

**THE FISHERIES DISPUTE; A  
LETTER TO THE HONOURABLE  
WILLIAM M. EVARTS, OF THE  
UNITED STATES SENATE**

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The Fisheries Dispute; a letter to the Honourable William M. Evarts, of the United States Senate  
by John Jay

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**JOHN JAY**

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# THE FISHERIES DISPUTE

A SUGGESTION FOR ITS ADJUSTMENT BY ABROGATING  
THE CONVENTION OF 1818, AND RESTING ON  
THE RIGHTS AND LIBERTIES DEFINED  
IN THE TREATY OF 1783

*A LETTER*

TO

THE HONOURABLE WILLIAM M. EVARTS  
OF THE UNITED STATES SENATE

BY

JOHN JAY  
LATE MINISTER TO VIENNA

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## THE FISHERIES DISPUTE.

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DEAR MR. EVARTS : The necessity of some decisive action by the Government to arrest the vexatious and harassing treatment of our fishermen by the Canadian authorities is recognized by the country, as well for the protection of our own rights as for the avoidance of a breach of our harmonious relations with Great Britain; and the passage in the Senate by 46 to 1 of Senator Edmunds' bill to authorize the President to protect and defend the rights of American fishing vessels, American fishermen, and American trading and other vessels in certain cases for other purposes, seems to show that the Senate shares the judgment of the country that a continuance of the policy under which such annoyances are possible would be a mistake, and that their further toleration is forbidden by a decent regard to the rights of our fishermen, and to the peace, interest, and dignity of the nation.

Upon the question how far the bill is calculated to disturb our friendly relations with Great Britain, the *New York Herald* reports your views as follows :

Mr. Evarts argued in support of the bill, which he said, was not in the nature of a menace or tending at all in that direction. It was the duty of Congress to take the subject away from local disturbance, irritation, and resentments. So far from the bill tending to war or tending to umbrage, it was intended to have a contrary effect. It was an immediate announcement to the people that they had only to trust their protection, not to personal resentment, but to the Government of the United States, and when the opening summer should bring about the recurrence of the fishing season and of the fishing dangers, the

question would be removed from that theatre of collision ; and, if not concluded, it would be under the contract of both governments, in a deliberate consideration of what should be done in order to have stability of intercourse and in order to give stability to the peace and dignity of the two nations, the United States and Great Britain.

I observe an intimation in the papers that some proposition has been made by our Government to which it is awaiting a reply, and I am sensible of the delicacy with which one not thoroughly aware of the state of a negotiation, should venture to offer advice. This question of the fisheries, however, is peculiarly a question for the people, and the recent reports in the Senate and the House, the correspondence on the subject submitted by the President on December 8, 1886, and again on February 8, 1887, with the replies of the Secretary of the Treasury to the House of December 14, 1886, and of February 5, 1887, and the letter of Secretary Bayard to the Senate of January 26, 1887, with the bills proposed by Senator Edmunds and Mr. Belmont, the resolution of Mr. Gorman, and the bill proposed by Secretary Manning, have brought the pending questions so fully before the country, with the facts and correspondence to so late a day, that a suggestion offered for consideration and based upon historic data and recent facts, will hardly I think be regarded as untimely or improper.

#### RETALIATION AS A REMEDY, TEMPORARY AND INCOMPLETE.

The difficulty which we propose to reach by retaliation seems to arise in great part from a seemingly irreconcilable difference of opinion between the government of Great Britain and that of the United States, touching the extent of the rights of our fishermen under the Convention of 1818. And if that Convention is really the source of the trouble which we have had with intervals during seventy years, is retaliation in truth the most complete and proper remedy ? or may not a threat have upon the English people the effect



it would have upon ourselves, disposing us to fight rather than to argue? or if we are forced to retaliation as a last resort, should not its suggestion be accompanied by some proposition looking to a fundamental and permanent readjustment of our rights?

When Mr. Bayard, under the date of November 6, 1886, referring to the seizure of the *Marion Grimes*, held that the Dominion Government was seeking by its action in the matter to "invade and destroy the commercial rights and privileges secured to the citizens of the United States under and by virtue of treaty stipulations with Great Britain," the Governor-General of Canada, the Marquis of Lansdowne held that that statement was "not warranted by the facts of the case," and that the two vessels that had been seized were "fishing vessels and not traders, and therefore liable, subject to the guiding of the courts, to any penalties imposed by law for the enforcement of the Convention of 1818, on parties violating the terms of that Convention."

