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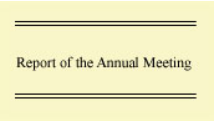


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# SPANISH CLAIMS TO A SHARE IN THE NEWFOUNDLAND FISHERIES IN THE EIGHTEENTH CENTURY

By VERA LEE BROWN

Those whose interests have accustomed them to the meandering propensities of the history of the Newfoundland fisheries will consider it characteristic of the subject that among the papers in the old Spanish archive at Simancas, bearing on the history of England and Spain in the eighteenth century, there should be a number of memorials and other official documents concerned with the ubiquitous cod. An examination of these, and a study of the several reports from the Board of Trade and other English papers on the subject that are available in the Public Record Office in London, reveals the issue of the Newfoundland fisheries to have been not only a constant factor in the relations of the two powers through a century of conflicting colonial ambitions, but one closely connected with the recurring crises of that rivalry. In this aspect the matter has received but passing notice in works devoted to larger fields and a review of the papers bearing on it would appear worthwhile.

The subject enters eighteenth century history with the Treaty of Utrecht. By the terms of this international agreement Newfoundland acquired for the first time the definite status of a recognized British possession. In the earlier period of the island's history, although the British Government occasionally took action looking toward a realization of its claims of sovereignty,[1] fishermen of four nations, the English, the French, the Portuguese and the Spaniards, constantly frequented its coastal waters, dried their catch on different sections of the shore, which in time they came to regard as their own, and in common

[1] Cf. The section of the report from the Lords Commissioners for Trade and Plantations to the Lords Justices, September, 1719, relating to England's early relations with Newfoundland, p. 16.

harbours followed a custom of acknowledging the authority of the first master of ship to arrive in the spring as admiral of the port for the season. Of these four nations, students of this early field tell us, that, putting aside the unsupported claims that were later advanced that Basque fishermen, in pursuit of their calling, had reached the Newfoundland shores before John Cabot's visit in 1497,[2] existing documentary evidence goes to show that the Spaniards were the last to follow in the wake of the Cabot voyages and establish a regular fishing trade to the Newfoundland banks.[3]

In view of later events it is noteworthy how little effort was made by the Spanish court at the time of the Cabot discoveries to establish a claim to either the island of Newfoundland or its fishery. It seems clear that no use whatever was made of the alleged existence of a tradition of a prior discovery of the fishery by Spanish Basques. The grand argument that was to be repeatedly reiterated in the memorials and diplomatic offices of the eighteenth century seems not to have occurred to Ferdinand and his ministers. A second basis of claim, while not wholly neglected, appears to have been only half-heartedly urged.[4] This rested on the Treaty of Tordesillas,[5] which had been made shortly after Columbus' voyage had raised Spain to the position of a rival candidate to Portugal for navigating and colonial honors. Its clauses had assigned all lands east of a line drawn 370 leagues to the west of Cape Verde islands to Portugal and those to the westward to Spain, without specifying any limit of latitude. According to modern calculations, Newfoundland, on these terms, fell within the Spanish sphere, and might, it would be thought, have been claimed by the Catholic King on this ground. Very little effort in this direction appears to have been made. In 1496, when Ferdinand was informed that Henry VII was contemplating an expedition to the Indies, he contented himself with instructing his ambassador to take care to point out to his brother sovereign that such expeditions were very uncertain enterprises and that it was his opinion that the idea had been thrown in the way of the English King by the King of France, with the premeditated intention of distracting him from other business.[6] Two years later, when all England was ringing with the news of Cabot's success in his undertaking, the Spanish ambassador did indeed mildly represent to Henry VII that in his opinion the new lands were within his master's dominions, but when the English King, who had been no party to the Treaty of Tordesillas,

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[2] A strong statement of this claim is to be found in Bellet, A. "La Grande Pêche de la Morue à Terre-Neuve depuis la découverte du Mouveau Monde par les Basques . . . . . au XIVè Siècle," Paris, 1902, p. 17. "Aussi pour nous qui sommes interessés dans cette grande pêche de la morue a Terre-Neuve dont les Basques furent les véritables inventeurs, c'est à ce premier atterrissage des baleiniers de Cap-Breton sur les cotes de Terre Neuves que nous devons faire remonter la véritable découverte du Nouveau-Monde, et l'établissement de la première route vraiment commerciale entre l'Europe et l'Amérique. Malheureusement il nous est encore impossible de pouvoir donner une date fixe à cet événement historique, le que nous pouvons affirmer, c'est qu'il précéde d'au moins un sèécle et demi la première expédition de Christophe sement il nous est encore impossible de pouvoir donner undtae de fixe a cet événement historique, le quel nous pouvons affirmer, c'est qu'il précéde d'au moins un siécle et demi la prémière expedition de Christophe Colomb, expédition qui ne fut d'ailleurs organisée par le navigateur génois que sur les indications d'autres Basques que, le vent avait poussées aux Antilles vers 1480."

[3] Cf. Biggar, H. C. "The Precursors of Jacques Cartier, 1497-1534," Ottawa, 1911. Introduction, p. XXII: "Although the Bretons may have visited the Banks even before the expeditions of the Cabots it was not until 1504 that French fishing vessels proceeded as far as Newfoundland. The harbours from Cape Race to Cape Bonaviste being occupied by the fishermen from Portugal, the French were obliged to have recourse to those which lie from Cape Race westward to Cape Breton. In 1508 the Pensée of Dieppe showed fishermen of Normandy the way to the harbours north of Cape Bonavista. Thus Spain remained the only country of western Europe whose subjects had not visited the region."

Prowse, D. W. History of Newfoundland. London, 1896, p. 43. "It is clearly proved as well as any remote historical event can be substantiated, that the English, Portuguese, Bretons and Normans were the first fishermen in Newfoundland. The Spanish Basques or Biscayans did not engage regularly in the fishing until about 1545; previous to that period they carried on a very extensive fishing in Ireland; gradually this was reduced and the Biscayans turned their attention to the great Transatlantique fishery."

[4] In the 18th century this argument appears to have been entirely neglected in connection with the Newfoundland fisheries, although, in other cases, as for instance in the Falkland Island controversy, it was brought forward. (See Brown, V. L. "Anglo-Spanish Relations in America, 1763-1774." Chap. III "The Falkland Islands." Hisp. Amer. Hist. Rev., Aug., 1922.)

[5] Signed June 2, 1494.

[6] Ferdinand and Isabella to De Puebla, 28 March, 1496. Calendar of State Papers. Bergenroth. Vol. I, p. 88.

showed a dislike for the minister's views,[7] the Spanish court seems not to have sent orders to its representative to make a more official and serious protest, and the controversy was allowed to drop.

Lack of exact geographical knowledge was probably the chief factor behind Ferdinand's apparent indifference. No one could draw the line specified in the Treaty of Tordesillas and consequently the relation of Newfoundland to the famous division of the unknown world was obscure. A very general opinion prevailed that the new island fell within the Portuguese half of the world. Uncertain of Spanish rights under the treaty, unwilling at the moment to offend Portugal and greatly preoccupied with discoveries going forward in the West Indies and Central America, Ferdinand allowed the years to slip by without making a serious effort to establish Spanish claims to an island and trade whose ultimate value he could hardly be expected to have realized fully. In his defense it is also to be remembered that the race for new world territory was in its infancy and governments everywhere were at times negligent in improving opportunities in a manner incomprehensible to their more experienced successors.

The English, on this occasion, permitted no time to elapse before following up the advantage which Cabot's voyage had given them, and immediately dispatched a number of expeditions to the new island, where they were joined in the course of a short time by the French and the Portuguese.[8] There is a record that in 1511 Ferdinand gave permission to a certain Juan de Agramonte to take two ships to Newfoundland, but no proof exists that these Spanish vessels ever set sail and they certainly left no mark on the Newfoundland situation.[9] The fisheries continued to be enjoyed solely by the English, the French and the Portuguese, until the closing year of the first quarter of the sixteenth century, when a vessel, sailing under the Spanish flag, arrived at the new island. This first historical Spanish expedition to Newfoundland came under the conduct of a Portuguese, Stephen Gomez, who, after one failure, due to a mutiny in his crew, arrived off St. Johns in 1525. His commission forbade him to enter any land belonging to the King of Portugal, and possibly, for this reason, after a brief stay in the island, he continued his way westward, coasting Cape Breton, visiting the Bay of Fundy and exploring Cape Cod and Cuba, before returning to Europe.[10] His journey is thought to have attracted considerable attention in Spain to the fisheries, but not to have led immediately to any large participation on the part of Spain in the trade. From all available evidence it would seem that the Spanish Newfoundland fishing industry did not assume anything approaching a national character until some twenty years after Gomez' time. This view is supported by the records of a law-suit which took place at San

[7] Pedro de Ayala to Ferdinand and Isabella, London, July 25, 1498. Calendar of State Papers. Bergenroth, I, p. 168. "I think that Your Majesties have already heard that the King of England has equipped a fleet in order to discover certain islands and continents which he was informed some people of Bristol, who manned a few ships for the purpose last year, had found. I have seen the map which the discoverer has made, who is another Genoese like Columbus, and who has been in Seville and in Lisbon asking assistance for his discoveries . . . . . I have seen on a chart the direction which they took, and the direction they sailed, and I think that what they have found, or what they are in search of, is what your Highnesses already possess. It is expected that they will be back in the month of September. I write this because the King of England has often spoken to me on this subject and he thinks that Your Highnesses will take great interest in it. I think it is not further distant than 400 leagues. I told him that, in my opinion, the land was already in the possession of Your Majesties but though I gave him my reasons he did not like them."

