

3. REPLY SUBMITTED BY THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

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INTRODUCTION

1. In the final conclusions of their Counter-Memorial, dated June, 1952¹, the Government of the French Republic ask the Court to find and to decide in respect of the Minquiers and the Ecréhous groups :

- "1) That the areas in question are not capable of appropriation by France or the United Kingdom, seeing that, by the Convention of August 2nd, 1839², the two nations placed them in their common sea ;
- "2) That if the said régime of 1839 has to be discarded, and if sovereignty has to be assigned exclusively to one or other of the Parties, the titles and facts invoked by France involve the recognition of her sovereignty over the areas in question" (p. 403).

The Government of the United Kingdom will contend in the present Reply, which is submitted to the Court in pursuance of the Orders made by the Court on the 26th June, 1952 (*I.C.J. Reports 1952*, p. 25) and the 27th August, 1952 (*I.C.J. Reports 1952*, p. 173), that both these conclusions are incorrect. The first will be considered in Part I of this Reply ; the second in Part II. Parts I and II of this Reply are contained in Volume I³. In Volume II⁴ will be found Part III of this Reply, which consists of certain documents filed as Annexes and numbered in continuation of the system adopted in the Memorial.

PART I

THE FIRST FRENCH CONCLUSION : THAT THE MINQUIERS AND THE ECREHOUS ARE NOT CAPABLE OF APPROPRIATION BY FRANCE OR THE UNITED KINGDOM

Contentions of the United Kingdom Government

2. The United Kingdom Government will put forward the following main Contentions regarding this part of the French case, which, according to the first French conclusion, is based on the alleged effect of the Anglo-French Fishery Convention of 1839 (hereinafter called the "1839 Convention") :

- I. That the French contention is inconsistent with two recent Agreements between the parties having equal authority with

¹ All citations from the French Counter-Memorial are given in the English translation prepared by the Registry of the Court. In a few instances, however, the French text itself has been cited for special reasons. The pagination shewn is that of the French Counter-Memorial itself.

² The full text of this Convention will be found as Annex A 27 in Vol. II of the United Kingdom Memorial. Its main provisions are quoted in paragraph 25, below.

³ See pp. 421-561.

⁴ " " 562-618.

the 1839 Convention, namely, the Fishery Agreement of the 30th January, 1951 (hereinafter called the "1951 Fishery Agreement"), and the Special Agreement of the 29th December, 1950 (hereinafter called the "Compromis"), by which the present case was submitted to the Court; and that, if there be any inconsistency between the provisions of these Agreements and those of the 1839 Convention, the recent Agreements must prevail¹.

- II. That the 1839 Convention did not, in any case, have the effect of rendering the Minquiers and the Ecréhous incapable of appropriation by France or the United Kingdom, or of precluding the two countries from asserting a claim to exclusive sovereignty over them.
- III. That even if, contrary to Contention II, the 1839 Convention did, at the time of its conclusion, have the effect suggested by the French Counter-Memorial, the subsequent conduct of the parties was inconsistent with, or involved a mutual abandonment of, that view, and was such as to entitle them (and entitles them now) to put forward claims to exclusive sovereignty over the groups. It will also be argued as part of this Contention (although, as a matter of strict logic, falling under Contention II) that the conduct of the parties subsequent to 1839 has been inconsistent with the view of the effect of the 1839 Convention now contended for by the French Counter-Memorial, and is evidence that this view is incorrect.

Before the arguments in support of these Contentions are formulated, it will be desirable to make certain preliminary observations in regard to those aspects of the French contention which have a direct bearing on United Kingdom Contention I. This will be done in Section A, immediately following. United Kingdom Contention I will then be developed in Section B. This will be followed in Section C by an analysis of the aspects of the French contention to which United Kingdom Contentions II and III relate. Finally, these two United Kingdom Contentions will be developed in Sections D and E, respectively.

SECTION A

Preliminary Observations on the French Contention

3. The United Kingdom Government did not discuss the present French contention in their original Memorial, because it had never occurred to them that either party could put it forward at this

¹ As stated on page 49, paragraph 69, of the United Kingdom Memorial, it was agreed between the parties that neither of them would rely upon the 1951 Fishery Agreement to substantiate a claim to sovereignty over the Minquiers or the Ecréhous. The United Kingdom Government are not, however, here citing the Agreement in support of their claim to sovereignty, but for the purpose of disproving the French contention that both the parties are *disqualified* from asserting any claim at all.

stage of the dispute, having regard to the terms of the 1951 Fishery Agreement and of the Compromis, and also to the past conduct of both the parties in claiming sovereignty over the groups—which cannot be reconciled with the view that they are legally incapable of, or disqualified from, doing so. A detailed analysis of the French contention is given in Section C below; but there is one aspect of this contention which requires to be considered at once, for the following reason. All three United Kingdom Contentions, including Contention I to be dealt with in Section B below, assume that the French thesis is based exclusively on the alleged effect of the 1839 Convention, as would indeed appear from the first conclusion on page 403 of the Counter-Memorial quoted above. From certain other passages in the Counter-Memorial, however (see paragraph 4; below), the French contention appears also to be based in part upon the view that the groups are incapable, by nature, of appropriation, because lacking in the necessary physical characteristics. This argument is necessarily inconsistent with the contention that the 1839 Convention precludes the parties from appropriating the groups, for this latter contention must imply that the groups are at least physically capable of appropriation; but the United Kingdom Government will submit that, in any case, the suggestion of physical inappropriability is untenable.

