

**REPORTS OF INTERNATIONAL
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**RECUEIL DES SENTENCES
ARBITRALES**

Commission established under the Convention concluded between the United States of
America and Great Britain on 8 February 1853

**Case of the Washington v. Great Britain, decision of the Umpire, Mr. Bates,
dated 23 December 1854**

Commission établie en vertu de la Convention conclue entre les États-Unis d'Amérique et la Grande-
Bretagne le 8 février 1853

**Affaire Washington c. Grande-Bretagne, décision du Surarbitre, Mr. Bates,
datée du 23 décembre 1854**

23 December 1854

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Affaire *Washington c. Grande-Bretagne*, décision du Surarbitre,
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Treaty interpretation—treaties regulating fisheries rights of British and American fishermen—restriction of the application of the new British doctrine of headlands to bays with mouths not exceeding ten miles in width—definition of these bays following an imaginary line drawn along the coast from headland to headland, with exclusive jurisdiction of the coastal state extending three marine miles outside of this line.

Interprétation des traités—traités réglementant les droits de pêche des pêcheurs britanniques et américains—restriction de l'application de la nouvelle doctrine britannique sur les promontoires pour ce qui est des baies ayant des embouchures n'excédant pas dix miles de large—délimitation de ces baies d'après une ligne imaginaire tracée le long de la côte, allant de promontoire en promontoire, l'État côtier bénéficiant d'une compétence exclusive s'étendant à trois miles marins au delà de cette ligne.

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The schooner *Washington* was seized by the revenue schooner *Julia*, Captain Darby, while fishing in the Bay of Fundy ten miles from the shore, on the 10th of May 1843, on the charge of violating the treaty of 1818. She was carried to Yarmouth, Nova Scotia, and there decreed to be forfeited to the Crown by the judge of the vice admiralty court, and with her stores ordered to be sold. The owners of the *Washington* claim for the value of the vessel and appurtenances, outfits, and damages, \$2,483, and for eleven years' interest, \$1,638, amounting together to \$4,121. By the recent reciprocity treaty, happily concluded between the United States and Great Britain, there seems no chance for any future disputes in regard to the fisheries. It is to be regretted that in that treaty provision was not made for settling a few small claims, of no importance in a pecuniary sense, which were then existing, but as they have not been settled they are now brought before this commission.

The *Washington*, fishing schooner, was seized, as before stated, in the Bay of Fundy, ten miles from the shore, off Annapolis, Nova Scotia.

* Reprinted from John Bassett Moore (ed.), *History and Digest of the International Arbitrations to Which the United States has been a Party*, vol. IV, Washington, 1898, Government Printing Office, p. 4342.

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It will be seen by the treaty of 1783, between Great Britain and the United States, that the citizens of the latter, in common with the subjects of the former, enjoyed the right to take and cure fish on the shores of all parts of Her Majesty's dominions in America used by British fishermen; but not to dry fish on the island of Newfoundland, which latter privilege was confined to the shores of Nova Scotia in the following words: "And American fishermen shall have liberty to dry and cure fish on any of the unsettled bays, harbours, and creeks of Nova Scotia, but so soon as said shores shall become settled it shall not be lawful to dry or cure fish at such settlements without a previous agreement for that purpose with the inhabitants, proprietors, or possessors of the ground."

The treaty of 1818 contains the following stipulations in relation to the fishery: "Whereas differences have arisen respecting the liberty claimed by the United States to take, dry, and cure fish on certain coasts, bays, harbors, and creeks of His Britannic Majesty's dominions in America, it is agreed that the inhabitants of the United States shall have, in common with the subjects of His Britannic Majesty the liberty to fish on certain portions of the southern, western, and northern coast of Newfoundland, and also on the coasts, bays, harbors, and creeks from Mount Joly, on the southern coast of Labrador, to and through the Straits of Belle Isle, and thence northwardly indefinitely along the coast, and that American fishermen shall have liberty to dry and cure fish in any of the unsettled bays, harbors, and creeks of said described coasts until the same become settled and the United States renounce the liberty heretofore enjoyed or claimed by the inhabitants thereof to take, dry, or cure fish on or within three marine miles of any of the coasts, bays, creeks, or harbors of His Britannic Majesty's dominions in America not included in the above-mentioned limits; *Provided, however,* That the American fishermen shall be admitted to enter such bays or harbors for the purpose of shelter and of repairing damages therein, of purchasing wood, and of obtaining water, and for no other purpose whatever. But they shall be under such restrictions as may be necessary to prevent their taking, drying, or curing fish therein, or in any other manner whatever abusing the privileges hereby reserved to them."

The question turns, so far as relates to the treaty stipulations, on the meaning given to the word "bays" in the treaty of 1783. By that treaty the Americans had no right to dry and cure fish on the shores and bays of Newfoundland, but they had that right on the coasts, bays, harbors, and creeks of Nova Scotia; and as they must land to cure fish on the shores, bays, and creeks, they were evidently admitted to the shores of the bays, etc. By the treaty of 1818 the same right is granted to cure fish on the coasts, bays, etc., of Newfoundland, but the Americans relinquished that right and the right to fish within three miles of the coasts, bays, etc., of Nova Scotia. Taking it for granted that the framers of the treaty intended that the word "bay" or "bays" should have the same meaning in all cases, and no mention being made of headlands, there appears no doubt that the *Washington*, in fishing ten miles from the shore, violated no stipulations of the treaty.

It was urged on behalf of the British Government that by coasts, bays, etc., is understood an imaginary line, drawn along the coast from headland to headland, and that the jurisdiction of Her Majesty extends three marine miles outside of this line; thus closing all the bays on the coast or shore, and that great body of water called the Bay of Fundy against Americans and others, making the latter a British bay. This doctrine of headlands is new, and has received a proper limit in the convention between France and Great Britain of 2d August 1839, in which "it is agreed that the distance of three miles fixed as the general limit for the exclusive right of fishery upon the coasts of the two countries shall, with respect to bays the mouths of which do not exceed ten miles in width, be measured from a straight line drawn from headland to headland."

The Bay of Fundy is from 65 to 75 miles wide and 130 to 140 miles long. It has several bays on its coasts. Thus the word bay, as applied to this great body of water, has the same meaning as that applied to the Bay of Biscay, the Bay of Bengal, over which no nation can have the right to assume the sovereignty. One of the headlands of the Bay of Fundy is in the United States, and ships bound to Passamaquoddy must sail through a large space of it. The islands of Grand Menan (British) and Little Menan (American) are situated nearly on a line from headland to headland. These islands, as represented in all geographies, are situate in the Atlantic Ocean. The conclusion is, therefore, in my mind irresistible that the Bay of Fundy is not a British bay, nor a bay within the meaning of the word as used in the treaties of 1783 and 1818.

The owners of the *Washington*, or their legal representatives, are therefore entitled to compensation, and are hereby awarded not the amount of their claim, which is excessive, but the sum of three thousand dollars, due on the 15th January 1855.