[8] Biggar, H. P. "Charles V and the Discovery of Canada." Roy. Hist. Soc. Trans. 3d Ser. XI. ". . . . . Henry VII continued to despatch expeditions to Newfoundland in 1502 and 1503. During these same years the Portuguese visited this region in the hope of finding a northwest passage to their possessions in the East. . . . . The French had early discovered the rich cod fishery, if indeed Bretons had not made their way thither before the Cabots. . . . . We first hear definitely of their (the French) presence in 1504."

[9] Biggar, H. P. "The Precursors of Jacques Cartier, 1497-1534." Ottawa, 1911. Introduction. "In October, 1511, King Ferdinand concluded an agreement with a certain Juan de Agramonte for a voyage of discovery to Newfoundland. Although this compact was ratified by Queen Joanna no record exists to show that the expedition which was to be piloted by Bretons ever set sail from Santander."

[10] *Ibid.*

Sebastian in 1561. A number of fishermen, who were giving evidence in a case concerned with the Newfoundland fisheries, agreed in their testimony that the Spanish trade thither had not begun more than 16 or 20 years earlier.[11]

The first forty-three years in the lifetime of this commerce, the period between 1545 and 1588, constituted its era of greatest prosperity. The prominent position which was held by the Spanish contingent on the Newfoundland banks in the decade before the year of the fatal armada is made clear in a letter written in 1578 by Anthony Parkhurst to Richard Hakluyt. The Englishman, who had spent four years in Newfoundland, gives an estimate of the comparative strength at this date of the various nations on the Newfoundland banks. "There are," he reports, "above 100 sail of Spaniards that come to take cod—besides 20 or 30 more that come from Biskaie to kill whale for traine. These be better appoynted for shipping and furniture of munition than any nation saving the Englishmen. As touching their tunnage, I thinke it may be neere five or sixe thousand tunne." The number of vessels from France and Brittany Parkhurst gives as "120 sail," but adds that most of their shipping was very small, "not past fortie tunnes." "Of Portugal," he writes, "there are not likely above 50 saile—whose tunnage may amount to three thousand tuns and not upwarde." The English, like the Portuguese, he says, had some 50 vessels engaged.[12]

The draughting of large numbers of fishermen into the Spanish fleet in preparation for Philip II's struggle with Elizabethan England, brought this prosperous period to an end. From the time of the armada the relative importance of the Spaniards in the Newfoundland trade declined rapidly. The men who had been drawn away from the fishing vessels to man the fleet only found their way back to their former occupation in greatly reduced numbers.[13] The decline of the navy, which at once set in, involved a lessened interest in a trade which had been the nursery of its seamen and the increase of the government's financial embarrassments brought heavier duties on the fishing industry and made participation in it less profitable. While the Spanish fishing vessels dwindled in number from the 130 of Parkhurst's day to less than a quarter of that figure, the English, especially after the peace of 1604, "flourished exceedingly." In 1615 an agent, who had been sent from the admiralty to investigate conditions, reported that there were then 250 English vessels of an average burden of 60 tons employed in the fishing trade, that each of these had an average crew of 20 men and took annually 120,000 fish and 5 tons of train oil. By 1644 the English had come to have 270 ships "besides those that brought salt and those that carried the fish to market," while most of the foreign competitors had been constrained to abandon the fisheries.[14] On the island itself, despite the opposition of the fishery interests, the early years of the 17th century saw permanent English colonies established at various points in the eastern part of the country. By 1650 these colonists had secured, if only temporarily, the appointment of a governor and had begun the process of capturing control of the major part of their nation's fishing trade.[15]

[11] Duro, C. F. Arca di Noé, p. 314. "En el pleito se quido en San Sebastian el año 1561 con los Maestres de Naos, sobre pagar a las iglesias el dos por cientos de los productos de la pesca de Terra Nova en el cual se preguntô a los testigos. Si saben que la pesqueria de Tierra Nuevo la seido hallada y usada de pocos años y tiempo a esta parte; y habiendo entre los declarantes algunos ancianos hasta de setenta años todos estuvieron conformes en que la pesca no contada mayor antiquedad que de diez y seis a veinte años a la fecha: es decir que se frecuentaba desde 1541 o 1545 y que por la mucha ganancia que producian estos viages se habian abandonado los a Flandes, Inglatierra y otros partes. (Quoted in Prowse, D. W., History of Newfoundland, p. 44.)

[12] Hakluyt, R. The Principal Navigations, Voyages, Traffiques and Discoveries of the English Nation. G. M. Dent. Vol. V, p. 343.

[13] Cf. Prowse, D. W., History of Newfoundland. Appendix to Chapter III, p. 48. "The scare of the impending conflict virtually destroyed the Biscayon fishery. From this time forward the Newfoundland fishing was principally in English hands. The great Spanish fleet dwindled down in a few years from one hundred and fifty sail to less than ten."

[14] Report of the Board of Trade, 19 December, 1718, printed in Acts of the Privy Council, Vol. VI.

[15] *Ibi.*

As the century advanced and French power under the direction of Richelieu, Mazarin and Louis XIV increased in all parts of the world and especially in North America, the French fisheries also rose to unprecedented dimensions, coming to include in their operations the shores of Nova Scotia, Cape Breton, St. John's island, Gaspe and Newfoundland. In 1662 a permanent French settlement was established and fortified at Placentia and henceforth even the English found themselves hard put to it to maintain either their colonies or fishery. A British writer of 1711 declares that "of late years the French employ in the fishery of Newfoundland 400 or 500 sail and 16,000 men and have quite eaten the English out of the trade."[16] The Spaniards, diminished in number and possessed of no territorial base, appeared by the close of the century merely as proteges of the French, who from time to time even attempted to prevent them from continuing to participate in the fisheries.[17]

The Treaty of Utrecht, closing a war in which Marlborough's victories gave England a basis for securing favourable terms from her new world rivals, provided for the relinquishment of all territorial claim other than British to Newfoundland. Its stipulations, however, preserved to the French the privilege of drying their fish on certain specified sections of the coast and recognized Spanish interests in the fishing trade in the following terms:—"And whereas it is insisted on the part of Spain that certain rights of fishing at the island of Newfoundland belong to the Guipuscoans or other subjects of the Catholic King, Her Britannic Majesty consents and agrees that all such privileges as the Guipuscoans and other people of Spain are able to make claim to by right, shall be allowed and preserved to them."[18] This clause was the result of efforts made by the Spanish plenipotentiary, the Marquis de Monteleon, who, while the discussions on the preliminaries of the treaty were in progress, was ordered to safeguard as far as possible the interests of the Spanish fishermen. An extract of the memorial that Monteleon presented is preserved among the Colonial Office papers. In it the plenipotentiary based the claim of the Spaniards to a recognized share in the Newfoundland fisheries on the ground that "the inhabitants of the said province of Guipuscoa have always had liberty of Fishing on the Coasts of Newfoundland and were never molested therein by the French or any other Nation, on the contrary, that they always agreed very well with the French and that on shore they gave preference to whomsoever was first in possession without distinction of nations."[19] It is noteworthy that there is lacking in this memorial that insistence on the Spanish Basques having been the first discoverers of the island and its fisheries that was to form the basic argument of all later negotiations on the subject. The plenipotentiary rests his case merely on the statement that the inhabitants of Guipuscoa "have always had the liberty of fishing on the coasts of Newfoundland."

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[16] British Museum, Additional Mss. 13972. "Considerations on the Trade to Newfoundland . . . . . wrote, printed and sent to the members of both Houses of Parliament by . . . . . Thomas Thompson . . . . . " 1711.

[17] Prowse, D. W. History of Newfoundland, p. 186. "The last of the great Spanish fleet now came only by stealth and under the protection of the French. They were up to this date, 1680, still the great whalers and seal killers on this coast . . . . . " p. 48. "In 1681 the French prohibited the Basques from fishing in Newfoundland. I do not think this order was ever carried out . . . . . In 1690 . . . . French again refused to allow them to fish there any more as it was a French colony."

A reference to an attempt on the part of the French to exclude the Spaniards from the Newfoundland fishing in 1687 is to be found in a memorial presented to the Spanish government by "la cassa de la contratation y consulado de la ciudad de S. Jenashan," in 1748 . . . . . in which it is stated that although the Spaniards had been in possession of the fishing up to that time, in the year 1697, the French King "Se escuso a darles los pasaportes que reciprocamente se solian conceder." . . . . . but the offices presented at Paris were effective in inducing His Most Christian Majesty to re-establish the Spanish in their just rights once more. Simancas. Est. Leg. 2368. (Antig. 7014.)