4. This suggestion seems to be based on the theory that the Minquiers and the Ecréhous have to be treated, not as land but as a maritime area, identified with the waters surrounding them, and partaking automatically of the status of those waters. This view the United Kingdom Government would have thought to be the exact reverse of the truth; for it is territory that gives status to waters, not *vice versa*. However, the French Counter-Memorial argues in places that the Minquiers and the Ecréhous are not physically territory at all, but are simply part of a sea area strewn with reefs and rocks. The argument appears in the following passages on pages 355, 356 and 371 of the Counter-Memorial:

".... it cannot be inferred from the geographical characteristics of these rocky plateaux that they all possess the same status, as the United Kingdom Memorial seems to assume from the fact that they are all grouped under a simple cartographical appellation. The legal status of rocky plateaux extending over so wide a maritime area is derived from contractual instruments, not from a geographical appellation," (p. 4¹);

".... in fact, these islets are not physically capable of effective appropriation;" (p. 5¹);

"Their [*i.e.*, the 1839 negotiators] object, in fact, was to work out a realistic settlement of a dispute concerning the exercise of fishery rights in the confined area between Jersey and the neighbouring coast of France. They regarded the waters in this intervening space *merely as an arm of the sea, sown with reefs*". [*Italics added*] (p. 20¹).

¹ English text not reproduced in this volume.

It is upon this basis that the Counter-Memorial argues and concludes that :

"It will be shown that the areas now in dispute were placed in the 'common sea' by the Convention of 1839, with all the consequences which ensue, in law, from that fact, namely :

"1. That the present status of the disputed areas is derived from a new title, which originated in the agreement of the Parties in 1839 and not from any title anterior to 1839 ;

"2. That, consequently, the present status could not be modified save by a fresh agreement between the Parties" (p. 20¹).

While, as will be seen later, the United Kingdom Government entirely accept the view suggested in the third of the above-cited passages, namely, that what the negotiators were doing in 1839 was to "work out a realistic settlement of a dispute concerning the exercise of fishery rights" [italics added, since the words italicized represent precisely the United Kingdom view of the purpose of these negotiations], they cannot accept the implications of the remaining parts of these passages, which are based upon a physical and geographical misdescription of the areas concerned ("an arm of the sea, sown with reefs"), and also upon a juridical misconception of the physical characteristics requisite to render land appropriable in sovereignty.

5. So far as the juridical aspects go, it is now an established principle of international law, which was accepted in the recent *Anglo-Norwegian Fisheries* case (*I.C.J. Reports 1951*, p. 116) by both the parties in those proceedings, and also by implication adopted by the Court in its judgement (at. p. 128), that all land permanently above water is capable of appropriation, and that even rocks which only appear above the surface at low tide are so capable, if situated within the belt of territorial waters appertaining to land itself capable of appropriation and actually appropriated. The United Kingdom Government do not think it necessary here to adduce authority in support of this principle, but will be prepared to do so should its validity be questioned by the Government of the French Republic².

¹ English text not reproduced in this volume.

² There is a suggestion on page 355 of the French Counter-Memorial that habitability might be the test of appropriability in law (e.g. : "Three above-water rocks in the Ecréhous group and one islet in the Minquiers group are inhabited during the summer months, though they contain no springs"). It is not, of course, the case that, juridically, appropriability depends upon habitability. However, even if it did, parts of the groups would satisfy this test. For instance, as paragraph 150 in Vol. I of the United Kingdom Memorial states, Philippe Pinel, a Jersey fisherman, resided continuously summer and winter on Maitre Ile * of the Ecréhous for nearly 40 years between 1850 and 1895, during 30 of which his wife was with him. In addition, the general evidence given in the Memorial and the drawings and photographs in the Annexes (see A 138 in Vol. II, and Vol. IV, *passim*) clearly establish the habitability of both groups.

* This statement is inaccurate, in that Philippe Pinel's house was, in fact, on Blanc Ile (see United Kingdom Memorial, Vol. IV, Annex C 11).

6. As to the physical aspects, it is a matter of geographical fact that the principal parts of each of the Minquiers and the Ecréhous groups, as well as a large number of smaller Islets and Rocks, are permanently above water. This is clearly established by Section A (Topography) of Part I of the United Kingdom Memorial (Vol. I, paragraphs 5-11¹), by the drawing and photographs in the Annexes (see A 138² in Vol. II², and the photographs in Vol. IV³), and by the whole *historique* of the facts and events relating to the groups (see, in particular, paragraphs 119-179 of the Memorial). There can be no question as to the natural capacity for appropriation of the groups as groups, or, on an individual basis, of such Islets as Maître Ile in the Minquiers group, and Maître Ile, Marmotière and Blanc Ile in the Ecréhous group, as well as many of the Rocks.

