fish for two months of the year on the Labrador coast at Green Bay, l'Ance a Loup, Black Bay and Modeste Islands; and allow the French to fish at Belle Isle. Perrier

¹
Ibid.

considered this proposal "totally inadmissable." He suggested instead the proposal that Thomas had made in 1844 to separate the fishing rights of the two nations.¹ In return for an exclusive fishing right from Cape St. John to some point on the west coast such as Cape Verde (Green Point, St. Barbe), France would renounce her rights on the rest of the Treaty Shore. But the French negotiator would accept French exclusive rights on part of the French Shore only if France was given the right of concurrent fishing on the rest of the shore; the right of concurrent fishing at Labrador and Belle Isle; and the right of concurrent bait fishing on the south coast.

Perrier forwarded his suggestion for a counter-proposal to the Foreign Office in June, 1855.² He felt that in return for the French giving up their rights between Cape Ray and Cape Verde they should be allowed to fish at Belle Isle and all restrictions should be removed from their right to purchase bait. Henry Labouchere,³ who became Secretary of State for the Colonies in November, 1855, agreed with Perrier

¹ Secret and Confidential Despatches from C. O., 1883-1885, Derby to Glover, June 12, 1884, Secret.

² Ibid.

³ Labouchere, Henry, Baron Taunton (1798-1869). Secretary of State for the Colonies, November, 1855, to February, 1858, in the first Palmerston Ministry. (D.N.B., XI, 367-369).

and had a draft treaty with France prepared on the basis of his plan. In the summer of 1856 negotiations were continued in London. Captain Pigeard now represented France and Herman Merivale,¹ the Permanent Under-Secretary in the Colonial Office, represented Great Britain. The basis of the 1856 negotiations was Perrier's suggested counter-proposal and Labouchere's draft treaty. This time the negotiations were successful and a Convention designed to replace all former agreements was signed in London on January 14, 1857.²

By the terms of the proposed Convention the French were to have during the fishing season the exclusive right to fish and to use the strand for fishery purposes from Cape St. John to the Quirpon Islands (Quirpon Island, White Bay North) on the north-east coast and from the Quirpon Islands to Cape Norman (White Bay North) on the north coast.³ The same exclusive privileges were also to be granted at five harbours between Cape Norman and Cape Ray; Port au Choix

¹ Merivale, Herman (1806-1874). Assistant Under-Secretary of State for the Colonies, 1847. Permanent Under-Secretary of State for the Colonies, 1848-1859. (D.N.B. XIII, 280-281).

² Journal of the Assembly, 1857, Convention of January 14, 1857, App., pp. 261-267. See also Appendix A.

³ Ibid., Article 1.

(St. Barbe), Small Harbor (Little Port, Humber West), Port-au-Port, Red Island, and Cod Roy Island.¹ Along the rest of the coast between these two points there was to be a concurrent fishery but during the fishing season the French were to have "the exclusive use of the strand for fishery purposes" from Cape Norman to Rock Point in the Bay of Islands.² A concurrent fishery was to be established at Belle Isle and on the coast of Labrador from Blanc Sablon to Cape Charles.³ The French were to be given an unrestricted freedom to purchase bait on the south coast.⁴ French naval officers were to be given the authority to enforce French exclusive rights when no British officer was available.⁵ In return for all these concessions Great Britain was to receive a concurrent right of fishery on the west coast from Cape Norman to Cape Ray except for the five ports where the proposed Convention gave the French exclusive rights.⁶ British subjects were also to be granted the exclusive use of the

¹
Ibid.

²
Ibid., Article 2.

³
Ibid., Article 3.

⁴
Ibid., Article 5.

⁵
Ibid., Article 9.

⁶
Ibid., Article 2.

strand from Rock Point to Cape Ray with a like exception.¹ The British government had claimed both these privileges for many years and so really gained nothing from the articles of the proposed Convention. Indeed, the terms of the agreement represented an abandonment of the British claim to a concurrent right of fishing on the Treaty Shore. One possible explanation for this reversal of British policy is that the Convention was signed at a time when Great Britain was cultivating the friendship of France because of the Crimean War. The proposed Convention was clearly a diplomatic triumph for France and was therefore strongly resisted in Newfoundland because it would have strengthened an already strong French fishery.

The Convention was to come into effect as soon as the necessary laws were passed "by the Imperial Parliament of Great Britain, and by the Provincial Legislature of Newfoundland."² Great Britain promised to use her best endeavours to have the Convention come into operation on or before January 1, 1858.³ Governor Darling referred the matter to the Newfoundland House of Assembly on February 6, 1857, and it immediately created

¹
Ibid., Article 4.

²
Ibid., Article 20.

³
Ibid.

a storm of protest.¹ A select committee of the House was formed on the same day to "draft resolutions and addresses in relation to the said subject."² This committee heard evidence from twenty two people and received written answers to questions it had circulated from twenty two others.³ The protest was unanimous. The Roman Catholic Bishop John T. Mullock, always outspoken, gave the committee his view of the proposed agreement in no uncertain terms:

the Treaty is drawn up solely and entirely in favour of France; we receive no equivalent of any sort; it is a cession of almost the whole Island to a Foreign Power. If put into execution Newfoundland must cease to be a British colony; it will become a desert, a fishing station for France, or be united to the States, for if the French are allowed to monopolize the Northern, Western, and Labrador Fishery, and the Southern Fishery, by taking bait, which is but another name for a fishery, the people cannot live; they may struggle for a few years in the Bays of Placentia, St. Mary's and Fortune, but as sure as the French are allowed to fish there, and taking bait is fishing, they must leave it and ship under the United States flag.⁴

The Anglican Bishop Edward Feild also expressed apprehension concerning the Convention in his reply to the committee.

¹

Ibid., February 6, Message from Governor Darling to the Assembly, pp. 17-18.

²

Ibid., p. 20. Members of the Select Committee were Little (Chairman), Hoyles, Kent, Prowse, Ellis, Parsons.

³

Ibid., Evidence taken by the Select Committee, App., pp. 280-335.

⁴

Ibid., Mullock to Little, February 25, 1857, pp. 311-314.

One interesting passage in his letter reveals something of the spirit of competition between Newfoundlanders and French in the fishery:

I must be allowed to mention the evil effect which would be produced on the moral and religious state of both the dwellers on the Coast of Newfoundland and Labrador, and the fishermen resorting to those places in the summer, from the heathenish practice of the French in pursuing (as they do) their fishing occupations on the Lord's day, precisely as at other times. I have myself been witness to this practice; and the French fishermen sometimes remark that they should not know the Sunday if they did not see the English "knock off." It is one of the sins which my Clergy on the Labrador, have labored zealously, and I trust with success, to correct; but it would be too much to expect that they would command the same attention, with the French carrying off the fish before their eyes.¹

The select committee reported back to the House on February 26, 1857.² The resolutions it presented, which were later adopted by the House, condemned the Convention with France. The House also adopted an address to the Assemblies of the neighbouring colonies of Nova Scotia, Prince Edward Island, New Brunswick, and Canada seeking their support against the Convention.

¹ Ibid., Feild to Little, February 28, 1857, pp. 315-318.

² Ibid., February 26, pp. 42-52.

³ Ibid., March 3, pp. 58-60.

John Kent¹ and F. B. T. Carter were appointed by the Assembly to go to these colonies to advance further the Newfoundland case.² Another address was adopted and sent to the Secretary of State for the Colonies protesting the Convention and requesting the British government not to bring it into effect: "we therefore earnestly entreat that the Imperial Government will take no steps to bring this Treaty into operation, but will permit the trifling fishing privileges that remain to us to continue unimpaired."³ When the House closed in March, P. F. Little⁴ and H. W. Hoyles,⁵ the two party leaders, were sent to Great Britain to add to this protest.⁶

¹ Kent, John (1805-1872). Member for St. John's East, 1855-1869. Colonial Secretary, 1855-1858, in the Little Government. Colonial Secretary and Premier, 1858-1861. Receiver General, 1865-1870, in the first Carter Government. (Canadiana, V, 397-398).

² Journal of the Assembly, 1857, March 4, p. 62.

³ Ibid., February 26, pp. 45-52.

⁴ Little, Phillip Francis (1824-1897). Member for St. John's, 1850-1855. Prominent in the struggle for responsible government, 1855. Attorney General and Premier, 1855-1858. Judge of the Supreme Court, 1858-1866. (Canadiana, VI, 183-184).

⁵ Hoyles, Sir Hugh William (1815-1888). Attorney General and Premier, 1861-1865. Chief Justice, 1865-1880. (Canadiana, V, 177).

⁶ Journal of the Assembly, 1857, March 16, pp. 116-117.

Under this Colonial pressure the British government gave way. Labouchere informed Darling of the British decision in a despatch dated March 26, 1857:

The proposals contained in the Convention having been now unequivocally refused by the Colony, they will of course fall to the ground. And you are authorised to give such assurance as you may think proper that the consent of the community of Newfoundland is regarded by Her Majesty's Government as the essential preliminary to any modification of their territorial or maritime rights.¹

This letter was hailed in Newfoundland as a "Magna Carta," a charter of liberty, and is referred to in Newfoundland history as the Labouchere despatch. It was interpreted by the colonists as giving them a veto power over any Anglo-French negotiations with respect to Newfoundland. The precedent established by this despatch played an important part in the French Shore Question after 1857.

The furor in the colony over the proposed Convention of 1857 served to illustrate some fundamental facts of Newfoundland life. In the nineteenth century St. John's was the commercial center of the British fishery at Newfoundland and this fishery was almost entirely carried on by people resident in the island. St. John's was the economic and political capital of Newfoundland but since the external affairs of the island remained in British hands, London retained

¹ Despatches from C.O., 1857, Labouchere to Darling, March 26, 1857.

an important power to influence the economy. The British government alone had the right to conduct negotiations with France and since Great Britain no longer had an economic stake in the fisheries her interests in such negotiations did not always necessarily coincide with those of the St. John's merchant class. This situation was bound to produce clashes between the colony and the Imperial power. The colony of Newfoundland had attained economic but not political autonomy. The dispute over the proposed Convention of 1857 is the outstanding example of this clash between the local economic interests of St. John's and the metropolitan political interests of London.

The Convention thus came to nothing but it was not quickly forgotten in Newfoundland. Sir Robert Bond, Prime Minister of Newfoundland from 1900 to 1908, speaking to the House of Assembly at the time of the Anglo-French agreement of 1904 which finally settled the French Shore Question described it in bitter language:

The Convention was, it will be observed an outrageous abandonment of our fishing rights both on the Coasts of this Colony and the Labrador, and gave to the French the power of expelling British settlers from the Treaty Coast, and of depriving them of the properties and homes which they had acquired by years of patient industry.¹

In July and August, 1858, reports reached the Newfoundland

¹

Evening Telegram, April 22, 1904.

government that French naval officers had informed Newfoundland fishermen that in future the articles of the treaties which had established French rights in Newfoundland would be strictly enforced.¹ The fishermen had allegedly been told that in accordance with this they would not be allowed to fish on the French Shore during the summer of 1859.² H. H. Forrest, the honorary magistrate at St. George's Bay on the French Shore, wrote to the Colonial Secretary of Newfoundland on August 18, 1858, concerning a conversation he had had with the Commandant of the French frigate Gassendi.³ The Commandant, he reported, had stated to him that the government of France had resolved "to abide by existing Treaties, believing that if these were strictly enforced it would be of more advantage to the French fishermen than if the proposed Convention of 1857, had been passed by the Colonial Legislature." The French naval officer had also claimed for France the exclusive right of fishing in St. George's Bay and had told Forrest to "warn the inhabitants, British Subjects, that they would not be allowed to fish in that locality next season, 1859."

¹ Journal of the Assembly, 1859, January 27, Speech by Governor Bannerman opening the Assembly, pp. 7-12.

² Ibid.

³ Ibid.

Shortly afterwards the Baron de la Ronciere de Noury, Commander of the French naval force stationed at St. Pierre, wrote to Governor Bannerman of Newfoundland confirming what Forrest had reported.¹ Vice Admiral Sir Houston Stewart, Commander-in-chief of the North America and West Indies Station of the Royal Navy, was also informed of the French intention by the French Commodore for the area and sent a report on the subject to the Admiralty in London.² The situation was particularly serious for the residents of St. George's Bay as the merchants there, faced with the possibility of no fishery the following summer, threatened to refuse credit for the winter.³ Governor Bannerman despatched H. M. S. Atalanta to the area to obtain information on the situation.⁴

On December 13, 1858, Lord Cowley,⁵ The British Ambassador in Paris, wrote to the French Minister of Foreign

¹
Ibid.

²
Ibid.

³
Ibid., Bannerman to Forrest, August 31, 1858, App., pp. 393-394.

⁴
Ibid.

⁵
Wellesley, Henry Richard Charles, first Earl Cowley (1804-1884). British ambassador to France, 1852-1867. (D.N.B., XX, 1118-1121).

Affairs, Count Walewski,¹ concerning these occurrences in Newfoundland.² He served notice that if the French government was intent on enforcing its rights in Newfoundland during the 1859 season the British government would do the same thing. This was not however the course that the British wished to follow:

I am...to observe that Her Majesty's Government are not without apprehensions that the enforcement of these notices on either side, without taking steps to ascertain by local enquiry, in what respect, and to what extent, the subjects of either Government may have encroached and disregarded the terms of treaties, may lead to much unpleasant discussion, and may be productive of inconveniences and loss to the subjects of both parties, which by a timely understanding might be avoided.

Instead of harsh action he suggested that a commission be appointed to ascertain "in what respect, and to what extent, the subjects of the respective nations upon the coast of the Island of Newfoundland, are in the habit of disregarding the provisions of the Treaties by which, within certain limits, the fishery upon those coasts is secured to French subjects."

The French government, Walewski replied, did not place much confidence in the results of such a commission but

1

Walewski, Alexandre Florian Joseph Colonna (1810-1868). French Minister of Foreign Affairs, 1855-1860. (Britannica, XXIII, 299).

2

December Journal of the Assembly, 1859, Cowley to Walewski, 13, 1858, App., pp. 404-406.

nevertheless would agree to its establishment in order to prevent "any circumstance which might prove of a nature in the least degree to injure the cordial relations...with the Government of Her Britannic Majesty."¹ He proposed that the new commission should meet in Newfoundland in May, 1859. He cautioned Cowley that the French and English naval commanders in the area for the summer should be told "to carry out their instructions with such toleration as may be deemed necessary to prevent any regrettable occurrence."

John Kent, Premier of Newfoundland, was named to the new commission by the British government.² The other British commissioner was Captain Dunlop.³ France was represented by M. Montaignac de Chauvance and M. de Gabineau.⁴ The commission, which met in Newfoundland during the summer of 1859, reported on infractions of the treaties and made recommendations to the two governments. The work of the commission in Newfoundland led to the renewal of negotiations in 1860 and the preparation of a new fishery convention.⁵

¹
Ibid., Walewski to Cowley, January 5, 1859, App., pp. 406-407.

²
Ibid., April 19, Speech by Governor Bannerman closing the Assembly, pp. 193-196.

³
Secret and Confidential Despatches from C.O., 1883-1885, Derby to Glover, June 12, 1884, Secret.

⁴
Ibid.

⁵
Ibid.

The Newfoundland House of Assembly looked with suspicion on these new discussions because no representative of the Newfoundland government had been invited to attend.¹ Kent's services had been dispensed with after the preliminary inquiry in Newfoundland. In view of the trouble only three years earlier the anxiety of the Assembly was understandable. In this instance, however, their fears were unnecessary as the proposed Convention was never signed. A dispute over the meaning of clauses four and fifteen of the instruction to be issued under the Convention led to the collapse of the talks.²

A long series of negotiations thus ended in failure and the situation on the French Shore when Sir Frederick Carter first became premier in 1865 was essentially as it had been in 1844. These Anglo-French negotiations were of great importance to Newfoundland because they concerned the rights of her greatest rival in the fishery, and the Newfoundland government naturally resisted any extension of French rights in the island. The negotiations had shown well that the interests of Imperial Great Britain did not always coincide with those of colonial Newfoundland. Perhaps

¹
Journal of the Assembly, 1860-1, January 30, 1860,
Resolutions and Addresses on Fishery Negotiations, pp. 39-42.

²
Secret and Confidential Despatches from C.O., 1883-1885, Derby to Glover, June 12, 1884, Secret.

their most significant result up to 1865 had been the precedent established by the Labouchere despatch in 1857. By 1865 then exhaustive talks had failed to settle the French Shore Question. The heritage of frustrated negotiations and French competition in the fishery was to be of great importance during the Carter and Bennett administrations.

THE FRENCH SHORE

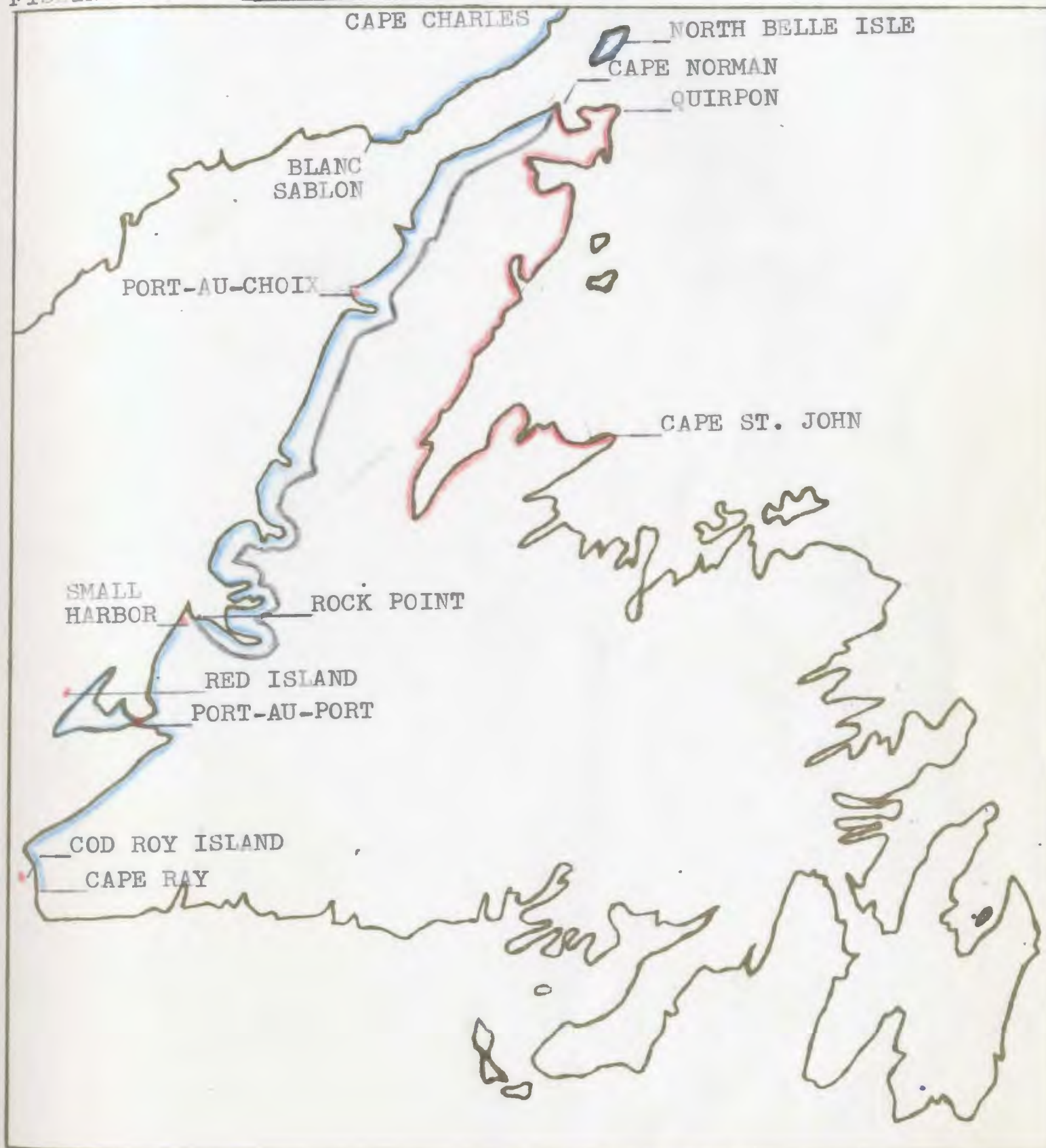


MAP I

THE ARRANGEMENT MADE IN THE PROPOSED CONVENTION OF
JANUARY 14, 1857
AREAS OF EXCLUSIVE FRENCH FISHERY DURING THE FISHING
SEASON
AREAS OF CONCURRENT FISHING

46

AREAS OF EXCLUSIVE FRENCH USE OF THE STRAND DURING THE
FISHING SEASON



Chapter II

THE FIRST CARTER GOVERNMENT, 1865-1870

By the 1860's it had been clearly demonstrated that the fishery alone could not sustain the population of Newfoundland. This result was perhaps inevitable in an area with one industry, a limited market for its produce, and an expanding population. French competition in the fishery only hastened an unavoidable crisis. Subsequent Newfoundland governments attempted to alleviate this situation by developing the other resources of the island. The fishery remained important but it had been proven to be inadequate and now new industries were needed. An important part of this new development centered on the lumbering, mineral, and agricultural potential of the French Shore and during the period of the first Carter Government (1865-1870) an effort was made to explore the economic possibilities of this region and to bring it within the jurisdiction of the Newfoundland government. These developments added a new element and a new urgency to the long-standing Anglo-French fishery dispute. Specifically two new questions became important: the granting of land, and the appointment of resident magistrates.

There was much optimism about the resources of Newfoundland during this whole period stimulated by the opening of several promising new mines. The New York, Newfoundland, and London Telegraph Company opened a mine at La Manche (Placentia East) in 1858.¹ Charles Fox Bennett, a St. John's

¹ Blue Book, 1858, pp. 228-229.

merchant who was to later be the anti-confederate Premier of Newfoundland, opened a copper mine at Tilt Cove (Green Bay), just outside the French Shore on the north-east coast of the island, in 1864.¹ By September, 1867, over two thousand tons of ore had been shipped from this mine.² The ore sold in England for about 10£ per ton.³ In 1867 the mine at Tilt Cove employed about two hundred persons and the population of the town was five hundred.⁴ The fact that this thriving community had only come into existence three years earlier must have been a welcome sign to the people of Newfoundland.

The Newfoundland government was quick to encourage such ventures. The Legislature passed an act in 1860 to make provision for the sale and lease of crown lands.⁵ But the Governor at the time, Alexander Bannerman, had been warned

¹ Newfoundland Royal Commission 1933 Report (London: His Majesty's Stationery Office, 1933), p. 9.

² C.O. 194/176, Musgrave to Buckingham, September 10, 1867, pp. 317-322.

³ Ibid.

⁴ Ibid.

⁵ Statutes of Newfoundland, 23 Vic., c. 3, III. An Act to Amend an Act Passed in the Seventh Year of Her Majesty's Reign, Entitled "An Act to Make Provision for the Disposal and Sale of Ungranted and Unoccupied Crown Lands Within the Island of Newfoundland and its Dependencies, and for Other Purposes," and to Make Provision for Granting Mining Leases, Leases and Grants of Mineral Lands, and for Other Purposes.

confidentially by the Secretary of State for the Colonies, the Duke of Newcastle,¹ "not to be a party (without the authority of Her Majesty's Government) to any grants of Land which would interfere with the rights secured by treaty to the French."² The 1864 session of the Legislature had voted a sum of five hundred pounds to begin a geological survey of the island.³ The Hoyles Government had been in communication with Sir William Logan, Chief of the Canadian Geological Survey, and he had encouraged them to engage in such a project expressing his confidence in the mineral potential of the island.⁴ He felt that the proximity of Newfoundland to Europe would quickly attract European capital once the existence of valuable minerals had been shown.⁵ Alexander Murray, a geologist on Logan's staff, was appointed to head the Newfoundland Geological Survey. Murray ranks after Cormack and Jukes among the pioneer explorers of the island. He first worked in

¹ Clinton, Henry Pelham Finnes Pelham, fifth Duke of Newcastle (1811-1864). Secretary of State for the Colonies, June, 1859, to April, 1864, in the second Palmerston Ministry. (D.N.B., IV, 554-555).

² Secret and Confidential Despatches from C.O., 1838-76, Newcastle to Bannerman, March 9, 1861, Confidential.

³ Journal of the Assembly, 1864, March 29, p. 96.

⁴ Ibid., Logan to Rogerson, July 9, 1863, App., pp. 741-742.

⁵ Ibid.

Nearly

Newfoundland during the summer of 1864.¹ That year he visited Notre Dame Bay inspecting the Terra Nova Mine at Little Bay (Green Bay) and exploring the coast and portions of the interior between Little Bay and Ming's Bight (White Bay South).² He also made trips into the interior of the Great Northern Peninsula and visited Halls Bay (Green Bay) where he followed up the Indian Brook for a considerable distance.³ The next summer Murray visited Tilt Cove and then walked from Halls Bay to St. George's Bay by way of Grand Lake.⁴ Coal was discovered at several places across the island.⁵ The 1866 expedition attempted to follow out the limits and distribution of these coal formations and to trace out any workable seams.⁶

From the start Murray's reports were greeted with

¹ Alexander Murray and James P. Howley, Geological Survey of Newfoundland (London: Edward Stanford, 1881), pp. 4-5.

² Ibid.

³ Ibid.

⁴ Ibid., p. 53.

⁵ Ibid., p. 55.

⁶ Ibid., p. 73.

enthusiasm in Newfoundland. Governor Musgrave¹ noted at the opening of the Legislature in 1865 that there was reason to hope that the work would lead to the discovery of valuable mineral deposits. Being acutely aware of the need for new sources of employment, he welcomed this prospect: "Any causes which may attract capital from elsewhere to the expansion of our trade, and to increase the demand for labour, which can at present be directed to but few profitable purposes, must operate directly to improve the circumstances and augment the importance of the Colony."² Murray himself was encouraged by the results of the work and his 1866 report contained an impressive list of the previous year's findings: "The economic materials observed during the season, at various parts, were copper, lead, iron, plumbago, building stones of granite, sandstone, and limestone, limestone for burning, whetstones, black, white, and variegated marbles, serpentine, gypsum (white and grey), red ochre, shellmarls, peat, and clay."³ The scientist Murray, however, regretted the circulation of rumours which exaggerated the mineral

¹ Musgrave, Sir Anthony (1828-1888). Governor of Newfoundland, 1864-1869, and prominent in the first attempt to bring the island into the Canadian confederation. (Canadiana, VII, 212.

² Journal of the Assembly, 1865, January 27, Speech by Governor Musgrave opening the Legislature, pp. 1-7.

³ Murray and Howley, p. 91.

wealth of the colony:

It is greatly to be regretted by all who have the interests of the province at heart, that grossly exaggerated statements, referring to the mineral wealth of Newfoundland, have at various times been circulated in a manner which has tended to retard rather than advance the object desired, propounding assertions too palpably improbable to admit of any consideration on the part of experienced persons. Nevertheless, there can be no doubt that the mineral indications in many instances are highly encouraging and may ultimately prove of great importance to the colony.¹

It was easy to stir up false hopes about industrial development in a depressed region like Newfoundland.

The Question of Land Grants

Some of the most promising areas for development investigated by Murray and others were close to, or on the coasts where the French possessed fishing rights, a fact which was to lead to much controversy in Newfoundland in the next twenty years. There was little hope of attracting capital to the French Shore if the title to land could not be guaranteed. Nobody could reasonably be expected to spend money on exploration if there was no assurance that the land would later be granted for development.) The French treaty rights were potentially more dangerous to the new industrial enterprises than French competition was to the Newfoundland fishery. For if it was not possible to make grants of land, the resources of the

¹
Ibid., p. 103.

French Shore would be entirely lost to the colony.

President Lawrence O'Brien of the Legislative Council, during a term as Administrator of the colony in 1864, had raised with the Secretary of State for the Colonies, Edward Cardwell,¹ the question of granting land on the French Shore.² The occasion was the application by a man named Kennedy, a resident of the Bay of Islands on the French Shore, for a grant of land. O'Brien could see no objection to such a grant as long as "the seaward boundary of the grant be at such a distance from the strand (say 100 yards) as will preclude interference with the rights of the French under the declaration accompanying the Treaty of Versailles to erect stages, and other buildings for the purposes of the fishery." He wished to be informed, however, if the Imperial government would make any objection to such a grant. Cardwell's decision was transmitted to the new Governor, Anthony Musgrave, in October, 1865.³ Cardwell connected the question of land grants with the old fishery dispute and instructed the Governor to

¹ Cardwell, Edward (1813-1866). Secretary of State for the Colonies, April, 1864, to June, 1866, in the second Palmerston and second Russell Ministries. (D.N.B., III, 952-954).

² C.O. 194/173, O'Brien to Cardwell, October 3, 1864, pp. 16-18.

³ Despatches from C.O., 1865, Cardwell to Musgrave, October 7, 1865.

make no grants of land on the French Shore. "I do not think in the present unsettled state of the fishery question," he wrote, "that it will be expedient to make any grants of land on the 'French Shore'."

Governor Musgrave, who took a keen interest in the Treaty Shore and the development of the colony, seemed to believe that this decision had been made without a full knowledge of the facts. His reply presented in a subtle way a case which aimed at reversing the decision of the Colonial Secretary:

The subjects to which this Despatch relates have recently been brought by circumstances very prominently to my notice. They have become already matters of practical importance; are likely to assume larger proportions at no distant period; and will probably form topics of discussion during the next Session of the Legislature. It appears to me that Mr. O'Brien's Despatch and the previous correspondence to which he refers scarcely disclose for your information the present aspect of the questions involved; and I therefore think it my duty to submit some observations for your consideration before it should become necessary for me to communicate to the Legislature any decision from you upon these questions.¹

He pointed out to Cardwell the situation on the French Shore: the growth in population, the absence of government, and the economic potential of the area. He assumed that it would now be considered impossible to order the removal of the population. But if this assumption was admitted by the British government, the problem of providing law and order for the area would have

¹C.O. 194/174, Musgrave to Cardwell, November 24, 1865, pp. 273-284.

to be faced. The population had either to be removed or else placed under the authority of the Newfoundland government:

if it is to be formally acknowledged that these settlements are not subject to the jurisdiction of the local Government and Legislature, and it is practically impossible at the same time to remove them, they will become more decidedly than ever the refuges of the outcasts of the neighbouring Colonies of Canada, Nova Scotia and New Brunswick, and it ought not to occasion surprise if the result should be a condition of affairs amounting to a national scandal.

Then there was the matter of resources. Musgrave indicated in his letter that if the question of settlement was not definitely adjusted some of the most valuable territory in the colony would be lost to economic enterprise. "It is obvious," he wrote, "that all endeavour to utilize these materials for prosperity and progress must be abandoned if an objection in perpetuity is to be admitted against the settlement and legal government of the territory adjoining the 'French Shore'." The Newfoundland government had received applications for grants of land to cut timber in the Humber Valley and also for licenses to search for minerals on the coast near St. George's Bay. If such mineral licenses were granted, and the subsequent explorations were successful, there would be a demand for mining leases and the right to establish settlements. Alexander Murray's findings had indicated a substantial mineral potential in the area adjoining the French Shore. The land there was also better suited for agriculture

than most part of the colony. Moreover, the idea was in circulation that a railway from St. John's to St. George's Bay as part of a great North American system would afford the speediest route of communication between Europe and America. This proposal had been discussed by Sandford Flemming, Engineer of the Inter-Colonial Railway, in a recent report. In the future then, other communities might well become involved in the question of granting land on the French Shore.