Nor was this simply the judgment of the Governor-General of Canada, for Earl Rosebery wrote: "I have to add that Her Majesty's Government entirely concurs in the view expressed by the Marquis of Lansdowne."

If the judgment of the British Government on that point, based apparently on a system of interpretation which is held at Washington to be so narrow, strained, and technical that it ignores not only the motives which induced Americans to accept the Treaty of 1818, but ignores also the rights and the duties that belong to international comity and the law of nations—if that judgment has not been changed by the able and courteous arguments of Mr. Bayard and Mr. Phelps, and the grave reports of Senator Edmunds and Mr. Manning, is it likely to yield more readily when the calm of diplomacy shall have been interrupted by the irritating measures of retaliation, which Senator Edmunds' bill, or the yet more stringent bill by Mr. Belmont in the House, extending to Canadian locomotives and cars, goods, wares,

and merchandise, authorizes the President to proclaim? Will it be more easy to come to an amicable understanding, after the vessels of the British Dominion in America have been excluded from our ports, or Canadian railway trains stopped at the border, in retaliation for the treatment of our fishermen; a treatment which the Ministers of Canada and Great Britain declare is justified by the strict letter of the Treaty of 1818, however, in the eyes of Americans, unfriendly, inhospitable, or even barbarous?

#### BRITISH MISCONSTRUCTION OF THE TREATY OF 1818.

On one point both Mr. Bayard and Earl Rosebery, Mr. Phelps and Lord Salisbury seem to be agreed, that the Treaty of 1818 is the law on the interpretation of which depends the decision of the question in dispute. But the recent correspondence on the rights of American fishermen, submitted by the President to the Senate on December 8, 1886, shows that this apparently simple question of interpretation is, in the view of the Department, fairly influenced by the series of laws and regulations referred to by Mr. Bayard, affecting the trade between the British Provinces of North America and the United States, which have since been respectively adopted by the two countries, and have led to amicable and beneficial relations between their respective inhabitants, building up a trade between the two countries founded on mutual interest and advantage, and establishing a reciprocal liberty of commerce. The question is next, as Mr. Bayard and Mr. Manning have both shown, improperly subjected, as regards American rights, to acts of colonial legislation under a supposed delegation of jurisdiction by the Imperial Government of Great Britain, and seemingly intended to include authority to interpret and enforce the provisions of the Treaty of 1818. The effect of the colonial legislation and colonial executive interpretation, if executed according to the letter, would be, as Mr. Bayard contends in his letter to Sir L. B. Sackville West,

of May 10, 1886, to expand the restrictions and renunciations of the Treaty of 1818, and to further diminish and practically destroy the privileges expressly secured to American fishing vessels to visit the inshore waters for shelter, the repair of damages, the purchase of wood, and the obtaining of water.

The seizure and detention, for instance, by the Canadian authorities of the *David J. Adams*, which Mr. Bayard in his note to Sir Lionel B. Sackville West, of May 20, 1886, characterized as "unwarranted, irregular, and severe," appeared to rest on charges :

- I. Of violating the Treaty of 1818.
- II. Of alleged violation of the Act 59 George III.
- III. Of alleged violation of the colonial Act of Nova Scotia of 1818, and
- IV. Of alleged violation of Canadian Statutes of 1870 and 1883.

And Mr. Bayard, in his telegram of May 22d, to Mr. Phelps, refers to "vexatious interpretations, and actions of local authorities which can only hinder an amicable award." On June 14th, Secretary Bayard, in regard to the allegations that American vessels would not be permitted to land fish at Halifax for transportation in bond across the Province, and that American vessels had been warned to keep outside of a line drawn from headland to headland, said :

Against this treatment I must instantly and formally protest as an unwarrantable interpretation and application of the Treaty by the officers of the Dominion of Canada and the Province of Nova Scotia ; as an invasion of the laws of commercial and maritime intercourse existing between the two countries, and a violation of hospitality ; and for any loss or injury resulting therefrom the Government of Her British Majesty will be held responsible.

In reply to your complaints of outrages, the British Minister at Washington has advised us that the matter has been referred to the Dominion Government, and Mr. Phelps at London has been informed that no further steps can be taken about the cases before the Canadian courts have been adjudicated.