7. Moreover, as will be seen presently, the suggestion of physical inappropriability is impossible to reconcile with the terms of the *Compromis* and of the 1951 Fishery Agreement (the latter of which actually contemplates, and depends in great part upon, a finding by the Court that one or other of the parties has sovereignty over various named Islets and Rocks of the groups). The same suggestion is also irreconcilable with France's own claims to the groups put forward in the past (see Section E, below), and repeated in Part III of the Counter-Memorial on a basis and in the light of facts, assuming and presupposing the physical appropriability of the groups.

8. In view of the known position, the Agreements just referred to, France's own claims, and the facts and arguments upon which these are, and have been, based, the United Kingdom Government submit that the Government of the French Republic cannot now be heard to say that the groups are incapable of appropriation *by nature*, or that the area in which they are situated is simply "an arm of the sea, sown with reefs". Accordingly, the United Kingdom Government will not consider this aspect of the French contention any further for the purposes of the present Reply.

SECTION B

United Kingdom Contention I: That the 1951 Fishery Agreement and the *Compromis* are incompatible with the view that the parties lack capacity to assert, or are disqualified from asserting, a claim to exclusive sovereignty over the groups; and that, if there be any inconsistency between the provisions of these Agreements and those of the 1839 Convention, the recent Agreements must prevail

Introductory Remarks

9. The United Kingdom Government submit that even if (which they deny) the French contention be correct upon the basis of the

¹ See pp. 21-26.

² " p. 346.

³ " pp. 351-352.

1839 Convention, it is irreconcilable with the recent 1951 Fishery Agreement and the Compromis ; and, therefore, since these Agreements (being later in date) must prevail, any restrictions on the right to claim sovereignty which might have been entailed by the 1839 Convention are now abrogated or superseded. It may be mentioned, in passing, that the whole of the conduct of the parties since 1839 has been, or came to be, inconsistent with the view of the effect of the 1839 Convention now put forward on the French side ; and, in this respect, the 1951 Fishery Agreement and Compromis are but the culmination of a process that has been going on for more than a century. However, since these Agreements are recent and directly connected with the present proceedings, it is convenient to deal with them separately. The rest of the post-1839 conduct of the parties will be considered in Section E, in connexion with United Kingdom Contention III.

10. In developing the present Contention, the following points will be made :

- (1) The 1951 Fishery Agreement and the Compromis were negotiated contemporaneously as part of a general settlement intended to put an end to all outstanding issues between the parties in respect of the Minquiers and the Ecréhous.
- (2) The 1951 Fishery Agreement contemplated in terms a finding by the Court that *one or other* of the parties had exclusive sovereignty over the groups, and, in particular, over certain named Islets and Rocks.
- (3) The Compromis submitted the matter to the Court on the basis that the Court was to decide *to which* of the parties this sovereignty belonged.
- (4) A decision that sovereignty belonged to neither party, based on the ground that the parties were, during the currency of the 1839 Convention, permanently disqualified from asserting or claiming it, would frustrate the whole purpose of the general settlement intended to be effected by the 1951 Fishery Agreement and the Compromis.

Point (1) : Simultaneous conclusion of the 1951 Fishery Agreement and the Compromis as part of a general settlement respecting the Minquiers and the Ecréhous

11. The two Agreements were negotiated, drawn up and ratified together, and were intended to form the different aspects of a complete settlement in respect of both groups. The essence of the scheme was that there would be a decision by the Court as to which party had sovereignty, but that the provisions about fishing would remain the same, whichever way that decision went. On the other hand, the carrying out of some of the provisions of the 1951 Fishery Agreement depended on obtaining the decision of the Court allocating exclusive sovereignty to *one or other* party. Of the two Agreements, the 1951 Fishery Agreement—although, for extra-

neous reasons, signed a month later—was, in fact, drafted first. The Compromis was drafted to fit on to it. It was the Government of the French Republic who requested that a fishery agreement should be concluded in advance of a decision by the Court on sovereignty, because they were unwilling that the issue of sovereignty should be settled until the fishery question had been disposed of. The United Kingdom Government agreed to this, although, for their part, they would have been quite ready to have the sovereignty issue determined first, and then to consider the fishery position in the light of it. It was, however, an essential element of the United Kingdom Government's understanding of the position that the conclusion of the 1951 Fishery Agreement in advance of the decision of the Court on sovereignty, in the terms which the Agreement actually employed, implied and assumed a finding of the Court which would finally determine all questions of sovereignty in favour of one or other party, not one which would leave the matter on the basis that neither side was entitled to assert a claim to sovereignty.

Point (2): The Terms of the 1951 Fishery Agreement

12. The full text of this Agreement will be found as Annex A 23 in Volume II of the United Kingdom Memorial¹. The following are the principal relevant passages (with the parts upon which the United Kingdom Government rely italicized):

"London, 30th January, 1951"

"The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the French Republic ;

"Considering that they *have decided* to request the International Court of Justice at The Hague to determine *to which of them* sovereignty over the islets within the Ecrehos and Minquiers groups *should be attributed* ;

.....