[18] Quozd from Hertslet, L. "A Complete Collection of the Treaties and Conventions and Reciprocal Regulations at present subsisting between Great Britain and Foreign Powers. London, 1827, Vol. II, Treaty of Peace and Friendship Signed at Utrecht 2-13 July, 1713.

[19] P.R.O., C.O. 194-23. Extract of a Spanish paper relating to the inhabitants of the Province of Guipuscoa having leave to fish in Newfoundland.

[20] *Ibid.* Commissioners for Trade and Plantations to the Earl of Dartmouth. Signed, Guilford, Robt. Monckton, Francis Gwyn, Tho. Foley, Whitehall, Jan. 13, 17 12 3.

The Commissioners for Trade and Plantations, to whom the paper was submitted by the secretary of state, adhered in their reply exclusively to the particular point in question, writing on January 13, 1713: "We take leave to inform your Lordship that we have discoursed with such persons as are able to give us information in the matter and we find some Spaniards have come thither with passes from Her Majesty and others may have fished there privately but never any that we can learn did it as of right belonging to them." In support of this latter contention the report quoted an "Act to encourage the trade of Newfoundland" passed in the 10th and 11th years of King William's reign, which provided that "No alien or stranger whatever not residing within the kingdom of England, the dominion of Wales or town of Berwick upon Tweed shall at any time hereafter take, bait or use any sort of trade or fishing whatsoever in Newfoundland or in any of the islands adjacent."[20] However accurately the report may have described the situation in the immediately preceding period, for the past as a whole it gave an impression less favourable to the Spaniards than the facts warranted, and the recognition of this may account in part for the progress that Monteleon was able to report in a letter of February 5, 1713. He wrote to his chief that he had submitted various propositions to the British plenipotentaries, which had been returned with annotations. His proposal had been: "They (the British Government) will maintain the Guipuscoans and other vassals of His Catholic Majesty in the immemorial and free use which they have had up to now, in time of war as well as of peace, of navigating to and trading and fishing whale and cod in Newfoundland." The English note appended to this proposal read, "The Queen consents to maintain the Guipuscoans and generally all vassals of His Catholic Majesty in their rights of whatever nature and offers also to specify them in an article of the treaty of peace."[21] The fulfillment of this promise was the 15th article of the Treaty of Utrecht.

It is not to be believed that the experienced Spanish diplomatists felt satisfied that the national fishing rights were adequately safeguarded by the vague words of the 15th article. They were, in fact, in possession of proof to the contrary. Within two days of Monteleon's letter to Grimaldo, an incident occurred which gave clear evidence of British intentions for the future. A Spanish vessel applying for a pass permitting it to go to Newfoundland and return to Spain laden with fish, was given the license only on the express condition that the vessel should not engage in fishing, but merely buy a cargo of such fish as were "caught and cured by Her Majesty's subjects settled there."[22] It was not from blindness but from helplessness to secure better terms that the Spanish court accepted the ambiguous article, regarding it as the best that could be secured, and hoping that "manana" would offer an opportunity to press for a liberal interpretation of the unsatisfactory wording. Meanwhile the presence in the treaty of an article, even of the most doubtful character, would serve to distract the attention of the Basque fishing interests from the weakness of a government unable to prevent the extinction of what had once been the most flourishing of all Spanish industries and fix their wrath and hopes on the British government.

The insistence of Spain on the inclusion in the treaty of peace of an article professing to give her some title to a share in the Newfoundland fisheries, was prohpetic of the interest that that nation was to take throughout the century in becoming once again a naval power. Every maritime country in the 18th century regarded the Newfoundland fisheries as the one great nursery for seamen. France showed the value that she placed on the industry as a guarantee of continued naval strength, by tightening her hold on the Newfoundland privileges as her other American holdings slipped from her. Had Spain in 1713 acquiesed in the obliteration of her Newfoundland traffic, it would have been

[21] Simancas. Est. Leg. 2368 (Antig. 7014). M. de Monteleon a M. de Monteforada y D. José de Grimaldo. Feb. 5, 1713. Accompanied by a paper entitled Proposiciones hechas por el Marquis de Monteleon.
[22] P.R.O., C.O. 194/23. State of Papers relating to Newfoundland. 1749.

tantamount to a confession that she had given over her ambitions as a naval power. The Spanish government was very far from the adoption of such a policy. On the contrary, Philip V and his ministers turned from Utrecht to bend every effort to preparing the nation to reopen hostilities with England at the earliest possible moment, with the hope of regaining the ground lost in the late unfortunate struggle. The necessary preliminary to such a conflict was the equipment of a strong naval force and all experience taught that this must be grounded on a strong fishing fleet. Spain had not ruled the seas since the necessities of the armada had broken the strength of the Basque contingent in Newfoundland and it seemed logical to suppose that any successful effort to regain the former position would have to take this fact into consideration. Spain, under the leadership of a new royal dynasty, turned from the peace conference of 1713 to face a century in which, in her relations with England, the longest period of peace was to be one of thirteen years. The realization that success in the struggle would, in the last analysis, have to be based on naval strength and that this in turn must rest on a strong sea-going element in the population accounts for the fact that the Newfoundland issue was to remain through the eighteenth century a never settled problem, that every period of friendliness and every settlement following upon hostilities were merely to suggest further opportunities to make some headway towards a privileged position in the Newfoundland trade.

With the Treaty of Utrecht signed, the Basques lost no time in putting the adequacy of the article which Monteleon's diplomacy had won for them to the test of experiment, and in the spring of 1715 they fitted out and despatched a number of ships to fish at Newfoundland. Early news in England of the preparation of this fleet enabled the Secretary of State, Earl Stanhope, to signify to the Lords of the Admiralty that His Majesty's pleasure was that the commanders of the British men-of-war in Newfoundland should not allow any Spaniards to fish there.[23] Accordingly, when the Basque vessels arrived, they were informed by the British authorities that as no orders had come from the king that they were to enjoy the right of fishing under the Treaty of Utrecht, they would not be allowed to remain. The turning back of their vessels, with no consideration given to the expense involved in their fitting out, was thought by the Spanish fishing interests to prove that the English wished, by such extreme measures, to frighten them away from similar attempts in the future and so to deprive Spain of one of her most useful services and give fish supplied by English fishermen an increased value.[24] The return of the disappointed fishermen was a signal for a concerted effort on the part of all those interested, to wring from the British Government a recognition of the justice of the Spanish claim to a share in the Newfoundland trade. The government, urged to action by a bombardment of memorials from the fishing interests of the northern provinces, sent orders to the ambassador in London to present an office to the British Government demanding reparation.[25] The two provinces most closely concerned despatched agents to London[26] to add weight to the ambassador's arguments and at home the force of reprisal was tried.[27]

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[23] *Ibid.*

[24] Simancas. Est. Leg. 2368 (Antig. 7014). Memorial by Don Joachin, Marquis de Barrenechea, presented to the British plenipotentaries at the Congress of Soissons, 1728. "Les (los Viscaynos y Guipuscoanos) impedio la pesca el Governador Britanico el año del 1715 haciendoles volver de vacio, sin considerar les costos, gastos y perjuicios del armento, con la mira caso de escarmentarlos para en adelante y de privarala a la Hispaña, de navegacion tan util y que olvidada por dificil, la pesqueria que es alimento premo y de gran consumno, tendria duplicada estimacion por mano de Ingleses."

[25] In consequence of these orders Monteleon presented a memorial dated Februay 12, 1716, to Lord Stanhope and repeated his representations in a letter of October 29th of the same year.

[26] Simancas. Est. Leg. 2368 (Antig. 7014). Memorial from la cassa de la contratacion y consulado de la ciudad de S. Jenashan. 1748.

[27] P.R.O., C.O. 194/6. Bubb (British Ambassador), to Marquis de Grimaldo, Madrid, 17 Dec., 1716, refers to the seizure of an English Captain and his cargo of fish at Bilbao because of anger at the recent decision of the English Admiral in Newfoundland.

These efforts fell within a period singularly propitious to their success. Shortly after the conclusion of the Treaty of Utrecht, Philip's general policy of preparation for war against England was halted temporarily by the death of Louis XIV. In his eagerness to assert his claim to the French regency the Spanish king adopted for a few months a policy of friendliness toward England, in the hope of winning British acquiescence to his French program. This short interval was seized by England to secure the signature of the Spanish Government to two commercial treaties[28] and was marked on the Spanish side by efforts to turn to account British satisfaction at the promised trade advantages and secure a recognition of the Spanish right to fish on the Newfoundland banks. Stanhope, who was desirous above all else of peace with Spain, which he knew involved rich commercial privileges in the Spanish peninsula and the political separation of that country from France, was not averse to concessions. He plainly told the Spanish ambassador in July, 1717, that he viewed the Spanish claim favourably.[29] It seems probable that could Stanhope have felt sure that a share in the fisheries would have drawn Spain permanently away from her belligerent program he would have been willing to concede it. But the fishery at the price of the abandonment of the very thing for which it was most desired was not a temptation to the Spaniards, and Stanhope accordingly found that Alberoni, the Spanish secretary of state, could not be turned from his ambitious schemes nor hostilities averted by the grant. By the summer of 1718 England and Spain were actually at war, although the formal declaration was delayed until December. Throughout the spring of 1719, while the pretender was being entertained at Madrid, expeditions of Irish and Spanish troops constantly left Spanish ports for a descent on western England or operations in Scotland and only the failure of these military measures caused Alberoni in the summer of 1719 to open negotiations for peace. These emerged in the following spring in Spain's adhesion to the Quadruple Alliance.