Governor Musgrave believed that the new questions relating to the development of the shore could be settled separately from the old fishery dispute. "It appears to me," he wrote, "that some dealing with the questions raised as to the appointment of officials an issue of grants of land cannot be long avoided, and that they will be most calmly considered and most reasonably settled when there is no heat of discussion concerning the matter of the fisheries themselves." He considered that the declaration attached to the Treaty of Versailles had been given under wholly different circumstances and that it was no longer possible to observe it. The right to occupy and use the land, he wrote, should be distinguished from the fishery question in the same way "as the right to take Salmon in a Scotch River is from the title to cultivate the fields on its banks."

The strong stand that the Governor took in his reply to Cardwell's instructions enabled him to convince his Executive Council not to introduce the subject into the Legislature during

the 1866 session.¹ Meanwhile, Musgrave continued to press the matter with the Colonial Secretary. He reported to Cardwell in June, 1866, that many applications had been laid before him for the right to search for minerals in the territory adjoining the French Shore.² He had been forced to reject these on the basis of the instructions which he had received from London in 1865.³

The Carter Government took a similar position on the question of land grants. They were especially concerned about the inconveniences being caused to people who were willing to invest in the colony. The Executive Council on May 20, 1866, petitioned the Secretary of State for the Colonies, through the Governor, to allow the granting of land on the French Shore:

The Executive Council would respectfully invite through your Excellency the attention of the Secretary of State for the Colonies to the serious inconvenience arising to parties applying for licenses and grants to search for and work Mines and Minerals in parts of the Island within the coast limits assigned to the French by Treaty for the temporary exercise of fishing privileges; and the great loss resulting to the Colony in suspending the action of these parties in the investment and application of capital for mining

¹
O.O. 194/175, Musgrave to Cardwell, June 11, 1866, pp. 155-158.

²
Ibid.

³
Ibid.

purposes, thus affording profitable employment to many of our people together with other material advantages to the Colony.¹

The Council believed that valuable mineral deposits existed in the territory near the Treaty Shore but that they would never be developed unless the title to land could be guaranteed. Like Musgrave, they considered the question of land grants to be quite distinct from the old fishery dispute. Exclusive or concurrent rights in the fishery had nothing to do with the British right to occupy the land and develop its resources. Even if the French exclusive claim to the fishery was admitted, and British subjects were barred by the treaties from erecting fishing establishments on the coast, they were still entitled to establish themselves there for all other purposes. The question of land grants, the Council argued, could be easily settled by placing a proviso in any grant securing to the French the fishing rights given them by the treaties.

Private protests were also heard from Newfoundland. In June, 1866, Stephen Rendell, President of the Chamber of Commerce, wrote to the Colonial Secretary of Newfoundland,

¹
¹ Ibid., Minute of the Executive Council, May 20, 1866, enclosed in Musgrave to Cardwell, June 11, 1866, pp. 155-158.

J. Bemister, protesting conditions on the Treaty Shore.¹ Charles Fox Bennett, Newfoundland's biggest mining promoter, wrote to Musgrave in November, 1866, complaining of Cardwell's decision on the granting of land.² He informed the Governor that he had been engaged in the search for minerals in the colony before 1860 and had been encouraged by the land act of 1860 to renew his explorations. To this end he had visited various parts of the island during the summers of 1864, 1865, and 1866. After his explorations in the summer of 1866 he had made applications for licenses of search on the French Shore in accordance with the provisions of the act of 1860. These had been refused because of the ban imposed by Cardwell on the granting of land. Bennett complained that the money he had spent on exploration would be wasted unless the title to land could be clearly established and he objected strenuously to the policy set forth by the Secretary of State for the Colonies:

Your memorialist under the circumstances felt himself in a position of great embarrassment: he had spent a considerable amount of money and a great deal of his valuable time, and had hoped that he was about to receive some adequate return for the same. He had intended to

1

Records of the St. John's Chamber of Commerce, Minute Book 1860-66, Rendell to Bemister, June 16, 1866, pp. 58-59.

2

C.O. 194/175, Bennett to Musgrave, November 8, 1866, pp. 299-310.

visit England with the view to organize a company or companies with the requisite capital to develop his discoveries but he has now been met on the part of the Government with insuperable obstacles to his progress; for it would be useless for him to attempt to raise capital with an imperfect title however just and good his legal rights may be to obtain the same.

Your memorialist fully appreciates the just motive which he believes has actuated the Colonial minister in giving such instructions; it is no doubt, with the intent to protect the French Fishermen in the exercise of their Treaty rights, which your memorialist has no desire in the remotest degree to interrupt or interfere with, but he believes that those instructions have been based on error in a misconception of what the French Treaty rights really were, also in the absence of all knowledge of the existence of the amended Land Act passed in 1860 under the operation of which your memorialist has been spending his time and money in the prosecution of his adventure.

He also saw dangers in adopting the course advocated by the Newfoundland government of granting land with the proviso that the French treaty rights would be guaranteed. Outside capital might well be suspicious of such a provision and it might be interpreted that the Newfoundland government was raising a doubt as to its territorial control over the whole island:

Your memorialist would under the peculiar circumstances in which your Excellency's Government and himself have been placed in regard to this matter and to enable him your memorialist without protracted delay to progress with his object, have suggested to your Excellency whether the Licenses and Grants could not be issued subject to the reservation of the French Treaty rights but the objections that have presented themselves to your memorialist as to the propriety of adopting this course are in the first place that strangers about to advance their capital in the enterprise might take exception to the reservation and would not take the trouble of satisfying their minds upon the subject of the legal points at issue, and in the second place whether it would be wise on the part of Government to raise any question of doubt as to their present valid title to the whole of the territorial rights of Newfoundland and its dependencies.

Bennett felt that the circumstances of the colony had changed drastically since the treaties had been made and this fact should be taken into account when deciding such questions. The future Premier was obviously out of patience with the policy of the British government.

The protests from Newfoundland induced the Colonial Secretary in the third Derby-Disraeli Ministry, the Earl of Carnarvon,¹ to reconsider Cardwell's ruling.² But Musgrave was instructed to make no grants of land while the matter was being discussed in London in the Colonial and Foreign Offices.³ Carnarvon's decision was sent to Musgrave in a despatch dated November 23, 1866.⁴ It maintained the position that Cardwell had taken and once again associated ownership and development of the land with the question of French fishing rights. Carnarvon, like his predecessor, was unwilling to do anything which would antagonize the French government although he

¹ Herbert, Henry Howard Molyneux, fourth Earl of Carnarvon (1831-1890). Secretary of State for the Colonies, July, 1866, to March, 1867, in the third Derby-Disraeli Ministry and February, 1874, to February, 1878, in the Disraeli Ministry. (D.N.B., IX, 646-652).

² Despatches from C.O., 1866, Carnarvon to Musgrave, August 13, 1866.

³ Ibid.

⁴ Secret and Confidential Despatches from C.O., 1838-76, Carnarvon to Musgrave, November 23, 1866, Confidential.

recognized the inconvenience of his decision to the colony:

I am conscious of the embarrassments which the absence of any authority of this kind must cause to the Government and people of the Colony. But I find myself unfortunately precluded from giving it while the question so long debated with the Government of France respecting the French Fishery rights remains in its present position, a position at all times unsatisfactory, and which at any moment may become one of grave difficulty.

A later public despatch dated December 7, 1866, confirmed this and indicated even more clearly why the decision had been made.¹ "Her Majesty's Government," he wrote, "much regret the unsettled state of this question and the serious inconvenience to which this leads. But it would be a far graver evil to embroil the Government of England in a dispute with that of France on grounds which a careful consideration of existing Treaties did not clearly justify."

The question of land grants was discussed in the 1868 session of the Assembly and resolutions were adopted on the subject.² A petition was also adopted to be forwarded to the Queen in which the House advanced the argument that British territorial dominion over the island of Newfoundland allowed the Newfoundland government to make grants of land on the French

¹
Despatches from C.O., 1866, Carnarvon to Musgrave, December 7, 1866.

²
Journal of the Assembly, 1868, March 4, Resolutions on the Question of Land Grants, pp. 41-42.

Shore for mining, agricultural, and other purposes.¹ The petition pointed out that the area in which grants were prohibited was at least one half of the territory of the island. British policy denied the colony access to the resources of this vast area:

For some years past, the Legislature of this Island, though embarrassed by financial difficulties arising from the distress prevalent amongst the labouring population, have voted large sums of money for the purpose of obtaining a Mineralogical survey of the Island, which will be to a great extent valueless, if that portion of the Island be withheld from the use of Your Majesty's subjects. Your Majesty's Petitioners therefore humbly pray that Your Majesty will be pleased to cause enquiry to be made into the matter, and to direct that the restriction contained in the Right Honorable the Earl Carnarvon's despatch be removed, so as to place Your Majesty's Government in a position to exercise those functions necessary to ensure to Your Majesty's subjects in the Island their Territorial rights.

The Legislative Council also in the same year forwarded a petition to the Duke of Buckingham and Chandos,² who had replaced Carnarvon in March, 1867, as Colonial Secretary in the Derby-Disraeli Administration. Their petition supported

¹ Ibid., March 13, Address to the Queen on the Question of Land Grants, pp. 60-61.

² Granville, Richard Plantagenet Campbell Temple Nugent Brydges Chandos, third Duke of Buckingham and Chandos (1823-1889). Secretary of State for the Colonies, March, 1867, to December, 1868, in the third Derby-Disraeli Ministry. (D.N.B., VIII, 574-575).

that of the Assembly.¹ It asked for a "speedy withdrawal of a prohibition fraught with such injurious consequences to the people of this Colony." The prohibition prevented the investment of capital to develop the mineral resources of the island and thus deprived people "in a state of almost utter destitution" of the means of employment.

John Kent, a member of the Executive Council of Newfoundland, also petitioned Buckingham in July, 1868, to remove the restriction on land grants.² Kent, who had served as a British Commissioner on the Anglo-French fishery commission of 1859, had an excellent grasp of the issues involved. He did not believe that the treaties gave the French any dominion over the soil. His petition is perhaps the best statement of the Newfoundland case available:

At the present time there are many reasons to induce Her Majesty's Government to entertain the question in a favourable point of view. As the population of the Island increases, the fisheries are not sufficient to support the Inhabitants. Poverty in consequence is widespread. The large bounties given by the French Government for the encouragement of their fisheries; and the exclusion of British fish from the markets of France, by imposing on the importation, a prohibitory duty tend to increase the difficulties of our fishermen.

The Newfoundland Government are most anxious to open up new resources for the employment of the people. The

¹
Journal of the Legislative Council, 1868, April 2,
Address to the Secretary of State for the Colonies on the Question
of Land Grants, pp. 46-47.

²
C.O. 194/177, Kent to Buckingham, July 13, 1868,
pp. 416-421.

mineral wealth of the Colony is beginning to attract the attention of capitalists. Under these circumstances, the denial of the right to search for minerals in any part of the Island, on the part of Her Majesty's Government, is considered by the Colonists as growing out of a very strained interpretation of treaty rights. And that denial is felt the more severely, as it emanated altogether from Her Majesty's Government - The French Authorities never having objected to any occupation of the soil on the part of British Settlers, who did not interrupt, by their competition, the fisheries of France.

This time the protests from Newfoundland were more successful and the Duke of Buckingham was induced to modify Carnarvon's ruling.¹ He still did not wish to take any action which could be interpreted as interference with the French fishing rights. He did feel, however, that the restriction placed on the granting of land had been interpreted too rigidly. He informed the Governor that grants could be made in the territory adjoining the French Shore provided that no grant was made which would enable buildings to be erected on the shore itself or which would cause any apprehension to the French. He invited the Newfoundland government, through the Governor, to suggest limits for such grants. Buckingham's attitude showed that the British were only willing to change their policy with extreme caution so as not to antagonize the French.

Musgrave was obviously pleased with Buckingham's plan.²

¹ Despatches from C.O., 1868, Rogers to Musgrave, December 9, 1868.

² C.O. 194/178, Musgrave to Granville, January 13, 1869, pp. 35-48.

The new directive allowed him to make grants of land which previously he had been unable to do; grants that could not in any way interfere with the French fishery. Applications were on file for grants to cut timber on the banks of the Deer Pond (Deer Lake, Humber East). There was also an application for a grant to quarry marble on the Humber River. Musgrave now felt free to issue grants of this type. To him the only question that remained concerned applications for grants which contained a part of the strand or seashore. These were important because in some cases indications of mineral deposits had been found on the shore itself. Musgrave felt that such grants could be made without jeopardizing French rights and they would be greatly in the interests of the colony:

In my opinion the object of preventing any apprehension by the French or any interruption to the full enjoyment of all the privileges incidental to their fishery rights, will be sufficiently secured by a provision in any grants to be issued that no Buildings shall be erected within one third of a mile of high water mark without permission from the Government. I think that this arrangement would practically work... and it will be much for the interest of the community that obstacles should be removed as soon as possible from the progress of enterprise that has recently been attracted to the development of the mineral wealth of the Colony, which from all information which I receive I have little doubt will be found to be great.

Gladstone had formed his first ministry by this time,

and his Colonial Secretary, Lord Granville,¹ proved to be more cautious than Musgrave.² He informed the Governor that he would be at liberty to make grants up to half a mile from high water mark on those parts of the coast which were not occupied by the French. But on parts of the coast where the French fished, Musgrave was to make no grants. Granville was anxious to make sure that the French would not be suspicious of this new move. The information was passed on to the French government and they were assured that Great Britain had "been especially careful of the interests of French subjects."³

The Question of Law Enforcement

On the French Shore itself a crisis of a different nature was developing. The British population living on the

¹ Leveson-Gower, Granville George, second Earl Granville (1815-1891). Secretary of State for the Colonies, December, 1868, to July, 1870, and Secretary of State for Foreign Affairs, July, 1870, to February, 1874, in the first Gladstone Ministry. Secretary of State for Foreign Affairs, April, 1880, to June, 1885, in the second Gladstone Ministry. (D.N.B., XI, 1029-1031).

² Despatches from C.O., 1869, Granville to Musgrave, March 10, 1869.

³ C.O. 194/178, Draft Despatch to Lyons from F.O., pp. 505-507.

shore increased from 3,334 in 1857, to 5,387 in 1869.¹ The French system "of encouraging one or two settlers to live in each harbour to act as gardiens in their absence" had contributed to this growth.² These people were served by Roman Catholic and Church of England clergy but there was absolutely no provision for government.³ Governor Musgrave believed that whatever had been the intention of the declaration of 1783 concerning settlement on the Treaty Shore, it was now impossible to remove the people living there.⁴ If this was admitted by the British government, then a decision would have to be made as to who was responsible for maintaining law and order in the area.⁵ As noted above, Musgrave believed that a "national scandal" would develop if the people living on the shore were not removed or else placed under the authority of the Newfoundland government.⁶ / In 1849 the British

¹ Abstract Census and Return of the Population, etc. of Newfoundland, 1869 (St. John's: Robert Winton, 1870).

² C.O. 194/172, Hamilton to Hope, July 13, 1864, pp. 348-361.

³ C.O. 194/174, Musgrave to Cardwell, November 24, 1865, pp. 273-284.

⁴ Ibid.

⁵ Ibid.

⁶ Ibid.

government had authorized the Governor of Newfoundland to appoint a civil magistrate at St. George's Bay.¹ Two kinds of magistrates had been subsequently appointed, honorary and stipendiary. H. H. Forrest had been made honorary magistrate and a Mr. Tobin had been made stipendiary magistrate.² The office of stipendiary magistrate, however, had been annulled in 1853 when the Newfoundland Assembly had refused to vote the necessary stipend.³

In 1865 some thirty residents of St. George's Bay petitioned Governor Musgrave for the appointment of a stipendiary magistrate and a constabulary force.⁴ One of the signers of the petition was H. H. Forrest, the honorary magistrate. The petition decried the state of affairs on the French Shore. "This portion of Newfoundland," it read, "is and has been, for years past, without the protection of law. Property and personal security are therefore at the mercy of the evil disposed, the malicious and the turbulent." The petitioners expressed a willingness to contribute to the cost

¹ F.F. Thompson, "Background to the Newfoundland Clauses of the Anglo-French Agreement of 1904" (unpublished Ph.D. thesis, Oxford University, 1953), pp. 105-106.

² Ibid.

³ Ibid.

⁴ Journal of the Assembly, 1865, St. George's Bay Memorial for Appointment of Stipendiary Magistrate and Collecting Officer, App., pp. 933-934.

of government in Newfoundland and asked for the appointment of a revenue officer. Carter presented the petition to the House of Assembly on March 29, 1865.¹

Not everybody living in St. George's Bay agreed with this petition. In the same month a counter-petition signed by forty-one residents was forwarded to Musgrave.² It complained that the petition seeking a magistrate had been secretly forwarded to the Governor and that it was "understood to have been signed simply by a few young individuals, that could not perceive their errors, and headed by one or two Merchants." These petitioners argued that the residents of the area could not afford the expense of government:

our Inhabitants are at present reduced to such an extreme state of poverty, owing to the failure of the fisheries since some years back, that if they be compelled to pay Duties, Taxes and such other Levies as are generally required by Her Majesty's Representatives, that starvation will undoubtedly and certainly take place by the greatest part of the population of this District.

They asked instead that the district be declared a "Free Port."

Cardwell was more receptive to the idea of appointing a stipendiary magistrate than he was to allowing the granting of land. He placed, however, an important proviso in his agreement:

¹
Ibid., March 29, p. 82.

²
Ibid., St. George's Bay Petition Against Taxation, App., pp. 935-936.

I shall be ready to consider any proposal for the appointment of a judicious person to act as Magistrate in that part of Newfoundland provided it is clearly understood that his proceedings will be under the personal control of the Governor. A matter which cannot but touch the execution of Treaties cannot be treated as one of mere local administration.¹

Governor Musgrave saw weaknesses in this plan. The Newfoundland Legislature was likely to object to any difference in the method of appointing officials on the French Shore from that followed in the rest of the colony and would probably refuse to pay a magistrate appointed in the way that Cardwell had suggested.²

During the summer of 1866 the Governor visited parts of the French Shore.³ He had planned to tour the colony the previous year but had been unable to obtain a ship. The 1866 trip was made in a steamer usually employed on the mail service, which was supplied by the Newfoundland government.⁴ Musgrave's object in the trip was to "obtain some personal information as to the character and condition of the settlements on the French Shore which circumstances are now forcing upon the consideration

¹
Despatches from C.O., 1865, Cardwell to Musgrave, October 7, 1865.

²
C.O. 194/174, Musgrave to Cardwell, November 24, 1865, pp. 273-284.

³
C.O. 194/175, Musgrave to Cardwell, July 10, 1866, pp. 185-186.

⁴
Ibid.

of the local Government."¹ He received several applications for grants of land while in the Bay of Islands but he deferred consideration of these on the basis of his earlier instructions from Cardwell.² The trip confirmed his views about the west coast. He wrote to Carnarvon after his visit that there would undoubtedly be a rapid increase in the population living on the coast and that some provision would have to be made for maintaining law and order there.³ He reported that the winter herring fishery in the Bay of Islands which was "prosecuted with nets under the ice" was attracting many new settlers as was the mineral potential of the area. He described the west coast to Carnarvon in glowing terms:

Marble which seems to be of valuable description has been discovered in large quantities on the River Humber, which flows into the Bay of Islands. The Timber on its Banks and of those of the Lake called the Deer Pond out of which it flows some miles inland, and which I was able to visit, is of fine quality. And Coal, and Copper, and even Gold, is said to have been found by persons who are as yet unwilling to make known the place of their discovery.

A Nova Scotian was boring for petroleum in the neighbourhood of Bonne Bay and there was an indication of a lead deposit

¹
Ibid.

²
212-215. Ibid., Musgrave to Carnarvon, August 8, 1866, pp.

³
Ibid.

at Port au Port (Port au Port). The agricultural possibilities of the area were also promising. Altogether, Musgrave enjoyed the west coast of the island and was impressed by what he saw there especially when he compared it with the rest of the colony. "It would be well," he wrote, "for a large proportion of our fishing population on the East Coast if they enjoyed half the substantial prosperity which I saw surrounding settlers on the Banks of the Codroy who live entirely by farming." But Carnarvon was even less willing than Cardwell had been to allow the appointment of resident magistrates. He wrote Musgrave on November 23, 1866, informing him that he was unwilling to agree to the appointment of magistrates while the fishery question was still in dispute.¹ The issue was to remain in this position for the next twelve years.

The British Response

During the first Carter Government then, the attempt to extend government and industry to the French Shore was almost completely thwarted. This was all the more frustrating to Newfoundlanders because it was Great Britain and not France that seemed to be holding back the progress of the island. The Colonial Office policy begun by Cardwell, developed by

¹ Secret and Confidential Despatches from C.O., 1838-76, Carnarvon to Musgrave, November 23, 1866, Confidential.

Carnarvon, and maintained by Buckingham and Granville was simply to maintain the status quo, to do nothing which might antagonize the government of France. The new problems created by the expansion of the Newfoundland economy were tied to the old fishery dispute. Carnarvon summarized the position in a despatch to Musgrave in December, 1866: "pending the settlement of the questions of French and British rights on the coast I am unable to authorize the appointment of a British Magistrate on the so called French Shore nor have I any alternative but to instruct you for the present not to make any grants of land on that coast."¹ (It is difficult to explain such an attitude. Britain no longer had a direct economic stake in Newfoundland and it was perhaps easy to sacrifice the interests of the colony for those of the mother country. Certainly the policy was not based on any pressure from the French government. There is no evidence that the French at this time took any strong stand on either the granting of land or the appointment of resident magistrates. The British policy appears to have been based solely on an imagined French reaction. It was, however, a policy that could never be tolerated by a Newfoundland community struggling not merely for economic security but for actual survival. The French Shore posed a delicate problem for the four men who

¹
Despatches from C.O., 1866, Carnarvon to Musgrave, December 7, 1866.

occupied the chair of Colonial Secretary during the years from 1865 to 1870. The French government must not be antagonized at any cost and yet the colonists would have to be satisfied in some manner. The reaction in Newfoundland to the proposed Convention of 1857 was well remembered in London. A rigid policy of enforcing the status quo would clearly cause more trouble. The Colonial Office answer to this problem was to try to satisfy both the French and the Newfoundlanders by renewing the negotiations with France that had been broken off in 1861.

Early in 1866 Cardwell asked the Foreign Secretary, Lord Clarendon,¹ "whether it would not be expedient to resume the endeavours which have been made to arrive at a final settlement of these questions by negotiation with the French Government."² For the British a resumption of negotiations would be a safe way out of an increasingly awkward situation. The Newfoundland government could be satisfied by the promise that its demands would be met if the discussions were successful. The signing of a convention would also remove any danger of

¹
Villiers, George William Frederick, fourth Earl of Clarendon and fourth Baron Hyde (1800-1870). Secretary of State for Foreign Affairs, October, 1865, to June, 1866, in the second Russell Ministry and December, 1868, to June, 1870, in the first Gladstone Ministry. (D.N.B., XX, 347-350).

²
C.O. 194/175, Hammond to Rogers, January 23, 1866, pp. 492-493.

Great Britain being involved in a dispute with France over a matter in which Imperial interests were not threatened. If the French could be induced to discuss the question in a spirit likely to produce settlement, it was indeed an opportune moment to renew the negotiations.

The draft Convention of June 19, 1860, prepared by Captain Dunlop and the Marquis de Montaignac de Chauvance, had not been concluded because of French objections to articles four and fifteen of the instructions to be issued to a proposed fishery commission.¹ The Foreign Secretary at the time, Lord Russell,² had been willing to agree to the French position on these articles.³ The Duke of Newcastle, however, had not come to any definite decision and the negotiation had been allowed to terminate. The first reaction of the Foreign Secretary to Cardwell's inquiry in 1866 therefore was to ask for a decision on these points which had been in abeyance since 1861.⁴ Clarendon was willing to approach the French government only

¹ Ibid., Hammond to Rogers, May 7, 1866, pp. 500-504.

² Russell, Lord John, first Earl Russell (1792-1878). Prime Minister, July, 1846, to February, 1852. Secretary of State for Foreign Affairs, June, 1859, to October, 1865, in the second Palmerston Ministry. Prime Minister, October, 1865, to June, 1866. (D.N.B., XVII, 454-464).

³ C.O. 194/175, Hammond to Rogers, May 7, 1866, pp. 500-504.

⁴ Ibid.

if there was sufficient reason to suppose that a settlement could be effected. He did not believe that any new negotiation would produce a result differing from that achieved in 1860-1861, but he was anxious to learn the proposals which Cardwell hoped to present to the French government. Clarendon's own opinion was that the negotiation should begin "at the stage at which it was interrupted."

When Earl Carnarvon came to the Colonial Office, he continued Cardwell's efforts to renew the fishery negotiations. He did not think that the fishery dispute with France was beyond reconciliation.¹ The main concern of the French was that they should be able to carry on their fishery without interruption. The colonists were interested in developing the resources of the island subject to the rights of fishing guaranteed to the French. Carnarvon did not believe that these two objectives were incompatible. A settlement, he felt, could be obtained by a compromise "guided by the general principle that each party shall relinquish on reasonable terms those rights which are more injurious to their neighbours than valuable to themselves." The sale of bait, the employment of gardiens, and the construction, organization, and maintenance of French fishing establishments on the coast, were subjects which the British could use to gain concession from the French.

¹

Secret and Confidential Despatches from C.O., 1838-76, Carnarvon to Musgrave, November 23, 1866, Confidential.

The French position was based on their ability to drive British fishermen from their fishing grounds and to require the removal of "Fixed Establishments" on the Treaty Shore. The main obstacle to negotiations, in Carnarvon's opinion, was the difficulty of obtaining the agreement of the Newfoundland government. If the results of negotiations had "to be submitted to the discussion of a Colonial Legislature and the chances of Colonial politics," Carnarvon could not see any possibility of coming to an agreement with France. He considered the Labouchere despatch to have been unfortunate:

I therefore consider it unfortunate that a previous Government have declared that they regarded the consent of the Colony as the essential preliminary to any modifications of their territorial or maritime rights... Whatever the exact effect of that pledge in itself, or its force as against subsequent Governments it is calculated to embarrass greatly the conduct of any negotiation. For compromise cannot but involve an exchange of concession and there are few, perhaps no concessions in this matter which may not be represented as modifying the maritime or territorial rights of Newfoundland. Moreover by such a promise the British Government finds itself placed between two disadvantages. It cannot urge on the French Government the recognition of any maritime or territorial right in favour of Newfoundland without at the same time and to the same extent limiting its own power of dealing with the right so established, and thus impairing its own power of conducting negotiation effectively.

Although he found the Labouchere promise embarrassing, Carnarvon made no attempt to violate its terms. Instead, he set out to get the consent of the Newfoundland government in a new way. He planned to evade the obstacles which the Labouchere despatch presented by getting the Newfoundland government, or

Legislature, or both, to request the British government to renew their efforts for a settlement. The party in Newfoundland making the request would then specify rights which they were not prepared to abandon but which would leave room for the British government successfully to conclude a new convention with France. Carnarvon proposed to Musgrave in a despatch dated November 23, 1866, that the basis of the new negotiations should be the draft Convention of June 19, 1860, a copy of which he forwarded to the Governor. He pointed out to Musgrave that the signing of such a Convention would enable him to "take into consideration measures calculated to encourage the settlement and use of land in the neighbourhood of the French Coast not being on the strand; and the establishment thereon of legal authority." Basically then, Carnarvon's plan was to get the consent of the colony before the negotiations began. The Newfoundland authority requesting a renewal of negotiations would issue a statement which would allow the British government to conclude the proposed Convention of 1860 without fear of its later being rejected by the colony.

The draft Convention of June 19, 1860, had been intended to help solve practical difficulties rather than replace the earlier treaties.¹ Its object was to provide "Regulations for the prevention and settlement of differences between the subjects

¹
Ibid., Proposed Convention of June 19, 1860, enclosed in Carnarvon to Musgrave, November 23, 1866, Confidential. See also Appendix B.

of the two nations, in conformity with the recommendations which the Commission of Inquiry for Newfoundland Fisheries of 1859 offered to their respective Governments." The draft Convention provided for the establishment of a mixed commission consisting of one British and one French naval officer designed to settle "All differences between the subjects of the two nations on matters relating to the practice of the fisheries."¹ The commissioners were to be appointed by the naval commanders-in-chief of Great Britain and France respectively and no appeal would be possible against their joint decisions.² When they could not agree, disputes were to be handled either by the naval commanders-in-chief or the governments of Great Britain and France.³ Great Britain would agree not to interfere with "The construction, the organization, and the maintenance of the French establishments."⁴ The French practice of leaving boats, salt, and fishing gear under the care of British subjects during the winter was to be permitted.⁵ The French were to be given the unimpaired right to purchase bait on the

¹
Ibid., Article 1.

²
Ibid.

³
Ibid.

⁴
Ibid., Article 2.

⁵
Ibid.

south coast from the first of April to the end of the fishing season.¹ France would agree not to "oppose" British subjects living in St. George's Bay and White Bay or to interfere with their buildings.² On the rest of the shore British subjects were not to be disturbed "in regard to buildings or inclosures now in their possession or occupation" provided that such sites were not necessary for French fishing purposes.³ Any buildings or inclosures occupied for five successive seasons could only be removed if the government requesting this action paid compensation to the owners.⁴ The amount of compensation would be determined by a joint decision of the fishery commission.⁵ No compensation would be required for the removal of any building erected without the consent of the fishery commission after the signing of the agreement.⁶ As noted above this agreement never came into effect because of a dispute over articles four and fifteen of the instructions to be issued to the proposed

¹
Ibid., Article 7.

²
Ibid., Article 3.

³
Ibid., Article 4.

⁴
Ibid., Article 5.

⁵
Ibid.

⁶
Ibid.

fishery commissioners.¹ In 1866 the British were willing to accept the French interpretation of these articles.² Thus the proposal which Carnarvon hoped to present to France was one which they would have willingly accepted in 1861.

Carnarvon announced his plan to the Newfoundlanders in a public despatch dated December 7, 1866.³ In this despatch he informed Musgrave that the British government would gladly reopen the negotiations with France which had been broken off in 1861, if only satisfied that there was a reasonable prospect of bringing them to a successful conclusion. He carefully added that such a negotiation would be attended with difficulty "so long as it is liable to be disturbed by unforeseen objections on the part of the Colony." The despatch made no mention of the 1860 draft Convention which had been sent to Musgrave two weeks earlier. Indeed, Musgrave was the only one in Newfoundland who knew anything about the basis on which Carnarvon was willing to resume the negotiations. The Governor was given great freedom of action to bring about the desired result. The skill he later displayed in handling the colonial politicians proved that this confidence was not misplaced.

¹ See above p. 43, and Appendix C.

² Secret and Confidential Despatches from C.O., 1838-76, Carnarvon to Musgrave, November 23, 1866, Confidential.

³ Despatches from C.O., 1866, Carnarvon to Musgrave, December 7, 1866.

Musgrave began by showing his Executive Council the copy of the proposed 1860 Convention which he had received from Carnarvon.¹ The members of the Council unanimously expressed regret that the Convention had not been agreed to in 1860. They felt that the only concession by Newfoundland was to allow the French to purchase bait on the south coast. In practice the French already possessed this privilege. Indeed, its removal would cause almost as much injury to the Newfoundlanders engaged in supplying bait as it would to the French fishermen. The Council members did not object to the articles which had been in dispute in 1861 as they felt "that no question of importance or practical inconvenience" would be likely to arise under them. They agreed to obtain a request from the Legislature to enable the British government to bring the proposed agreement into effect. Musgrave reported the good news to Carnarvon on January 17, 1867. "I now have the honor to report," he wrote, "that after consultation with my Council I have reasonable ground for hoping that during the session about to commence such an address from the Legislature may be obtained as will meet your Lordships views and enable Her Majesty's Government to renew negotiations with that of France for the purpose of completing the arrangement

1

C.O. 194/176, Musgrave to Carnarvon, January 17, 1867, Confidential, pp. 2-12.

which was abandoned in 1860." In the same despatch Musgrave informed Carnarvon that in any new convention it would be enough to reserve a breadth of strand three hundred yards wide for French fishery purposes. Provision should also be made, he felt, to allow settlers to export produce and land supplies for mining and other purposes. The construction of such facilities could be controlled by the proposed fishery commission so as not to interfere with the French fishery.