"Desiring, without prejudice to the determination of the question of sovereignty, to settle certain differences which have arisen between them with reference to fishing rights in the areas of the Ecrehos and Minquiers ;

"Have agreed as follows :—

"ARTICLE I

"*Subject to the provisions of Articles II, III and IV of the present Agreement, the 1839 Convention shall, be interpreted as conferring on British nationals and French nationals equal rights of fishery in the whole area between [here follows the description]*

¹ See p. 173.

▪ Italics in the original.

"ARTICLE II

"(a) *The Contracting Party, which is held to have sovereignty over the Maitresse¹ Ile in the Ecrehos group, shall have the right to grant fishing concessions within a zone having a radius of one-third of a mile and centred on the beacon situated in the middle of that island,*

"ARTICLE III

"(a) *The Contracting Party, which is held to have sovereignty over the Maitresse Ile in the Minquiers group, shall have the right to grant fishing concessions within a zone having a radius of one half mile and centred on the point where the flagstaff situated on the northern part of the island stood on 24th July, 1950,*

"ARTICLE IV

"(a) *If it is held that the United Kingdom has sovereignty over the Pipette rocks, the Government of the United Kingdom shall have the right to grant fishing concessions within a zone having a radius of one half mile and centred on the Pipette Beacon*

"(b) *If it is held that France has sovereignty over the rocks known as the Maisons, the Government of the French Republic shall have the right to grant fishing concessions within a zone having a radius of one half mile and centred on the Maisons Beacon*

13. The United Kingdom Government submit that the above-cited provisions conclusively negative the contention that there was or, at any rate, that there remained, for the parties, any disqualification from asserting a claim to sovereignty; and that, on the contrary, these provisions make it clear that it was precisely in order to render possible adjudication on such claims in favour of one or the other party that the matter was now to be submitted to the Court. In so far as any previous agreement between the parties created or implied any such disqualification, it was clearly superseded and put an end to, *pro tanto*, by the 1951 Fishery Agreement. The principal points are as follows:

(a) The Preamble, which affords the clearest evidence of what the parties believed they were submitting to the Court, is in itself conclusive in the above sense, and is not reasonably open to the interpretation that the Court was being asked, as one of the main issues in the case, to consider the possibility that sovereignty should not be attributed exclusively to either party.

(b) However, if there could be any doubt on the point, it would be set at rest by the operative part of the Agreement. This contains only six main Articles, apart from formal provisions and definitions, and amongst them three which cannot take effect unless, and

¹ Usually known as Maitre Ile and so referred to in the United Kingdom Memorial.

until, the Court has decided that *either* France *or* the United Kingdom has sovereignty over the Islets and Rocks named in the Articles referred to. Thus, Article II (a) provides that :

"The Contracting Party, which is held to have sovereignty over the Maitresse Ile¹ in the Ecrehos group, shall have the right to grant fishing concessions within a zone"

Similar provisions appear in Articles III and IV (see paragraph 12, above). These three Articles are only consistent with the view that *both* the parties considered that *one* of them had sovereignty over the Islets and Rocks mentioned, and would eventually exercise the right of granting fishing concessions in the zones surrounding them. These Articles, in fact, clearly anticipate a decision of the Court on the question of sovereignty, in order to give them effect.

(c) Article I of the Agreement is also relevant and important, because it contains an express stipulation that the 1951 Fishery Agreement is to prevail, *pro tanto*, over the 1839 Convention. It says in terms that the interpretation of that Convention, as conferring common fishery rights in a certain area on the nationals of the two parties, is to be read "subject to the provisions of Articles II, III and IV" of the Agreement—*i.e.*, subject to provisions which contemplate, and require, a decision by the Court attributing sovereignty over the main parts of each group to one or other party.

Point (3): The Language of the Compromis

14. The Compromis, which was drafted immediately after the 1951 Fishery Agreement and as part of the same general settlement, demonstrates equally that there was, or remained, no disability or disqualification for either party as regards claiming sovereignty ; and that it was, indeed, on the basis of the actual existence of such claims that the matter was submitted to the Court, expressly for the purpose of obtaining from the Court a decision as to which claim was the better. The relevant parts of the Compromis (with the parts on which the United Kingdom Government rely italicized) read as follows :

"The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the French Republic ;

"Considering that differences have arisen between them as a result of claims by each of them to sovereignty over the islets and rocks in the Minquiers and Ecrehos groups ;

"Desiring that these differences should be settled by a decision of the International Court of Justice determining their respective rights as regards sovereignty over those islets and rocks ;

"Desiring to define the issues to be submitted to the International Court of Justice ;

"Have agreed as follows :—

¹ Usually known as Maitre Ile and so referred to in the United Kingdom Memorial.

"ARTICLE I

"The Court is requested to determine whether the sovereignty over the islets and rocks (in so far as they are capable of appropriation) of the Minquiers and Ecrehos groups respectively belongs to the United Kingdom or the French Republic."