In the intervening months of discussion, a long memorial on the fishery claim represented Spain's effort to make a recognition of her subject's right to participate in the Newfoundland fishery an integral part of the settlement. The arguments that Spanish letters and memorials since 1715 had been stating were reiterated in this document in a form that constant repetition through the next half century was to make very familiar. The Spanish claim had, by this date, come to be squarely based on the assertion that the Biscayans and Guipuscoans had been the first to discover the island of Newfoundland and its fishery and had exercised the right of fishing in its waters and trading in its harbours from that time onward to the Treaty of Utrecht without interruption.[30] The 15th article of the treaty of 1713, it was said, had merely recognized a long-standing right. Common report and general credit, the Spaniards declared, gave the honour of the discovery of the transatlantic fishery to the Spanish Basques; reason itself, it was maintained, supported this view, while the Basque

[28] Louis XIV died Sept. 1, 1715. George Rubb (British ambassador at Madrid) signed a new commercial treaty on Dec. 14, 1715, and negotiated a new asiento treaty May 26, 1716.

[29] Simancas. Est. Leg. 2368 (Antig. 7014). Monteleon to Marquis de Grimaldo, Julio 19, 1717. "Me ha dicho tabien en confianza que siempre haceria sustentado la justicia de nuestra demanda, pero que Mons Methuen, y aun My Lord Townshend se hacerian siempre opuesto debajo del pretexto de no poder contravenir a un acto parlamentario . . . . . "

[30] *Ibid.* Memoria instructiva tocante a los derechos y prerogati as que los Guipuscoans y Biscaynos, vasallos de S. M. C. tienen a la pesca del bacallao sobre las costas de Terranova y sus cercanias despuesta por el Exmo. el Marq. de Monteleon, ambajador de S.M.C. en la corte de Londres. "Los Guipuscoans y Biscaynos fueron los primeros que descubrieron la Isla de Terranova y han gozado de la pesca del bacallao sobre las costas de dha isla desde aquel tiempo hasta aora sin alguna interrupciôn." For similar statements cf. A Memorial from the Province of Guipuscoa to Done José de Carabajal y Lancaster, San Sebastian, 11 June, 1748. "Habiendo side mis. hi jos los descubridores y imbentores de la pesqueria, trincheria y sequeria del bacallao en la Isla de Plasencia y los demas de Terranova se mantubieron en ella hasta el año del 1713 en que los despolaron los Ingleses . . . . . " Also later memorials from the same province to Count Florida Blanca, dated Jan. 24, 1781, and Mar. 31, 1782, and parallel statements from other bodies such as the memorials of 1748 from the Province of Biscaya and the cities of S. Jenashan and Azoitia. Cf. Also Bristol's (British Ambassador) letter to Egremont (secretary of state), Dec. 6, 1761. (P.R.O., S.P. Sp. 164). "Wall (Spanish secretary of state) urged that the Spaniards indeed pleaded in favour of their claim to a share in the bacallao trade the first discovery of the island."

names which many of the Newfoundland localities had from the first borne and the Basque name *bacallao*, which was in common use throughout Europe for cod, were so many proofs in support of the Spanish contention.[31] To cover a weakness in the latter argument, it was set forth that the well-known character of the French nation made it certain that had the Basque names of Newfoundland arisen, not from Spanish Basque discovery, but from the presence of French Basques on the island from an early time, there could be no doubt that the world would long since have been made well aware of the circumstance.[32]

This Spanish memorial was turned over by the English Secretary of State to the Lords Commissioners for Trade and Plantations for detailed examination. The subsequent report, which was addressed to "Their Excellencies, the Lord Justices," is dated September 11, 1719, and constitutes the most important English statement of the eighteenth century on the fishery issue.[33] After drawing attention to the fact that article 15 of the treaty gave the Spaniards the right that they were claiming only "if they could support their claims to those privileges by an undoubted right," the report proceeds to refute the arguments advanced by the Spaniards, especially the fundamental one that had played such an important part in the recent memorials. "Now, although the Spaniards," the report runs, "seem to assert that they were the discoverers of Newfoundland and would found their right of fishing thereupon nevertheless it is notorious that this island was first discovered by John Cabot, anno 1497, at the charge of King Henry VII and he took possession thereof in the name and for the use of His Said Majesty." The effort is made to prove that the English government had maintained unbroken connection with Newfoundland from Cabot's time forward. "King Henry VIII," so the commissioners state, "sent one Bute to make a settlement in Newfoundland,[34] while several voyages were made thither by Mr. Hore[35] and other merchants." An act against the exacting of money by

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[31] All of these arguments are given particularly clearly in a decument entitled "Discertacion sobre el descubrimiento de Terranova, 1772. Simancas. Leg. 2368 (Antig. 7014). Spanish names which are mentioned in this paper as occurring in Newfoundland and by their presence supporting the Spanish contention that the island was discovered by Spanish Basques are:—

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|---|---|
| Baia d Vizcaia | San Lorenzo |
| Bacallao | Chumea |
| Buruchumea | Nichele |
| Buruandia | Poray |
| Echaide | |

[32] In thisconnection it is to be remembered that the Spanish ambassador in London, Pedro de Ayala, in his letter to Ferdinand and Isabella, dated Iuly 25th, 1498, mentions that Cabot had been in Seville ard Lisbon for asistance. A Spanish and Portuguese element in Cabot's crews might account for an early appearance of Iberian names in Newfoundland.

[33] The original paper is to be found in the Public Record Office. C.O. 194. 23. A copy exists in the British Museum among the Newcastle papers. Add. 33.028.

[34] The first voyage in the reign of Henry VIII that we know was made by royal command was that made by two vessels that set out from England May 20, 1527. Hakluyt gives an account of this voyage under the title "The Voyage of the two ships whereof the one was called the Dominus Vobiscum, set out the 20 day of May in the 19th yere of King Henry the eight, and in the yere of our Lord God 1527 for the discoverie of the north partes." (Principal Voyages, Dent. V., p. 336.)

Another account of what is apparently the same journey is to be found in Purchas' His Pilgrims in a letter from John Rut to King Henry VIII dated from St. John's harbour, Newfoundland, August 3rd, 1527, describing the journey of the two vessels one of which Rut commanded and finally succeeded in bringing safely to England.

[35] An account of Hore's voyage to Newfoundland in 1536 is given by Hakluyt (The Principal Voyages, etc., Dent. Vol. V, p. 335) under the heading "The Voyages of M. Hore and divers other gentlemen to Newfoundland, and Cape Briton, in the yere 1536 and in the 28th yere of King Henry the 8th." Hore is described by Hakluyt as "Master Hore of London a man of goodly stature and of great courage and given to the studie of cosmographie." In 1536 he "encouraged divers gentlemen and others, being assisted by the King's favour and good countenance, to accompany him in a voyage of discoverie upon the northwest parts of America." They embarked in two ships, the Trinitie and the Minion, in April, 1536, and after a journey of two months arrived in Newfoundland where they suffered so severely for lack of food that some members of the company were reduced to cannibal practices. They reached St. Ives in Cornwall on their return journey on the 3rd of October. Among the adventurers on this journey was a certain M. Thomas Buts, the son of Sir William Buts from whom Hakluyt secured his information concerning his voyage.

any officer of the admiralty for license to traffic into Newfoundland[36] is mentioned as proving that the trade and fishery of that island were well known and frequented in the time of Edward VI. Sir Humphrey Gilbert, it is recalled, by virtue of letters patents granted to him by Queen Elizabeth, took possession of Newfoundland in 1583 for himself and heirs.[37] The Spaniards are reminded that early in the seventeenth century James I, "assured that Newfoundland was not actually possessed and inhabited by any Christians or others whatsoever" granted, by letters patents, a considerable part of the island to several of his subjects, who formed the Company of Adventurers and Planters of the cities of London and Bristol for the Colony or Plantation of Newfoundland[38] and that in 1623 the same sovereign conceded the province of Avalon to Sir George Calvert. Charles I, in 1638, it is further recalled, granted the whole of Newfoundland to the Marquis of Hamilton, Sir David Kirke and others[39] "with power to demand and receive from all strangers who should come to fish or to buy fish there or within 30 leagues thereof 5 per cent as an Acknowledgment of the King's just and undoubted Right and Interest over that Country and Fishery.[40]

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[36] 2nd and 3rd Edward VI. Cap. VI. A.D., 1548. An Act against the exacting of Money or other Thing by any Officer for License to Traffick into Ireland, etc. "Forasmuch as within these few years now past there hath been levied, perceived and taken by certain of the officers of the Admiralty, of such Merchants and Fishermen as have used and practised the Adventures and Journeys into Iseland, Newfoundland, Ireland and other Places commodious for Fishing and the getting of Fish, in or upon the Seas or otherwise, by way of Merchandise in those parts, divers great Exactions or Sums of money, Doles, or Shares of Fish, and such other like Things! to the great Discouragement and Hindrance of the same Merchants and Fishermen and to no little damage to the whole Commonwealth . . . . . Be it therefore enacted by the King our Sovereign Lord, and the Lords and Commons in this present Parliament assembled, and by the authority of the same, that neither they, nor any Officer or Minister, Officers and Ministers of the Admiralty for the Time being, shall in any wise hereafter, receive or take by himself, his Servant, Deputy, Servants or Deputies, of any such Merchant or Fisherman, any sum or sums of Money, Doles or Shares of Fish or any other Reward, Benefit or Advantage whatsoever it be, for any person to pass this Realm to the said Voyages or any of them upon pain to forfeit for the first offence treble the sum, or treble the value of the Reward . . . . . and for the second offence the Party so offending not only to lose or forfeit his or their Office or Offices in the Admiralty, but also to make fine and Ransom at the King's Will and Pleasure."