The subject of negotiations was discussed in detail during the 1867 session of the Legislature. Governor Musgrave indicated the Colonial Office policy in his opening speech.¹ He pointed out the connection between a new agreement with France and the proposed development of the resources of the island. The proper course for the Legislature to take to obtain such an agreement was clearly indicated:

I recommend you therefore, to request Her Majesty's Government to resume these negotiations, of which the settlement would probably remove all obstruction to the effective development of the territorial resources of the Colony. It would be easy to specify such rights as the Colony is not prepared to relinquish, and, these being excluded from the negotiations, to leave Her Majesty's Government at liberty to complete the proposed agreement.

The importance can hardly be overrated of the prospect thus opened to us, and of which practical experiment has already demonstrated the value, of developing the mineral

¹
Journal of the Assembly, 1867, January 31, Speech by Governor Musgrave opening the Assembly, pp. 19-22.

wealth of the Colony. Means of employment would then be afforded to numbers of the people who now are without any alternative on failure of the fisheries. And we might hope, under such circumstances that the revenue would be relieved from constantly recurring drafts for Poor Relief which have almost entirely penalized all efforts for legitimate public improvements.

The Assembly first discussed the matter in committee of the whole on February 22.¹ A resolution to form a joint select committee with the Legislative Council to consider the question was passed sixteen to seven. The first meeting of this select committee was held in the committee room of the Council on February 28.² Musgrave confidentially reported to Carnarvon on March 19, that the report of the select committee would contain "such recommendations as... will effect the object which your Lordship has in view."³ The Governor's confidence, however, was soon shaken when the opposition of several members of the committee threatened to wreck the project.⁴ Musgrave believed that their opposition was based on a fear of

¹ Ibid., February 22, p. 54.

² Ibid., February 26, pp. 57-58. Members of the Committee were Carter, Kent, Hogsett, Renouf, Pinsent, Bennett, and Parsons from the Assembly, and Stabb, Tessier, Clift, and Kent from the Legislative Council.

³ C.O. 194/176, Musgrave to Carnarvon, March 19, 1867, Confidential, pp. 104-106.

⁴ Ibid., Musgrave to Buckingham, April 29, 1867, Confidential, pp. 187-197.

"imaginary danger in dealing with the subject."¹ He was able to overcome the opposition of some members of the committee by personal interviews and "eventually a Report was adopted which had been very carefully prepared in accordance with the terms of the proposed convention of 1861."²

The report of the select committee was considered by the Assembly in committee of the whole on April 11.³ Like the select committee, the Assembly was at first hesitant to accept it. Many members wished to know more about the exact character of the Convention of 1860 before committing themselves. The committee of the whole rose without having adopted the report. Musgrave later described this crisis to Buckingham as follows:

After much discussion, the Committee of the whole House which had been engaged in consideration of the subject rose without having adopted the Report, and leaving the impression with the members of my Government that to press the matter further at present would be fruitless and probably lead to defeat; as the question is one which it was not regarded as expedient to treat as one of party, and their usual supporters were divided in opinion as to the propriety of doing anything which they feared might lead to results not anticipated or desired.⁴

¹
Ibid.

²
Ibid.

³
Journal of the Assembly, 1867, April 11, p. 134.

⁴
C.O. 194/176, Musgrave to Buckingham, April 29, 1867, Confidential, pp. 187-197.

Once again Musgrave intervened. By personal influence and explanation he was able to convince two influential members of the Assembly to change their minds.¹ The report was finally adopted by the Assembly on April 25, 1867.² It was a great victory for Musgrave and Carter, for the Premier had cooperated with the Governor from the very beginning. Musgrave not long after reported to Buckingham the splendid contribution Carter had made in guiding the report through the hazards of the Assembly.³

Carnarvon was not only interested in a convention to settle practical difficulties but also in a broader agreement to resolve the basic dispute with France over fishing rights in Newfoundland.⁴ Such an agreement unlike the proposed Convention of 1860 would replace all existing treaties. Carnarvon thought that it would be in the best interests of all concerned:

¹
Ibid.

²
Journal of the Assembly, 1867, April 25, pp. 147-154.
See also Appendix D.

³
C.O. 194/176, Musgrave to Buckingham, April 29, 1867, Confidential, pp. 187-197.

⁴
Secret and Confidential Despatches from C.O., 1838-76, Carnarvon to Musgrave, November 24, 1866, Confidential.

The rights which unquestionably belong to the French are such as to obstruct the development of the Colonial resources throughout the French Shore and to place in a great measure at the mercy of the French Authorities the British population which has collected there: while the restrictions which are imposed upon the French, besides the risks of collision which peculiarly affect the Imperial Government, cannot fail to prevent a free and amicable intercourse between the population of the Colony and the French fishermen and to impede that wholesome employment of labor and interchange of commodities which would be a certain and not inconsiderable advantage to both parties. Unless therefore this system of mutual restrictions is really necessary for the protection of the fishing interests of the Colony, it is equally desirable in an Imperial and Colonial point of view that it should cease to exist.

Perhaps France could be induced to abandon exclusive rights on the Treaty Shore in return for the right to fish in all the waters of Newfoundland "on the same free terms which were accorded to the United States by the Reciprocity Treaty." Carnarvon felt that such an arrangement would be advisable and he invited Musgrave's comments. Lord Stanley,¹ the Foreign Secretary, also agreed with Carnarvon that the abandonment of exclusive rights on both sides would be the best solution to the dispute.²

¹ Stanley, Edward Henry, fifteenth Earl of Derby (1826-1893). Secretary of State for Foreign Affairs, July, 1866, to December, 1868, in the third Derby-Disraeli Ministry and February, 1874, to March, 1878, in the Disraeli Ministry. (D.N.B., XVIII, 948-951).

² C.O. 194/176, Egerton to Rogers, February 7, 1867, Confidential, pp. 414-415.

The Governor's report, however, was discouraging.¹ Although such an arrangement "would be practically beneficial in all respects to Newfoundland," it would never be accepted in the colony. The influential mercantile groups would certainly reject it and their opposition would mean that it could never command popular support. The general public was "too much under the influence of the supplying Merchants not to be guided by their opinion." The concession of any new fishing rights was unthinkable unless the French were willing to give up their system of bounties. Carnarvon reluctantly abandoned the idea of a general solution and turned his attention solely to the possibility of negotiating a convention to end practical difficulties.

Having once received the consent of the Newfoundlanders to proceed with the negotiations, however, the British officials were slow to act. Only when the pressure from Newfoundland was increased by the address to the Queen from the Assembly in March, 1868,² and a visit to London by Governor Musgrave later in the year, were they finally goaded into action. A new Convention was prepared in the Colonial Office on the basis of the Convention of June 19, 1860, and the address that

¹
Ibid., Musgrave to Carnarvon, January 21, 1867, Confidential, pp. 15-26.

²
See above, pp. 64-65.

had been received from the Newfoundland Legislature.¹ On September 10, 1868, Buckingham requested Stanley to endeavour "to resume negotiations with the French Government, in order to bring to a settlement the long pending questions with France which relate to the Fisheries in Newfoundland."² In the same despatch a copy of the amended Convention of 1860 was forwarded to the Foreign Secretary. The ambassador in Paris, Lord Lyons,³ was instructed by Stanley to approach the French Minister of Foreign Affairs, M. de Moustier, on the subject.⁴ If the Minister proved willing to discuss it, Lyons was ordered to give him a copy of the amended Convention.

When Moustier was approached by Lyons on September 23, 1868, he was non-committal. He simply asked to be allowed "to defer giving an answer until he had consulted those of his colleagues to whose department the subject especially belonged."⁵ Lyons approached Moustier again on October 29,

¹ Secret and Confidential Despatches from C.O., 1838-76, Rogers to Musgrave, November 16, 1868, Confidential.

² C.O. 194/177, Egerton to Rogers, September 28, 1868, pp. 309-310.

³ Lyons, Richard Bickerton Pemell, second Baron and first Earl Lyons (1817-1887). British ambassador to France, July, 1867, to November, 1867. (D.N.B., XII, 358-359).

⁴ C.O. 194/177, Egerton to Rogers, September 28, 1868, pp. 309-310.

⁵ Ibid., Lyons to Stanley, September 23, 1868, p. 312.

1868.¹ Moustier now replied that he was disposed to resume negotiations but he had not yet received answers from the departments concerned. He promised to take measures to hasten the consideration of the matter by his colleagues. Governor Musgrave was still in England and Buckingham was anxious to have him stay if the negotiations were soon to be resumed.² On November 16, 1868, Lyons addressed a note to the French government, once again pressing for an early answer to his proposal.³ He pointed out that the presence of the Governor of Newfoundland would greatly facilitate a satisfactory arrangement but that he could not be detained in Great Britain indefinitely. Moustier replied in a note dated November 28, 1868, that the French Government could not make a decision without a full knowledge of the basis on which Great Britain proposed to reopen negotiations.⁴ Lyons consulted with the Foreign Secretary and on December 10, 1868, passed a new note to the French Minister enclosing a draft of the amended

327. ¹Ibid., Lyons to Stanley, October 29, 1868, pp. 326-

322. ²Ibid., Rogers to Hammond, November 10, 1868, pp. 321-

334. ³Ibid., Lyons to Moustier, November 16, 1868, pp. 333-

338. ⁴Ibid., Moustier to Lyons, November 28, 1868, pp. 337-

Convention of June 19, 1860.¹

But by early June, 1869, Lyons had received no answer to this note. He reported that he had reason to believe that the result of simply pressing for an answer would be a French declaration of unwillingness to negotiate on the basis of the proposed draft.² He wrote to Clarendon that if the British Government was determined to press for a renewal of negotiations, "we should frankly state to them the obstacles opposed by the present state of things to the development of the mineral wealth of the Colony, and point out to them the importance and indeed necessity of removing these obstacles."³ Lord Lyons, however, did not think that it was a favourable moment to press the issue with the French government. Granville, who had by now replaced Buckingham in the Colonial Office, was ready to accept this advice. He informed the new Governor of Newfoundland, Stephen Hill,⁴ that no further action would be taken to bring about a renewal of negotiations until Newfoundland had decided on the question of confederation:

¹ C.O. 194/178, Lyons to Clarendon, June 8, 1869, Confidential, pp. 520-521.

² Ibid.

³ Ibid.

⁴ Hill, Sir Stephen John (1809-1891). Governor of Newfoundland, 1869-1876. (Canadiana, V, 126-127).

having regard to the probability that the Colony of Newfoundland will soon unite itself to the Dominion of Canada, I think it advisable to leave this question to be dealt with by the Government of the Dominion when the union shall have taken place, unless some communication requesting immediate action should in the meantime be received from the French Government.¹

The final official mention of the French Shore for the year 1869 came in November, when Clarendon informed Granville that he would "not lose sight of the question of reopening negotiations with the French Government."²

During the first Carter Government then, two new issues became important with respect to the French Shore: the granting of land, and the appointment of resident officials. These issues arose partly from the growth in population on the shore but mainly from the attempt of the Newfoundland government to extend its influence over the area. This urge to expand onto the French Shore resulted from the pressing need to develop new sources of employment. The colonial demands, however, met with an unsympathetic response in the Colonial Office. Except for the minor concessions concerning the granting of land made by Buckingham and Granville, the British refused to allow either of the Newfoundland requests. The British position was prompted by a belief that any unilateral move on the Treaty Shore would result in a serious

¹
Despatches from C.O., 1869, Granville to Hill, July 10, 1869, Confidential.

²
C.O. 194/178, F.O. to Rogers, November 1, 1869, pp. 547-548.

incident with the French. With this in mind they put forward the idea of renewing the fishery negotiations which had been broken off in 1861. From the British point of view the conclusion of a new fisheries agreement would have the virtue of satisfying the Newfoundland demands without involving Great Britain in a dispute with France. But before any such agreement was possible, some means had to be found around the obstacle posed by the Labouchere despatch and the French had to be convinced to resume negotiations. By 1869 the British had achieved the first of these but had failed in the second. During the last months of the Carter Government the French Shore issue was of secondary importance, being overshadowed by the question of confederation. However, the defeat of the confederates in 1869 and the accession to power in St. John's of the mining promoter Charles Fox Bennett precluded a renewal of the agitation from Newfoundland for free access to the French Shore.

Chapter III

THE FRENCH SHORE, 1870-1873

The agitation from Newfoundland over the granting of land and the appointment of resident magistrates on the French Shore was only one factor inducing the British government to seek a new fisheries agreement with France. The distressing events on the Treaty Shore from 1870 to 1873, which produced many disagreements between British and French, provided an even greater stimulus. These disputes centered around the work of the British and French naval officers who patrolled the Treaty Shore. They eventually became a direct threat to harmonious Anglo-French relations. If the policy of the Gladstone Government was to maintain good relations with France, a situation on the coast of Newfoundland which led to interminable quarrels could hardly be tolerated, especially when these differences arose from the work of British naval officers who were engaged in protecting a colonial and not a mother country fishery. Disputes on the Treaty Shore between British and French were not new but between 1870 and 1873 they were particularly serious. Combined with the stream of protests from Newfoundland, this fresh outbreak of trouble on the French Shore thoroughly convinced the British government of the need to reopen the fishery negotiations.

Newfoundland has had a long connection with the British Navy. The work of a naval convoy established by the Commonwealth in 1649 to escort the West Country fishing fleet from England to Newfoundland had eventually provided the basis for

government in the island. The first royal governor of Newfoundland, Captain Henry Osborne, appointed in 1729, was an officer of this convoy, as were all the succeeding governors in the period before the granting of representative government in 1832. Naval officers continued to provide the only semblance of government on the French Shore during most of the nineteenth century, since representative institutions were not extended to the shore in 1832. Each summer two warships of the Royal Navy were employed in the protection of the fisheries of Newfoundland and Labrador. In naval terminology the Newfoundland-Labrador area was referred to as the Newfoundland station, and the officer in charge was called the senior officer of the Newfoundland station. He was responsible to the commander-in-chief of the North America and West Indies station whose headquarters was at Halifax. The naval officers on the Newfoundland station were instructed by the British government to keep the peace between the British and French fishermen on the Treaty Shore. They were also commissioned by the Newfoundland government as justices of the peace, but their Imperial duties naturally took precedence over this colonial responsibility. The annual reports of the naval officers on the Newfoundland station form one of the most valuable sources of information relating to the French Shore.

The French Navy also sent warships to Newfoundland in the summer. Their purpose was to protect French privileges.

The French Navy had a Newfoundland sub-division with a senior officer in charge. The French naval officers in Newfoundland were responsible to "l'Admiral Commandant en Chef Station Navale des Antilles, du Golf Mexique et de l'Amerique du Nord." These British and French naval officers were the only law enforcement agency on the French Shore at this time. The account of their work is an unwritten chapter in the history of Newfoundland.

While better than nothing, the administration of justice by the naval officers was far from being a satisfactory arrangement. A typical case from the records of the 1870 fishing season will serve to show its inadequacy. In July, 1870, one of the French naval officers on the Newfoundland coast, Captain Mer, reported to his superior, Admiral Lefebvre, that the premises of a French fishermen named Pauliquen at Pilier Creek near Cape Rouge (White Bay North) had been destroyed by fire the previous winter.¹ Captain Mer had investigated Pauliquen's complaint and had determined that the masters of two Newfoundland schooners which had visited Cape Rouge on October 12, 1869, while proceeding from Labrador, were responsible for the destruction of the property. At the time of their alleged action the Newfoundland masters were reported to have shown a complete disrespect for law and order.

¹C.O. 194/179, Capitain Mer to l'Amiral Commandant en Chef Station Navale des Antilles, du Golf Mexique et de l'Amerique du Nord, July 24, 1870, pp. 415-419.

Mer informed Lefebvre that when some witnesses had asked them why they were destroying the property, they had replied that they were burning wood in order to get nails. The French care-taker or gardien at Cape Rouge, in company with the masters of two other schooners, had gone to Pillier Creek and taken the names of the schooners and their captains. The alleged offenders were two brothers named Butler, residents of an area near Harbour Grace on Conception Bay, who were engaged in the Labrador fishery. To Captain Mer it was a clear-cut case of guilt. He wrote to Lefebvre that nothing could be "more easy than to arrest the offenders on their return from the Labrador and to try them for the crime of arson."

When Governor Hill was informed of the incident by Admiral Lefebvre, he immediately requested Captain Pasley, the senior officer on the Newfoundland station for the 1870 season, to go to Cape Rouge.¹ Pasley was to take the deposition of the care-taker and investigate the circumstances of the case. However, the French fishermen left the coast of Newfoundland earlier than usual in 1870 because of the outbreak of the Franco-Prussian war, and Pasley was unable to obtain the information necessary in order to proceed with

¹
Ibid., Hill to Pasley, August 13, 1870, pp. 413-414.

the case.¹ Thus the investigation of a crime allegedly committed in October, 1869, had to be postponed until the summer of 1871. The start of the Franco-Prussian War was a complicating factor in this instance, but even under normal circumstances the offenders could not have been brought to trial before the autumn of 1870. Moreover, during the long delay between the actual commission of the crime and the time when the first report reached the British authorities, the offenders could have easily eluded arrest and trial.

This case, though not important in itself, shows the two main weaknesses in the system of justice on the French Shore. First, it provided no effective means for apprehending offenders. The few naval officers who were on the coast for only a part of the fishing season could hardly be expected to police thousands of fishermen constantly on the move. Second, if the offenders were arrested and tried, the process of justice was too slow to be really effective. But no matter how clumsy and inefficient, the system did provide some semblance of law and order. Naval justice on the French Shore was evidently inadequate, as it had been in the whole of Newfoundland before 1832, but it was still better than no justice.

Altogether, the 1870 fishing season was one of

¹ C.O. 194/182, Hill to Kimberly, October 6, 1871, pp. 57-59.

comparative tranquility. The main point of dispute investigated by Captain Pasley during his tour of duty was the extent to which the French were allowed by the treaties to fish in the rivers on the Treaty Shore.¹ He was unable to arrive at any definite conclusion on this point. Vice Admiral Fanshawe, commander-in-chief of the North America and West Indies station, wrote to the Admiralty in November, 1870, that there had been few complaints during the summer, "yet the divergence of views of the Colonists who believe that the French have no right to the rivers at all and the French who believe their rights to displace Englishmen extend up the Rivers appears to render compromise difficult."² He promised to give orders to the next officer on the Newfoundland station to gather all possible information on this subject.

There were many more disputes during the 1871 season than there had been the previous year. Once again there were the usual protests from the French that their property had been stolen or destroyed after they had gone home the previous winter. Then there was the recurring problem of preventing the French from fishing outside their assigned limits. These two problems alone were more than enough to occupy the time of the two British warships on the coast. To them, however,

¹ C.O. 194/180, Pasley to Fanshawe, November 18, 1870, pp. 24-25.

² Ibid., Fanshawe to Secretary of the Admiralty, November 22, 1870, pp. 20-22.

were added all the petty squabbles between French and British fishermen that occurred during the summer.

In July, 1871, Commander Charles G. F. Knowles of H.M.S. Lapwing, one of the officers on the Newfoundland station during the 1871 season, received a report that some French boats were fishing at certain harbours on the coast of Labrador.¹ The harbours mentioned in the report were Bonne Esperance, Salmon Bay, Five Leagues Harbour, Middle Bay, and Belles Amour Harbour. Knowles immediately informed Captain Charles Duder, fishery commissioner for the government of Newfoundland, of the complaint. On investigation, Duder found three schooners from St. Pierre fishing at Middle Bay each with five hundred quintals of cod on board.² One of the schooners involved had been previously warned off the Labrador coast. Duder took the names of the boats and ordered them to leave the coast immediately.

Commander Knowles informed Captain F. Giovannetti, the French senior officer patrolling the Treaty Shore, of this incident in a letter dated August 12, 1871.³ Giovannetti replied in a letter to the British senior officer, Captain

¹ C.O. 194/182, Knowles to Duder, July 26, 1871, pp. 113-114.

² Ibid., Duder to Knowles, August 2, 1871, pp. 115-118.

³ Ibid., Knowles to Giovannetti, August 12, 1871, pp. 119-120.

William S. Brown of H.M.S. Danae, dated August 18, 1871.¹

He informed Brown that the masters of the French ships were encouraged to violate the treaties "by seeing our reserved coast invaded at certain times by English vessels." He agreed, however, that the intrusion into the Labrador fishery was unjustified and promised to inform the Governor of the Islands of St. Pierre and Miquelon so that the offenders could be punished.

Brown visited St. George's Bay in July, 1871, and warned the residents against stealing or destroying French bultows.² He reminded them that such acts were punishable and that anybody injured while committing such an offense would have no claim for compensation or assistance. On September 1, 1871, he wrote Governor Hill informing him of the occurrences on the French Shore during the summer.³ He enclosed in his letter copies of the correspondence that had taken place between the British and French naval officers. In forwarding this letter to Kimberly,⁴ Hill again pointed out the inadequacy

¹ Ibid., Giovannetti to Brown, August 18, 1871, pp. 120-121.

² Ibid., Notice issued by Brown to the residents of St. George's Bay, July 31, 1871, pp. 100-101.

³ Ibid., Brown to Hill, September 1, 1871, pp. 99-100.

⁴ Wodehouse, John, first Earl of Kimberly (1826-1902). Secretary of State for the Colonies, July, 1870, to February, 1874, in the first Gladstone Ministry. (D.N.B., 1901-1911 Supplement, 695-699).

of the legal system on the Treaty Shore: "Complaints ... are annually made by the French authorities to our naval officers. In almost every instance the subject brought under notice has reference to an occurrence which has taken place during the previous year, hence the difficulty under which the Colonial Government labour, in obtaining the conviction of, or even in capturing those accused."¹ However, he reminded Kimberly that it was not only British subjects who violated the treaties, as Captain Duder's experience with the St. Pierre schooners at Middle Bay, Labrador, had shown.

In October, 1871, Brown sent Hill a comprehensive account of conditions on the French Shore.² This was in addition to the annual report of the Newfoundland station which he sent to his superior, Admiral Fanshawe. He informed the Governor that the French ship D'Estaing had visited every harbour on the Treaty Shore during the summer, and it was rumoured that the French intended to reoccupy several stations which they had not used for some years. Conche (White Bay North), Griquet Harbour (White Bay North), and Pistolet Bay (White Bay North), were mentioned as harbours that might be repossessed. These

¹ C.O. 194/182, Hill to Kimberly, November 7, 1871, pp. 90-94.

² Ibid., Brown to Hill, October 14, 1871, pp. 138-142.

three settlements by this time were supporting three hundred and fifty settlers. "It would be well," he wrote, "in case of the French calling for the removal of these people to be prepared with some course of action." Brown complained to Hill that the magisterial powers invested in the naval officers were of little use because they were based on law "whereas, on the French Shore no law exists." F. F. Thompson in his "Background to the Newfoundland Clauses of the Anglo-French Agreement of 1904" has written that this "referred not merely to the absence of the constitutional conditions present in the remainder of the island, but a failure of the British government to re-enact 2 and 3 William IV, c. 79 which had expired in 1834 and by which parliamentary sanction had been given for the execution of the treaties."¹ To add to the task of law enforcement, many of the disputes were concerned with ownership of land, and as Brown pointed out, these were almost impossible to settle.

The social conditions observed by Brown on the French Shore during the summer were very primitive. The aged were completely dependent on the good will of others, but in an area of subsistence living there was little left over for charity. Brown noted in his letter to the Governor that "the

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Thompson, pp. 127-128.

misery of those unable to work is very great." The officers and crew of his two ships had assisted the poor at their own expense. He suggested that the Newfoundland government should grant a small sum of money to the naval officers to be distributed to the needy of the coast. There was also, he reported, a complete lack of medical services. The medical officers of the Danae had been kept busy at every port of call tending to the sick, and about four or five hundred cases had been treated in this way.

The fundamental difference between the British and French interpretation of the treaties was still, according to Captain Brown, the basic cause of the disputes which continued to occur:

It is evident that the French Naval Officers on this station are of opinion that the French have the exclusive right to the fishery, and altho' our intercourse during the past season has been carried on with the greatest cordiality and friendship and no difficulties of any sort have arisen, still when the Officers of the two nations hold different views of a treaty and when the rights of all parties are not strictly defined there is always risk of misunderstanding arising, more especially as the French have grounds of complaint in the destruction of their property during the time they are absent in France, by herring and seal fishermen, and failing to obtain satisfaction for these acts of wanton destruction they may and probably will prevent our vessels from fishing on their coast during the summer...

Altogether the state of affairs in connection with the "French Shore" seems to me most unsatisfactory and cannot fail to be a continually increasing trouble and liable at any time through the indiscretion or over zeal of an officer to cause serious misunderstanding.

The soundness of this warning was to become evident during

the next summer (1872).

Finally in his letter, Brown addressed several questions to the Governor which had occurred to him during his tour of duty:

1. Have the French an exclusive right to the Fishery on the "French Shore"?
2. If the French have not an exclusive right, what rights have British subjects?
3. Have the French any right to the Salmon fishery?
4. If the French have any right to the Salmon fishery, how far up the river do these rights extend?
5. Have the French any right to ask for the removal of British subjects settled on this Shore, unless they require the ground occupied by them for purposes connected with the fisheries?
6. When British subjects fish off the "French Shore" have the French any right to decide what means or engines they shall employ to take fish?
7. In the event of the French coming to fish on any part of the "Shore" where for years past they have not fished, have they the right to call on British subjects who for a length of time have resided or fished there to give over fishing and remove from the "Shore"?

He informed Hill that if these questions could be "authoritatively settled," the work of the naval officers would be greatly simplified.

The questions asked by Captain Brown raised fundamental problems connected with French rights in Newfoundland. Hill prepared answers to the questions on the basis of previous British policy but discreetly submitted his replies to Lord Kimberly before sending them on to Admiral Fanshawe in

Halifax.¹ The questions evoked within the Colonial Office a thorough discussion of the whole issue of French rights in Newfoundland, and a comprehensive paper was prepared on the subject.² After the answers transmitted by Hill had been revised in the Colonial Office, they were sent for approval to the Foreign Secretary, Lord Granville.³ Granville in turn consulted the Law Officers of the Crown, who agreed to the answers as they had been prepared in the Colonial Office.⁴ Kimberly finally approved the following answers:

1. The French have not the exclusive right to the Fishery on the "French Shore." This point is however still in dispute.
2. Altho fishing within French limits by British subjects is to be discouraged as much as possible, English fishermen may fish within these limits in consideration of at once relinquishing to the French any waters in which they may desire to fish.
3. The French have the right to the Salmon Fishery within their own limits.
4. According to the interpretation put upon the treaties by the Imperial Government, the French have no right to fish for Salmon in any River

¹
C.O. 194/182, Hill to Kimberly, November 8, 1871, pp. 125-126.

²
Ibid., Minute Paper, pp. 127-133.

³
Ibid., Meade to Hammond, December 19, 1871, pp. 134-137.

⁴
C.O. 194/184, Law Officers to Granville, January 17, 1872, pp. 359-360.

though the contrary view is upheld by the French: and the matter must therefore be considered to be one in dispute.

5. The French have the right to demand the removal of any fixed fishing Establishment on the French beach, but with regard to other Establishments the question is in dispute. What should be considered as "beach" must depend much upon local circumstances. The term ought to receive such an interpretation as would remove all such Establishments to such a distance from high water mark as would be beyond the space generally used or occupied by Fishermen on the Coast, and as would leave ample room for fishing Establishments between them and the sea.
6. The French have no right to decide what means or engines the British shall employ but they may object to any means or engines which are an infringement of the Treaty. It would be unreasonable for the French to object to the British fishermen using off the French Shore any means or engines for fishing which the French themselves use off that Shore, but it is questionable whether the use of Bultows is legal if they were not used before 1792.
7. Length of residence does not confer upon an English fisherman the right to interfere with privileges granted to the French by Treaty. British subjects should therefore remove from French limits when the latter for fishing purposes require such removal.¹

The answers to questions one, two, three, and seven were the same as those originally submitted by Governor Hill.² To

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For answers one, two, three, and seven see C.O. 194/182, Hill to Kimberly, November 8, 1871, pp. 125-126. For answers four, five, and six see Despatches from C.O., 1872, Kimberly to Hill, February 9, 1872.

²

C.O. 194/182, Hill to Kimberly, November 8, 1871, pp. 125-126.

questions four, five, and six the Governor had answered as follows:

4. The Right of the French to the Salmon fishery extends so far up the rivers as will be bounded by straight lines drawn perpendicular to the direction of such rivers at the point where the French right of fishing ceases. Whatever may be the rights of British fishermen in the rivers they are not to interfere with the sea Fisheries of the French.
5. British subjects are not supposed to settle on the French Shore neither are the French supposed to erect permanent buildings there.
6. No, provided the British fish according to the Laws of this Colony outside French limits.

The first answer approved by Kimberly maintained the traditional British position that the treaties had not established an exclusive but rather a concurrent fishery. The second answer was also a continuation of previous policy. It explained what the British government meant by the term "concurrent fishery." Answers three and four were concerned with a comparatively recent problem on the Treaty Shore. The French had not demanded the right to catch salmon until 1858.¹ In that year they had claimed the privilege of fishing for salmon in the rivers on the French Shore and had begun to enforce their claim. Governor Bannerman had warned the Colonial Secretary, the Duke of Newcastle, in 1863 that this new French demand could not be allowed "without conceding

¹
C.O. 194/170, Bannerman to Newcastle, October 22, 1863, Confidential, pp. 90-93.

a territorial right to a foreign nation."¹ The same year, Admiral Milne, the commander-in-chief of the North America and West Indies station, had written the Admiralty that the British settlers on the French Shore "should not be deprived of those valuable fisheries without some remonstrance or notice on our part."² Newcastle's policy had been to ignore the issue. He had informed Bannerman not to raise the question of salmon fishing rights unless larger numbers of British settlers were interfered with by the French.³ The new policy contained in the answers to these two questions was therefore a stronger stand than the British government had formerly taken. The changes made to answer five in the Colonial Office maintained the right of British subjects to erect buildings on the Treaty Shore for purposes other than the fishery. But while the question was in dispute, the British were unwilling to enforce their interpretation. This was the basis of the British refusal to allow the granting of land on the French Shore and was vigorously opposed by the Newfoundland government. The answer to question seven from a colonial point of view was very unsatisfactory for two reasons. First, there was no

¹
Ibid.

²
C.O. 194/171, Milne to Secretary of the Admiralty, October 26, 1863, pp. 217-218.

³
Secret and Confidential Despatches from C.O., 1838-76, Newcastle to Bannerman, December 14, 1863, Confidential.

independent authority to determine when the French needed an area for fishery purposes. This made summary eviction of British settlers possible. Second, the policy enunciated in the answer helped prevent the development of the resources of the Treaty Shore.