If, when the Compromis was being drawn up in these terms, it had ever been envisaged by those responsible for negotiating it, that the Government of the French Republic wished to make it their principal contention before the Court that the parties were under a pre-existing obligation not to claim any exclusive sovereignty over the groups, which, accordingly, had some other status—for instance, were *res nullius* or under some sort of *condominium*, and, for that reason, were not under French or British exclusive sovereignty—then it is quite obvious that Article I of the Compromis would never have been drafted as it was. The Court would have been asked to say whether the Islets were French or British, or belonged to both countries or to neither, and would never have simply been asked, as Article I at present asks the Court, to say whether the sovereignty was French or British. The position may be contrasted with the terms of reference of the Arbitrator in the *Agreement between the Governments of France, the United Kingdom and the United States of America for the Submission to Arbitration of certain Claims to Gold Looted by the Germans from Rome in 1943*, concluded at Washington on the 25th April, 1951¹, to which France was a party as well as the United Kingdom, where the Arbitrator was asked to say whether the gold should be attributed to Albania or to Italy, or to neither of them². It is impossible to imagine that draftsmen of the experience of those representing the two signatories of this Compromis would have drafted Article I as it is drafted, if it had not been understood that both Governments agreed that the groups belonged to one or the other exclusively. If it had been stated on the French side that the Government of the French Republic wished to include the disqualification issue in the sense of the first conclusion on page 403 of the French Counter-Memorial, this would, inevitably, have called forth from the United Kingdom side the observation that this contention was entirely inconsistent with the 1951 Fishery Agreement that had just been drafted.

¹ Cmd. 8242.

² The relevant provision reads as follows:

"The arbitrator is requested to advise the three Governments whether,

- (i) Albania has established that 2,338,7565 kilograms of monetary gold, which were looted by Germany from Rome in 1943, belonged to Albania, or
- (ii) Italy has established that 2,338,7565 kilograms of monetary gold, which were looted by Germany from Rome in 1943, belonged to Italy, or
- (iii) neither Albania nor Italy has established that 2,338,7565 kilograms of monetary gold, which were looted by Germany from Rome in 1943, belonged to either of them."

15. Certain particular points on the language of the Compromis may be noticed :

(a) The second paragraph of the Preamble recites that differences had arisen between the parties "as a result of claims *by each of them to sovereignty* over the islets and rocks....". These words constitute, in the submission of the United Kingdom Government, a clear and unequivocal indication that the matter was submitted to the Court on the basis that claims to the groups were, in fact, advanced and maintained *on both sides*, and that the Court was being asked to determine which side had the better title. The present French contention would be quite consistent with a position in which the Government of the French Republic simply denied the United Kingdom claim without maintaining one of their own. But the moment the matter is referred to the Court on the basis of mutual claims ("claims by each of them") *to sovereignty*, the inference is that each side is denying the validity of the other's claim *by alleging a superior claim of its own*, and the Court is, therefore, being asked by each party to decide, not merely that the other's claim is bad, but that its own is good—a basis that necessarily excludes the contention that neither side is entitled to put forward a claim.

(b) The next relevant provision of the Preamble reads :

"Desiring that *these differences should be settled*¹ by a decision determining their *respective rights as regards sovereignty* over those islets and rocks". [Italics added.]

Here, the phrase "these differences" can (in the context) only denote the differences that had "arisen between the parties as a result of claims *by each of them to sovereignty* over the islets and rocks in the Minquiers and Ecrehos groups". Again, the phrase "respective rights as regards sovereignty over those islets and rocks" suggests that the parties (or one of them) had *some* rights as regards the exclusive sovereignty over the Islets and Rocks, not, as the French Counter-Memorial now contends, that they both had none. The term "respective" is significant. It must be borne in mind that, so far as the Compromis was concerned, it was not ruled out that *both* parties had exclusive sovereign rights, one over the Minquiers and the other over the Ecréhous. The phrase "their respective rights as regards sovereignty over those islets and rocks" would clearly cover this possibility. It would also cover, without undue difficulty, a position in which one country had sovereignty over both groups and the other none—*i.e.*, that *one or other* had sovereignty. What it will not, according to any reasonable interpretation, cover—and is, indeed, quite inconsistent with—is the proposition that *neither* party has exclusive sovereignty, and more—

¹ The term "should be settled" has its importance, for a decision that neither party had, or could assert, sovereignty would be but a paper settlement ; and, as the whole history of the dispute shews, would, in reality, *settle* nothing. See paragraph 20, below.

over, that neither party can even seek to assert it. Such a phrase as "determining their *respective* rights as regards sovereignty" is not normally employed with reference to a position in which the parties have no rights to determine, and are precluded *a priori* from asserting any; for that would merely deprive the whole phrase of any significance or content¹. Finally, if there were any doubt about the meaning and intention of the phrase "a decision determining their *respective* rights as regards sovereignty over those islets and rocks", it would surely be disposed of by the words in Article I of the Compromis: "The Court is requested to determine whether the sovereignty over the islets and rocks *respectively* belongs to the United Kingdom or the French Republic". The repetition of "respective" and "respectively" is significant.