[37] An account of the ceremony is given in Hakluyt, R. The Principal Voyages. Dent. Vol. VI., p. 1. "A report of the voyage and sucesse thereof attempted in the yere of our Lord, 1583 by Sir Humbrey Gilbert . . . . . intended to discover and to plant Christian inhabitants in place convenient, upon those large and ample countreys extended Northward from the cape of Florida, . . . . . yet not in the actual possession of any Christian prince, written by Mr. Edward Haie. "Monday following, the General had his tent set up, who being accompanied with his own followers, summoned the merchants and masters, both English and strangers to be present at his taking possession of those countries. Before whom openly was read and interpreted unto the strangers his commission: by virtue whereof he took possession in the same harbour of S. John, and 200 leagues everyway, invested the Queenes Majestie with the title and dignitie thereof, had delivered unto her, (after the custome of England) a rod and a turffe of the same soile, entering possession also for him, his heires and assignes for ever: and signified unto all men, that from that time forward, they should take the same land as a territorie appertaining to the Queene of England, and himself authorized under her majestie to possesse and enjoy it."

[38] A copy of the London and Bristol Company's charter, granted largely through the influence of Lord Bacon, May 2, 1611, is given in the appendix to Chap. V of Prowse's History of Newfoundland.

[39] The grant to the Duke of Hamilton, Sir David Kirke and others of the Island of Newfoundland, 13 November, 1637, is given in part by Prowse, History of Newfoundland, p. 143.

[40] A volume among the manuscripts of the British Museum, entitled "The State of the Colony of Newfoundland, 1744," which is partly printed and partly in manuscript, contains two memorials on the Newfoundland trade and a number of extracts drawn from the works of various writers on Newfoundland in the 16th and 17th centuries. The earlier of the two memorials is entitled "Considerations on the Trade of Newfoundland" and was "wrote, printed and sent to the members of both Houses of Parliament by Thomas Thompson." The 2nd memorial, apparently the work of Peter Thompson, the son of Thomas Thompson, is entitled "Memorial concerning Cape Breton and the Newfoundland fishery." It was delivered August 24, 1752, to Lord Carteret and on January 31, 1744, was given to Andrew Stone the secretary to the Duke of Newcastle. Both memorials contain information of interest for the purpose of the present article. The earlier memorial has a section on the duties that were collected by the English from the French fishermen in the 17th century as an acknowledgement of British sovereignty in Newfoundland. "The trade of Newfoundland in the reign of King James I was in a very flourishing condition and then entirely without a rival, possessed and enjoyed by the English. It remained the same until the time of King Charles I. That about this time the French first began to fish at Newfoundland and by ways and means obtained liberty from King Charles I for so doing: and as an acknowledgment of our right they agreed to pay 5 L per cent from all ships coming thither. Their allotment for curing fish etc. was the westward of Cape Raze, and the tribute aforesaid was duly paid for many years afterward . . . . . King Charles II in the 27th year confirmed the French in the aforesaid liberty and granted to them the former tribute of 5 L per cent . . . . . King James II confirmed this . . . . . King William III of most glorious memory, being sensible of the vast importance of this Trade, did never confirm these grants to the French; but that his subjects might understand that his Predecessors could not justly dispose of this trade, as they pretended to do, did in the tenth and eleventh year of his Reign, give his Royal Assent to an Act of Parliament to resume it." Statute 10, 11 Wm. III Cap. 25 is quoted. *See* p. 9 and Note 20.

In 1650, the report continues, a commission was issued to Mr. John Treworgey to be governor of Newfoundland[41] and five years later Sir David Kirke, "by virtue of this grant from the crown, conveyed to John Claypole[42] and others a right to make settlements there, where no foreigners had hitherto attempted to settle any colony or to question the undoubted right of the Crown of England to that fishery." The commissioners admit that a few years later the French, "having frequented the fishery for some years by connivance," began to settle at Placentia with soldiers, artillery, etc., and fortify the same "though Mr. Isaac Dethick, an English planter, and others were then settled at the place."[43] "However," declare the commissioners, "it does not appear to us upon searching the books and papers in our office that the Spaniards ever had any settlement either under the English or the French in Newfoundland, or that, for many years past, they have been permitted to fish there excepting only some few ships to whom her late Majesty granted papers and licenses for the purpose."

The American Treaty of 1670, which throughout the eighteenth century was to be a rock of defense to the English government in all of its disputes with Bourbon Spain, is called upon for help on this occasion. "Besides," continues the report, "if the Spaniards could make out their pretence of an ancient right to that fishery as being the first discoverers of Newfoundland, yet as it is beyond dispute that the English were, and they were not in possession of any part of Newfoundland at the time of making the American Treaty in 1670 between the crowns of Great Britain and Spain, they are absolutely excluded from all such pretended right by the 7th and 8th articles of the said treaty, whereby it is expressly stipulated that the King of Great Britain shall hold, keep and always possess in full right of sovereignty and propriety all the lands, colonies and other places, be they what they will, lying and situated in the West Indies or in any part of America, which the said King of Great Britain and his subjects now hold and possess and that the subjects of each ally respectively shall forbear and abstain from sailing to and trafficing in all places possessed by the other party in the West Indies." After quoting the act of William III, forbidding aliens to trade or fish in Newfoundland, the commissioners conclude "it is therefore manifest that not only the country but the fishing on the coasts and in the harbours thereof are the undoubted property of His Majesty and that the Guipuscoans have no manner of right to fish and trade there."

In the Treaty of Madrid, signed nearly two years after the appearance of the report of 1719, when circumstances were somewhat more favourable for Spain, all former treaties were renewed between the two powers and Spain secured the inclusion of a section specifically providing that His Britannic Majesty would give orders for the fulfilment of articles 8, 11, and 15 of the Treaty of Utrecht, which were stated hitherto not to have been executed and the 15th of which allowed to Spain the fishing of cod in Newfoundland waters.[44] This provision, however, had no more effect in bringing fish to Spain in Spanish

[41] Before becoming Newfoundland's first true governor John Treworgie had lived for some years in Sturgeon Creek, Kittery, Maine, but had visited Newfoundland for trading and fishing purposes. His commission as governor was renewed May 27, 1653, and he continued in office till 1660.

[42] Claypole was the son-in-law of Cromwell.

[43] Cf. Prowse, D. W. History of Newfoundland, p. 78. "During both the administration of Cromwell and the reign of Charles I no foreigner had attempted to make any permanent settlement in Newfoundland. Up to 1662 no Frenchman had ever lived a winter on the island." . . . . . "In 1662 a great French ship full of men and women put out from Placentia where she landed a great number of soldiers and passengers who fortified the harbour with 18 pieces of Ordnance as one Isaac Dethick who was there affirmed." (From the Deposition of John Raynor late deputy governor in Newfoundland.)

[44] P.R.O. Treaty Papers. 67. Treaty signed June 13, 1721, part of Article II. "Se donneront de la part de sa majestie Brittanique les ordres qui seront demandés et jugés necessaires pourl' accomplissement de tout ce qui a été stipulé et arresté entre les deux courrones dans les susdits Traités d'Utrecht et specialement en ce qui peut n'avoir pas été mis en execution des choses reglées par les articles 8, 11 et 15me du Traite de Paix, qui parlent de laisser auz Espagnols le libre commerce et navigation aux Indes Occidentales et de maintenir les anciennes limites en Amerique comme elles se trouvoient dans le tems du Roy Charles second, du libre exercice de la Religion Catholique dans l'Isle de Minorque et de la Peche du Baccalao dans les mers de Terre Neuve de même que a le gard de tous les autres articles qui jusques ici n'auroient pas été mis en execution da la part de la Grand Bretagne."

vessels than had its predecessor and the fishing question continued to be an issue on every occasion at which an attempt was made to arrive at a settlement of Anglo-Spanish differences. Thus the Spanish plenipotentiaries at the international conferences of Cambray (1724) and Soissons (1728) received orders to make representations on the subject.[45]

In an effort to meet the English contention that documentary evidence proving the soundness of Spanish claims should be produced, the plenipotentiaries to the Congress of Soissons wrote urgent letters to the *Senorio de Vizcaya*[46] asking to have forwarded to them any legal documents that could serve to support the Spanish claims. In replying the *senorio* was forced to admit that after the most diligent search in the archives and in the offices of the *escribanos* no documents could be found.[47] Despite this handicap a long memorial was drawn up by Don Joachin de Barrenechea and presented to the British representatives in the congress. The English insistence on documentary evidence was quoted in this paper as proof of their lack of candour in the interpretation of the article in question.[48] It was urged that the act of William III, which Stanhope had admitted was the only thing he had to oppose to the Spanish claim,[49] had referred only to places in the possession at that date of the English, as the French were then and continued for years to be established at Placentia and the Spaniards themselves had continued to fish undisturbed until 1713.