This set of questions and answers is very important because it represents the major policy statement of the British government on French treaty rights in Newfoundland during the entire period between 1865 and 1878. The questions were asked by the most important British official on the Treaty Shore, and the answers were the product of intensive thought by the Governor of Newfoundland and the officials of the Colonial and Foreign Offices. Thus both the executors and legislators of British policy in Newfoundland were involved. The answers, however, contained few changes from previous British policy. Only on one question, that of salmon fishing in the rivers, was a stronger stand taken than before. This unbending attitude towards the needs and wishes of the Newfoundlanders was certain to create further disharmony between the colony and the Imperial power. It was not so much the British interpretation of the treaties that caused the tension between the colony and the mother country as the failure of the British government to enforce its interpretation. The British officials were unwilling to take any bold action in the interest of the colonists and continued to place their confidence in a renewal of negotiations to solve the problems

of the French Shore. As it happened, events on the coast of Newfoundland during the 1872 fishing season gave them convincing proof to present to the French government of the need for a new agreement.

The disputes on the Treaty Shore during the summer of 1872 were much more serious than those of the previous two years. Captain Hoskins of H.M.S. Eclipse was the senior officer on the Newfoundland station for the summer. On June 1, he visited St. Pierre to meet the French senior officer, M. de Boissoudy, of the French sloop of war Kersaint.¹ The purpose of the visit was "to make arrangements for meeting... on the coast of Newfoundland during the summer in order jointly to settle any disputes which may have arisen between the fishermen." But Boissoudy had left St. Pierre for Sydney and so Hoskins left a letter for him with the Commandant of St. Pierre and Miquelon.² In this letter the British officer expressed a willingness to cooperate with his French colleague to avoid any trouble on the coast of Newfoundland: "In the performance of the duties entrusted to me it is the hope of my Commander-in-Chief that while all encroachments will be prevented, seizures may not be made except in extreme cases, trespassers being warned off; and I feel sure that you will

¹
C.O. 194/184, Hoskins to Boissoudy, June 1, 1872, pp. 263-265.

²
Ibid.

equally with myself use your endeavours to prevent collisions between the Fishermen of the two nations." Boissoudy replied in an equally amicable manner.¹ Unfortunately, subsequent events were to destroy this early accord.

In June, 1872, Premier Bennett received a petition from two residents of Fleur-de-Lys (White Bay South) charging that the French captain at the place had prevented them from fishing and had told them "that should they attempt to do so, he would seize both their boats and fish."² The petitioners wrote to Bennett that they had been fishing at Fleur-de-Lys for five or six years and had never before been interfered with by the French. Smith McKay, Bennett's partner in the Tilt Cove mining venture, had helped the fishermen draw up the petition.³ Commander Knowles, who was again on the Newfoundland station, was sent by Captain Hoskins to Fleur-de-Lys to take the testimony of the two fishermen.⁴ When Knowles asked the French captain why he had given such an order to the Newfoundland fishermen, the Frenchman replied that he had done so "under a conviction that the French had the exclusive

¹ Ibid., Boissoudy to Hoskins, July 7, 1872, pp. 266-268.

² C.O. 194/183, Ford and Shelly to Bennett, n.d., pp. 396-398.

³ Ibid., Knowles to Hoskins, August 12, 1872, pp. 400-404.

⁴ Ibid.

right to the fishing on the coast." Knowles informed the captain that he had exceeded his powers and told the British fishermen to return to work but not to interfere with the French.

The first indication of serious trouble came on September 2, 1872, when Commander Knowles visited St. Anthony (White Bay North).¹ He found there two residents of St. Mein's Bay (St. Mein Bay, White Bay North) named Richard and Mark Pilgrim who complained to him that on or about the twentieth of August the French ship Diamant, under command of Captain Carrey, had seized several of their salmon nets and cut the moorings from some herring nets.² The fishermen informed Knowles that the captain of the Diamant had been acting under orders from the French senior officer, M. de Boissoudy. The next day, September 3, Knowles wrote to Boissoudy protesting the seizure of the nets.³ He informed the French officer that it was the policy of the British and Newfoundland governments to prevent encroachments by British fishermen. However, he requested that the nets be returned to the Newfoundland fishermen at the end of the season "as it has been stated to me that these

¹ Ibid., Knowles to Hoskins, October 7, 1872, pp. 474-476.

² Ibid.

³ Ibid., Knowles to Boissoudy, September 3, 1872, pp. 478-480.

nets were not laid down in any way so as to interfere with the French cod fishery." The seizure of the nets was a heavy loss to the fishermen and if they were not returned, Knowles feared that "some overt act of retaliation" might be attempted. He reminded Boissoudy that it was in the interest of both British and French to prevent such an occurrence.

Boissoudy, who also happened to be at St. Anthony, replied to this letter the same day.¹ He informed Knowles that the French had every desire to see the peace kept on the Newfoundland coast. It was only after exhausting all methods of warning that they had been "compelled to make some examples." He justified the seizure of the nets on the basis of the French claim to an exclusive right of fishing on the Treaty Shore and invited Knowles to make this fact known to the British fishermen:

I have every reason to think that when you receive the petition of the English residents you will make them fully understand that they have no right to fish on that part of the coast, to which the treaties reserve to us the exclusive right and that you will avail yourself of this opportunity to make them understand the gravity of the breach which they commit by violating our prohibitions.

I hope that for the future being better informed of their true position on the French Shore, the English subjects will abstain from using nets, and that they will not change into a profitable fishery the simple tolerance of the use of the hand-line.

Later in his trip around the French Shore, Commander

¹
Ibid., Boissoudy to Knowles, September 3, 1872, pp. 481-482.

Knowles received further reports of seizure by the Diamant.¹ These seizures represented more than a simple dispute between fishermen. They involved recognized officials of both Great Britain and France and laid bare in all its intricacies and dangers the unsettled question of fishing rights in Newfoundland. It was exactly the type of dispute which the British government was so anxious to avoid.

Captain Hoskins arrived at Quirpon (White Bay North) on September 28, 1872, and learned from the residents that the Diamant had passed along the coast and taken up all the nets which did not belong to French subjects.² He then proceeded to St. Anthony where he received complaints from William Ireland, Andrew Cockburn, Francis Wyatt, George Richards, and William Curlew, all of Carroll's Cove (St. Carols, White Bay North), that during August the Diamant had seized their nets.³ Ireland had gone alongside the Diamant and "begged to have his nets returned saying he had never received any warning against using them." The commander of the Diamant, however, had completely rejected this plea.⁴ The petitioners told

¹ Ibid., Knowles to Hoskins, October 7, 1872, pp. 474-476.

² Ibid., Hoskins to Hill, October 9, 1872, pp. 468-473.

³ Ibid.

⁴ Ibid.

Hoskins that there had been no French fishermen in the vicinity at the time of the seizures and that they had fished in the area for many years without interference. The loss of their nets would mean great hardship to them.

Hoskins informed Hill of the seizures in a letter dated October 9, 1872.¹ Boissoudy, he wrote, had fully endorsed the seizures by the Diamant and had admitted "that what had been done was by his orders." Hoskins informed the Governor that he had met Boissoudy in St. John's at the beginning of August and at that time had requested the French captain to tell him "of any breaches of the Treaties by British subjects." Boissoudy had complained of the general tendency of the British fishermen to encroach but to Hoskins' later surprise he had been "entirely silent as to the steps which the Commander of the 'Diamant', was about that very time leaving this Port to take, under instructions from him." Hoskins concluded that the French intended to enforce their exclusive claim to the fishery wherever they thought it worthwhile. Moreover, they were apparently intent on ordering the removal of the settlers without first consulting the British authorities. He informed the Governor that the actions by the Diamant had raised much animosity against the French on the Treaty Shore. He felt that the winter could hardly pass without this finding

¹
Ibid.

vent "in acts of retaliation on the property which in contravention of the clear terms of the treaties they are in the habit of leaving behind them when they withdraw in the Autumn." Hill was reminded that the answers he had returned to Captain Brown's questions had maintained that the French did not have the exclusive right to the fishery. Nor did they have the right which Boissoudy had claimed in his letter to Knowles on September 3, 1872, of deciding what "means or engines" the British fishermen could employ. Hoskins' letter expressed anything but optimism about the future prospects for harmonious Anglo-French relations on the coast of Newfoundland.

Hill notified Kimberly on October 14, 1872, of the disturbing events which had occurred on the French Shore during the summer.¹ He pointed out that the French had not enforced their claim to exclusive rights in order to allow French subjects to fish but rather had seized the nets simply to assert the principle. The British government had always recognized the right of the French to demand any place which they required for their fishery, but the seizures by the Diamant were quite a different matter. As for the "means or engines" to be used by the fishermen, British policy had been made quite clear in the answers returned to Captain Brown's questions earlier in the year. Hill did not feel that the use of nets by British fishermen was a violation of their privileges. Moreover, he

¹

Ibid., Hill to Kimberly, October 14, 1872, pp. 462-468.

emphasized in his letter to the Colonial Secretary the urgent need to reimburse the fishermen for the loss of their property: "The loss of the nets will be a great hardship to those men, indeed I know not how they can exist during the coming winter, except on the charity of those whose property has escaped capture, and these as a rule have barely sufficient to support themselves and their families."

Admiral Fanshawe, the commander-in-chief of the North America and West Indies station, thought that the work of the British naval officers on the coast of Newfoundland would be made more difficult by the incidents during the summer of 1872.¹ He wrote to the Admiralty from Halifax on October 19, 1872, that Captain Hoskins and Commander Knowles would soon be returning to England and he trusted that their great knowledge of conditions on the French Shore would be put to good use. He hoped that "very shortly...Her Majesty's Government will be of opinion that the time has arrived when these relations and the treaties which led to them must be very carefully considered and defined in order that the occurrence of lawless and unseemly encounters between the two nations may be avoided." Fanshawe deplored conditions on the French Shore. He reported that there were only four missionaries of the Church of England and a few clergy "of other creeds" on the whole coast. The Church of England Bishop of Newfoundland occasionally visited

¹
C.O. 194/184, Fanshawe to Secretary of the Admiralty, October 19, 1872, pp. 231-238.

the area. The entire Treaty Shore was without any legal authority except for "such settlement of current disputes as can be made on the casual visits of English ships of war, whose Captains and Senior Executive Officers are furnished with Commissions as Justices of the Peace for the purpose." The activities of the Labrador fishermen, who put into the French Shore twice a year, added to the general chaos and degradation. People living under such primitive conditions, the Admiral concluded, could hardly be expected to submit quietly to arbitrary acts by French naval officers. In transmitting Fanshawe's letter to Kimberly, the Lords of the Admiralty pressed for "some definite understanding being arrived at respecting the rights of the English and French nations as regards the Newfoundland fisheries."¹

Kimberly decided to take a strong stand on the Diamant affair. He informed Granville, the Foreign Secretary, of what had happened on the Newfoundland coast and asked him "to address a strong representation to the French Government on the matter."² The actions by the captain of the Diamant were a direct assertion of the French claim to an exclusive right of fishing and could not be tolerated by the British government.

¹

Ibid., Hall to Herbert, November 1, 1872, pp. 228-230.

²

C.O. 194/183, C.O. to Hammond, November 12, 1872, pp. 486-487.

Kimberly expressed the hope that the French government would disapprove of the actions of its naval officers in Newfoundland. There was a lesson to be learned from the whole affair he thought. The trouble had been a direct result of the unsettled state of the fishery question and was further proof "of the danger of leaving the various matters in dispute any longer unsettled."

Lyons sent the protest of the British government to the French Minister of Foreign Affairs, M. de Rémusat,¹ in a note dated December 2, 1872.² Three days later, on December 5, he discussed this note with the French Minister.³ Lyons took advantage of the occasion to remind Rémusat of the pressing need to settle the outstanding questions connected with the fishery at Newfoundland. Only the cooperation of the naval officers of both nations and the "great forbearance on the part of Her Majesty's Government," he stated, had prevented serious disputes in the past. The inconveniences caused by the existing arrangements became more serious each day, and any arbitrary action by French naval officers only aggravated

¹ Rémusat, Charles Francois Marie (1797-1875). Minister of Foreign Affairs, August, 1871, to May, 1873, under Thiers. (Britannica, XIX, 122).

² C.O. 194/184, Lyons to Rémusat, December 2, 1872, pp. 415-416.

³ Ibid., Lyons to Granville, December 5, 1872, pp. 421-422.

an already dangerous situation.

The 1873 fishing season began with doubts concerning French intentions. Captain Miller of H.M.S. Sirius was the senior officer on the Newfoundland station for the summer. On June 9, 1873, he wrote to the French Admiral in North America "that under existing circumstances it will be better except in extreme cases to refrain from seizures, merely warning of trespassers and using joint endeavours to prevent collisions between the fishermen of the two nations."¹ He invited the French commander to send a ship to join with him in a visit to the Treaty Shore.

The next day, June 10, Captain Dupin de St. Andre replied to Miller's letter.² He informed Miller that the Admiral of the North American station had returned to France on February 14 because of ill health. However, a ministerial decree of March 14 had empowered him to take command of the station. Although his reply was amicable in tone, St. Andre still insisted on the French exclusive right. He agreed to cooperate with the British officers not only to prevent violence but also to enforce French rights. He believed that the British inhabitants of the French Shore would show greater respect for

¹ C.O. 194/186, Miller to French Admiral North American Station, June 9, 1873, pp. 57-59.

² Ibid., Dupin de St. Andre to Miller, June 10, 1873, pp. 59-64.

the treaties, and therefore for the French exclusive right, when they saw the naval officers of the two nations working together: "As you so very aptly remark, in the execution of the supervision of the fisheries, the causes of seizure can only present themselves in extreme cases, which will not even appear, from the moment, that, the English inhabitants shall see the English authorities interest themselves for the maintenance of the exclusive rights, which, the Treaties confer upon us." As for the proposal that the ships of both nations should visit the Treaty Shore together, St. Andre thought that nothing could better demonstrate "to the English subjects our meaning and our accord." He informed Miller that he would be leaving for France at the end of June and that Captain de Boissoudy of the Kersaint would be left in control of the Newfoundland station.

Miller quickly reported to Admiral Fanshawe in Halifax the disquieting news of the French attitude.¹ Fanshawe instructed Miller to insist that the subject of exclusive and concurrent fishing rights was still in dispute.² If any case arose which involved this point, he was to "urge" upon the French officers "the propriety of not altering the course pursued until last year, pending a reference by him and yourself

¹
Despatches from C.O., 1873, Miller to Fanshawe, June 11, 1873.

²
Ibid., Fanshawe to Miller, June 16, 1873.

to your respective Governments." Fanshawe based these instructions on the answers that Hill had returned to Brown's questions. He wrote to the Secretary of the Admiralty that apparently the French were intent on unilaterally enforcing their claim to an exclusive right of fishing.¹ If the British officers were required to enforce the British claims, some new arrangement would have to be made quickly to avoid violence on the Newfoundland coast.

Granville informed Lyons of these developments and ordered him to request immediate action on the part of the French government.² He wrote to the ambassador that unless orders were sent to the French Commander in Newfoundland to refrain from any attempt to enforce the exclusive claim "there is imminent danger of a collision between the British and French Naval forces in that quarter." Lyons passed this information on to the French government in a note to the new Minister of Foreign Affairs, the Duc de Broglie,³ dated June

¹ Ibid., Fanshawe to Secretary of the Admiralty, June 16, 1873.

² Secret and Confidential Despatches from C.O., 1838-76, Granville to Lyons, June 28, 1873.

³ Jaques Victor Albert, Duc de Broglie (1821-1901). Minister of Foreign Affairs, May, 1873, to November, 1873, under MacMahon. (Britannica, IV, 228-229).

29, 1873.¹ He strongly recommended in the note that new instructions should be sent to the French officers in Newfoundland to suspend any action to enforce the exclusive claim until the two governments had time to consult on the matter. He urged that the orders be sent immediately "notwithstanding today's being Sunday" and stated that he was ready to discuss "this serious matter" at any moment.

Broglie agreed to meet Lyons on the same day to review events in Newfoundland.² The meeting was attended also by Rear Admiral Baron Duperre "Chief of the Staff and of the Cabinet of the Minister in the Department of Marine and Colonies." Admiral Duperre expressed "great surprise" at the happenings in Newfoundland. He told Lyons that the latest instructions which had been sent to the officers were "to the effect that they should do their utmost to act in harmony with the English officers, and should avoid as far as possible making seizures, or taking any other steps likely to cause ill feeling." Nothing in the reports received from the French officers had indicated any probability of disagreement with the British officers. However, in compliance with the British request new instructions had been sent that morning through the

¹ Secret and Confidential Despatches from C.O., 1838-76, Lyons to Broglie, June 29, 1873.

² Ibid., Lyons to Granville, June 30, 1873.

Commandant of the Islands of St. Pierre and Miquelon to the officers on the Newfoundland station. This new directive had enjoined the French officers to maintain harmonious relations with the British officers as far as possible and to make no arrests in cases of dispute until instructions were received from both governments. Thus from the British point of view a crisis on the French Shore was narrowly averted.

The disputes between British and French in Newfoundland from 1870 to 1873 showed the inadequacy of the unique system of naval supervision on the Treaty Shore. Moreover, the increase in the number and seriousness of the disputes provided undeniable proof of the dangers inherent in the old treaties. Their effect was to demonstrate to the British more than ever before the need to reopen the fishery negotiations with France.

Chapter IV

THE BENNETT GOVERNMENT, 1870-1874

The effort to extend the influence of the Newfoundland government over the French Shore was continued by the Bennett Government. Similarly, the policy of the British government towards the French Shore developed during the first Carter Government (1865-1870) was also characteristic of the Bennett period (1870-1874). The inter-action of these two will be the subject of this chapter. Two new factors, however, were important during the Bennett Administration. The first was the increase in the number of disputes between British and French on the Treaty Shore climaxed by the Diamant affair in 1872 and the uncertainty which characterized the start of the 1873 fishing season. The second concerned Bennett himself and the unpopularity of his government in the Colonial Office. Bennett had come to power on an anti-confederate platform which was in open conflict with the wishes of the British government. He must have appeared to the officials of the Colonial Office as something of a rebel and an agitator, a man whose policies should not be encouraged if at all possible. This was certain to affect all phases of British thinking with regard to Newfoundland.

British policy towards the French Shore had two aspects. The first was to convince the French government to reopen negotiations on the Newfoundland fishery question and thereby to conclude a new agreement which would satisfy the Newfoundland demands without antagonizing the French. Such an agreement would eliminate the possibility of a major dispute

between Great Britain and France over the Treaty Shore, a matter in which British economic interests were no longer involved. The second aspect of British policy was to maintain the status quo on the French Shore pending the resumption of the negotiations and the conclusion of a new agreement. This resulted in a cautious attitude towards anything connected with French rights in Newfoundland. A case from the year 1870 will serve to illustrate this point.

Granville was requested by Governor Hill in 1870 to allow the erection of lighthouses on the French Shore. The Canadian government was anxious to build lighthouses at Capes Ray and Norman (White Bay North), and Ferolle Point (St. Barbe). Lord Lisgar, Governor General of Canada, had written Hill in April, 1870, asking leave to begin this project.¹ Hill had replied that permission could not be granted until the consent of the Imperial government had been obtained, since Cape Norman and Ferolle Point were located on the French Shore.² Hill wrote to Granville in May, 1870, explaining that the Newfoundland government was anxious to give its assent to the Canadian plan and requesting the permission of the British government.³ But Granville was

¹ C.O. 194/179, Young to Hill, April 27, 1870, pp. 247-248.

² Ibid., Hill to Young, May 12, 1870, pp. 249-251.

³ Ibid., Hill to Granville, May 12, 1870, pp. 249-251.

unwilling to take any action without first assuring the French government that its rights in Newfoundland would not be violated.¹ Lyons was instructed to invite the approval of the French government "it being clearly understood that such consent is asked for and given for the good of the Public, and without prejudice to any rights claimed by either Government with respect to the Fishery on the coasts of Newfoundland."² But the mere fact that the French government was consulted on such an innocuous matter indicates the discretion with which Granville approached anything even remotely connected with French rights.

Fortunately for Granville the French government agreed to the erection of the lighthouses.³ If they had refused, he would have been in an extremely embarrassing position. If he had then upheld the French, he would have been denying the colonists the right to build essential public works. This would have been all the more serious in this case because objections would have come from Canadians as well as Newfoundlanders. If he had sided with the colonists in spite of French

¹ Ibid., Holland to Hammond, June 7, 1870, pp. 241-242.

² C.O. 194/180, Clarendon to Lyons, June 11, 1870, pp. 189-190.

³ Ibid., Hammond to Rogers, July 19, 1870, pp. 220-221.

objections, he would have embroiled the British government in a dispute with France of his own creation. Consulting France about every matter affecting the French Shore in an attempt to maintain the status quo could have very serious consequences.

When Carter resigned in February, 1870, the British attempt at resuming negotiations with France had come to a standstill. This delay soon aroused new protests from the Newfoundland government. Governor Musgrave had informed the Legislature at the opening of the 1869 session that measures were being adopted to renew negotiations "for the purpose of arriving at such an amicable understanding as would give effect to the views embodied in the Report of the Joint Committee... made during the Session of 1867."¹ In the same speech he had announced the concessions which Buckingham had made concerning the granting of land.² But when the Legislature met again in 1870, no further information had been made available on the subject of the proposed negotiations with France.

An address to Governor Hill adopted on March 10, 1870, showed that the Legislative Council was suspicious of British

¹
Journal of the Assembly, 1869, January 28, Speech by Governor Musgrave opening the Legislature, pp. 13-16. See above, pp. 87-88.

²
See above, pp. 66-67.

intentions and impatient at the long delay.¹ Hill was asked to inform the Council "whether the negotiations referred to by Governor Musgrave have resulted or are likely to result in the arrangement which he anticipated." He was also requested to provide information on any action that had been taken under the authority which Governor Musgrave had been authorized to exercise with regard to the granting of "Mining Licenses of search, as well as for Timber cuttings." Hill sent his reply to the Council four days later.² He dismissed the question of the proposed negotiations by simply stating that the French Shore Question was still being considered by the British and French governments. As for the granting of licenses to search for minerals, he informed the Council that he possessed only the same powers that had been invested in Governor Musgrave. He agreed to furnish the House with a return showing the number of licenses granted.

Governor Hill forwarded the address of the Council to Lord Granville in a despatch dated March 25, 1870.³ Granville used the occasion of Hill's letter to remind the

¹ Journal of the Council, 1870, March 10, Address to Governor on French Shore Question, pp. 27-29.

² Ibid., March 14, Reply of Governor to address on French Shore Question, pp. 30-31.

³ C.O. 194/179, Hill to Granville, March 25, 1870, pp. 112-114.

Foreign Secretary, Lord Clarendon, of his pledge of the previous year not to "lose sight of the question of reopening negotiations."¹ Lord Clarendon replied that he was willing to approach the French government only if he had a fresh understanding with the Colonial Secretary on the issues involved.² Granville was invited to send to the Foreign Office "some distinct exposition" of the concessions he was willing to make and the proposals he was willing to accede to in any new agreement. Clarendon reminded Granville that this statement should take into account the previous unsuccessful contact with the French government in 1868.³ Moreover, he reiterated the advice which Lyons had given in his letter of June 8, 1869, that any new approach to the French government should include a frank statement of British intentions in the proposed negotiations.⁴ He assured Granville that once he had received such a report he "would be prepared to concert with Lord Lyons as to the expediency and time of bringing the question again before the French Government."

¹ Despatches from the C.O., 1870, Rogers to Hammond, May 7, 1870. See above, p. 94.

² C.O. 194/180, Hammond to Rogers, May 25, 1870, pp. 162-163.

³ See above, pp. 91-93.

⁴ See above, p. 93.

Frederic Rogers,¹ the Permanent Under-Secretary in the Colonial Office, replied on June 7, 1870.² His letter put forward the Colonial Office position on fishery negotiations. The old treaties, he wrote, were obviously outdated and changes would be beneficial to both sides. The treaty of 1783 had been made when France and Britain were enemies, "when it was intended to prevent the colonization of Newfoundland and when an injury to the commerce of one country was supposed to confer a benefit on another." This treaty had set up obstacles to the French fishery in order to give an advantage to British fishermen. But as time had passed, French treaty rights had blocked the progress of the colony. The fishing rights of the French had allowed them to impede the development of Newfoundland "to an extent not at all necessary for the purpose of preventing interference with their own industry." Using this argument, Rogers felt that the object of both Britain and France in the proposed negotiations should be to retain "no gratuitous obstruction." An agreement based on this principle would remove any hindrances to the French fishery which were not valuable to the

¹ Rogers, Frederic, Baron Blachford (1811-1889). Permanent Under-Secretary of State for the Colonies May, 1860, to May, 1871. (D.N.B., XVII, 119-120).

² C.O. 194/180, Rogers to Hammond, June 7, 1870, pp. 165-170.

Newfoundlanders and would remove all impediments to the development of the colony which were not valuable to the French. Rogers used the word "valuable" in the sense of "not merely as embarrassing a competitor or giving advantage in negotiation but as conferring a direct benefit on those who are entitled to enforce it." Since such a "mutual abandonment of vexatious powers" would probably work out in favour of the Newfoundlanders, Rogers believed that it might be necessary to make new concessions to the French to restore the balance. He enclosed in his letter to the Foreign Office a draft convention to which Granville was prepared to agree.¹

This draft convention was much more concerned with permitting the development of the resources of the French Shore than had been that of 1860. Although based on the earlier proposal, it contained significant changes. Only three articles remained intact: articles one, two, and four in the old convention became articles one, four, and eight in the new. Two new articles were added reflecting the problems that had become important on the Treaty Shore since 1860. The strand or beach to be used for French fishery purposes was to be limited to one third of a mile from the high water mark.² The British government was to agree, subject to the articles

¹
Appendix E.

²
Article 3.

of the convention, to remove any buildings erected on the strand if the French fishery commissioner declared the land was necessary for the French fishery.¹

Five articles from the earlier agreement were kept with some alterations: articles three, five, six, seven, and eight in the old convention became articles seven, nine, ten, five, and two in the new. The proposed fishery commission was to determine the points at the mouth of each river up to which the French could fish.² The French right to purchase bait on the south coast was to be restricted to the period during which British subjects were lawfully permitted to take bait.³ This right was also to be made subject to the duties and other restrictions imposed on British subjects. Bay of Islands (Humber West), Bonne Bay (St. Barbe), and Great and Little Cod Roy (the Grand and Little Codroy Rivers, St. George's) were to be added to the places where the French were not to object to British settlers.⁴ Compensatory payments by the party requesting removal were to be extended to buildings

¹
Article 6.

²
Article 2.

³
Article 5.

⁴
Article 7.

erected with the consent of the fishery commission.¹ The uses for which the British government could reserve portions of the French strand were to be extended to include roads, railways, piers, lighthouses, and "other works for public use or benefit."² The right to build on the French strand was also to be given to "private persons" under certain fixed conditions.³ The proposed new convention was in accordance with the British policy of trying to satisfy both the French and the Newfoundlanders.

Clarendon forwarded Rogers' letter and the proposed convention to Lyons and asked his opinion "as to the expediency ...of bringing the question again before the French Government."⁴ The ambassador was instructed to bring the matter to the attention of the French government whenever he considered it advisable. Lyons' reply, however, held out little hope for the success of any new negotiations.⁵ He did not think that the moment was particularly favourable to approach the French government,

¹ Article 9.

² Article 10.

³ Ibid.

⁴ C.O. 194/180. Clarendon to Lyons, June 11, 1870, pp. 185-186.

⁵ Ibid., Lyons to Clarendon, June 17, 1870, pp. 209-213.

although it was as good as any likely to present itself in the near future. He agreed to make a new attempt but suggested to Clarendon that a different approach should be used from that which had previously been unsuccessful. The request to the French government for a renewal of negotiations "should be accompanied by a distinct statement of the evils which we desire to remove." Lyons recommended that this statement be prepared in the Colonial Office. It should, he wrote, make quite clear to the French government that the treaties were wholly inadequate to meet existing circumstances: first, because they blocked the development of the colony, second, because their strict enforcement would be injurious to the French fishery. The statement should warn the French that if the projects of the colonists were constantly frustrated, they might eventually attempt to retaliate by demanding that the British government strictly enforce the treaties. If this were done, some of the usages of the French fishery, such as the leaving of fishing gear in Newfoundland during the winter, would no longer be allowed. The French should be told that the British could not easily reject such a demand from the colony. To accede to it, however, would be to "bring about a state of affairs little likely to promote harmony between France and England." Finally, the statement of the British case should be made so convincing that to deny it would show "a selfishness and narrow mindedness wholly inconsistent with the generosity of the French Character." The new approach suggested by Lyons

promised a more satisfactory arrangement if the French would agree to negotiate and threatened trouble on the coast of Newfoundland if they refused. It was the boldest statement on the fishery question yet suggested by a British official for presentation to the government of France.

While the statement was being prepared in the Colonial Office, events on the continent of Europe were leading to a clash between France and Prussia. The declaration of war by France on July 19, 1870, brought British hopes of renewed fisheries negotiations to an abrupt halt. On August 22, 1870, Lyons reported to Granville, who had by now been transferred to the Foreign Office, "that in the present very critical state of France, it would be difficult to obtain attention from the French Government to the matter, and that for other reasons a proposal to resume negotiations upon it would be inopportune at this particular time."¹ British policy towards the French Shore was once again thwarted. Unhappily for the new Colonial Secretary, Lord Kimberly, the Franco-Prussian War did not at the same time remove the conditions that had made renewed negotiations so necessary. The inevitable result of the War would be increased tension between the colony and the Imperial power. In Newfoundland economic necessity would doubtless seem much more important than the fighting in far off Europe. Held back for so long from the French Shore, the Newfoundlanders

¹

Ibid., Lyons to Granville, August 22, 1870, pp. 230-231.

would be little prepared to accept the diplomatic niceties of Europe as an excuse for a continued denial of their "rights." The problem facing Kimberly became one of quieting the colonists until conditions in France returned to normal and Lyons could once again broach the subject of negotiations.

Premier Bennett and one of his followers, Thomas Talbot, member of the Newfoundland Assembly for St. John's West and member of the Executive Council, visited England during the summer of 1870. The main purpose of the trip was to try to prevent a complete withdrawal of the British garrison from Newfoundland, but Bennett also found time to discuss the French Shore. He repeated to Kimberly all the old arguments of the Newfoundland government and appealed for a new policy towards the French Shore.¹ He told Kimberly of the great potential value of the shore. Already, he said, there were more than four thousand people there who were engaged in the herring, seal, cod, and salmon fisheries. A large fleet of ships from "Nova Scotia and the neighbouring provinces" was also employed in the herring fishery on the shore. The agricultural possibilities of the area were good, and there was proof of valuable mineral deposits. He reminded Kimberly that these minerals could not be exploited "for the reason that the Imperial Government have forbidden the Government of Newfoundland from permitting the use of any part of the strand

¹
293. Ibid., Bennett to Wodehouse, August 5, 1870, pp. 290-

within half a mile of the sea coast by British subjects."

On August 5, 1870, while in London, Bennett wrote to Kimberly summarizing the discussions up to that point and adding more arguments to his case for a new policy.¹ He now pointed out that there had been no resident magistrate on the Treaty Shore since the time of Governor Gaspard LeMarchant and that the Newfoundland government received no revenue from the area. But Kimberly was unwilling to be drawn into a controversy over French rights with the anti-confederate Bennett. He merely informed the Premier that there was no definite word as to whether the negotiations could be resumed but that every effort would be made to settle the question.²

Bennett returned home empty handed, and for the rest of the year 1870, while the war continued between France and Prussia, there was little mention of the French Shore either in St. John's or in London. Bennett apparently still hoped for a settlement through the initiative of the British government. In any case as leader of a party which had defied British policy, he was reluctant to say or do anything that would put his government into further disrepute in London. His effusive protestations of loyalty were ample evidence of his attempts to regain favour with the Imperial government.