(c) A further point is that Article II of the Compromis starts with the words "Without prejudice to any question as to the burden of proof...." ("Sans préjuger en rien de la charge de la preuve...."). The reference would seem, in the general context of the Compromis, clearly to be to the proof by each party of its claim to title; and this supports the view that it was on the merits of these claims that the Court was asked to adjudicate.

The parenthetical phrase in Article I of the Compromis

16. The entire French contention, so far as the language of the Compromis goes, is based upon the words of the parenthetical phrase in Article I "(in so far as they [the islets and rocks] are capable of appropriation)". But these words, considered according to their natural and ordinary meaning in the context², simply have in view the fact that certain islets or rocks in or round the groups may, by reason of their physical nature and position, be incapable of appropriation by any State at all: that is (see paragraph 5, above), there might be rocks or banks which are only uncovered at low water, and are situated outside the territorial waters of any other appropriable land. The Government of the French Republic, however, interpret these words as if they read "in so far as France and the United Kingdom are not precluded from appropriating

¹ It will be recollected that in the course of interpreting the Special Agreement between the United Kingdom and Albania in the *Curfu Channel* case (*Merits*) (*I.C.J. Reports 1949*, p. 4), the Court cited (at p. 24) with approval, a dictum of the Permanent Court of International Justice in the case of the *Free Zones of Upper Savoy and the District of Gex* (Series A, No. 22, at p. 13) to the effect that: "in case of doubt, the clauses of a special agreement by which a dispute is referred to the Court must, if it does not involve doing violence to their terms, be construed in a manner enabling the clauses themselves to have appropriate effects".

The United Kingdom Government submit that the French contention would not only deprive the clauses of the Compromis of their intended effect, but would also involve doing violence to their clear terms.

² See the principles of interpretation formulated by the Court in the case concerning the *Competence of the General Assembly for the Admission of a State to the United Nations* (*I.C.J. Reports 1950*, p. 4, at p. 8).

them, because France and the United Kingdom have agreed by treaty that they shall not be appropriated". This is quite a different thing. What the parenthetical phrase really relates to, put in the simplest terms, is whether appropriation be *possible*, not whether the parties have a *right* to appropriate. The language of the phrase is neither natural, nor apt to convey the latter meaning; and, if the parties had intended such a meaning to be covered, they would certainly have used different and more explicit terms. They could not have been satisfied to do it in this indirect and elliptical manner, and by the use of a phrase obviously directed primarily to something else, especially when this would involve giving the phrase a meaning inconsistent with all the remaining portions of the instrument that was being drafted.

Reasons why the parenthetical phrase was inserted

17. A consideration of the real reasons for the insertion of the parenthetical phrase shews that the object was quite a different one from that involved in the French contention; that it had nothing to do with any disability attaching to the parties by reason of an agreement between them precluding claims in these areas; and that it had reference solely to the peculiar physical characteristics of the territory, *i.e.*, the Islets and Rocks, which formed the subject-matter of the dispute. The following points are relevant:

(a) Where a claim is made to an ordinary piece of territory, such as part of a mainland, or a large island, or a city, no question arises, or can arise, as to the inherent capability of the territory to be appropriated in sovereignty. In such a case, if either party wanted to contend that both parties were precluded by a previous agreement from asserting any claim to sovereignty, this would have to be stated in terms, because a phrase such as "in so far as capable of appropriation" would have no natural or obvious meaning in connexion with such a piece of territory.

(b) The use of the parenthetical phrase in the present case is due to, and draws its entire significance from, the fact that the subject-matter of the dispute is not ordinary territory, but small Islets and Rocks, many of the Rocks being isolated and scattered, and lying far out from the main part of the group concerned. It is significant that the phrase does not relate to the groups as a whole, as groups, but to the Islets and Rocks of the groups, shewing that what is involved, is not the status of the groups as groups, but the position of the individual Islets and Rocks—*i.e.*, a matter of physical configuration. (The French contention, it will be noticed, necessarily relates to the entire groups as such, and, therefore, raises quite a different issue). Some of the Rocks, as will be seen from Section A (Topography) of Part I of the United Kingdom Memorial (see Vol. I, paragraphs 5-11¹), are so small that there is a disagreement between

¹ See pp. 21-26.

the British and French charts as to whether they are permanently above water ; and there might, consequently, be doubt as to their capacity for appropriation. On the other hand, the main Islets in both groups are certainly capable of appropriation.

(c) In these circumstances, the object and effect of the parenthetical phrase in Article I, according to the submission of the United Kingdom Government, is to relieve the parties to the dispute from having to argue, and the Court from having to decide, whether any particular Islet or Rock be capable of appropriation in sovereignty, or, indeed, whether each and every Rock be so capable. The purpose was to delimit the subject-matter of the dispute as being all those Islets and Rocks which were, in fact, capable by nature of appropriation ; or, in other words, to secure that the process of adjudication should not be confused by any issue as to the physical capacity or incapacity of some of the Rocks to separate appropriation. In short, the parties intended the groups as a whole to be adjudicated upon ; and the matter was put in this way so that, for the practical purposes of the argument and the decision, the susceptibility of individual Islets or Rocks to appropriation could be ignored—or could be assumed, especially as all those specifically mentioned in the 1951 Fishery Agreement were unquestionably capable of it.