The Congress of Soissons broke up without definite results in this, as in other matters, and the subject was left to be again renewed in 1732 when commissioners of the two powers met in Seville to attempt once more the adjustment of respective complaints. The Spanish representatives on this occasion were directed to press for damages on the ground that the second article of the peace of Seville had renewed all treaties prior to 1752 and the British were therefore to be held responsible for the non-performance of the treaty of 1725 in respect to the Newfoundland fisheries.[50] This protest, like earlier ones, remained without settlement and was left to swell the volume of discontent that finally brought the two countries into war in 1739. During the period of hostilities, the French, whose Newfoundland trade now employed 20,000 men and a thousand ships annually, supplied the Spanish market with fish.[51] The Spaniards remained unreconciled to the loss of the industry and on the approach of negotiations for the peace of 1748 the northern provinces again showered the government with memorials restating the old arguments, pointing out that since fish had reached Spain only through foreign hands the price had more than doubled and urging that instructions should be sent to the Spanish plenipotentiaries to the conference at Aix-la-Chapelle to press once more Spain's right to participation in

[45] Simancas. Est. Leg. 2368 (Antig. 7014). Copy of an unsigned letter (apparently from the secretary of state) addressed to the Spanish plenipotentiaries at the Congress of Cambray, Aranjuez, 8 May, 1724. *Ibid.* M. de Santa Cruz (a Spanish plenipotentiary at the Congress of Soissons), to M. de la Paz (secretary of state), 8 Nov., 1728. *Ibid.* D. Joachin de Barrenechea (another Spanish plenipotentiary at the Congress of Soissons), to M. de la Paz, 18 Dec., 1728.

[46] *Ibid.* Plenipotentiaries of Spain at the Congress of Soissons to the Senorio de Vizcaya, 29 Oct.

[47] *Ibid.* El Senorio de Vizcaya to M. de la Paz, 31 Oct. "en cumplimiento de la orden que V. E. se servio comunicarme en 11 de Julio li solicitado con instantes diligencias reconocer los archivos y los oficios de escrivanos y no sea podido encontrar documento antiquo que pueda justificar el derecho de mis naturales y ostros vasallos del rey.

[48] *Ibid.* Memoria presentada en el Congreso de Soissons por los plenipotenciarios de S. M. C. para los de S. M. B. en asunto de la pesqueria del bacallao en Terranova . . . . . formada por D. Joachin M. de Barrenechea.

" . . . . . Ha poco tiempo hizo ver la experiencia que no fue tan candida la intencion de la Gran Bretana en las palabras de .o estipulado pues tomando por pretexto que justificasen los Viscaynos, y Guipuzcoanos su derecho, les impidio la pesca el governador Britanico el ano del 1715."

[49] *Ibid.* "Stanhope . . . . . dejo que nada tenea que oponer amenos que no fuese un acto de el Parlamento hecho en Inglaterra el ano X⁰ del regnado de Guillermo tercero."

[50] *Ibid.* D. Joseph Patino, secretary of state, to D. Augustin de Montiano (Spanish commissioner), Seville, 5 July, 1732.

[51] Add. Ms. 13972. Memorial concerning Cape Breton and the Newfoundland fishery by Peter Thompson, presented to Lord Cateret, 24 August, 1742, and delivered 31 Jan., 1744, to Andrew Stone, secretary to the Duke of Newcastle.

the fisheries.[52] Despite this activity the final peace documents carried no reference to Spanish rights in the Newfoundland trade.

The renewed discussion, however, was responsible for a paper entitled "State of Papers relating to Newfoundland," which is to be found among the Colonial Office papers and is in the nature of a report from the office of the Board of Trade.[53] It was apparently written soon after the peace of Aix-la-Chapelle. It reviews and quotes from the two previous reports submitted by the Board on the Spanish Newfoundland claims and states that from 1719 onward there is no trace to be found of anything on the subject at that office. The writer considers that the earlier reports had dealt effectively with any arguments that might be based on the Treaty of Utrecht and as for the treaty of 1721 he disposes of it by saying that "not having been renewed by that of Aix-la-Chapelle it cannot be deemed to subsist, but allowing it to remain still in force it does not give the Spaniards any new right but only confirms the stipulations of the Treaty of Utrecht."

Through the reign of the peace-loving Louis VI and his Portuguese Queen Barbara, with her English sympathies, the fishery question, like other Anglo-Spanish controversies, was not closely pressed, although toward the close of the reign, when Pitt's leadership in English affairs was beginning to make itself felt in a series of victories for English arms, Spanish anxiety at the unrivalled position that the English naval forces were gaining manifested itself in a memorial in which the old Newfoundland claims were again restated. How unlikely these were to receive recognition while Pitt remained at the helm in London, may be gathered from the instructions that Lord Bristol carried with him when he went as British ambassador to Madrid in 1758, in which the principle was laid down that England would never allow "an interest so essential as the Newfoundland fishery, one great nursery of our seamen, and a principal bases of the maritime power of Great Britain to be in any degree pared off and divided."

The accession to the Spanish throne of Charles III in 1759 opened a new era. The establishment of an extensive program of economic reform and the inauguration of an energetic foreign policy, based on a restitution of naval forces, were at once undertaken. As the fishery issue bore an intimate relation to both, its revival was foreshadowed in the prominence given to them. Moreover from his arrival in Spain the new king moved steadily towards the family alliance with France, which was concluded two years later. He was in a unique position to appreciate to the full the significance of the new imperial position that the genius of Pitt was winning for England. Seventeen years earlier, as an Italian prince, he had had England's naval power forced upon his attention.[54] As king of Spain he ruled a realm whose greatness depended on its possessions in the very part of the world in which England was fast gaining for herself a commanding position, while as ally of Portugal Britain stood a barrier to the age-old dream of an all-Spanish peninsula. The French fleet had long been the first line of Spanish defence; with it defeated the future would wear a most ominous aspect. Charles had little doubt that with France disposed of to English satisfaction, the time would come very soon when Spanish military resources would have to oppose, alone and unsupported, the aggressive force of the new imperial power.[55] He heard with emotion of the fall of Quebec,

[52] Simancas. Est. Leg. 2368 (Antig. 7014). Memoria de la cassa de la contratacion y consulado de la ciudad de S. Jenashan, 1748.

Provincia de Guipuzcoa a D. José de Carabajal : Lancaster, San Sebastian, 11 June, 1748. Others from Viscaya and "la leal valla de Azoitia."

[53] P.R.O., C.O. 194123.

[54] On August 18th, 1742, while troops of Charles, then King of the two Sicilies, were fighting with the Spanish forces against Austria in Lombardy, a British squadron arrived at Naples and the Neapolitan government was given two hours to decide whether it preferred to withdraw its troops from active hostilities against England's imperial ally or submit to a bombardment of the capital. As the city was practically defenceless Charles had been compelled to yield.

[55] This view was one constantly pressed by the French ambassador, M. D'Ossun. Choiseul, the French first minister, in the instructions which he sent to D'Ossun set forth this view in great detail. Morel Fatio, Recueil des Instructions. Espagne, III, p. 349.

which he said "made his blood run cold"[56] and declared in December, 1759, to the French ambassador, that if the English would not listen to his offer of mediation which was then pending and conclude peace with France, they would force him to enter the war, but that one way or another, he would not suffer them to remain masters in Europe and in America.[57]

To a Spanish king, with a brother who ruled in Parma,[58] and a son king of Naples, the situation on the continent, where France's ally Austria seemed on the point of annihilating Prussia, was almost as alarming as England's victories in the new world. The bond between Austria and France was new and there seemed every danger that with French prestige in the dust, Austria and England would find it to their advantage to renew their ancient friendship and fall upon the remaining member of the Bourbon family in the new world and in Italy.[59] From a purely selfish Spanish and Italian point-of-view it seemed the part of wisdom to join in what he considered an inevitable struggle while allies were still to be had. In a family alliance between all the members of the House of Bourbon, Charles saw the one instrument capable of facing the growing power of England on anything like equal terms. With such an outlook, demanding an ever-ready excuse for a declaration of hostilities, it was not to be expected that old issues with England would be allowed either to find a solution or to remain in a state of quiesence. Among the issues kept on the active list was the fishery controversy. It was also natural that the course that the revived controversy with England followed should bear the marks of the new direction in which Spanish foreign policy had turned. Having tried direct discussion with the British court and appealed in vain to international conferences and to specially appointed boards of commissioners to secure what she believed to be her just rights in the Newfoundland trade, Spain in the early sixties, tried the new expedient of calling in the assistance of France to obtain her end.