¹
Ibid.

²
Ibid., Holland to Bennett, August 12, 1870, pp. 295-

On February 18, 1871, Bennett received a telegram from W. B. Vail, the anti-confederate Provincial Secretary of Nova Scotia, inviting the Newfoundland government to join in a protest against sacrificing the fisheries "to Imperial or Canadian interests."¹ Vail's message referred to resolutions passed in the Nova Scotia Assembly the previous day concerning the proposed fishery negotiations with the United States.² Bennett replied by telegram on February 21, 1871, declining the invitation.³ Later he sent Vail a detailed letter explaining the position of the Newfoundland government on the Nova Scotian request.⁴ His letter referred by implication to the French Shore dispute and was probably written more as propaganda for Hill and Kimberly than as information for Vail. Bennett informed Vail that he could not see the "propriety or utility" of joining in the protest. The circumstances of the case were not known in Newfoundland but even if they were, it would still be doubtful if the Newfoundland government

¹ C.O. 194/181, Vail to Bennett, February 18, 1871, Telegram, p. 73.

² Journals and Proceedings of the House of Assembly of the Province of Nova Scotia, 1871, February 17, pp. 27-28.

³ C.O. 194/181, Bennett to Vail, February 21, 1871, Telegram, p. 74.

⁴ Ibid., Bennett to Vail, March 2, 1871, pp. 75-77.

would agree. He lectured Vail on the need for respecting the wisdom of the Imperial government. It was the desire of the Newfoundland government "to avoid any collision with the Imperial wishes that do not necessarily demand our interference." England, he wrote, was the trusted guardian of the interests of Newfoundland:

We view England as our Natural Protector. She has always acted not only justly but generously towards us. We have no apprehension that she will in any manner prejudice those rights and privileges which she so liberally granted to the people of the Colony under their valued constitutional charter. She has left us to exercise our own discretion and free will to enter the Confederation of the North American Provinces under the Dominion or not; and we have every confidence that she will protect us in the enjoyment of all those rights and privileges which are so essential to our prosperity and happiness.

Bennett could reply as he did because the negotiations leading up to the Treaty of Washington caused little apprehension in Newfoundland.

When Hill reported this correspondence to the Colonial Secretary, he referred to the irregular course that Vail had adopted "in thus communicating by an inexplicit telegram the intended action of one of the Provinces of the Dominion of Canada."¹ He informed Kimberly that the Newfoundland government had shown no desire to support the Nova Scotian protest. Indeed, Bennett had submitted his answers to the Governor before sending

¹

Ibid., Hill to Kimberly, March 18, 1871, pp. 69-71.

them to Halifax. Kimberly wrote back to Hill approving of the replies which Bennett had given to Vail's request.¹ But his real attitude towards Bennett was shown in a minute paper he wrote for circulation within the Colonial Office:

We must be careful not to approve by a side wind Mr. Bennett's Anti-Confederation policy. I would answer that I think Colonel Hill was quite right in approving Mr. Bennett's determination not to interfere in the matter and that I observe with pleasure the good feelings which Bennett manifests towards the Imperial Government.²

In France, meantime, the situation was daily becoming more serious. The superior forces of Prussia had quickly defeated the French armies, and the emperor Napoleon III had surrendered on September 2, 1870. The Third Republic had had an inauspicious beginning two days later. The last French army had surrendered at Metz in October, 1870, and Paris had finally capitulated on January 28, 1871. Adding to this humiliating defeat was the constant threat from within posed by the "Paris Commune." Elections had been held on February 8, 1871, for a new National Assembly, and Adolphe Thiers had emerged as the leader of a new French government. His first responsibility was the very unpleasant task of concluding peace with Prussia. Defeat and internal disorder had weakened

¹ Ibid., Kimberly to Hill, April 22, 1871, pp. 72-73.

² Ibid., Minute of Kimberly, April 18, 1871, p. 41.

France diplomatically, but the British refrained from taking advantage of the situation to disturb French rights in Newfoundland.

The first direct mention of the French Shore issue in 1871 came from Governor Hill. In a detailed letter to Kimberly in April he offered proposals that he felt might profitably be made to the French.¹ He began by reminding Kimberly of the economic importance of the issue to the people of Newfoundland. While the produce of the fisheries had hardly increased in half a century, the population of the colony had doubled. "There must be therefore something fundamentally wrong in our fishery affairs," he wrote, "when we observe such a result." He attributed the trouble to the effect of "French Treaties French Bounties and French Policy" on the commerce of the colony. He cited figures from the years 1792 and 1793 to show that no private enterprise could compete with the French state-supported bounty system. Before 1792, he wrote, twenty thousand French fishermen had been lured to the Newfoundland fishery by the attractive bounty payments. When the bounties were discontinued in 1792, only slightly more than three thousand fishermen came out from France. He admitted that "a state of warfare" might have contributed to this decline but he reminded Kimberly that

¹
Ibid., Hill to Kimberly, April 8, 1871, Confidential, pp. 136-146.

England had also been at war and yet "her progress in the fisheries was remarkable." He went on to refer to the decline of the British fisheries after the bounties were resumed in 1814.

The bounty system was detrimental to the Newfoundland fishery but was it "commercially beneficial" to France. The Governor did not think so. He reminded Kimberly that in May, 1851, the French Minister of Marine, when asking the Assembly to continue the bounties, had indicated that they were "solely for naval purposes." This fact together with the financial difficulties being experienced in France because of the Franco-Prussian War led the Governor to conclude that it would be an excellent time to try to induce the French government to abandon the bounty system:

The inutility of bounties for every purpose being thus apparent, policy would seem to dictate an abandonment of the system, but in addition to their inutility the financial necessities of France at the present moment supply another reason for such abandonment.

It would be no great sacrifice for France to abandon a system which experience has proved to be impolitic and to discontinue bounties which her present circumstances forbid her to maintain. I would therefore respectfully suggest to your Lordship the expediency of endeavouring to open the markets of Catholic France to British fish on equal terms with French fish.

Such a proposal, he wrote, would show the "liberality of England" in supplying "her gallant French neighbours with food for existing wants, and with cornseed for their future harvests." It would be advantageous to Great Britain and Newfoundland:

to Britain because it would make her a good neighbour, to Newfoundland because it would be "a vast benefit."

Hill also suggested in his letter that it might be an opportune moment, presumably because they were being defeated, to try to persuade the French to abandon completely their rights in Newfoundland. In return for such a concession the French might be offered the right "to fish upon all parts of the coast of Newfoundland in common with British Subjects, and to dry their fish upon any vacant places and of selling it in all British ports." Such an agreement, he felt, would establish the very desirable goal of a perfect free trade in the fishery. In conclusion he informed Kimberly that he had discussed all these proposals with his "Responsible Advisers," and they had approved of what he had written.

The British government, however, was unwilling to do anything to prejudice its relations with France in her hour of great difficulty.¹ "I am entirely unable to agree with you," Kimberly replied, "in considering the present an opportune moment for reviving negotiations with France." As for the proposal to establish free trade in the fishery, he referred Hill to an earlier despatch from Musgrave, which had indicated that such a proposal might not be supported in Newfoundland. The correspondence with Hill was sent to the Foreign Office

¹
Ibid., Kimberly to Hill, May 31, 1871, Confidential, pp. 151-152.

but any action on it was left to Granville's discretion.¹ When the correspondence was sent on to Lyons in Paris later in the year, he completely rejected the Governor's arguments.² He reported to Granville that it was difficult to get the attention of the French government for anything that was "not immediately urgent." Even if the French could be persuaded to renew negotiations, the discussions would be very slow, and any attempt to speed them up would only produce dissension. Lyons also noted that French public opinion would be particularly sensitive "to any proposal from a Foreign Power tending, even in appearance only, to be an abandonment of French rights or French possessions abroad." A suggestion to the French government to give up the bounty system would be "a matter of great delicacy" under the best of conditions but it would be unthinkable in existing circumstances.

The next proposal for an approach to the French government surprisingly enough came from Kimberly himself. It was a direct result of the work of the naval officers on the French Shore during the summer of 1871. Governor Hill forwarded copies of Captain Brown's report on the fisheries for 1871 to the Colonial Office on November 9, 1871.³ In

¹ Ibid., Holland to Hammond, May 16, 1871, pp. 150-151.

² C.O. 194/182, Lyons to Granville, September 4, 1871, Confidential, pp. 456-457.

³ Ibid., Hill to Kimberly, November 9, 1871, pp. 145-146. See above, p. 105.

this report Captain Brown discussed the dangerous situation on the French Shore and emphasized the need for a new agreement.¹ In sending the report on to the Foreign Office, Kimberly requested Granville to take advantage of any favourable opportunity to renew the fishery negotiations.² But Granville was still not convinced. His reply merely informed Kimberly "That the time has not yet arrived for reviving pending questions."³

Although the long delay caused by the Franco-Prussian War must have been frustrating, the Newfoundland government refrained from sending any further protests to the Colonial Office. This voluntary quietude ended abruptly during the 1872 session of the Legislature. An address to the Queen concerning the French Shore passed both Houses of the Legislature on April 24, 1872.⁴ Hill forwarded the address to Kimberly in a public despatch dated May 10, 1872.⁵ The

¹ Ibid., pp. 149-184.

² Ibid., Holland to Hammond, December 15, 1871, pp. 147-148.

³ C.O. 194/184, Hammond to Herbert, January 15, 1872, pp. 348-349.

⁴ Journal of the Assembly, 1872, April 24, pp. 173-176. See also, Journal of the Council, 1872, April 24, pp. 102-107.

⁵ C.O. 194/183, Hill to Kimberly, May 10, 1872, pp. 168-169.

address commented upon the various interpretations of the treaties, the problems of the French Shore, and the failure of British policy. The Legislature rejected the status quo on the French Shore because it restricted the rights of British subjects and caused disharmony between British and French. Prominent in the list of complaints were the issues of magisterial appointments and land grants. The legislators believed that there was an urgent need to appoint magistrates on the Treaty Shore and requested that this power be given to the Governor of Newfoundland. A "well-organized judicial system" would not only maintain order among the residents of the shore but would also protect British and French treaty rights. As for the granting of land, the legislators felt that the restrictive British policies denied the colonists the best parts of the island. Altogether, the address contained the most forceful statement yet of the Newfoundland position:

On a review of the whole case it is evident, we humbly submit, that the policy, comparatively recent, pursued by the Imperial Government towards the Colony, in the restrictions so imposed, have placed the large British population on the so-called French shore in a position the most deplorable, and such as is unparalleled in any other civilized country in the world. Life and property are insecure, the vast resources which are known to exist on that portion of the coast are rendered unavailable, and the revenue which should flow into the Colonial Exchequer under the influence of a regularly constituted order of things is lost to the country...We most humbly and earnestly pray your Majesty to cause to be removed the restrictions in reference to the appointment of Magistrates, and also of those affecting our territorial rights, which press so injuriously and inconveniently upon the interests of Your Majesty's subjects in this Colony.

Judging by past behaviour, the Legislature should have received only a courteous acknowledgement from Kimberly. Instead, the petition of the Newfoundlanders this time prompted the Colonial Secretary to take action. Kimberly appended a note to the Colonial Office minute on the address which showed a distinct sympathy towards the colony.¹ "I think the complaints of the colonists well founded," he wrote "and I should be glad to do anything to remove them." But what could be done? Granville had made it quite clear that there was little chance of renewing negotiations for the present. The only other possibility was for the British government to take some unilateral action on the French Shore. This might ruin the policy so carefully followed since the time of Carnarvon but perhaps it had become necessary. How much longer could the demands of the colonists be resisted? Moreover, there were the growing number of reported disputes on the French Shore to consider. Kimberly decided to propose the appointment of resident magistrates on the shore. The appointments would be a concession to the Newfoundlanders and if handled properly need not offend the French. Granville could not object because negotiations would certainly not be considered necessary to allow the appointment of officials in a British territory. Finally, the work of magistrates might prevent the increasing number of disputes on the shore.

¹ Ibid., Minute of Kimberly, June 19, 1872, p. 167.

Henry Holland,¹ the Assistant Under-Secretary in the Colonial Office, wrote to Edmund Hammond,² the Under-Secretary in the Foreign Office, on June 26, 1872, announcing the new plan.³ Kimberly, he wrote, wanted this temporary arrangement made if it was not immediately possible to renew the negotiations with France:

Should however Lord Granville be of opinion that it would be inexpedient at the present time to attempt to negotiate a settlement of the whole question, Lord Kimberly would suggest that the French Government should be informed that with a view to secure peace and good order amongst the numerous settlers on the west coast of the Colony, it has become necessary to authorize the Colonial Government to appoint magistrates for those districts.

It seems to Lord Kimberly that this step might properly be taken without waiting for the conclusion of a fresh convention with France, inasmuch as although the French have by Treaty certain rights along the shore, the territory itself without doubt belongs to Her Majesty, and in self protection the Colonial Government have the strongest claim to be allowed to appoint magistrates for the purpose of keeping order.

He pointed out that the appointment of magistrates would help to prevent disputes between British and French on the Treaty

¹ Holland, Sir Henry Thurston, first Viscount Knutsford (1825-1914). Assistant Under-Secretary of State for the Colonies March, 1870, to August, 1874. (D.N.B., 1912-1921 Supplement, 262-263).

² Hammond, Edmund, Lord Hammond (1802-1890). Permanent Under-Secretary of State for Foreign Affairs, August, 1854, to October, 1873. (D.N.B., VIII, 1124-1125).

³ C.O. 194/183, Holland to Hammond, June 26, 1872, pp. 172-174.

Shore. Moreover, the proposed arrangement would be advantageous to French fishermen because the magistrates would help to enforce their treaty rights.

Granville readily agreed and instructed Lyons to bring the matter to the attention of the French government at some "favourable opportunity."¹ In doing so Lyons was to give assurances that French treaty rights would not be violated and to invite suggestions from the French government as to the jurisdiction and powers to be given the proposed magistrates. Lyons discussed the proposed appointments with the French Minister of Foreign Affairs, M. de Rémusat, on July 19, 1872.² He emphasized in the conversation that the appointments would be in the best interests of both nations. He told Rémusat that they had become "absolutely indispensable" in order to maintain law and order on the French Shore. Rémusat, however, declined to express any opinion until he had been informed of the details of the proposed appointments.³

Governor Hill, who was in London at the time, was asked to furnish "any observations as to the details of the proposed arrangement which it may be useful to communicate to the

¹ C.O. 194/184, Granville to Lyons, July 11, 1872, pp. 379-380.

² Ibid., Lyons to Granville, July 19, 1872, pp. 384-385.

³ Ibid.

French Government."¹ He replied that at least three magistrates should be appointed.² Two of these should be on the west coast of the island, one at St. George's Bay with jurisdiction from Cape Ray to Bay of Islands, the other at Bay of Islands with jurisdiction from there to the northern tip of the island. The third magistrate should reside at Croc (White Bay North) and should have jurisdiction from the northern tip of the island to Cape St. John. The magistrates should receive five hundred pounds per year plus travelling allowances and "possess powers similar to those of any other Magistrate of the Island." On these last two points, however, Hill informed Kimberly that he had not consulted with his government and so declined to give any "decided opinion." He promised to send the exact views of the Newfoundland government on the appointments when he returned to the colony. The information provided by Hill was passed on to Rémusat who promised to give it "his careful consideration."³

The Attorney General of Newfoundland, Joseph Little, approved of the magisterial districts suggested by Hill.⁴ He

¹ Ibid., Herbert to Hill, August 8, 1872, pp. 386-387.

² Ibid., Hill to Herbert, August 8, 1872, pp. 473-477.

³ Ibid., West to Granville, September 20, 1872, p. 389.

⁴ Ibid., Little to Private Secretary, September 14, 1872, pp. 423-427.

also agreed that the powers of the proposed officers should be the same as those possessed by the other magistrates in the colony:

The Jurisdiction to be exercised by the Magistrates will be coequal with that exercised by the other Magistrates throughout the Island no special or extended powers I presume will be given them and in that case they will be confined to adjudicating in all civil cases where the Title to Land is not in dispute and where the amount at issue between the parties does not exceed Five pounds sterling. In all cases of Trespass with like exceptions where the damage does not exceed that amount, and in the preservation of the Peace, and the prosecution and trial of parties accused of petty offences, and the prevention of the sale of spiritous liquors by unlicensed individuals.

He informed the Governor that the proposed appointments would in no way interfere with French rights. On the contrary, he considered "the Establishment of these proposed Constitutional guardians of the peace" to be of great advantage to the French fishermen. His only regret was that the other proposals of the Newfoundland government were not being adopted at the same time.

Premier Bennett visited London for the second time during his administration in the fall of 1872. He was again accompanied by Thomas Talbot. This trip in great contrast to the previous one was marked by a measure of success for Bennett in his dealings with the officials of the Colonial Office. On October 15, 1872, Thomas Glen, member of the Newfoundland Assembly for Ferryland and acting leader of the Newfoundland government, wired Bennett in London as follows:

"it would be desirable to call on Earl Kimberly to ascertain how far the authority of our government on what is called the french shore extends. The appointing magistrates would not be sufficient to carry out our views with respect to mining operations etc."¹ Bennett sent the telegram to Kimberly and asked for an interview.² Kimberly was leaving London and was unable to grant the request but recommended that Bennett see Robert Herbert,³ his new Permanent Under-Secretary.⁴

The planned appointment of magistrates ensured that Bennett's protests would now receive a favourable hearing in the Colonial Office. On October 24, 1872, Holland wrote to Hammond that the question of appointing magistrates "cannot properly be delayed much longer."⁵ He suggested that Granville should have Lyons make another approach to the French government. Two days later a report of the discussions with Bennett in the

¹ Ibid., Glen to Bennett, October 15, 1872, Telegram, p. 457.

² Ibid., Bennett to Kimberly, October 16, 1872, pp. 460-461.

³ Herbert, Sir Robert George Wyndham (1831-1905). Assistant Under-Secretary of State for the Colonies, February, 1870, to May, 1871. Permanent Under-Secretary of State for the Colonies, May, 1871, to February, 1892. (D.N.B., 1901-1911 Supplement, 253-254).

⁴ C.O. 194/183, Herbert to Bennett, October 21, 1872, pp. 427-429.

⁵ Ibid., Holland to Hammond, October 24, 1872, pp. 429-431.

Colonial Office was sent to Granville as further evidence of the need for immediate action.¹

Lyons addressed a new note to Rémusat on November 11, 1872, informing him that the British government intended to proceed with the naming of magistrates.² He hoped that the appointments would "meet with no objection on the part of the Government of France." The seizures by the Diamant, the report of which had just reached London, no doubt contributed to this new sense of urgency.³ But Rémusat merely informed Lyons in reply that the matter had been referred to the Ministry of Marine.⁴ It was not until January, 1873, that he sent back a definite answer.⁵ In his reply he maintained the French claim to an exclusive right of fishing on the Treaty Shore, defended the seizures by the Diamant, and refused to sanction the appointment of magistrates. He informed Lyons that the seizures by the Diamant had been made only after

¹ C.O. 194/184, Holland to Hammond, October 26, 1872, pp. 461-463.

² Ibid., Lyons to Rémusat, November 11, 1872, pp. 398-401.

³ See above, p. 120.

⁴ C.O. 194/184, Rémusat to Lyons, November 19, 1872, pp. 412-413.

⁵ C.O. 194/188, Rémusat to Lyons, January 24, 1873, pp. 11-17.

repeated warnings had failed and had been intended to protect the interests of French fishermen. As for the appointment of magistrates, the French government, he wrote, could not approve the adoption of measures which would encourage the growth of settlements on the French Shore.

Coming as it did so soon after the Diamant affair, Rémusat's antagonistic reply must have seemed a prelude to a deterioration in Anglo-French relations on the coast of Newfoundland. In any case it did not bode well for the fixed objective of British policy, the negotiation of a new fisheries agreement. But Kimberly was not ready to abandon easily an objective of such long standing, and as it turned out, the events of the next few months were to reward his persistence. In February, 1873, Kimberly requested the opinion of the Law Officers of the Crown as to the legality of appointing magistrates on the French Shore.¹ Their reply maintained that such appointments would not contravene any treaty between Great Britain and France. In May, 1873, Adolphe Thiers was replaced as head of the French government by the royalist Marshall MacMahon. It was a fortunate change from the aspect of fishery negotiations for it removed the hostile Rémusat from the French ministry. On June 2, 1873, Lyons passed a note to the new Minister of Foreign Affairs, the Duc de Broglie, informing him of the Law Officers opinion as to the legality

¹ Ibid., Granville to Lyons, March 25, 1873, pp. 44-48.

of appointing magistrates.¹ The note also renewed the invitation of the British government, first made in 1868, to begin a discussion of the whole question of fishing rights in Newfoundland.² The crisis at the beginning of the 1873 fishing season climaxed by the meeting of Lyons, Broglie, and Duperre on June 29, emphasized the seriousness of the differences between the two nations.³ On July 2, 1873, Lyons again discussed with Broglie the situation on the French Shore.⁴ He reminded the minister of the trouble on the coast of Newfoundland the previous year and of the uncertainty that had just been resolved. He repeated the offer of the British government to resume negotiations. Broglie replied that "his knowledge of the subject was too imperfect for him to be able to express an opinion" but he promised to give attention to the matter without delay.⁵ Only one week later he informed Lyons that the French government was willing to resume negotiations and suggested that commissioners be appointed by

¹ Ibid., Lyons to Granville, June 2, 1873, p. 114.

² See above, pp. 91-93.

³ See above, pp. 124-128.

⁴ C.O. 194/188, Lyons to Granville, July 2, 1873, pp. 133-136.

⁵ Ibid.

both governments for the purpose.¹ The British now abandoned temporarily the idea of appointing magistrates. Granville and Kimberly both felt that such a move might prejudice the discussions with France.² Their attention was now directed solely to ensuring the success of the long awaited negotiations.

Kimberly communicated the good news to Governor Hill in a despatch dated August 6, 1873:

Her Majesty's Government cannot doubt that this announcement will be received with satisfaction by your Ministers and the Colonists generally, as representations have been repeatedly made to them by the Newfoundland Government and Legislature since the former negotiations were broken off.³

The British government, he wrote, was aware that conditions on the French Shore and in the colony generally made a new agreement with France imperative. The impediments to the development of the island, the rapid increase in population on the Treaty Shore, and the danger of collisions between British and French, demanded such an arrangement. The willingness of the French government to negotiate held out the prospect of removing all these difficulties. He informed

¹ Ibid., Broglie to Lyons, July 9, 1873, pp. 157-158.

² Ibid., Holland to Hammond, September 11, 1873, pp. 231-232.

³ Despatches from the C.O., 1873, Kimberly to Hill, August 6, 1873.

the Governor that the report of the joint committee of both Houses of the Newfoundland Legislature in 1867 would form "a reasonable basis" for the proposed negotiations.¹ He requested, however, that this be brought to the attention of the Newfoundland government to determine whether they had "any objection to the course proposed."

The reply of the Bennett Government was contained in a set of resolutions adopted by the Executive Council on September 1, 1873.² The tone of these resolutions differed greatly from the cautious conciliatory policy of the Imperial government. F. F. Thompson has written that the resolutions "bordered on the impertinent."³ In his letter accompanying the resolutions Governor Hill wrote as follows:

My ministers after mature and careful consideration appear to think that the views contained in the enclosed Minute of Council are more in accordance with the wishes of the people and more likely if adopted to give satisfaction throughout the Colony than those forwarded to Downing Street by Governor Musgrave.⁴

The Bennett Government totally rejected the French claim to an exclusive right of fishing on the Treaty Shore and accused

¹ See above, pp. 87-88.

² C.O. 194/186, pp. 166-176. See also Appendix F below.

³ Thompson, p. 131.

⁴ C.O. 194/186, Hill to Kimberly, September 4, 1873, pp. 164-166.

the French of being responsible for all the trouble that had developed. The British government was requested to instruct its delegates in any future negotiations to concede to the French only what they were entitled to under existing treaties, to recognize no French right of fishing other than a concurrent right, to limit the discussion to the extent of beach or strand needed by the French for "landing and drying their fish," and to refuse the French the right to purchase bait on the south coast until they had abandoned "their untenable pretensions to an exclusive Fishery." This reply was clearly in opposition to the wishes of the Colonial Secretary.

Kimberly wrote to Hill in October that the British government not only regretted the content but also the "tone and language" of the resolutions.¹ He chided the Newfoundland government for having adopted such an attitude. When Hill showed Kimberly's despatch to Bennett, the Premier agreed to "withdraw the strong expressions" contained in the Minute of Council.² He informed the Governor, however, that this could not be done until after the general election on November 8, since most of the members of the Executive Council were out campaigning.

A new impasse seemed to have been reached. But changes in both France and Newfoundland during November, 1873, greatly

¹ Ibid., Kimberly to Hill, October 6, 1873, pp. 177-178.

² Ibid., Hill to Kimberly, October 20, 1873, Confidential. pp. 265-269.

improved the chances of success in the approaching negotiations. The French Assembly in November, 1873, made MacMahon "President of the Republic" and seemed at last to have settled down to a stable and permanent regime. In Newfoundland the Government of the difficult Mr. Bennett was severely shaken by the general elections. Governor Hill jubilantly reported to Kimberly in December, 1873, that the election results had given Carter a good chance of forming a government.¹ This news was welcomed in the Colonial Office, and when Bennett finally resigned on January 30, 1874, there was little regret. To the British officials his government ended as it had begun - in open conflict with British policy. The return to power in St. John's of the cooperative Carter, it was felt, would quickly remove the obstacles which Bennett had placed in the way of the coming negotiations.

Between 1870 and 1874 the British government in response to the persistent demands from Newfoundland for access to the French Shore continued to urge the French to renew the fishery negotiations. This effort was intensified after the Diamant affair in 1872 and the uncertainty at the start of the 1873 fishing season. The French at first rejected the British suggestion but finally agreed after a change of government in May, 1873. The proposed negotiations were then jeopardized

¹
Ibid., Hill to Kimberly, December 13, 1873, Confidential, pp. 391-394.

by the attitude adopted by the Bennett Government. However, the strengthening of the French government in November, 1873, and the return to power of Carter in January, 1874, enhanced the prospects for a new agreement.

Chapter V

THE MILLER-BOISSOUDY NEGOTIATIONS

The first phase of the British plan for settling the French Shore disputes had been completed during the Bennett Administration when the French government had finally agreed to reopen negotiations. The completion of the second phase, to attain success in these negotiations by concluding a new fisheries agreement, was the object of British policy during the second Carter Government. The return to power of Carter in January, 1874, quickly led to the removal of the obstacles which the Bennett Government had placed in the way of reopening negotiations. Governor Hill broached the subject to the Newfoundland Legislature at the start of the 1874 session:

I regret the continued existence of impediments to the settlement of that part of the coast of this Island where the French enjoy rights of fishing, but am not without hope that means may be adopted by the Legislature to place our relations in this important matter on a satisfactory footing. With a view to this result my Ministers will be prepared to submit for your consideration propositions which have been lately received from the Imperial Government.¹

Hill wrote to Kimberly on February 18, 1874, that the propositions he had referred to in his speech were those contained in the despatch of August 6, 1873.² He reported that Carter had, on assuming office, been gratified to learn that the British government approved of the 1867 joint committee report

¹ Journal of the Assembly, 1874, February 5, Speech by Governor Hill opening the Legislature, pp. 7-9.

² C.O. 807/73, Hill to Kimberly, February 18, 1874, No. 84. See above, pp. 162-163.

as a reasonable basis for negotiations. But Carter wished to refer Kimberly's despatch of August 6, 1873, to the Legislature "before giving a decided reply." In a confidential despatch dated the same day, Hill informed the Colonial Secretary that the new Newfoundland government did not approve "of the tone and language" of the resolutions which had been adopted the previous year by the Bennett Government.¹ "Mr. Carter and his associates," the Governor wrote, "are well aware that the settlement of grave questions such as those now under discussion can only be obtained by mutual forbearance and concession, and that in this spirit my Executive will approach the adjustment of the existing difficulties between the French and the people of Newfoundland." Carnarvon, who had returned to the Colonial Office in Disraeli's second Ministry in February, 1874, wrote to Hill confidentially on March 24, 1874, expressing his satisfaction at the attitude of the Newfoundland government.² He informed the Governor that the British government would take no action on the proposed negotiations pending the consideration of the matter by the Newfoundland Legislature.

The resolutions adopted by the Assembly on April 23, 1874, fulfilled Governor Hill's best expectations about his

¹ Ibid., Hill to Kimberly, February 18, 1874, Confidential, No. 85.

² Ibid., Carnarvon to Hill, March 24, 1874, Confidential, No. 89.

new government.¹ The report of the joint committee of 1867 was again accepted by the Assembly with only slight amendments as a suitable basis for negotiations with France. The only addition to the report was a statement that the French claim to an exclusive right of fishing was not warranted by the treaties. The term "French Shore" was avoided in the resolutions and the expression "that part of the coast of Newfoundland on which the French have a temporary right of fishery" substituted. This precaution had been recommended earlier in the year by Lyons.² Altogether, the resolutions were conciliatory in tone and perfectly acceptable to the British government. Carnarvon requested the Foreign Secretary, Lord Derby,³ on June 4, 1874, to take the necessary steps to reopen the negotiations.⁴

The instructions which Derby sent to Lyons in July, 1874, set forth the basis on which the British government was prepared to negotiate:

The question is not so much to ascertain who has been

¹ Journal of the Assembly, 1874, April 23, Resolutions on French Shore Question, pp. 164-166.

² C.O. 807/73, Lyons to Granville, September 2, 1873, Confidential, No. 40.

³ See above, p. 89.

⁴ C.O. 807/73, Holland to F.O., June 4, 1874, No. 112.

right or wrong in the past interpretation of the existing Treaties, as to supplement those Treaties by such an international agreement as may render future differences improbable, or at least confine them within the narrowest possible limits, without alienating or conceding the rights of either Government under existing Treaties.¹

Only on one point, the method of preventing British fishermen from interrupting the French, did the instructions not follow the conditions laid down in the resolutions of the Newfoundland Legislature. Lyons was informed that the British government would be willing to allow the French, in the first instance, to be the judges of whether their fishery was being interrupted and to require British fishermen to stop fishing. Once the British fishermen had stopped, however, the dispute would have to be dealt with by the proposed joint naval commission, or, in case of their failure to agree, by the two governments.

Lyons discussed the reopening of negotiations with the French Minister of Foreign Affairs, the Duc Decazes, on July 28, 1874.² Decazes proposed as a first step a meeting between himself, Lyons, and the Minister of Marine and Colonies, Admiral de Montaignac. Montaignac was the same officer who had served with Captain Dunlop on the Anglo-French fishery

¹
Ibid., Draft instructions to Lord Lyons, enclosed in Holland to F.O., June 29, 1874, No. 124.

²
Ibid., Lyons to Derby, July 28, 1874, No. 128.

commission of 1860.¹ Lyons had discussed the fishery question with him in May, 1874, soon after his appointment to the French Cabinet.² Montaignac had then stated "that it was desirable to settle all the questions by a Convention suited to the existing state of things and fair alike to all parties." He had promised to do everything in his power to forward the negotiations.

The meeting between Lyons, Decazes, and Montaignac took place at the Foreign Office in Paris on August 12, 1874.³ Decazes suggested that the best way to open the negotiations would be for the two governments to appoint commissioners. The work of this commission would be to determine a basis for a new agreement. Decazes stated that personal communication between commissioners who were well acquainted with the facts of the case would be more likely to lead to a settlement than written communications between the two governments. Both French Ministers suggested that the commission should meet in Paris.

Lyons was unsure of the attitude he should take to these proposals and wrote to Derby on August 13, 1874, for

¹ See above, p. 42.