(d) Even if, however, the effect of the parenthetical phrase were to render it necessary for the Court to go into the question of the physical nature and configuration of, for instance, isolated outlying Rocks, it would still be the natural character of the Islets or Rocks *in rem* that would be put in issue by this phrase, not the quite separate question of the capacity *in personam* of the parties to appropriate them. When two Governments mean to refer to the possibility of their own personal incapacity or disability (incapacity or disability of the parties) they do not normally do this by referring to the incapacity of the subject-matter.

18. It thus appears that what the French Counter-Memorial really does, as regards the parenthetical phrase, is to utilize an expression introduced solely on account of the peculiar physical configuration of the subject-matter, and only having a natural meaning with reference to such a configuration, in order to bring in by a side wind another, and distinct, juridical issue, not covered by the ordinary language of the Compromis. The contention that France and the United Kingdom have agreed not to appropriate these groups is one that might be put forward about any territory, the sovereignty over which was in dispute, however obviously capable of appropriation. *It is a contention which has nothing to do with the capacity for appropriation of the subject-matter as such.*

Point (4) : A decision that neither party had sovereignty would frustrate the whole purpose of the general settlement intended by the 1951 Fishery Agreement and by the reference to the Court

19. As already stated, the object of the reference to the Court (as of the parallel 1951 Fishery Agreement) was to settle finally the long-standing differences between the two countries concerning the Minquiers and the Ecréhous ; and, so far as the territorial issue was concerned, to do so on the basis of a finding that the sovereignty belonged to one or the other of them. This is plain from the language of the 1951 Fishery Agreement and the Compromis already considered. The following particular points may be noticed :

(a) A decision that neither party could claim sovereignty would not constitute a settlement of the issue on the lines clearly contemplated by the parties, and would in practice merely perpetuate, instead of terminating, the present uncertainties. Locally, in particular, it would tend to preserve, and even to intensify, the possibility of incidents and other difficulties.

(b) The reference to the Court, as already shewn, was part of a general negotiation, the other aspects of which were dealt with by the 1951 Fishery Agreement. A positive finding on the issue of sovereignty is necessary to the carrying out of this Agreement (see paragraph 13, above), and, if there should be any doubt as to whether the purpose of the Compromis was to obtain an adjudication of the issue of sovereignty in favour of one or other of the parties, this doubt would be resolved by the terms of the 1951 Fishery Agreement ; and the Compromis ought to be interpreted accordingly, so as to enable the 1951 Fishery Agreement to be given its plainly intended effect.

(c) One of the further objects of the 1951 Fishery Agreement was to effect a settlement of the fishery issue in a manner that would be satisfactory to the parties, *whichever of them was adjudged sovereign over the groups*. A finding that neither could claim sovereignty would not, therefore, in any way facilitate the settlement of any fishery issue between the two countries ; and, so far as the Fishery Agreement itself is concerned, would actually frustrate a full settlement.

20. To sum up, it was unquestionably the intention of the parties that, by means of the 1951 Fishery Agreement and the Compromis, and the consequent decision of the Court, all disputes between France and the United Kingdom affecting the Islets and Rocks of the Minquiers and the Ecréhous groups should be settled. The parties were concluding a fishery agreement, the terms of which were carefully drafted so as to express clearly what the position would be about fishing, both in case sovereignty were attributed to France and in case it were attributed to the United Kingdom. The attribution of sovereignty to one or the other would also automatically settle all other possible subjects of dispute—e.g., what law

applied in the groups as regards land tenure, crimes, customs, &c. But the 1951 Fishery Agreement and the Compromis could only thus settle all possible subjects of dispute, if it were adjudged that the groups certainly belonged either to France exclusively or to the United Kingdom exclusively. A decision in the sense of the first conclusion of the French Counter-Memorial would not merely render most of the 1951 Fishery Agreement inapplicable, but would leave absolutely unsettled every other subject of dispute. Some of the Islets are regularly inhabited for a portion of each year, and have in the past been inhabited all the year round and may be so again. Others are visited regularly, and could be used much more than they are now used. What law is to apply to govern property rights on the Islets? What law is to apply to crimes committed on them? All these and other matters are, and have for a long time past been, actual issues, which cannot be left unsettled.

CONCLUSION ON UNITED KINGDOM CONTENTION I

21. The United Kingdom Government submit that, for the reasons given above, the French contention that the parties are, by reason of the 1839 Convention, precluded from claiming sovereignty over the Minquiers and the Ecréhous is quite irreconcilable with the 1951 Fishery Agreement and the Compromis into which the Government of the French Republic have themselves entered, and with the whole basis of the general settlement which these Agreements were intended to bring about, which it would entirely frustrate. Whatever might be the merits of this contention, therefore, if the issue rested simply on the 1839 Convention, the position is that it does not now rest upon that Convention alone; for it is clear that, by the recent Agreements, the parties have tacitly abrogated, or mutually treated as being no longer binding upon them, any restrictions on claiming sovereignty which the 1839 Convention might have involved.