In preparation for the new attack on an old subject, the secretary of state, Richard Wall, made a determined effort to secure documentary evidence that could be used to support the Spanish pretensions. The province of Guipuscoa and the national archive at Simancas were both requested to make a thorough search for documents that could in any way assist in proving the Spanish claim, the officials being told that such papers would be of the first importance to the royal service. In answer to this appeal the province of Guipuscoa submitted four papers. The earliest in date was a royal cedula of July 15, 1553, whose purport was to reverse an order of April 21, 1553, forbidding any vessel to sail from Guipuscoa for Newfoundland without special license. The other three papers were merely copies of memorials to the central government dated 1697, 1728 and 1732 respectively.[60] The reply from Don Manuel de Ayala, the head of the archive at Simancas, reported that although he had examined many *legajos* no instrument of any kind could be found of such a nature that a claim to the fisheries could be based upon it. He could only find, he said, some 17th century correspondence relating to the hindrances put in the way of Spanish fishing by the English and some correspondence with the court regarding certain frauds in the fishing.[61]

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[56] The French ambassador, Marquis D'Ossun, was present when Charles was given this news shortly after his arrival in Madrid and reported that the king's words were "que cette nouvelle lui avait glacé le sang." (Rousseau, F. Règne de Charles III d'Espagne, Paris, 1907. Vol. I, Chap. 2, p. 35.)

[57] Morel Fatio, Recueil des Instructions, Espagne. Vol. XII, 338. D'Ossun to Choiseul, Dec. 17, 1759.

[58] Charles' younger brother, Don Felipe, succeeded him in the Duchy of Parma when he became King of Spain.

[59] This idea was strongly urged on Charles by Choiseul, who wrote it in great detail in his despatches to D'Ossun. (cf. especially Choiseul to D'Ossun, Dec. 24, 1759. Rousseau, Regne de Charles III d'Espagne Vol. I, Chap. 2, p. 44.)

[60] Simancas. Est. Leg. 2368 (Antig. 7014). Wall's letter was dated May 12, 1760, and the reply May 26th of the same year.

[61] *Ibid.* Wall to Ayala, May 13, 1760, and Ayala to Wall, May 21 and 31, 1760. In the latter letter Ayala's words are: "en todo lo reconocido no se halla instrumento alguno proprio para fundar el antiguo derecho de la Provincia de Guipuzcoa a la pesca del Bacallao en los bancos de Terranova."

Despite the lack of documents a new memorial was drawn up and the French court made officially acquainted with its terms. Upon presentation in London in September, 1760, not only was no satisfactory reply returned, but the British ambassador at Madrid was commanded to lay stress on the "sensible regret" of the English government at the unprecedented proceeding.[62] It proved, however, to be but a prelude to much more drastic action along the same line. Through the early months of 1761 negotiations proceeded apace in Paris for a close family alliance between France and Spain. Following upon a proposal by Choiseul, the French secretary of state, in January, 1761, that there should be a defensive treaty negotiated between France and Spain, Grimaldi, the Spanish ambassador, in February proposed an offensive treaty. This encouraged Choiseul to elaborate a project of a treaty which should be at once offensive and defensive. In May the main outlines of the *Pacte de Famille* were agreed to and the document was signed on August 15th, 1761. At the same time a convention was concluded, by the terms of which Charles III engaged to declare war against England on May 1st, 1762, if by that time peace had not been established.[63] Both agreements were, of course, secret. A week before the family compact was signed, Lord Bristol, the English ambassador in Madrid, was informed by Wall that "His Catholic Majesty, finding that he could gain no ground upon the British court by having this business (the fishery question) transacted directly and immediately with the British ministry, had accepted the frequent offers made by His most Christian Majesty to interpose his good offices towards accommodating all the American differences between England and Spain hoping that the peace which was now in agitation might be a permanent and lasting one."[64]

The French had already taken the step that Wall here indicated had been decided upon as Spanish policy and through its agent, Bussy, had presented, on July 23rd, a memorial to the British court setting forth the full story of Spain's grievances as an American power and declaring that the French king could not "disguise the danger he apprehends and of which he must necessarily partake if these articles which seem nearly to concern His Catholic Majesty should be the occasion of war."[65] This memorial, in Bristol's words, was "received, looked into and sent back by the king's command," a procedure which the ambassador pointed out to Wall "gave an idea of the impression that irregular proceeding had made in England."[66] Pitt had in fact told Bussy that it would be time enough to treat of Newfoundland fisheries when the tower of London had been taken sword in hand and had further informed him that "His Majesty would not suffer the disputes with Spain to be blended in any manner whatever in the negotiation of peace between the two crowns," and that "it was expected that France would not at any time presume a right of intermeddling in such disputes between Great Britain and Spain." In an interview with the Spanish ambassador, Pitt comported himself "like a Lucifer"[67] and sent orders to Bristol to protest to the Spanish government against such irregular diplomatic procedure and to recapitulate English arguments in reply to the Spanish grievances, "including the stale and inadmisable pretensions to fish at Newfoundland"

The rejected memorial dealt with three subjects—the second of which was "the claim so often set up by the Biscayans and Guipuscoans to fish at Newfoundland and as often denied by England." In speaking on this subject to Wall, Bristol reminded the Spanish secretary of state that he had in "the clearest terms" "showed that the first discovery of the island was made at the expense

[62] P.R.O., S.P., Spain, 164. Bristol to Pitt, Aug. 6, 1761.
[63] Cf. Morel Fatio. Recueil des Instruction, VII 340. *See also* Rousseau, F. Regne de Charles III d'Espagne Vol. I, Chap. 2.
[64] P.R.O., S.P., Spain, 164. Bristol to Pitt, Aug. 6, 1761.
[65] Parl. Hist., XV. 1044-47.
[66] P.R.O., S.P., Spain, 164. Bristol to Pitt, Aug. 31, 1761.
[67] Bourgot, Choisel et l'Alliance Espagnole, p. 228.

and by the command of Henry VII" and had "likewise demonstrated the uninterrupted possession of it from that time to the present date to have belonged to the English from their being constantly settled there, whilst the Spaniards never had any establishments in those parts," and that therefore it was "absolutely impossible for Great Britain to make the least concession in so clear a right and it was hoped that Spain would no longer expect as the price of union a sacrifice which could never be granted by the court of London."[68] Wall denied any design to retard the peace or give offence, but stated firmly that Spain had always insisted upon the claims of the Guipuscoans and Biscayans to fish for *bacallao* and had never receded from this position in any treaty.[69] Wall's unyielding attitude and his clear statement that Bussy's memoir had the Catholic King's approval,[70] led Bristol to write that he thought a declaration of war from Spain was not far off.

Pitt was early in a position to give proper weight to Bristol's prophecy, as within a month of the conclusion of the family compact Pitt was secretly acquainted with the contents of that document. His instant determination to strike Spain from the side of France with one heavy and unexpected blow and so finish the war in the brilliant manner that it had seemed lately to be closing, was frustrated by his failure to carry his cabinet with him. His colleagues would not believe in the hostile intentions of Spain and the disagreement ended in Pitt's resignation on October 5th.[71] In the weeks that followed evidence rapidly accumulated in support of Pitt's assertion that a compact had been signed by the Bourbon powers and that for all political purposes "France was Spain and Spain was France."

In November, 1761, when Bristol was at last directed to ask Wall officially if there was truth in the rumors that were telling of the existence of a family alliance between Spain and France, the secretary of state, supported by the knowledge that the treasure fleet was now home, instead of replying directly, launched into a passionate denunciation of the whole trend of recent English policy. In his review of Spanish wrongs the Newfoundland issue played a prominent part. "His Catholic Majesty," declared Wall, "could never obtain an answer from the British ministry to any memorial or paper." He believed, he said, that the English "were intoxicated with all their successes and continued series of victories," that they "aimed first to ruin the French power in order the more easily to crush Spain," and to destroy the French power in America in order "to have an easier task in seizing on all the Spanish dominions in those parts, thereby to satisfy the utmost of their ambition and to gratify their unbounded thirst of conquest." During the war, the minister continued, the English had set the Spanish power at defiance by attacking and plundering their vessels, insulting their coasts, violating their neutrality, fortifying themselves illegally in the Bay of Campeachy, "besides denying the Spaniards a right they had so long claimed to fish upon the banks of Newfoundland, nay, even wanting to put the Biscayans and Guipuscoans on a worse footing at present in regard to their pretensions to the *bacallao* trade than they had been by the Treaty of Utrecht and that of 1721, where the article in relation to them was that the Spaniards should enjoy *que jure sibi vindicare poterunt*, whereas all the ambassador's instructions had run to declare their claim to be stale and inadmissible and finally to assert that England hoped that the Catholic King would never expect this sacrifice as a price of a union which could never be consented to on those terms."

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[68] P.R.O., S.P., Spain, 164. Bristol to Pitt, Aug. 31, 1761.