² G.O. 807/73, Lyons to Derby, May 16, 1874, No. 111.

³ Ibid., Lyons to Derby, August 13, 1874, No. 132.

advice.¹ His letter provides an instructive summary of the considerations facing the British government at the beginning of the negotiations. The ambassador believed that the condition of the French government would have to be taken into account in deciding on a suitable course of action. He reminded Derby that although Montaignac and his colleagues appeared willing to negotiate reasonably, they had to deal with a National Assembly in which their position was very insecure. The political situation in France might make the French government "somewhat timid" about the terms of any arrangement which it might have to present to the Assembly. Thus, if the basis for negotiation prepared by the British government was "crudely presented," it might be completely rejected by the French government. But the work of appointed commissioners such as Decazes had suggested might result in the essential points of the British position being accepted by the French and at the same time being presented in a form acceptable to French public opinion. The difficulty with appointing commissioners was that the British position could not be "materially altered," since it was based on resolutions of the Newfoundland Legislature. Under this circumstance, Lyons felt that it might not be worthwhile to name commissioners without first ascertaining if the French would accept the

¹ Ibid., Lyons to Derby, August 13, 1874, Confidential, No. 132.

essential points maintained by the British. But this in turn would raise the very issue which the appointment of commissioners sought to avoid. It was a delicate problem. On one side it was necessary to take into account the sensibilities of a shaky French government, and on the other the obstacles presented by the Labouchere despatch.

Lyons recommended to Derby that whatever was decided it would be necessary to proceed cautiously "in order to avoid rendering the maintenance of a modus vivendi in the absence of a distinct settlement more difficult than it is at present." To begin the negotiations and have them end in disagreement might produce serious results:

To bring the differences of opinion between the two countries respecting the Newfoundland fisheries to a distinct issue, and to show that agreement between them is impossible, might have very serious consequences, and even a proposal to refer the matter to arbitration might be inconvenient: for in a matter so complicated and so unprecedented it would be impossible to feel sure that the Arbiter would come to a decision which would be acquiesced in by the people of Newfoundland.

The decision was made by Carnarvon. He agreed to accept the proposal of the French Government to name commissioners provided that if they could not agree on an acceptable basis for an arrangement, "it should still be open to Her Majesty's Government to make such fresh proposals as may seem desirable."¹ The commissioner named for the French government was Captain Baucheron de

¹

Ibid., Herbert to F.O., August 21, 1874, No. 133.

Boissoudy, who had been on the Newfoundland station during the 1873 fishing season.¹ His British counterpart was Captain David Miller, who had also seen duty in Newfoundland the previous year.² Miller was to be assisted by a secretary, Mr. E. B. Pennell of the Colonial Office staff.³ The instructions sent to Miller by Carnarvon were essentially the same as had been sent to Lyons earlier in the year.⁴ The instruction concerning the method to be used in preventing British fishermen from interrupting the French fishery was now withdrawn. Carnarvon felt that to leave it among the British proposals would be "to prejudge in favour of the French one of the most important practical questions which it is desired to settle through the assistance of the Commission."⁵

Captain Miller replied to his letter of appointment on November 12, 1874.⁶ He thought that many of the disputes with the French could have been prevented had there been resident

¹ C.O. 807/80, Decazes to Lytton, September 18, 1874, No. 1.

² Ibid., Herbert to Miller, November 7, 1874, No. 10.

³ Ibid., Herbert to Pennell, November 9, 1874, No. 14.

⁴ Ibid., Herbert to Miller, November 7, 1874, No. 10.

⁵ Ibid., Herbert to F.O., October 14, 1874, No. 3.

⁶ Ibid., Miller to C.O., November 12, 1874, No. 19.

magistrates on the Treaty Shore. The failure of Great Britain to appoint such officials, he wrote, had allowed the French to enforce their interpretation of the treaties. In any new agreement "it should be distinctly stated that, as the whole coast of Newfoundland is just as much British territory as any part of Great Britain, enforcement of the law must be left to British authorities." Miller felt that the fairest solution to the problem was that proposed by Governor Hill in 1871 to allow the French to fish in all the waters of Newfoundland on equal terms with British subjects in return for giving up their special privileges and their bounty system.¹ If the French could not be induced to accept reasonable terms, he felt they could be coerced into agreement "by prohibiting the sale of bait and putting sufficient revenue vessels or ships of war on the coast to see the law obeyed." Of course these were only the personal views of Miller. While acting as British commissioner, he would have to follow strictly the instructions he had received from Carnarvon.

The first meeting of the commission took place in Paris on November 26, 1874.² Boissoudy was accompanied by his secretary, a French naval officer named M. Humann.³ During

¹ See above, p. 149.

² C.O. 807/80, Miller to Lyons, December 10, 1874, No. 34.

³ Ibid.

the meeting Miller gave the French commissioner a memorandum, based on his instructions, outlining the British position. The statement concluded with a list of points which the British government felt would form an equitable basis for negotiation:

The following would then, in the opinion of Her Majesty's Government, form an equitable basis for negotiation:-

1. The establishment of a Joint Naval Commission which shall take cognizance of such matters only as relate to the fisheries, and, in case of disagreement, reference to be made to the respective Governments of Great Britain and France. All other questions to be dealt with by the two Governments or by special Commissioners appointed in that behalf by the said Governments.

2. The British Government will not oppose the practices or usages at the present time followed by the French fishermen on all matters relating to --

1st. The construction, the organization, and the maintenance of the French establishments;

2nd. The usage of leaving on British territory, during the winter and under the care of British subjects, boats, salt, and fishing gear.

3. That the existing British Settlements in St. George's Bay, Ced Roy, and Bay of Islands, Bonne Bay and White Bay, shall remain undisturbed, and that there shall be no interruption by the French to fishing by the British in those bays, nor interference with their buildings and enclosures there, nor with any erections or buildings on any part of the coast where the French have a right of fishery under existing Treaties or declarations, if such erections or buildings do not actually interfere with the fishery privileges of the French, as shall be determined by the Commissioners, nor shall British subjects be molested in fishing on any part where they do not actually interrupt the French by their competition.

4. That no building or enclosure which shall have been erected for five years shall be removed as interfering with the French fishing privileges without compensation, to be determined on by the Commissioners; but no compensation

shall be payable for any such building or enclosure hereafter erected without the consent of the Commissioners.

5. That the Commissioners shall determine the limit or boundary line to which the French may prosecute their fishery, the British having the exclusive right of salmon and all other fishing in rivers.

6. That the breadth of strand of which the French should have the temporary use for fishing purposes shall be defined, with the view of removing objections to grants of lands for all purposes beyond the boundary so to be defined, and of reserving to the Colonial Government within the same limits the right for mining and other purposes, to erect on such strand works of a military or other public character, and to authorize the erection of wharves and buildings necessary for mining, trading, and other purposes, apart from the fishery, in places selected with the permission of the Commissioners.

7. The French shall have the right to purchase bait, both herring and caplin, on the southern coast, at such times as British subjects may lawfully take the same.¹

This statement followed exactly the provisions of the report of the joint committee of 1867, and the resolutions which had been adopted in April, 1874, by the Newfoundland Legislature.²

In reply Boissoudy passed a memorandum to Miller on December 15, 1874.³ His statement was based on the French

¹ Ibid., Memorandum placed in the hands of Captain de Boissoudy (the French Commissioner), by Captain Miller, at a meeting held in Paris, November 26, 1874, being extracts from Captain Miller's Instructions, No. 34.

² See above pp. 169-170.

³ C.O. 807/80, Memorandum by Captain de Boissoudy, December 15, 1874, No. 47.

claim to an exclusive right of fishing on the Treaty Shore. Arguing from this premise, he objected to any settlement which should not have for its fundamental principle a separation of the interests of the two nations in Newfoundland. Since interruption of the French fishery would inevitably result, he felt, from any contact between the rival fishermen, the areas where British and French could fish should be clearly separated. "La présence seule," he wrote, "des pêcheurs Anglais à la côte de Terre-Neuve, désignée par les Traités, constitue une gêne pour les pêcheurs Français." As for the concessions offered to the French by Miller, Boissoudy rejected them as not being of great importance. The bait trade, he wrote, was "une condition même d'existence pour les habitants de l'île." He referred to the second concession offered, the maintenance of French fishing customs, as "usages consacrés de temps immémorial et certes bien antérieurs aux envahissements dont il s'agit aujourd'hui d'arrêter le cours." Having thus rejected the basis for negotiations suggested by Miller, Boissoudy proposed instead the Convention of 1857.

Miller returned to London in February, 1875, to meet Carter, who was then visiting the British capital.¹ Although no detailed account of their discussions is available, there

¹ Ibid., Miller to C.O., February 6, 1875, No. 58.

is evidence that Carter strongly rejected Boissoudy's proposal.¹ The Premier made it quite clear that the colony would never accept the Convention of 1857, especially its primary provision, the cession to the French of exclusive rights on part of the Newfoundland coast.² As this was exactly what Boissoudy hoped to obtain from the British, the negotiations seemed to have reached a stalemate.

But the British government was not prepared to abandon the project so easily. The warning given by Lyons, that to break off the negotiations might have disastrous consequences, was well remembered in London. The ambassador reaffirmed this opinion in a letter to Derby on March 24, 1875.³ "I confess," he wrote, "that so long as any hope remains of bringing about an amicable and tolerably satisfactory agreement with the French Government, I am very unwilling to run any risk of breaking off the existing negotiation." He again pointed out that the peculiar circumstances of the case made settlement through negotiation imperative. Arbitration could not be used because Great Britain, having to consider colonial reaction, could not promise to abide by the arbitrator's decision. Arbitration could place the British government in

¹ Ibid., Herbert to F.O., March 11, 1875, No. 64.

² Ibid.

³ Ibid., Lyons to Derby, March 24, 1875, No. 74.

the embarrassing position of having to enforce the decision on a hostile colony. Moreover, the fishery question was not one which could "be left in abeyance" indefinitely without a risk of collisions between the fishermen or the naval forces of the two nations. Lyons felt that the commissioners might yet reach a settlement:

As regards the basis of negotiation, the specific object with which the Commission now in existence has been established, is to settle a new basis. The French have rejected that which we proposed; we cannot agree to that proposed by them; but it does not necessarily follow that no basis acceptable to both can be discovered: and the natural course would seem to be that the Commissioners should meet again, and make a fresh effort to come to an understanding.

Carter, while in London, provided another reason for not ending the negotiations. He reported to Herbert, the Permanent Under-Secretary in the Colonial Office, in a letter dated April 21, 1875, that the Newfoundland Legislature had only reluctantly passed the resolutions on the French Shore Question in 1874.¹ The Premier felt that if the current negotiations failed, it would be extremely difficult if not impossible to get the Legislature to agree again to any such proposals. On all accounts then, there was every reason for the British government to try to continue the negotiations.

¹
Ibid., Carter to Herbert, April 21, 1875, No. 81.

Miller was sent back to Paris and met Boissoudy on June 21, 1875.¹ After informing Boissoudy that the Convention of 1857 was unacceptable as a basis for negotiation, he offered two new alternative settlements.² The first was the one originally proposed by Governor Hill that the French should be admitted to all the fisheries of Newfoundland on equal terms with British subjects in return for relinquishing their special privileges and their bounty system. The second was that the French should part with their treaty rights in Newfoundland by purchase. Boissoudy rejected both these offers.³ He again stated that in any settlement the French would require "a certain part of the island entirely under French laws."⁴

At the next meeting on June 25, 1875, Boissoudy asserted that the appointment of magistrates on the Treaty Shore was an infringement of French rights and he maintained the right of the French to police the waters in which they had fishing

¹ C.O. 807/81, Summary of the Proceedings which took place at a Meeting between Captain Miller, R.N., and Captain de Boissoudy in Paris, on the 21st of June, 1875, relating to the Newfoundland Fisheries, No. 50.

² Ibid.

³ Ibid.

⁴ Ibid.

rights.¹ The attitude adopted by Boissoudy made a complete deadlock appear imminent. But an almost chance remark by Captain Miller revived the discussion. Miller later described this in his report to Carnarvon on the meeting:

I observed, however, that so far as the British were concerned the Government were sincerely desirous of according to the French their Treaty rights.

At this remark Captain de Boissoudy appeared to catch. He said that what the French feared for was the future of their fisheries; that the one idea of the fishermen of Newfoundland was to get rid of them altogether. But he said that if the British Government would be prepared to give them a fresh declaration to the effect that it was their desire to assure the French in the future the possession of their fishing rights as secured by Treaty, and to define clearly in that declaration the rights of both parties, he doubted not that the matter might be settled.²

Miller replied that with such a declaration and the establishment of a police force on which the French could perhaps be represented, it might be possible to settle the dispute. He promised to consult the British government to determine whether they would be willing to give the necessary declaration.³

Having thus found a basis to work from, the commissioners discussed individual points of difference at their next meeting on July 3, 1875.⁴ On the question of defining the strand or

¹ Ibid., Miller to C.O., June 25, 1875, No. 54.

² Ibid.

³ Ibid.

⁴ Ibid., Miller to C.O., July 3, 1875, No. 63.

seashore for French use, Miller stated that one quarter of a mile from high water mark would be a sufficient distance. He had decided on this distance, he said, by observing the French fishing establishments on the Newfoundland coast during the summer of 1873. He proposed to make any French establishments which had been operating beyond the quarter mile limit within the previous seven years an exception to the rule. Boissoudy rejected this distance as being too narrow. He urged instead that the limit defined in the Convention of 1857 be adopted.¹ The second question discussed was the right of the British government to erect "wharves or other buildings for public purposes on the strand." Boissoudy denied any such right claiming they would be "fixed establishments" and therefore contrary to the terms of the treaties. Moreover, by tending to increase the population of the coast, they would constitute an interruption of the French fishery. The commissioners next considered a suitable method of preventing any interruption to the French fishery. Miller stated that a distance of one to two miles between the fishermen of the two nations would be sufficient. Boissoudy agreed that this arrangement would be acceptable on the west coast. He said that if it were adopted, he would withdraw his objection to the working of mines and the erection of public works in the area. On the north and north-east coasts, however, he still insisted that the French be

given an exclusive right to the fishery unconditionally. Miller then suggested that in return for any concessions made by the French they should be allowed to leave their fishing gear behind in the winter and "should be allowed to build comfortable houses for their fishermen and storehouses for their property." Boissoudy asked that in addition French gardiens should be allowed to stay in the island during the winter. The final issue discussed by the commissioners at the July 3 meeting was that of the salmon fisheries. Miller proposed and Boissoudy agreed, that for conservation purposes, except for rod and line fishermen, salmon fishing in the rivers along the Treaty Shore should be forbidden. After the meeting Miller returned to London for further consultation.¹

On September 27, 1875, Carnarvon sent Governor Hill three lengthy secret despatches on the fishery question. The first reviewed the progress of the negotiations and invited the attention of the Newfoundland government to the proposals of the commissioners.² Special consideration was requested to the question of giving the French exclusive privileges on the north and north-east coasts.

The second despatch contained "comments on what has passed from the point of view which Her Majesty's Government

¹ C.O. 807/81, Miller to C.O., July 18, 1875, No. 71.

² Secret and Confidential Despatches from C.O., 1838-76, Carnarvon to Hill, September 27, 1875, No. 1, Secret.

is disposed to adopt of this difficult question."¹ In this despatch Carnarvon wrote that the cession of the exclusive rights asked for by the French Commissioner would be a small sacrifice to make if it would enable the other points in dispute to be settled. "Such a settlement," he wrote, "would probably well repay this concession, if in no other way, by the development of the industrial and mineral resources of the Country which would speedily follow, and which are now in a great measure wasted by the anomalous conditions of the West Coast." He then suggested, perhaps as a palliative to the suspicious Newfoundlanders, that the concession of exclusive rights might at first be temporary and might be modified as experience showed necessary:

I think it may not be otherwise than prudent to accompany this proposal with the additional provision that, if adopted, it should be temporary in its character. If for a limited period, which would be matter for agreement, the experiment could be tried, and the exclusive right given to the French fishermen, whilst for the same time free play were given to the industries which are now held back in other parts of the Colony, it would be clearly seen, without any prejudice to the claims of either party, how far the public interests of Newfoundland were promoted by such an arrangement.

On the definition of the French strand, Carnarvon wrote that an extension of the quarter mile suggested by Miller would not present any disadvantages. On the method of preventing

¹

Ibid., Carnarvon to Hill, September 27, 1875, No. 2,
Secret.

interruption to the French fishery, he wrote that the imposition of a two mile limit between French and British fishermen would probably end all dispute. Where the French only fished occasionally, the British would have access to the fishery when the French were not present. He was prepared to allow French gardiens to remain in Newfoundland during the winter provided that their number was limited. He "strongly" recommended to the Newfoundland government Miller's proposal concerning the salmon fishery. Finally, he wrote that the British government denied the claim made by Boissoudy that the French had a right to exercise jurisdiction in the waters along the Treaty Shore:

This is a claim which Her Majesty's Government has never recognized and to which they can never consent. Whatever concessions on minor points may be entertained and made by either party in reference to present negotiations it is hardly necessary for me to say that any such proposal - be the equivalent what it may - is wholly inadmissible, and that Her Majesty's Government have not the slightest intention of surrendering the jurisdiction of the Crown over any part of the Island of Newfoundland and its Dependencies, or the British waters adjacent thereto.

The third despatch of September 27, 1875, concerned the appointment of magistrates.¹ During the 1875 session the Assembly had again petitioned Governor Hill to appoint officials on the French Shore:

¹ Ibid., Carnarvon to Hill, September 27, 1875, No. 3,
Secret.

The House of Assembly, having had under consideration the desirability of appointing a Magistrate and Revenue Officer on that part of the coast of this Island where the French are permitted to fish, respectfully request that such Officer may be appointed, and this House will make provision for the necessary expenditure.¹

A minute of the Executive Council forwarded to Carnarvon by Hill on May 3, 1875, summarizing the reasons why the magistrates were needed, had supported the request of the Assembly.²

Carnarvon now agreed that the magistrates were urgently needed.³ He also affirmed the right of the British government to make such appointments. But from an Imperial point of view it was still necessary to take into account the sensibilities of the French government. He informed Hill that he would gladly accede to the request of the Newfoundland government "if it were not necessary to give due consideration to the views of a friendly Power." He reminded the Governor that the French had in the past objected to the appointments. The best procedure in naming magistrates, he wrote, would be to notify the French government through the joint commission sitting in Paris. If the Newfoundland government agreed to the proposals contained in his second despatch, it would greatly facilitate the acceptance of the appointments by the French government.

¹ Journal of the Assembly, 1875, April 12, p. 179.

² Minutes of the Executive Council, 1874-1883, May 1, 1875.

³ Secret and Confidential Despatches from C.O., 1838-76, Carnarvon to Hill, September 27, 1875, No. 3, Secret.

By skillfully making the appointment of magistrates appear conditional on the success of the negotiations, Carnarvon hoped to influence the decision of the Newfoundland government on the concessions to be granted the French.

If this was the case, the answer of the Carter Government sent in a minute of Council dated November 16, 1875, must have disappointed the Colonial Secretary.¹ The Council completely rejected the main proposal which had been made by the French commissioner:

The Council are fully conscious of the difficulties that surround this question and of the anxiety which it must cause Her Majesty's Government whilst it remains unsettled; but with every desire to assist in relieving Her Majesty's Government from the embarrassing position thus occasioned, they feel unable - at least without further reference to the Legislature - to accede to the proposals of the French, however persistently urged, which they believe to be a violation of the rights guaranteed to British subjects by the Treaties, and outside any claim ever recognized by Her Majesty's Government in this Colony.

To allow the French exclusive rights on the north and north-east coasts would be to accept one of the most objectionable parts of the proposed Convention of 1857. It would entail, the Council stated, the removal of two thousand British settlers who were profitably engaged in the cod and seal fisheries. Moreover, to give the French exclusive rights for a trial period as Carnarvon had suggested would only aggravate the fishery dispute.

¹ Minutes of the Executive Council, 1874-1883, November 16, 1875.

"Such a concession," the Council felt, "could not be made with a just regard to the conservation of the public interests."

On Carnarvon's other proposals, however, the Council proved more conciliatory. They agreed to an extension of the French strand from the quarter mile suggested by Miller provided that the French were not given an exclusive right to its use. They agreed that to avoid "collision and interruption" a limit should be established between British and French fishermen on the west coast. But they made no mention of what arrangement should be followed on the north and north-east coasts, the main centers of the French fishery. They agreed to let French gardiens stay in Newfoundland on condition that their number would be limited, that they would not fish during the winter, that they would not cultivate the land or engage in trade, and that the French government would withdraw its objections to mining and agriculture, and the erection of public works which did not interfere with the French fishery. While denying the French right to fish in the rivers, they agreed to Miller's suggestion concerning the salmon fishery. The Council again urged Carnarvon to appoint officials on the shore. Finally, they denied Boissoudy's claim that the bait privileges enjoyed by the French were an unimportant concession, since they benefited Newfoundlanders. The comments of the Council on this subject must have convinced Carnarvon more than ever of the dangers inherent in the status quo on the Newfoundland coast:

With regard to the concession to permit the French to purchase bait, the council observe, by his Lordship's

despatch, that they profess to place very little value on this, and they assert that it is essential for the trade of the Colony. This statement is not correct; the privilege is an invaluable boon to them, and without it they could not prosecute their bank fishery, in which their capital is chiefly invested. The impolicy of permitting our people to export bait to supply our rivals is daily attracting more attention. Upon our own fishermen who prosecute the coast fishery the practice inflicts serious injury in the want of a sufficient supply of bait...The opinion now is that the temporary gain from the sale of bait, to those in a section of the Colony, is not at all equal to what our fishermen would reap if those engaged in the trade fished on our own coasts. Should the French continue their obstructive policy, they need not be surprised if in the next Session of the Legislature an Act with stringent provisions should be passed to prohibit the exportation of bait.

Governor Hill in his letter to Carnarvon enclosing the minute of Council, supported the attitude of the Carter Government.¹ He reported that public opinion in the colony would allow no further concessions to the French than those contained in the 1874 resolutions of the Legislature.

The report from Newfoundland was not encouraging, but while there was any chance of success, Carnarvon determined to press on with the negotiations. He informed Derby on December 13, 1875, "that, while the Newfoundland Government are not prepared to assent to the desire of the French Commissioner for the concession of exclusive fishery rights on the North and North-East Coasts, they are not unwilling to agree to certain concessions on minor points, which appear...to offer an opportunity for reopening with advantage the negotiations

¹ C.O. 807/81, Hill to Carnarvon, November 17, 1875, No. 112

at Paris."¹ In the same letter Carnarvon informed the Foreign Secretary that the declaration concerning French rights in Newfoundland requested by Boissoudy at the meeting of the commission on June 25, 1875, would only be given as a last resort.²

Miller returned to Paris and met Boissoudy on January 7, 1876.³ He opened the session by informing the French commissioner that the British government was unable to concede the exclusive rights which had been requested.⁴ In view of Boissoudy's attitude at the earlier meetings this announcement could have resulted in the breaking off of negotiations. But to Miller's surprise Boissoudy made no marked protest. Instead, he now adopted a less rigid approach than at the previous sessions. In place of the demand for exclusive rights he stated that a clause in any new agreement recognizing French precedence in the fishery on the Treaty Shore would be a sufficient guarantee of French rights.

When the discussion then shifted to the specific points

¹ Ibid., Herbert to F.O., December 13, 1875, No. 117.

² See above, p. 183.

³ O.O. 807/81A, Miller to Lyons, January 7, 1876, No. 4.

⁴ Ibid.

of dispute, Boissoudy also proved more agreeable than before.¹ Miller informed him of the conditions under which the British government was willing to allow French gardiens to remain in Newfoundland during the winter. Boissoudy stated that in many places it might be more useful to leave to the decision of the proposed joint naval commission the method of preventing interruption to the French fishery rather than make a hard and fast rule for the whole coast. He told Miller that he thought the questions relating to the salmon fishery could be arranged so as not to stand in the way of a general agreement. The session, the most successful ever to be held by the commission, ended on this cordial note.

Five days later, on January 11, 1876, Boissoudy gave Miller a draft declaration embodying the principle of French precedence in the fishery on the Treaty Shore.² He informed Miller that if the principle was accepted by the British government, he would be prepared at the next session to draw up, article by article, the proposed new agreement. Lyons was prepared to accept this proposal.³ He quickly saw that what Boissoudy was suggesting would involve no concession by Great Britain. For while British policy had always maintained

¹
Ibid.

²
Ibid., Boissoudy to Miller, January 11, 1876, No. 9.

³
Ibid., Lyons to Derby, (No. 1), January 11, 1876, No.

the right of British fishermen to fish on the French Shore, it had also recognized the right of the French to precedence in the fishery. What Boissoudy now wanted was exactly what the British meant by the term "concurrent fishery." Lyons wrote to Derby concerning the declaration "that a great point would be gained if the practical admission, which it appears to make, could...be secured and recorded." But he emphasized the need for haste because of "the critical state of the French Ministry."¹ It was important, he felt, not to lose the chance of conducting the negotiations while Decazes and Montaignac were still in office.

A summary of an acceptable agreement was hurriedly prepared in the Colonial Office for Miller's use.² The consent of the Newfoundland government was requested to the summary, but by the time the commission met again on February 21, 1876, this had not been obtained.³ A telegram from Hill to Carnarvon on February 5, 1876, had ended with the rather discouraging statement, "My Ministers understand that, without the assent of the Colony, no new Convention will be concluded with the French."⁴ The summary itself did not follow as closely the

¹ Ibid., Lyons to Derby, (No. 2), January 11, 1876, No. 10.

² Ibid., Meade to F.O., February 12, 1876, No. 34.

³ Ibid., C.O. to Hill, January 28, 1876, Telegram, No. 24.

⁴ Ibid., Hill to Carnarvon, February 5, 1876, Telegram, No. 32.

the report of the joint committee of 1867 and the resolutions of 1874 as had the earlier proposals which had been made to the French:

Heads of Proposed Convention

Declaration to be made that the French are entitled to priority in fishing in those waters in which they have fishery rights, but that they have no rights on the soil of Newfoundland except on the strand as limited by the terms of this Convention.

2. An Anglo-French Naval Commission to be appointed to settle on the spot any differences which may arise during the fishing season with respect to the exercise of fishery rights.

3. Abuse, violence, or menace, or any conduct calculated to cause a breach of the peace between French and British to be severely punished.

British fishermen not to fish with hook and line nearer to any French boat than half a mile. No British fixed net to be set nearer to those parts habitually fished from day to day by the French than one mile and a half, nor British to draw any net for bait or otherwise in any part which shall really be an interruption to the French by preventing them from drawing their nets, or by preventing them from obtaining a sufficient supply of bait.

4. The usages of the French respecting their establishments and leaving their boats and gear during the winter to be allowed by the British Government. French guardians to be permitted subject to certain necessary restrictions.

5. Newfoundland Legislature to pass a law forbidding all fishing in rivers flowing into the sea on the coast where French under Treaty have fishing privileges except with hook and line. No net to be set or drawn within 400 yards of the mouth of any such river along the shore, fixed nets to be set to seaward of the mouth of rivers so as to allow a clear passage for salmon to seaward out of and into the river of 800 yards besides the breadth of the mouth.

6. On the south coast the French to be allowed to purchase bait.

7. One-third of a mile to be the limit of the strand used by the French.

8. Buildings or enclosures erected for five years not to be removed as interfering with French fishing privileges without compensation; no compensation to be payable for buildings hereafter erected without consent of the Joint Naval Commission.

9. Existing British Settlements in St. George's Bay, Cod Roy, and Bay of Islands, Bonne Bay and White Bay, to be undisturbed; and no interruption to be made by the French of British fishing in those bays, nor interference with British buildings and inclosures there or on any part of the coast where French have a right of fishery during the season, provided they do not interfere with the French fishery privileges as determined on by the Commissioners.

10. Reserve to the British Government the right of occupying such portion of the strand as may be required for the construction of works of defence, or for that of roads, railways, lighthouses, the working of mines or of quarries, or for other works of public use or benefit, whether they are made by the Government or by private individuals under its authority, but of any intended exercise of this right within the strand due notice to be given to the French Government, and erections made on it by private persons to be subject to the consent of the Fishery Commissioners as to site.

11. Buildings on any part of the strand which the Commissioners shall declare to be necessary to keep vacant for French fishing purposes shall be removed by the British Government, subject to the last three preceding Articles.

12. The French fishing season to end on the 5th of October.¹

Miller opened the February 21 meeting by telling Boissoudy that the British government declined to issue the declaration he had offered in January but would be willing to

¹

Ibid., Meade to F.O., February 12, 1876, No. 34.

incorporate a similar statement into a general agreement.¹ He informed Boissoudy that any agreement reached would, however, have to be approved by the Newfoundland government before ratification. Boissoudy answered that the French could only look to the British government for the fulfilment of treaty engagements. He then asked if the provisions of the summarized agreement which Miller had with him would be accepted by the Newfoundland government. Miller replied that he thought they probably would. After Miller had read the summary, the meeting adjourned with Boissoudy promising to notify the British commissioner when he was ready to answer the proposals.

Over a month's delay followed before the next meeting. When the commission reassembled on March 24, 1876, Boissoudy displayed a much more antagonistic attitude than before.² He told Miller that the French government objected strongly to making the consent of the Newfoundland government the prerequisite of ratifying any agreement. He again stated that the French could only look to the British government for carrying out the provisions of treaties. He informed Miller that he could not consent to discuss the articles of the summary until he was assured they would be approved by the Newfoundland government. As Miller could not definitely give such an

¹ Ibid., Miller to C.O., February 21, 1876, No. 42.

² Ibid., Miller to C.O., March 24, 1876, No. 64.

assurance, the session ended abruptly at this point. Miller wrote to Carnarvon on March 24, 1876, requesting "the authority of the Home Government to inform Captain de Boissoudy that the summary lately laid before him has been accepted by the Colonial Government as well as by that of Her Majesty."¹ Carnarvon in turn requested the consent of the Newfoundland government in a telegram dated March 27, 1876.² He informed Governor Hill that if the Newfoundland government did not agree to the proposals in the summary, they should send a representative to Great Britain "empowered to act...in the matter." The next day Hill informed Carnarvon by telegram that Carter would be proceeding to London.³

In a conversation on March 28, 1876, Lyons pointed out to Decazes, the French Foreign Minister, that the change of attitude by the French commissioner had corresponded with a change of Ministers in the Marine Department:

I took an opportunity this afternoon of saying to the Duc Decazes that I could not help feeling uneasy about the Newfoundland Fishery negotiation. There had, I said, appeared to be an unfavourable change in the tone of the French Commissioner, and this change had coincided in time with the change which had taken place in the Ministry. I most earnestly hoped that it did not imply

¹
Ibid.

²
Ibid., Carnarvon to Hill, March 27, 1876, Telegram,
No. 67.

³
Ibid., Hill to Carnarvon, March 28, 1876, Telegram,
No. 71.

that the new Minister of Marine, Admiral Fourichon, was less disposed to treat the matter in a friendly spirit than his predecessor, Admiral de Montaignac, had been.¹

Decazes denied that there was any connection between the two events and assured Lyons "that the new Minister was not in any degree less friendly than his predecessor." Later events, however, were to confirm Lyons' suspicion and show that there was a strong difference of opinion within the French government on the Newfoundland fishery question.

Carter's departure for England was delayed first by ice conditions and then by the arrival of a new Governor of Newfoundland, Sir John Hawley Glover.² It was not until late in May that he finally arrived in the British capital.³ He spent the next two months in a busy schedule of conferences with officials of the Colonial Office working out the terms of a new agreement with France which would be acceptable to the Newfoundland government. In late July the proposed agreement was ready:

Article (A).

The object of the Convention is, while ratifying in

¹

Ibid., Lyons to Derby, March 28, 1876, No. 75.

²

C.O. 807/91, Hill to Carnarvon, April 15, 1876, Secret, No. 23, and Hill to Carnarvon, April 21, 1876, Telegram, No. 10.

³

Ibid., Glover to Carnarvon, May 3, 1876, No. 27.

the name of the Queen all the rights of fishing granted to the French on that part of the coast of Newfoundland on which they enjoy such rights under existing Treaties, to secure to the French and to the British alike their unquestioned privileges of concurrent fishing on the said part of the coast, and for this purpose the French fishermen shall be deemed, so long as this Convention is in force, to have the first claim to any particular position on the water, but not so as to exclude the British from such rights of free concurrent fishing as they have hitherto enjoyed and are entitled to claim.

Article (B).

All differences between the subjects of the two nations in matters relating to the fisheries shall be arranged or determined by a Mixed Commission, composed of two officers, one of the British Navy and one of the French Navy, specially appointed on the part of their respective Governments, who will act in conformity with joint instructions based on these Articles.

There shall be no appeal from any joint decision of the Fishery Commission.

In the event of the Commissioners being unable to come to a joint decision upon any matter before them, the matter shall be referred to their respective Governments.

The Commissioners shall, subject to such instructions as may be agreed upon between the two Governments, have power to punish any person contravening any order or decision of the Commissioners by fine not exceeding --- in amount, and in default of payment of such fine, to seize vessels, boats, or other property afloat of such person; and the Commissioners shall also have the power to enforce any order made by them by the removal of anything which, in their opinion, may be an obstruction to the full enjoyment of the respective fishery rights of the British and French.

Article (C).

A sufficient police shall act under the orders of the Joint Naval Commission, in order to provide that all regulations of the Commission issued in pursuance of the above-mentioned instructions, shall be obeyed.

Article (D).

The British Government will not oppose the practice at the present time followed by French fishermen of leaving on British territory during the winter boats, salt, and fishing gear; nor will they object to the French building a dwelling house for each guardian left

by them in charge of their property during their absence.

Article (E).

The British Government will not prevent the French from purchasing bait (both herring and caplin), on shore or at sea, on the southern coast of Newfoundland, at such times as British subjects may lawfully take the same, free from all duty or restriction not imposed on British subjects.

Article (F).

The French shall have the right to appoint guardians, either French or British, to watch over their property when they are absent from the coast after the fishing season.

Should these guardians be French, their number shall be limited to one in each harbour or port where the French usually fish; such French guardians shall not be permitted to fish out of the season, except with hook and line, for cod; nor shall they engage in the salmon, seal, herring, or other fishery.

Article (G).

The laws of Newfoundland for the protection of the salmon fishery shall be equally observed and carried out in that part of the coast on which the French enjoy rights of fishing as in other parts, the right of fishing in all rivers, estuaries, and inland waters from the sea belonging exclusively to the British.

Article (H).

The strand upon which the French may exercise their fishery rights for the purposes declared in the aforesaid Treaties shall, subject to the provisions of this Convention, extend to one-third of an English mile inland from high water mark on the coast line, as shall be determined by the Commissioners.

Article (I).

Subject to the limitations contained in the three immediately succeeding Articles, the British Government will cause to be removed any buildings erected on the strand, if objected to by the French Government, on a declaration from the Fishery Commissioners that the buildings are interfering with the due exercise of French fishery rights.

Article (J).

The existing British settlements in St. George's Bay, Cod Roy, Bay of Islands, Bonne Bay, and White Bay shall

remain undisturbed, and there shall be no interruption by the French to fishing by the British in those bays, nor interference with their buildings and inclosures there, nor shall there be any interference with any existing erections or buildings on any other part of the coast where the French have a right of fishery during the season, which do not actually interfere with the fishery privileges of the French, as shall be determined by the Commissioners, nor shall British subjects be molested in fishing in any part where they do not actually interrupt the French by their competition.

The existing French erections at Cod Roy Island, &c., shall not be interfered with by the British.

Article (K).

No building or enclosure removable in pursuance of the foregoing Articles as interfering with the French fishery privileges, which has been erected for five years, or which shall hereafter be erected on the strand, with the consent of the Fishery Commissioners, shall be removed until the Government requiring such removal shall have paid to the owners such compensation as shall be agreed upon by the Fishery Commission.

In case the Commission cannot agree upon the amount of compensation, the case shall be referred to the respective Governments, provided always that no such compensation shall be required in the respect of the removal of any building which shall be hereafter erected without the consent of the Fishery Commission.

Article (L).

The British Government reserves the right of occupying such portions of the strand as may be required for works of defence, or for roads, railways, piers, lighthouses, for the working of mines or quarries, or for other works of public use or benefit, whether made by the Government or by private persons under the authority of Government; but due notice shall be given to the French Government of any intended exercise of this right on the strand, and any erection made thereon by private persons interfering with the user of French fishing privileges, shall be subject as to site to the consent of the Fishery Commissioners.

Article (M).

The British Government reserves the right of authorizing the occupation of land and the erection of buildings for all purposes within the strand by any person whatsoever (under the laws of Newfoundland regulating grants and licenses generally applicable to British subjects), subject

to the consent of the Fishery Commissioners as to site; but any such building which shall hereafter be actually interfering with the exercise of French fishing privileges, erected under this clause for purposes other than those coming within the terms of Article (L), shall be removable on payment of compensation, as provided by Article (K).

Article (N).

The French season of fishery shall be held to commence on the 30th April, and to terminate on the 5th October in each year.

Article (O).

This Convention shall be terminable at any time not less than a year after notice to terminate the same shall have been given in writing by either of the High Contracting Powers to the other, provided always that such notice shall not be given as to terminate the Convention during the fishery season as hereby defined.¹

Miller returned to Paris and gave Boissoudy a copy of the proposed agreement at a meeting on July 29, 1876.² But the British proposals were not well received by the French government. Decazes told Lyons confidentially on August 28, 1876, "that if a discussion were now to take place in the Commission solely on those Articles...it could hardly end otherwise than in a declaration by the French Commissioner that they did not afford a basis for negotiation."³ Under this circumstance, Decazes suggested that the French government prepare a counter-

¹ Ibid., Herbert to F.O., July 20, 1876, No. 69.

² Ibid., Miller to C.O., July 29, 1876, No. 90.

³ Ibid., Lyons to Derby, August 28, 1876, No. 128.

proposal.¹ The statements of both governments, he said, could then be considered together and concessions made on both sides. But Decazes had no enthusiasm for his own proposal. He told Lyons he preferred that the two governments establish a modus vivendi rather than conclude a formal convention. He reminded the ambassador that a convention would have to be submitted to the French Legislature for approval, perhaps with disastrous consequences.² Thus by August, 1876, the negotiations had reached an almost complete deadlock.

Lyons pointed out to Decazes on October 13, 1876, that many weeks had passed since any communication had been received from the French government on the negotiations.³ Decazes' only reply was to put forward again his plan to establish a modus vivendi. "If this modus vivendi were well devised," he said, "experience would show the advantage of it, and it might then, in case of need, be converted into a formal Convention." Three days later Decazes told Lyons confidentially that he was having great difficulty in even arranging the terms of a modus vivendi from the British proposals.⁴ He indicated to Lyons that there

¹ Ibid.

² Ibid.

³ Ibid., Lyons to Derby, October 13, 1876, No. 143.

⁴ Ibid., Lyons to Derby, October 16, 1876, Very Confidential, No. 145.

was a sharp division within the French government on the fisheries question. "The subordinate authorities," he stated, "instead of uniting with him in endeavouring to devise a practical settlement consistent with the existing state of things, appealed to old documents and declared that they could not be parties to destroying the work of Louis XIV and Louis XV."¹ In another conversation on October 21, 1876, Decazes confirmed that a serious conflict existed between his views and those of the officials of the Marine Department.²

With the prospect of failure in the negotiations becoming increasingly apparent and the demands of the Newfoundland government becoming steadily more insistent, the British were finally forced to make a concession to the colony. British policy had aimed at satisfying the demands from Newfoundland without unduly offending the French. It had always been clear, however, that if the negotiations failed, the demands of the colonists would still have to be satisfied if trouble was to be avoided. The concession granted by the British was to appoint magistrates on the Treaty Shore.

Lyons had discussed the appointment of magistrates with Decazes on July 28, 1876.³ He had told the French Minister that the question was not open for discussion in the negotiations,

¹
Ibid.

²
Ibid., Lyons to Derby, October 21, 1876, Very Confidential, No. 149.

³
Ibid., Lyons to Derby, July 28, 1876, Very Confidential, No. 93.

as it was a sovereign right of the British Crown. Decazes had told Lyons that his personal opinion was that the British had the right to appoint such officials on shore. But he had contended that the French had "on the sea...a certain jurisdiction for the purpose of enforcing the observance of the Fishery Treaties." While Carter had been in Great Britain during the summer of 1876, he had strongly urged Carnarvon to appoint officials and allow the granting of land:

When you favoured me with an interview yesterday, I availed myself of the occasion to repeat what I had previously stated that, whatever may be the result of the pending negotiations with the French government as regards the mode of fishing, it is of the utmost importance to British subjects, and in the sustainment of their interests, that resident officials should be appointed with the least practicable delay, and regulations made for the use and enjoyment of the territory within the prescribed limits designated for the French temporary rights of fishery.¹

Carnarvon had replied that no matter how much he agreed with Carter he could not take any such action pending the outcome of the negotiations.² But the Premier had proved unwilling to accept this any longer as an excuse for delaying the appointment of magistrates.³

¹ Ibid., Carter to C.O., August 11, 1876, No. 98.

² Ibid., Herbert to Carter, August 16, 1876, No. 109.

³ Ibid., Carter to Herbert, August 17, 1876, No. 110.

Decazes had told Lyons on October 13, 1876, that there was a controversy within his Department on the question of allowing the British to appoint magistrates.¹ Great stress, he had said, was being placed by those opposing the appointments on the note which had been written by Rémusat in 1873.² Decazes had, however, reaffirmed his personal opinion that the appointments were both necessary and legitimate. Lyons told Decazes confidentially on December 29, 1876, that the appointments would soon be made.³

Governor Glover of Newfoundland wired Carnarvon on January 8, 1877, that it was important he should receive, before the opening of the Legislature in February, instructions authorizing the appointment of officials on the Treaty Shore.⁴ Carnarvon informed the Governor two days later to announce that the question was being considered by the British government and that arrangements would be made for early appointments.⁵

¹ Ibid., Lyons to Derby, October 13, 1876, Very Confidential No. 144.

² See above, pp. 159-160.

³ C.O. 194/194, Lyons to Derby, December 29, 1876, Confidential, pp. 223-225.

⁴ C.O. 194/193, Glover to Carnarvon, January 8, 1877, Telegram, p. 5.

⁵ Ibid., Carnarvon to Glover, January 10, 1877, Telegram, pp. 6-7.

Finally, on January 23, 1877, Carnarvon wrote to Glover that he would allow resident magistrates on the French Shore if the Newfoundland government would agree to leave their selection and appointment in British hands.¹

Meanwhile, there had been no further progress in the negotiations. Lyons had again on December 14, 1876, pointed out to Decazes the long delay.² Decazes had told Lyons that the recent ministerial crisis, which both he and Admiral Fourichon had survived, had delayed the preparation of the French counter-proposals. Lyons had used the conversation to tell Decazes again that the British government could never agree to submit the Newfoundland fishery question to arbitration.³ On January 17, 1877, Decazes told Lyons that the French counter-proposals were ready.⁴ He suggested that they should confidentially discuss the proposals and reach agreement before reassembling the commission. This direct communication, he felt, would more readily lead to an agreement. Recalling the hostile attitude

¹ Despatches from C.O., 1877, Carnarvon to Glover, January 23, 1877.

² C.O. 194/192, Lyons to Derby, December 14, 1876, pp. 418-419.

³ Ibid., Lyons to Derby, December 14, 1876, Confidential, pp. 420-421.

⁴ C.O. 194/194, Lyons to Derby, January 17, 1877, Confidential, pp. 229-231.

of Boissoudy at some of the meetings of the commission, Lyons was prepared to agree to this procedure.¹

On February 2, 1877, Decazes showed Lyons the French proposals in the form of a draft declaration between the two governments.² When Lyons immediately objected to the terms of the declaration, Decazes withdrew it promising to make such changes as would make it acceptable to the British government.³ But when he again submitted it in March, 1877, it still contained the clause most objected to by Lyons.⁴ The clause in question declared "that all British subjects in the island of Newfoundland should be prohibited, during the whole season from every kind of fishing in the places with regard to which the French have Treaty rights." The revised draft declaration was considered by Carnarvon "entirely inadmissible."⁵ The negotiations did not advance beyond this point for the rest of the Carter period. The British government was, however, reluctant to end formally the negotiations. For

¹
Ibid.

²
Ibid., Lyons to Derby, March 6, 1877, Very Confidential, pp. 242-244.

³
Ibid.

⁴
Ibid., Lyons to Derby, May 4, 1877, Secret, pp. 309-312.

⁵
Ibid., C.O. to F.O., June 1, 1877, Secret, pp. 328-332.

while the discussions continued, the French could be persuaded not to disrupt the uneasy peace on the Newfoundland coast by attempting to enforce their exclusive claim.¹

The Carter Government had not been satisfied with the terms under which Carnarvon proposed to appoint magistrates. Governor Glover had informed the Colonial Secretary by telegram on February 27, 1877, that the Newfoundland government wanted the magistrates paid by the Imperial government if they were to be appointed by the Imperial government.² Carnarvon wired back on March 6, that while the British government insisted on the right to appoint the magistrates, they could not agree to pay their salaries.³ Four days later Glover wired that his ministers were unable to obtain the assent of their supporters to the method of appointment proposed by Carnarvon.⁴ As an alternative the Newfoundland government put forward a plan whereby the Imperial government would pay half the salary of the magistrate "with joint authority in the matter of appointment and removal, except in civil and

¹ Ibid., Lyons to Derby, June 27, 1877, Secret, pp. 395-401.

² C.O. 194/193, Glover to Carnarvon, February 27, 1877, Telegram, pp. 39-40.

³ Ibid., Carnarvon to Glover, March 6, 1877, Telegram, pp. 40-41.

⁴ Ibid., Glover to Carnarvon, March 10, 1877, Telegram, pp. 116-117.

criminal matters involving questions under Treaty in which case power...would rest with Her Majesty's Government."¹ Carnarvon declined this offer.² Instead, he agreed to appoint the magistrates proposed by the Newfoundland government provided that their names were first submitted to him for approval and the British government retained the right, "immediately and without question," to remove "any magistrate who may give just cause of complaint."³

But the issue was not merely one of money and patronage as Carnarvon thought. After trying for so long to get the British to agree to these appointments, the Newfoundland government would scarcely quibble over who was to pay the bill. The delay in the appointments was caused in fact, by the exigencies of colonial politics. On April 18, 1877, the Assembly passed an address to the Governor requesting him to proceed with the appointment of two magistrates, one each for the west and north-east coasts.⁴ The yearly salary provided by the House for each magistrate was a generous sixteen hundred dollars. The Governor was also requested to have the

¹ Ibid.

² Ibid., Carnarvon to Glover, March 15, 1877, Telegram, pp. 118-120.

³ Ibid.

⁴ Journal of the Assembly, 1877, April 18, p. 156.

magistrates act as revenue officers in their districts. In this capacity they would receive a percentage of the customs duties they collected each year. Glover had wired Carnarvon a copy of this address two days before it was passed.¹ On April 19, 1877, Carnarvon replied that he had no objection to the terms of the address provided that the names of the proposed magistrates were submitted to him for approval and the Governor of Newfoundland reserved the power "of instructing, transferring or removing from office each magistrate."² Glover wrote to Carnarvon on April 24, 1877, that Carter had objected to the power of instructing and transferring the magistrates to be retained by the Governor and had delayed the passing of the address in the Legislative Council.³ The Premier feared that the magistrates might be called upon "to carry out directions under construction of Treaties to which the Colonists have been and are opposed."⁴ Chief Justice Hoyles had

¹ C.O. 194/193, Glover to Carnarvon, April 16, 1877, Telegram, pp. 181-183.

² Ibid., Carnarvon to Glover, April 19, 1877, Telegram, pp. 183-184.

³ Ibid., Glover to Carnarvon, April 24, 1877, pp. 207-209.

⁴ Ibid.

approved of Carnarvon's proposals and his support had been enlisted in trying to convince Carter.¹ "I still hope," Glover concluded, "that I may be enabled to remove all scruples from the minds of My Ministers and so to obtain the passing of the message by the Legislative Council."² The Governor's success was evidenced by the passing of the address in the Council the very day he wrote the despatch to Carnarvon.³

But after the Legislature closed, Carter's doubts reappeared. Glover wired Carnarvon on May 3, 1877, requesting to be informed of the instructions to be given the proposed magistrates.⁴ In a despatch to Carnarvon the same day Glover gave the first hint of the real reason for the hesitancy by the Newfoundland government:

The hesitation on the part of my Ministers arises from the fear that public opinion on this, to them, vital question may drive them from power, unless they can show that they offered all constitutional opposition to Your Lordship's reservations and that the measure will have been forced upon them by Imperial authority and for Imperial purposes consequent with International Treaties.⁵

¹ Ibid.

² Ibid.

³ Journal of the Council, 1877, April 24, p. 82.

⁴ C.O. 194/193, Glover to Carnarvon, May 3, 1877, Telegram, pp. 221-222.

⁵ Ibid., Glover to Carnarvon, May 3, 1877, pp. 224-226.

Carnarvon wrote the Governor on May 29, explaining the instructions to be given the magistrates:

The only instructions which on their part Her Majesty's Government would propose at present to issue would be that the Officers should abstain from adjudicating upon any point in which a disputed interpretation of Treaties is involved, their desire being not to interfere with the action of the Magistrates but only to limit their sphere of action to such matters as concern the maintainence of peace and order and do not involve the interpretation of treaties.¹

A new plan devised by the Carter Government was forwarded to Carnarvon by telegram on May 30, 1877.² Under this scheme the Imperial government would appoint the first magistrate and would pay half his salary. The magistrate would be instructed "not to interfere with Treaty matters except under joint directions from Her Majesty's Government and from Governor with the advice of Executive Council." Carnarvon replied by telegram on June 1, that this arrangement was impossible.³ In another message on June 12, he cautioned Glover against issuing any commission to a magistrate "until

¹ Ibid., Carnarvon to Glover, May 29, 1877, pp. 228-231.

² Ibid., Glover to Carnarvon, May 30, 1877, Telegram, pp. 278-279.

³ Ibid., Carnarvon to Glover, June 1, 1877, Telegram, pp. 279-280.

specially authorized by Her Majesty's Government."¹

The dispute over the appointments appeared to be solved by the arrival in St. John's of Carnarvon's despatch of May 29, 1877, outlining the instructions to be given the proposed magistrates. Glover reported on July 12, 1877, that the explanations given in the despatch had removed "all doubt as to the nature of the duties, which the proposed officials... will be called upon to discharge."² The Newfoundland government, he wrote, would now be willing to submit nominations for the positions. But after Carter had stated that he did not know "a competent person in Newfoundland who would accept the position," Glover wired Carnarvon that the Newfoundland government still wanted the British to name the first magistrate and pay half his salary "so that their constituents may be satisfied."³

The matter was finally resolved on November 10, 1877, when Captain William Howorth, a naval officer who had been on the Newfoundland Station during the 1874 fishing season, was

¹
p. 335. Ibid., Carnarvon to Glover, June 12, 1877, Telegram,

²
pp. 432-433. Ibid., Glover to Carnarvon, July 12, 1877, Confidential,

³
pp. 435-436. Ibid., Glover to Carnarvon, July 30, 1877, Telegram,

appointed magistrate on the west coast.¹ Half his salary of five hundred pounds per year was to be paid for four years by the Imperial government, and he was required to collect customs duties in the vicinity of his post.² He was ordered by the British government "to abstain from adjudicating upon any point in which the interpretation of any Treaty is involved or any point which is disputed or under discussion."³ If any such case did arise, he was to "take the instructions of Her Majesty's Government through the Governor of Newfoundland."⁴ The new magistrate left England for Newfoundland on November 13, 1877.⁵

The protests from the French over Howorth's appointment were less stringent than those contained in Remusat's note of January, 1873. This was perhaps due to the difference of opinion on the fishery question within the French government. Glover had informed Carnarvon in March, 1877, that he had received a protest from the French consul in St. John's concerning

¹ Despatches from C.O., 1877, Malcolm to Howorth, November 10, 1877.

² Ibid.

³ Ibid.

⁴ Ibid.

⁵ Ibid., Herbert to Glover, November 13, 1877.

the proposed appointments.¹ Decazes had told Lyons on June 1, 1877, that he was under attack within the French government for letting the British make the appointments without any French protest.² He had told Lyons that "he was so bitterly reproached with having thrown away a valuable means of obtaining concessions from England in the negotiation, that he thought he could hardly abstain from making some communication...on the subject." Two weeks later the French ambassador in London, the Marquis d'Harcourt, had protested the proposed appointments to Derby.³ He had told Derby that the French government opposed the appointments for two reasons: first, because they would prejudice the interests of French fishermen in Newfoundland by "legalising a progressive encroachment on the privileges reserved to them by international agreements"; second, because they would be detrimental to the negotiations in progress. A further protest was received from the French ambassador after Howorth had arrived in Newfoundland.⁴ The French complaints, however, had come too late to have any effect. If Decazes had

¹ C.O. 194/193, Glover to Carnarvon, March 6, 1877, Telegram, pp. 106-107.

² C.O. 194/194, Lyons to Derby, June 1, 1877, Secret, pp. 347-350.

³ Ibid., Derby to Lyons, June 14, 1877, pp. 358-360.

⁴ Ibid., F.O. to Herbert, December 29, 1877, pp. 478-480.

taken a strong stand when Lyons had first mentioned the appointments, the French might have been able to prevent them. But as Lyons had told Decazes in June, 1877, "the thing...was done" and "no remonstrances from the French government could prevent the appointment of the magistrates."¹

During the second Carter Government the negotiations with France had been begun and had reached a complete deadlock although they had not been formally terminated. The failure to conclude a new fisheries agreement had meant the failure of British policy towards the French Shore and had finally forced the granting of a concession to the colony. When Carter retired in 1878, the Executive Council counted as his two great achievements "The suppression of the evil of gratuitous relief to the able bodied poor" and "The solution of the long vexed question of British territorial rights on those parts of the Coast where the French exercise fishery privileges."² It was an overly optimistic statement on both counts. The very year that Carter retired saw the beginning of a new dispute over the right of the Newfoundland government

¹
350. Ibid., Lyons to Derby, June 1, 1877, Secret, pp. 347-

²
Minutes of the Executive Council, 1874-1883, April 27, 1878.

to build a railway near the French Shore. The appointment of one magistrate, although an important concession, did not mean the end of the French Shore disputes. On the contrary, it represented only the first step in bringing the area under the influence of the Newfoundland government. The agitation from the colony, prompted by economic necessity, would increase and multiply until complete control over the shore was achieved in 1904.

EPILOGUE

Reference was made in the first chapter to a thesis put forward by Harold Innis concerning French influence on Newfoundland in the nineteenth century.¹ By showing the effect on the Newfoundland economy of French competition in the fishery, this study has partly verified Innis' theory. The Newfoundland effort to develop the French Shore, induced in part by the effect of French competition in world markets, was a major theme of Newfoundland history during the last century. Much more research, however, will have to be done before Innis' thesis can be accepted as completely correct.

The fishery negotiations between Great Britain and France discussed in this study serve to show the importance to the colony of Newfoundland of the Labouchere despatch. At no time during the Miller-Boissoudy discussions did the British violate the terms of this despatch. It was always quite clear that the consent of the colony was the essential preliminary to the conclusion of any agreement with France. Obtaining the consent of the colony to the terms of a possible agreement before the negotiations began, as was tried in 1867, was only meant to facilitate negotiations and not to deny the Newfoundlanders their rights. The Labouchere despatch had given the colony a veto power over any proposed agreement but the responsibility for negotiations still remained a British prerogative.

¹
See above, p. 25.

The position with regard to the French Shore in 1878 was essentially as it had been in 1865. The basic dispute over the meaning of the treaties remained unresolved. The Miller-Boissoudy negotiations never advanced beyond the stage reached in 1877. A new series of negotiations was begun in 1880 at the instance of the French. The significant changes between 1865 and 1878 had been an increase in the agitation in Newfoundland for colonial access to the French Shore, and the concession in principle made by the British in the appointment of one magistrate. This symbolic action was undoubtedly important but it was not "The solution of the long vexed question of British territorial rights on those parts of the Coast where the French exercise fishery privileges," as the Executive Council thought at the time of Carter's retirement in 1878. It was true, however, that Carter had succeeded in persuading the British government to assert through positive action the right of colonists to live (conditionally at least) in the northern and western parts of the island of Newfoundland.

APPENDICES

Appendix A

Proposed Convention of January 14, 1857.¹

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, and His Majesty the Emperor of the French, being desirous to remove for the future all cause of misunderstanding between their respective subjects relative to the Fisheries on the Coast of the Island of Newfoundland and the neighbouring Coasts, by regulating with exactness the rights and privileges of their said subjects, have resolved to conclude a Convention for that purpose, and have named as their plenipotentiaries, that is to say:

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, the Right Honorable George William Frederick, Earl of Clarendon, Baron Hyde of Hindon, a Peer of the United Kingdom, a Member of Her Britannic Majesty's Most Honorable Privy Council, Knight of the Most Noble Order of the Garter, Knight Grand Cross of the Most Honorable Order of the Bath, Her Britannic Majesty's Principal Secretary of State for Foreign Affairs; and the Right Honorable Henry Labouchere, a Member of Her Britannic Majesty's Most Honorable Privy Council, a Member of Parliament, Her Britannic Majesty's Principal Secretary of State for the Colonies.

And His Majesty the Emperor of the French, the Sieur John Gilbert Victor Fialin, Count of Persigny, a Senator, Grand Cross of the Imperial Order of the Legion of Honor, Grand Cordon of the Imperial Order of the Medjidie of Turkey, Grand Cross of the Order of St. Maurice and St. Lazarus of Sardinia, Grand Cross of the Order of Danebrog of Denmark. His Ambassador to Her Britannic Majesty: Who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon and concluded the following Articles:

Article I.

French Subjects shall have the exclusive right to

¹

Journal of the Assembly, 1857, App., pp. 261-267.

fish, and to use the strand for fishery purposes, during the season elsewhere specified (Article VIII), on the East Coast of Newfoundland, from Cape St. John to the Quirpon Islands. They shall also have the right to fish, and to use the strand for fishery purposes, during the said season, to the exclusion of British subjects, on the North Coast of Newfoundland, from the Quirpon Islands to Cape Norman; and on the West Coast, in and upon the five fishing harbors of Port-au-Choix, Small Harbor (or Petit Port) Port-au-Port, Red Island, and Cod Roy Island. Such exclusive fishing, from the Quirpon Islands to Cape Norman, shall extend to a distance of three marine miles due North from a straight line joining Cape Norman and Cape Bauld, and as regard the five harbors, shall extend to within a radius of three marine miles in all directions from the centre of each such harbor, but with power to the Commissioners or Umpire elsewhere provided for in this Convention, to alter such limits for each harbor in accordance with the existing practice.

Article II.

British subjects shall have the right, concurrently with French subjects, to fish on the West Coast of Newfoundland, from Cape Norman to Cape Ray, except at the five above-mentioned points; but French subjects shall have the exclusive use of the strand for fishery purposes during the said season, from Cape Norman to Rock Point, in the Bay of Islands, North of the River Humber, in latitude $49^{\circ} 5$ (about) in addition to the strand of the reserved harbours.

Article III.

French subjects shall have the right, concurrently with British subjects, to fish on the Coast of Labrador from Blanc Sablon to Cape Charles, and of North Belle Isle, together with liberty to dry and cure fish on any of the portions of the North Coast of Belle Isle aforesaid, which shall not be settled when this Convention shall come into operation. The British Government, however, retains the right to erect thereon buildings for military or public purposes; and if any settlement for permanent habitation shall be thereafter established on any portion of the Coast of the said Island, the right of French subjects to dry and cure fish on such portion of the coast shall cease, one season's notice of such settlement having been given beforehand to the French Commander on the station.

The said French concurrent right of fishing shall terminate at the embouchures or outlets of rivers and creeks; the place of each embouchure or outlet shall be determined,

in the manner elsewhere specified in this Convention, by the Commissioners or Umpire.

Article IV.

From Rock Point in the Bay of Islands to Cape Ray, Great Britain shall have the unrestricted and exclusive use of the shore, except at the points above named in Article I, and within the land limits assigned for those points (Article X.)

Article V.

French subjects shall have the right of purchasing bait, both herring and caplin, throughout the South Coast of Newfoundland, including for this purpose the French Islands of St. Pierre and Miquelon, at sea or on shore, on equal terms with British subjects, without any restriction on the practice of such fishery by British subjects, and without any duty or restriction being imposed either on British or French subjects in respect to such traffic, or upon the export of such bait, on the part of Great Britain or of the Colony.

Should such circumstances whatever restrict, in a notorious manner previously established to the satisfaction of both the British and French Naval Commanders on the station, during two seasons, consecutive or not, the supply by purchase, French subjects shall have the right to fish for bait on the portion of the South Coast of Newfoundland comprised between Cape St. Mary and Cape LaHune, during the French fishery seasons; French fishermen not being allowed to use any other nets than those employed for this kind of fishery; but this right shall cease as soon as the causes of the deficient supply shall have disappeared.

Article VI.

The lateral boundaries of the French rights of fishing towards the sea shall be as follows:-

At Cape Ray, a straight line drawn due West South West;

At Cape Norman, a straight line thence due North;

At Cape St. John, as may be defined by the Commissioners or Umpire, on the basis of existing agreements and practice;

At Cape Charles, a straight line thence due East;

At Blanc Sablon, a line as nearly perpendicular to the

general direction of the coast as may be, the precise line to be determined by the Commissioner or Umpire.

Article VII.

From Cape St. John to Rock Point in the Bay of Islands, the French right of fishing shall extend up all rivers or creeks as high as the salt water. From Rock Point to Cape Ray the Right shall be limited to half a marine mile above the embouchure or outlet of each river or creek.

The point hereby limited for each river or creek from Cape St. John to Rock Point, and from Rock Point to Cape Ray, shall be settled in the manner elsewhere provided for by the Commissioners or Umpire.

Article VIII.

The French season of fishery on the Coast of Newfoundland, Labrador, and North Belle Isle, shall extend from the fifth of April to the fifth of October.

Article IX.

The Naval Officers of the French Government shall be entitled to enforce the said French exclusive rights of fishing, as defined in Article I, by expulsion of vessels or boats attempting concurrent fishing, in the case of there being no British cruising vessels in sight, or made known to be present, within a distance of five marine miles.

Article X.

The strand reserved for French exclusive use for fishery purposes, shall extend to one-third of an English mile inland from high water mark, from Rock Point to Bonne Bay, inclusive, and at the four reserved harbors South of Bonne Bay; and from Bonne Bay to Cape St. John to half an English mile inland from high water mark.

The land lateral boundaries of the reserved harbors shall be settled by the Commissioners or Umpire, in accordance with the existing practice.

The strand shall be laterally bounded, where it reaches the banks of rivers and creeks, by straight lines drawn perpendicularly to the direction of the said rivers and creeks at the place where the French right of fishing ceases, to be determined as to each river or creek, in the manner elsewhere

specified, by the Commissioners or Umpire.