[69] *Ibid.*

[70] *Ibid.* "I then delivered to Mr. Wall the copy of the memorial relating to Spain, desiring him to read it over and to acquaint me whether it was word for word such as had been authorized from hence. On returning it to me His Excellency said it was verbatim what had been sent by order of the Catholic King."

[71] Cf. Hall, H. Pitt and the Family Compact. Quarterly, Oct., 1899.

In replying to that part of this outburst which touched the fisheries, Bristol insisted again on the English discovery of Newfoundland, pointing out that Spain had never brought forward any proofs to back their assertions, whereas the English had "clearly deduced their right from the time of Henry VII."[72] The ambassador wrote home at a later date that what had given most offence in Spain in connection with the *bacallao* controversy was "my being ordered so frequently to declare and Count de Fuentes having been as often told that England never would hear of that inadmissible pretension, which was denying in the most pre-emptory fashion what we had granted by the Spanish treaty of 1721, that the Biscayans and Guipuscoans should enjoy the privileges which they could prove to be their due by right."[73] After the actual break in diplomatic relations had occurred, Bristol again emphasized the important part that the offence occasioned by the fishery dispute had played in bringing about the breach in friendly relations.

England declared war on Spain on January 2nd, 1762. After a few months of fighting, during which Spanish losses were out of all proportion to the time that the nation was engaged in the struggle, Spain found herself, through the exigencies of her ally's position, forced to agree to make peace.[74] Among other sacrifices that her plenipotentiaries had to agree to in the Treaty of Paris, signed February 10th, 1763, was a clear resignation of all claims to a share in the Newfoundland fishing trade. Article 18 of the treaty read, "His Catholic Majesty desists as well for himself as for his successors from all pretensions which he may have formed in favour of the Guipuscoans and other His Majesty's subjects to the right of fishing in the neighbourhood of the Island of Newfoundland." No other section of the treaty illustrates more clearly the straits to which Spain was reduced by her misfortunes in the seven years' war than this one providing for the relinquishment of her claim to a trade that had played a part in Spanish history for over two hundred years.

From the sixteenth century, when Spain, on the confession of a rival, had possessed the finest contingent of any of the nations that in that age fished on the Grand Banks, through the seventeenth century, when the smallness of the Spanish force showed the effects of the disaster that had befallen the armada, the lack of interest in naval matters at home, and the growing consolidation of English and French holdings in Newfoundland, the Spaniards had enjoyed an actual share in the fishery. From the Treaty of Utrecht onwards the subject had been one of constant diplomatic controversy between England and Spain, furnishing continual cause for dispute and dissatisfaction between the two powers. In making the agreement of 1713, the English, who were at that date desirous of re-opening commercial relations with Spain and were not unhopeful of effecting, through careful diplomacy, the eventual separation of French and Spanish policy, had thought it worth while to placate Spanish pride by the inclusion of an article bearing on the claim of Spanish subjects to participate in the fishery, but had secured a vagueness of phraseology that could be held to mean much or little, as their convenience should dictate. When it had become clear that Spanish policy, under the guidance of the new Bourbon dynasty, was to be, on the whole, a belligerent and unfriendly one toward England, the possibility of an interpretation of the fishery clause favourable to Iberian interests had passed out of practical English politics. The Spaniards, however, decade after decade, had continued to urge their claim on every conceivable ground, although always without documentary proof, until England, making use of her

[72] P.R.O., S.P., Spain, 164. Bristol to Egremont, Nov. 2, 1761.

[73] *Ibid.* Bristol to Egremont, Dec. 6, 1761. Others besides Wall found Pitt's uncompromising language hard to put up with. Stanley, the English representative in Paris, on one occasion ventured to suggest to Pitt that it might be expedient to soften the asperity of his language reporting that Choiseul read "with great impatience and with frequent interruptions . . . . . those passages . . . . . in which the words *must* and *shall* are used . . . . . and complained with warmth of the authoritative tone and imperious superiority which they implied." (Quoted in Williams, The Life of William Pitt, p. 97.)

[74] The Preliminaries of the Treaty of Paris were signed Nov. 3, 1762.

overwhelming victory in the seven years' war, was able to relieve herself from further diplomatic controversy by securing a decisive prohibitory statement in an international treaty.

How little satisfied the Spanish Basque provinces were with the justice of this settlement of their long struggle, may be read in a paper dated 1772, and entitled, "Discertacion sobre el discubrimiento de Terranova," which is to be found among the documents at Simancus.[75] The introductory portion of this paper sets forth at great length that it could not be thought that the English nation was so ignorant of just principles that it failed to recognize the fundamental justice of the Spanish claim, but that it was evident that the Banks of Newfoundland constituted too rich a mine for that nation, with its commercial spirit, not to wish to enjoy them alone. As the English had forgotten in this matter the principles of integrity and honor that usually distinguished it and were in possession of the fisheries because of greater power, there was nothing that the Basques could do, the paper continues, more than to keep before the public their rightful claims, in order that these, through silence, should not pass into oblivion. In pursuit of this end the document proceeds to review at length all the claims, arguments and efforts of the preceding sixty years. A decade after the date of this paper, during the period of the American war, the struggle to secure a renewal of the controversy was re-opened in a new series of Basque memorials that urged the Spanish government to discuss the fishery question in the treaty conferences, that would close the war. Spain, as a naval power, these petitions emphatically stated, was suffering immense damages through the loss of the fishing industry.[76]

Unlike its subjects in the northern provinces, however, the Spanish government by 1780 was taking a greatly lessened interest in the Newfoundland issue. It tended to regard the controversy as closed, or, at least, as of less importance than certain other aims of its diplomacy. This is clear from a letter that the secretary of state, Count Florida Blanca, wrote to his secret agent in London, Mr. Thomas Hussy, on March 2, 1780.[77] The secretary of state informed Mr. Hussy, that about the same time that he had received his last letter with the news that the English government was willing to name a person, who, with another appointed by His Catholic Majesty, would set on foot and conclude a separate peace with Spain, and so bring to an end Spain's participation in the war, he had received via Lisbon a note of preliminaries, which he wrote, "it is supposed are conformable to the intentions of the court of London." He enclosed, he said, a copy of this note to Hussy, who would observe in the margin the additions and explanations by which this negotiation might be concluded. "Once accepted," he wrote, "these marginal explanations might be put in form at Lisbon, between our ambassador and the minister or person who shall be named by England." Meanwhile Hussy might regard himself as authorized to treat and conclude the negotiations, reserving merely the exterior formalities for completion later. The 5th article of the project of preliminary articles,[78] referred to by Florida Blanca, unambiguously conceded the recognition of the long-standing Spanish claim to a place in the Newfoundland fisheries in the following terms: "La liberté de pêcher sur le banc de Terre Neuve assigné a la France par le Traité de Utrecht serait equalement ouvert aux sujets de S. M. C. dans ses limites." The secretary of state's marginal note to this proposed article, instead of expressing unalloyed satisfaction, reveals the preference of the Spanish government for a quite different concession. Florida Blanca's note reads, "Au lieu de cette cession l'Espagne sohaitroit celle de la moitie de la Florida en restant aux Anglais la partie Orientale depuis l'embouchiere du canal de Baheme

[75] Simancas. Est. Leg. 2368 (Antig. 7014).
[76] *Ibid.* Memorials from the Province of Guipuscoa to Florida Blanca, Jan. 24, 1781, and Mar. 31, 1782.
[77] P.R.O., Treaty Papers. 68. Florida Blanca to Mr. Hussey. Pardo, Mar. 2, 1780. (trans.)
[78] *Ibid.*

dehors, et revenant a l'Espagne la partie occidentale au dedans du Golphe de Mexique dans le quel cas l'Espagne donneroit quelque recompense si il en falait a l'Angleterre."[79]

This effort of Florida Blanca to strengthen Spain's hold on the Gulf of Mexico at the expense of a proferred share of the Newfoundland trade, came for the moment to nothing when the secret negotiations for a separate peace broke down on the discovery that the Duke of Cumberland, the English agent,[80] did not carry, as Florida Blanca had understood from the note on the preliminaries would be the case, instructions permitting him to treat with the Spaniards concerning the cession of Gibraltar to Spain.[81] The fact, however, that the Spanish minister was prepared to make such a proposal, was significant of the diminished place the Newfoundland issue had come to occupy on the Spanish government's active program. Three years later proof was furnished that Florida Blanca's views, as expressed in 1780, represented the Spanish government's permanent policy when Spain, in the Treaty of Versailles, secured her position on the Mexican Gulf, while she permitted the Newfoundland fishery issue to rest on the basis settled in 1763.

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April, 1925.

[79] *Ibid.*
[80] *Ibid.* Hillsborough to Florida Blanca, St. James, Apr. 1780.
[81] *Ibid.* Hillsborough to Cumberland, St. James, Apr. 17, 1780. (Instructions) "In case Mr. Hussey shall acquaint you that the court of Spain does not mean to enter into a negotiation but on the basis or even on the expectation of a cession or exchange of Gibraltar or Menoica you are in such case to return to England."