Article XI.

No British buildings or enclosures shall be erected, or maintained, on the strand reserved for French exclusive use, except for the purpose of military defence or of the public administration (in which case due notice of the intended erection thereof shall be first given to the French Government); but such existing buildings or enclosures as have stood and been in occupation upon this strand, without objection on the part of the French Government, for a period of five seasons preceding the date of this present Convention, shall not be liable to be removed without equitable compensation to the owners from the French Government, to be agreed on between the Naval Commanders of Great Britain and France on the station, or their respective delegates.

The French Naval Officers, or other delegates duly nominated for this purpose, by the French officer commanding-in-chief on the station, shall be entitled to take such measures as occasion may require, to put the French fishermen in possession of any portion of the strand of which their exclusive use for fishery purposes is recognised by the present Convention, in case of their being no British police establishment, cruising-vessel, or other recognised authority within a distance of five English miles.

Such measures may include the removal of buildings or enclosures, in conformity with the above stipulations, fifteen day's notice of any such intended removal having been given to any such British authority as aforesaid, if known to be within twenty English miles. Should there be no such authority within the distance, then the French officer commanding-in-chief shall, on the earliest opportunity after any such removal shall have taken place, report the same to the English officer commanding-in-chief.

Article XII.

No French buildings or enclosures shall be erected or maintained, for the fishery or other purposes, between Cape St. John and Rock Point, beyond the limits hereby recognised as those of the French right to the use of the strand. And it shall be lawful for the British or Colonial Government to remove buildings and erections made beyond the said limits by French subjects, fifteen days' notice of any such intended removal having been given to the officer of any French cruising-vessel, or other authority appointed for this purpose by the French officer commanding-in-chief, if known to be within

twenty English miles. Should there be no such authority known to be within that distance, then the Government (British or Colonial) so removing shall, on the earliest opportunity, after such removal shall have taken place, report the same to the French Officer commanding-in-chief.

But such buildings or enclosures as have stood and been in occupation beyond the said limits, without objection on the part of the British Government, for a period of five seasons preceding the date of this present Convention, shall not be liable to be removed without equitable compensation to the owners from the British Government, to be agreed on between the Naval Commanders of Great Britain and France on the station, or their respective delegates.

Article XIII.

If any building or erection, British or French, not in conformity with the stipulations of this present Convention, shall at any time have stood and been in occupation undisturbed by the French or English Governments respectively for five seasons, it shall not be removed without six months' notice to the occupier.

Article XIV.

The British Government shall give the most positive orders to prevent injury to the French boats and fishery works during the winter; and in order to facilitate the apprehension of offenders in this respect, the French Government shall be allowed to employ British or French subjects for the custody of such boats and works, whether in the summer or winter, not to exceed in number three persons within any mile of coast. Such persons shall be subject in all respects to the local law of Newfoundland.

Article XV.

French subjects shall be at liberty to use, on the strand reserved as aforesaid to their exclusive use for fishery purposes, any material and instruments they may think proper for their fishery erections; such erections and instruments being made and adapted for the drying and curing, or other preparation of fish, and for those purposes only.

Article XVI.

The privilege of French subjects to cut wood for the repair of their fishery erections and fishing vessels, from Cape St. John to Rock Point, may be exercised as far as required

for the purpose, but not on private land, without the consent of the occupier.

With respect to the four reserved harbours between Rock Point and Cape Ray, the same privilege shall be exercised on the mainland or elsewhere, within a radius of three marine miles from the centre of each harbour, such centre to be determined by the Commissioners or Umpire, as elsewhere specified.

Article XVII.

The provisions of the present Convention shall apply to the Islands adjacent to the Coasts mentioned, as well as to the Coasts themselves, except where otherwise specified. The Islands of Groais and South Belle Isle shall be regarded as adjacent to the nearest coast.

Article XVIII.

In order to settle the various points left by this Convention to be decided by Commissioners or an Umpire, each of the two Governments shall, on the application of the other, at any time after the passing by the Imperial Parliament of Great Britain, and by the Provincial Legislature of Newfoundland, of the laws required to carry this Convention into operation, appoint a Commissioner, to enter immediately on his functions.

Whenever a case shall occur in which the said Commissioners may differ in opinion, they shall name some third person to act as an Arbitrator or Umpire therein. If they should not be able to agree in the choice of such a third person, they shall each name a person, and it shall be determined by lot which of the two persons so named shall be the Arbitrator or Umpire. In the event of the death, absence, or incapacity of either of the Commissioners, or of the Arbitrator or Umpire, or of their or his omitting, declining, or ceasing to act as such Commissioner, Arbitrator, or Umpire, another and different person shall be appointed or named in the manner hereinbefore specified, to act as such Commissioner, Arbitrator, or Umpire, in the place and stead of the person so originally appointed or named as aforesaid.

The said Commissioners or Umpire shall frame regulations for the exercise of concurrent rights by the parties to this Convention, with a view to prevent collisions; such regulations to be approved by the respective Governments, and until so approved, to be in force provisionally; but such regulations shall be subject to revision, with the consent of both Governments.

Article XIX.

All stipulations of former Treaties shall remain in force so far as they are not superseded or modified by this present Convention.

Article XX.

The present Convention shall come into operation as soon as the laws required to carry it into effect shall have been passed by the Imperial Parliament of Great Britain, and by the Provincial Legislature of Newfoundland: Her Britannic Majesty hereby engaging to use Her best endeavors to procure the passing of such laws in sufficient time to enable Her to bring the Convention into operation on or before the 1st of January, 1858.

Article XXI.

The present convention shall be ratified, and the ratifications shall be exchanged at London in fifteen days, or sooner if possible.

In witness whereof the respective Plenipotentiaries have signed the same, and have affixed thereto the seals of their arms.

Done at London, the fourteenth day of January, in the Year of Our Lord One Thousand Eight Hundred and Fifty Seven.

Appendix B

Proposed Convention of June 19, 1860.¹

The Undersigned, namely, on the part of the United Kingdom of Great Britain and Ireland, Hugh Dunlop, Esquire, a Commodore of the First Class in the Royal Navy;

And on the part of the French Empire, M. le Capitaine de Vaisseau Louis Raymond, Marquis de Montaignac de Chauvance, Officer of the Imperial Order of the Legion of Honour, Commander-in-chief of the French Naval Division of Newfoundland;

Duly appointed and authorized by their respective Governments to act as Commissioners for the purpose of preparing practical Regulations for the prevention and settlement of differences between the subjects of the two nations, in conformity with the recommendations which the Commission of Inquiry for Newfoundland Fisheries of 1859 offered to their respective Governments, and without departing from the spirit of existing Treaties, which the present Convention is not intended to interpret or invalidate, in any respect whatsoever, have agreed upon the following Articles, which they submit to their respective Governments for approval and confirmation:-

Article I.

All differences between the subjects of the two nations in matters relating to the practice of the fisheries shall be arranged or determined by a Mixed Commission composed of two officers, one of the British navy, and one of the French navy, specially appointed by the naval Commanders-in-chief, on the part of their respective Governments, who will act in conformity with joint instructions based on the provisions of the following Articles.

There shall be no appeal from any joint decision of the Fishery Commission.

1

Secret and Confidential Despatches from C.O., 1838-76, Carnarvon to Musgrave, November 23, 1866, Confidential.

In the event of the Commissioners being unable to come to a joint decision, the matter shall be referred to the respective Commanders-in-chief, who, if unable to agree, shall refer the question to their respective Governments.

Article II.

The British Government will not oppose the practices or usages at the present time followed by French fishermen in all matters relating to-

1st. The construction, the organization, and the maintenance of the French establishments.

2ndly. The usage of leaving on British territory during the winter, and under the care of British subjects, boats, salt, and fishing-gear.

Article III.

The French Government will not oppose British subjects resident in St. George's and White Bays fishing in these bays, and will not interfere with the buildings there established by such British subjects.

Article IV.

In addition to the provisions of the preceding Article, the French Government undertakes not to disturb British subjects residing within the French limits in regard to buildings or inclosures now in their possession or occupation, provided the site occupied by such buildings or inclosures is not necessary for French fishery purposes.

Article V.

No buildings or inclosures that have or shall have been occupied for five successive seasons shall be removed until after payment to the owners, by the Government requiring the removal of the same, of such compensation as shall be jointly agreed upon by the Fishery Commissioners; and in case they cannot agree upon the amount of compensation, the case shall be referred to the respective Commanders-in-chief: provided always, that no such compensation shall be required in respect of the removal of any building which shall hereafter be erected without the consent of the Fishery Commission.

Article VI.

The British Government reserves the right of occupying

such portions of the strand referred to in the preceding Articles as may be required for works or establishments of a military or other public character.

Due notice shall be given to the French Government of any intended exercise of this right.

Article VII.

The British Government concedes to the French the right of purchasing bait, both herring and caplin, on shore or at sea, on the Southern Coast of Newfoundland, free from all duty or other restriction, from the 1st day of April in every year to the end of the fishery season.

Article VIII.

The limit or boundary line in all rivers up to which French subjects may prosecute their fisheries shall be determined by the Fishery Commission.

Article IX.

The provisions of the present Convention shall be binding on the respective Governments of Great Britain and France from and after the 1st of April, 1861, until the 1st of November, 1867.

If twelve months before the 1st of November, 1867, notice of a desire to determine this Convention shall not have been given by either Government, it shall continue in force for successive and complete periods of five years, until one of the Contracting Parties shall, twelve months previously to the expiration of any such period, give notice to the other of its desire to determine the same.

Appendix C

**Draft Instructions to the Fishery Commissioners,
Under the Proposed Convention of June 19, 1860.¹**

Joint Instructions for the Fishery Commissioners, prepared in conformity with the provisions of Article I of the Convention.

1. On or about the 1st of June in every year, the Fishery Commissioners of the two nations shall meet at such place as may have been agreed upon at the conclusion of the previous season, and they shall then decide upon the route to be taken by the Commission. Such route shall embrace the whole extent of coast from Cape Ray to Cape St. John, the coast of Labrador in the Straits of Belle Isle, and the southern coast of Newfoundland.

2. The Fishery Commissioners shall take all such measures as may be necessary to secure the French fishery operations against any interruption or impediment whatsoever on the part of the British subjects; and they shall also take all necessary measures for preventing French subjects from fishing anywhere beyond the French limits on the coasts of Newfoundland, or on any part of the coasts of Labrador, or the Island of North Belle-Isle.

3. All matters that shall be brought before the Fishery Commission shall be settled in accordance with the letter and spirit of the Convention of the 19th of June.

4. Disputes between the subjects of the two nations shall, as far as possible, be settled amicably by the Commissioners, who, in default of such settlement, shall investigate the case, and should the party complained of be found guilty, the Commissioner of the nation to which he belongs either shall punish him to the extent of his power, or shall take the necessary steps to ensure his punishment by the proper tribunal.

1

Secret and Confidential Despatches from C.O., 1838-76, Carnarvon to Musgrave, November 23, 1866, Confidential.

5. The powers of the Fishery Commission extend only to questions affecting the interests of the fishery. All other matters shall be dealt with by the competent authorities.

6. Each Fishery Commissioner shall be assisted by a Secretary, who shall act as Clerk of the Court, and shall be bound to keep a register of the proceedings of the Commission.

7. Proceedings must be commenced before the Fishery Commission by a complaint in writing, proceeding either from the injured party or his agent, or from a magistrate or officer of one of the two nations.

8. The Clerks of the Court shall reduce to writing such complaints as the subjects of their respective nations may have to lay before the Commission, in case the complainants shall be found incompetent to do so for themselves.

9. In all cases where a written complaint shall have been presented to the Commission, the Commissioners shall issue a summons requiring the immediate attendance of the parties.

All causes shall be heard orally, and evidence shall be given vivâ voce.

10. In case of the non-appearance of the parties, or of one of them, the written decision of the Commissioners shall be delivered to an officer charged with its execution.

11. Every person, except a magistrate, or an officer authorized by the Commission, who may prefer a written complaint, shall enter into an undertaking that he will, in accordance with the decision of the Commissioners, indemnify the party complained of for loss of time and other damage resulting from the complaint, in case it shall be found to have been made maliciously and without cause.

12. All causes which may be heard before the Commission, and all other acts of procedure, as well as the Minutes of their sittings, shall be duly entered in the registers kept by the Clerks.

13. All matters referred to the Commanders-in-chief, and the decisions taken thereupon, whether by them or by their respective Governments, shall be duly entered on the registers of the Commission.

14. The compensation granted for the removal of buildings

in accordance with the provisions of Article V of the Convention, shall be paid to the parties entitled to the same by the Fishery Commissioners, who shall make a Minute of such payment, and such buildings shall, within six months of such payment, be removed by order of the British Commissioner, or of officers appointed by him for that purpose.

15. Any building which shall hereafter be erected without the consent of the Fishery Commission shall be removed by order of the British Commissioner, without compensation,* within six months after notice to that effect shall have been given, should the site occupied by such building be required for French fishery purposes.

16. The Commissioners shall as soon as possible proceed to an inspection of the rivers situate within the French limits; and they shall immediately afterwards address to the respective Commanders-in-chief a report containing their decisions or their proposals relative to the limits within which French subjects shall confine their fishery.

The limits agreed upon or proposed are to bear reference to fixed marks capable of identification.

17. Naval officers in command, magistrates, and other officers authorized by the Commission, may seize nets, boats, and fishing gear, made use of in contravention of the established regulations, after due notice of such contravention has been given and disregarded.

Such seizure or detention shall be only provisional, and the matter shall as soon as possible be brought before the Fishery Commission.

Nor shall the officers or Magistrates of either nation seize property belonging to the subjects of the other, if any competent authority of such other nation be present or accessible.

18. Every year the Fishery Commissioners shall be authorized to present, in concert, to the two Governments through the respective Commanders-in-chief, such modifications or additions to the present instructions as experience may appear to them to render necessary.

* Or, "within six months after notice to that effect shall have been given by the Commission, that the site occupied by such building is requisite for French fishery purposes."

Appendix D

Report of the Joint Committee of Both Houses
of the Newfoundland Legislature, 1867.¹

The Joint Committee appointed by Resolution of the Legislative Council and House of Assembly, in reference to the question of British Territorial Rights and French Privileges, on that part of the Coast of this Island called the French Shore, respectfully report:-

That they have had under consideration the speech of His Excellency the Governor at the opening of the present session, and the despatch therein referred to, with the Treaties and other documents relating to the subject matter of their inquiry.

Your Committee submit that no question can arise under the treaties, as to the dominion of the soil on the so-called French Shore, in common with the whole Island of Newfoundland, belonging to the Crown of Great Britain; and such right, in all negotiations between the two nations on the subject of the treaties has never been impeached. But certain privileges are claimed by the French, under these treaties and accompanying declarations, in making erections and otherwise on the coast, for fishery purposes; and it is contended that British subjects are prohibited from having fixed settlements there.

Your Committee further submit that, without French permission, it is lawful for British subjects to construct buildings and reside therein, for purposes apart from those of fishery, and to make use of the strand for all purposes essential to the exercise of the Territorial Dominion of the interior land, and that the term "fixed settlements," referred to in His Britannic Majesty's Declaration, applies only to such as are in connection with the Fisheries. On the coast are French establishments of a substantial character, unauthorized by the Treaties.

¹
Journal of the Assembly, 1867, pp. 150-153.

It would appear to your Committee that the objection to issuing Grants and Licenses has arisen from the construction given by the French to their treaty right to the use of the shore in connection with the Fishery; and whilst it is advisable that any uncertainty on this point should be removed by amicable arrangement, yet your Committee submit that the territory being unquestionably in Great Britain, the local Executive is authorized to issue Grants and Licenses for Agricultural, Mining, and other purposes which have not for their object the interruption of the French by competition in the Fishery.

Your Committee are however aware that in the construction of the treaties, as regards the respective rights and privileges of the subjects of both nations, there has not been general acquiescence, and they would recommend a concurrence in any fair adjustment for the better observance and execution of existing Treaties which did not concede any further rights of Fishery to the French on the coast of this Island, nor any rights or privileges whatever at Belle Isle, and Labrador.

With this view, and in acceptance of the suggestions of Her Majesty's Imperial Government, for the resumption of negotiations with the Government of France, in order that the utilization of territorial rights may no longer be obstructed,-

Your Committee recommend that the Legislature should state to Her Majesty's Government, that they are not prepared to agree to any concessions to the Government of France which should convey to the French rights of Fishery which they do not now possess under existing Treaties, but they would recommend the Legislature to consent that the valuable and important right to purchase Bait, both Herring and Caplin, on the Southern coast, be conceded to the French at such times as British subjects may lawfully take the same, upon the terms herein contained being agreed upon.

It being thus clearly understood that any further concession with regard to rights of fishery are to be excluded from the negotiation, your Committee are of opinion that it would be desirable for the interests of all parties, if Her Majesty's Government should be able to make such an arrangement with the Government of France as would embrace the following matters, viz:-

- 1.-The establishment of a Joint Naval Commission which shall only take cognisance of such matters as relate to the Fisheries, and in case of disagreement, reference to be made to the respective Governments; all other questions shall be

dealt with by the competent authorities.

2.-That the existing British settlements in St. George's Bay, Cod Roy, and the Bay of Islands, Bonne Bay and White Bay, shall remain undisturbed, and that there shall be no interruption by the French to fishing by the British in those Bays; nor interference with their buildings and enclosures there, nor with any erections or buildings on any part of the French shore which do not actually interfere with the fishery privileges of the French, as shall be determined by the Commissioners, nor shall British subjects be molested in fishing on any part where they do not actually interrupt the French by their competition.

3.-That no Building or enclosure which shall have been erected for five years shall be removed as interfering with the French fishing privileges, without compensation, to be determined on by the Commissioners; but no compensation shall be payable for any such Building or enclosure hereafter erected without the consent of the Commissioners.

4.-That the Commissioners should determine the limit or boundary line, to which the French may prosecute their fishery; the British having the exclusive right of Salmon and all other fishing in the rivers.

5.-That the breadth of strand of which the French should have the right of temporary use for fishery purposes should be defined; thus removing objections to grants of land for all purposes beyond the boundary so to be defined, and within the same for mining purposes, right being reserved to the British Government to erect on such strand works of a Military or other Public character; and to British subjects for wharves and buildings necessary for mining, trading and other purposes apart from the fishery, in places selected with the permission of the Commissioners.

On the basis of the foregoing propositions, your Committee respectfully recommend that the Legislature should request Her Majesty's Government to resume negotiations with the Government of France, for such an agreement as will accomplish these objects, while ensuring the effectual execution of existing Treaties, and the sustainment thereunder of the rights of the subjects of both nations.

Appendix E

Proposed Convention of 1870.¹

Article I.

All differences between the subjects of the two nations in matters relating to the practice of the fisheries shall be arranged or determined by a Mixed Commission composed of two officers, one of the British Navy and one of the French Navy, specially appointed by the Naval Commanders in Chief, on the part of their respective Governments who will act in conformity with joint instructions based on the following articles:-

There shall be no appeal from any joint decision of the Fishery Commission.

If the Commissioners cannot agree, the matter must be referred to the respective Commanders in Chief, who, if they cannot agree, shall refer the question to their respective Governments.

Article II.

The Fishery Commission shall determine the points at the mouth of each River up to which the Fishing rights of the French shall extend.

Article III.

The strand for French use for fishing purposes shall extend to one third of an English mile inland from high water mark. The French strand shall be laterally bounded where it reaches the banks of rivers by straight lines drawn perpendicularly to the direction of such Rivers at the point where the French right of fishing ceases.

Article IV.

The British Government will not oppose the practices or

¹ Secret and Confidential Despatches from C.O., 1838-76, Rogers to Hammond, June 7, 1870.

usages at the present time followed by French fishermen in all matters relating to:-

1. The construction, the organization and the maintenance of the French establishments.
2. The usage of leaving on British Territory during the winter and under the care of British subjects, boats, salt, and fishing gear.

Article V.

The British Government will not prevent the French from purchasing bait, both herring and caplin, on shore or at sea, on the Southern Coast of Newfoundland at such times as British subjects may lawfully take the same, free from all duty or other restriction, not imposed on British subjects.

Article VI.

Under the limitations contained in articles VII, VIII, IX, and X, the British Government will cause to be removed any Buildings erected on the French strand, if objected to by the French Government, on a declaration from the French Fishery Commissioner, that the land is necessary for French fishing purposes or its occupation injurious to the French Fisheries.

Article VII.

The French Government will not oppose British subjects resident in St. George's and White Bays, Bay of Islands, Bonne Bay, and at Great and Little Cod Roy, fishing in these places, and will not interfere with the buildings there established by such British subjects.

Article VIII.

The French Government will not disturb British subjects residing within the French Strand in regard to buildings or inclosures now in their possession, or occupation, provided that the site occupied by such buildings or inclosures is not necessary for French Fishery purposes.

Article IX.

No buildings or inclosures which have or shall have been occupied for five successive seasons, or shall be erected with the consent of the Fishery Commission shall be removed until the Government requiring such removal shall have paid to the owners such compensation as shall be agreed upon by the Fishery Commission. In case the Commission cannot agree upon the amount

of compensation, the case shall be referred to the respective Commanders in Chief.

Article X.

The British Government reserves the right of occupying such portions of the French Strand as may be required for works of defence, or for roads, railways, piers, lighthouses, or other works for public use or benefit, whether made by the Government, or by private persons under the authority of Government. But due notice shall be given to the French Government of any intended exercise of this right, and the erections if made by private persons shall be subject as to site to consent of Fishery Commission.

Article XI.

The provisions of the present Convention shall be binding on the respective Governments of Great Britain and France from and after the for years.

Appendix F

Resolutions of the Bennett Administration on Fishery Negotiations, September 1, 1873.¹

Resolutions adopted at a meeting of the Executive Council of this Colony for transmission to Her Majesty's Government upon the subject of French aggressions and British rights on that part of the Coast commonly termed the French Shore.

Resolved -

That by the Treaty of Utrecht the exclusive sovereignty of the whole territory of Newfoundland and the Islands adjacent thereto were conveyed by His Majesty the King of France to His Majesty the King of Great Britain and his heirs for ever in full right. But His Majesty the King of Great Britain by the same Treaty conceded to the subjects of His Most Christian Majesty the privilege of a concurrent right of Fishing on that part of the Coast of Newfoundland extending from Cape Bonavista to Point Rich, together with the liberty to land their fish and dry them. The following is the language used in the Treaty "The Island called Newfoundland with the adjacent Islands shall from this time forward belong of right wholly to Great Britain." "Nor shall the Most Christian King, his heirs and Successors or any of their subjects at any time hereafter, lay claim to the said Island and Islands or any part of it or them."

That by the subsequent Treaties of Paris and Versailles and by every succeeding Treaty these rights were affirmed to His Majesty the King of Great Britain and his heirs with the following exceptions, that by the Treaties of Paris and Versailles His Majesty the King of Great Britain ceded in full sovereignty to His Majesty the King of France the Islands of St. Pierre and Miquelon subject to given conditions together with the privilege to his subjects of fishing concurrently with those of His Britannic Majesty "on that part of the Coast of Newfoundland extending from Cape John passing to the North and descending by the Western Coast of Newfoundland to the place

called Cape Ray situate in forty seven degrees fifty minutes North latitude" in exchange for that portion of the Coast extending from Cape Bonavista to Cape John which His Most Christian Majesty assented to abandon.

That on the introduction into this Colony of self Government by virtue of its great Charter granted by His late Majesty King William and affirmed by subsequent Acts of the Imperial Government and by the Legislature of this Colony, all the rights which Great Britain possessed in Newfoundland became under stipulated conditions the property of this Colony, and is now held in trust by its Government for the benefit of its people.

That such is the high appreciation in which these Treaty rights are, and ever have been held by the inhabitants of this Colony, that no Minister in this Country would dare to compromise them in any manner. Not an inch of their soil, not an atom of their concurrent rights in the fisheries on the so called French Shore, would any permanent resident of sound mind in the Colony consent to part with.

That out of deference to the perplexities which circumstances have imposed on the Imperial Government in their negotiations for many years past, in regard to this subject the aggrieved parties resident on the so called French Shore have borne with great forbearance the studied audacious periodical robberies and other grievances perpetrated on them by the French when peaceably engaged in their fishing operations. But should such conduct be repeated the Government greatly fear that when the hope of legal redress ceases to exercise its influence on them our people may be induced to make reprisals for the wrong done them. -

That with the view to establish a preposterous and untenable claim to an exclusive right in the place of the concurrent right of fishing on the most valuable part of our fishing grounds, the French have, and more particularly of late years, by force attempted to assert that right.

That the inhabitants of this Colony appreciate the able and successful manner in which Lord Palmerston and other able British statesmen have from time sustained their Treaty rights. Had there been the slightest misunderstanding with regard to our concurrent right of fishing it surely would have been put at rest at the same time when the Islands of St. Pierre and Miquelon were conveyed in full right to France, and in the same unmistakeable language, or it would have been so inserted in some, subsequent Treaty-but this was never done, and we have exercised and maintained our rights ever since with an annually

increasing population.

That there are localities on the so called French Shore which have been exclusively occupied by the French time out of mind, and others in like manner occupied by British subjects. During the time of war British subjects took possession of these French Premises and in some cases refused to conform to the stipulations of the Treaties when peace was restored. Hence the Imperial Act which was passed to meet the contingency and the proclamations of Governors ordering the removal of such persons. In no other case was the Act ever availed of. There is no instance on record where the French have been interrupted in the rightful exercise of their fishery. All the collisions with respect to the Fishery have been from the unlawful interruptions and aggression on British subjects by the French.

That the Treaties provide that no fixed settlement shall be erected on the so called French Shore. But the fact is, as if by mutual consent, both the French and British have disregarded this restriction for both have fixed settlements. And British subjects are employed by the French to take care of their property during their absence. The French do not and have no right to reside in Newfoundland during the Winter season.

That there is an Act in existence 7th Victoria, authorising the issue of grants of land without any restriction as to the so called French Shore and a subsequent Act, which received the special sanction of Her Majesty after twelve months deliberation, under which Licenses to search for Minerals have been issued and grants made subject to French rights.

That the extent of the Coast line of the so called French Shore inclusive of the sinuosities of the Bays and Inlets, is little short of the one half of the whole sea coast of the Island. Of this great distance the French occupy a small fractional part only, the British are scattered more or less throughout the whole length.-

That the rights of fishing involved in the absurd claim of an exclusive fishery by the French are not limited to the residents of Newfoundland, they are the rights of the other provinces of British North America and also those of the United States, to the latter granted them under their Treaty with Great Britain in the year 1818. England could not and would not have granted to the United States that which she had no right to grant, and much less would she deprive the inhabitants of the soil of rights which she had granted to non residents

and to Aliens.-

That should Her Majesty's Government deem it desirable to appoint Commissioners to negotiate with the French Government with a view to the settlement of existing disputes between the fishermen of the two nations such Commissioners should be instructed to make no concession whatever of any part of the soil beyond the privilege to which the French are entitled under existing Treaties namely "to erect stages made of boards and huts necessary and usual for drying fish, nor to resort to the said Island beyond the time necessary for fishing or drying fish," nor any other fishery rights other than a concurrent right, to which only are they entitled.

That the simple questions for the consideration and decision of the Commissioners be limited to the Beach or strand necessary for the purposes contemplated under the Treaty, extending from the sea towards the Interior, limiting that space to the necessary requirements of "landing and drying their fish," and their sea fishing to the entrance of the Rivers flowing from the Interior, within which rivers the French have no right of fishing whatever.-

That the valuable and important privilege to purchase Bait both Herring and Caplin on the Southern Coast be conceded to the French to be exercised at such times as British subjects may lawfully take the same, conditionally that the French abandon their untenable pretensions to an exclusive Fishery.-

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Volume 4, 1861-1869.

Volume 5, 1869-1874.

Volume 6, 1874-1883.

A record of the proceedings of the Newfoundland Executive Council.

- b. Series A1, The St. John's Chamber of Commerce.

Volume 4, Minute Book, 1860-1865.

Volume 5, Minute Book, 1866-1875.

These Minute Books contain a record of the proceedings of the St. John's Chamber of Commerce. They include valuable information concerning the views of the St. John's mercantile community.

- c. Series A2, The St. John's Chamber of Commerce.

Volume 1, Governor's correspondence with the Chamber of Commerce, 1857-1884.

Volume 6, Addresses and Replies.

Copies of addresses from the Chamber of Commerce to various government officials and their replies.

- d. Blue Books. The fourteen volumes covering the period from 1865 to 1878 were used.

The Blue Books, annual statistical reports, form a valuable source of background material.

B. Public Records Office, London.

1. Colonial Office Records.

a. C.O. Series 194.

Volumes 161-198, 1860-1879.

The C.O. Series 194, on microfilm at the Newfoundland Archives, is the main Colonial Office file of material relating to Newfoundland and was the most important collection of documents used in this thesis. The series includes:

- i. Despatches and enclosures from the Governor of Newfoundland to the Secretary of State for the Colonies.
- ii. Minute papers by the officials of the Colonial Office on these despatches.
- iii. Draft replies to the Governor's despatches.
- iv. Correspondence with other departments and officials of the British government arising from the Governor's despatches, including correspondence with the Admiralty, Board of Trade, Crown Agents for the Colonies, Foreign Office, Law Officers of the Crown, Treasury, and War Office. The Admiralty and Foreign Office correspondence contained in the series was used extensively in this thesis.

b. C.O. Series 807.

N.A. 73, Newfoundland: Fisheries Correspondence.

N.A. 80, " " "

N.A. 81, " " "

N.A. 81A, " " "

N.A. 91, " " "

The C.O. Series 807, on microfilm at the Public Archives of Canada, consists of printed copies of correspondence relating to the Newfoundland

fisheries. It was an invaluable source of information for this thesis because of omissions in the C.O. Series 194.

III. Original Authorities: Published.

A. Newfoundland Archives.

1. Abstract Census and Return of the Population, &c. of Newfoundland, 1857. St. John's: 1857.
2. Abstract Census and Return of the Population, &c. of Newfoundland, 1869. St. John's: 1870.
3. Census & Return of the Population, &c., of Newfoundland & Labrador, 1874. St. John's: 1876.
4. Census & Return of the Population, &c., of Newfoundland & Labrador, 1884. St. John's: 1886.
5. Journals of the Assembly. The following volumes were used: 1848-49, 1852, 1856, 1857, 1859, 1860-61, and the fourteen volumes covering the period from 1865 to 1878.
6. Journals of the Council. The fourteen volumes covering the period from 1865 to 1878 were used.
7. Privy Council, Judicial Committee. In the Matter of the Boundary Between the Dominion of Canada and the Colony of Newfoundland in the Labrador Peninsula. 12 vols. London: William Clowes, 1927.

This set contains accurate copies of many documents relating to the history of Newfoundland. It is a valuable source for the researcher.

B. Library of the Law Society of Newfoundland.

1. Imperial Statutes At Large.
Volume XIV, 1781-1786.
2. Statutes of Newfoundland.
Volume II, 1843-1853.
Volume IV, 1864-1869.
Volume V, 1870-1876.
Volume VII, 1877-1882.

These volumes are from a privately bound collection of the statutes of Newfoundland owned by the Law Society of Newfoundland. They are the most convenient source for the acts of the General Assembly of Newfoundland.

C. Goaling Memorial Library, St. John's, Newfoundland.

1. The Royal Gazette and Newfoundland Advertiser.
The fourteen volumes covering the period from January 3, 1865, to December 31, 1878, were used.

IV. Secondary Material.

I have followed the practice suggested in Scholarly Reporting in the Humanities of omitting the publisher's name in works more than a century old.

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