22. The United Kingdom Government do not propose to take any formal objection to the competence of the Court to go into the issue raised by the French contention, although they have little doubt that this particular issue is not covered by the language of the Compromis, and is not, therefore, strictly one of those submitted to the Court by the parties. The United Kingdom Government will not take this point because, if the Government of the French Republic, in the course of the negotiations for drawing up the Compromis, had, in fact, asked that this issue be included in terms, the United Kingdom Government would not have refused. They would only have pointed out (see paragraph 14, above) that this issue was quite inconsistent with the 1951 Fishery Agreement which had just been drawn up, and made nonsense of three or four of its main Articles. The signature and ratification of the 1951 Fishery Agreement would,

accordingly, have had to be postponed until the issue of sovereignty (including the question of disqualification now raised by the Government of the French Republic) had been decided by the Court ; or else this Agreement would have had to have been redrafted in completely different terms. However, since the Government of the French Republic did not raise this question at the time, and concluded the 1951 Fishery Agreement and the *Compromis* upon a basis that clearly envisaged and assumed the capacity of the parties to claim sovereignty, they cannot now allege that the parties lack this capacity.

23. In case, however, the Court should consider that the issue of capacity is not conclusively settled by the terms of the 1951 Fishery Agreement and of the *Compromis*, in the sense above contended for, the United Kingdom Government will, in Section D below, give their reasons for the view that, even upon the basis of the 1839 Convention, standing alone, the parties are under no disqualification from claiming exclusive sovereignty over the Minquiers and the Ecréhous. Subsequently, in Section E, they will give their reasons for the view that if, contrary to this Contention, the 1839 Convention did involve such a disqualification, and this disqualification had not been removed by the 1951 Fishery Agreement and *Compromis*, it would already have been removed by the conduct of both parties in the post-1839 period, between 1839 and 1938. These Contentions will be preceded in Section C by an analysis of what the French thesis, as to the effect of the 1839 Convention, really involves.

SECTION C

Detailed Analysis of the French Contention as to the effect of the 1839 Convention

Introductory Remarks

24. In Section B above, it has been argued, and it is hoped demonstrated, that the first of the conclusions advanced on page 403 of the French Counter-Memorial is necessarily wrong because, whatever disabilities as regards the assertion of claims to exclusive sovereignty may have been entailed by the former 1839 Convention, these were removed by the 1951 Fishery Agreement, and by the *Compromis* itself under which the present dispute was brought before the Court. Before going on to argue that this conclusion is in any event incorrect, even on the basis of the 1839 Convention, and equally in the light of the 1839-1938 conduct of the parties, the United Kingdom Government consider it desirable to attempt some analysis of what appears really to be involved by the French contention concerning the effect of the 1839 Convention, since this will facilitate understanding of the United Kingdom counter-argument.

This will be done in Sub-Section I. In Sub-Section 2 certain consequences of this analysis will be shewn.

25. For convenience of reference, the main provisions of the 1839 Convention are cited hereunder (for the full text, see Annex A 27 in Vol. II of the United Kingdom Memorial¹):

"CONVENTION

"Whereas His Majesty the King of the French and His late Majesty the King of the United Kingdom of Great Britain and Ireland, appointed in the year 1837, a mixed Commission for the purpose of ascertaining and defining the limits within which the subjects of the two countries respectively should be at liberty to fish for oysters between the Island of Jersey and the neighbouring coast of France.

"And whereas the Commissioners so appointed have agreed upon certain lines, as marked in a Chart hereinafter referred to, as the limits above mentioned, and have also agreed upon certain arrangements, which they conceive to be calculated to prevent the recurrence of disputes which have, at various times, arisen between the fishermen of the two countries;

"And whereas the High Contracting Parties have also considered it desirable to define and regulate the limits within which the general right of fishery on all parts of the coasts of the two countries shall be exclusively reserved to the subjects of France and Great Britain respectively,

"Art : 1st

"It is agreed that the lines drawn between the points designated by the letters **A B C D E F G H I K**, on the Chart annexed to the present Convention, shall be acknowledged by the High Contracting Parties as defining the limits between which and the French shore the oyster fishery shall be reserved exclusively to french[sic] subjects:

"Art : 2.

"The oyster fishery within three miles of the Island of Jersey, calculated from low water mark, shall be reserved exclusively to british[sic] subjects.

"Art : 3.

"The oyster fishery outside of the limits within which that fishery is exclusively reserved to french and british subjects respectively, as stipulated in the preceding articles, shall be common to the subjects of both countries.

"Art : 9.

"The subjects of His Majesty the King of the French shall enjoy the exclusive right of fishery within the distance of three miles

¹ See pp. 179-186.

from low water mark, along the whole extent of the coasts of France, and the subjects of Her Britannick Majesty shall enjoy the exclusive right of fishery within the distance of three miles from low water mark, along the whole extent of the coasts of the British Islands.

"It being understood that upon that part of the coast of France which lies between *Cape Carteret* and *Point Meinga*¹, French subjects shall enjoy the exclusive right of all kinds of fishery within the limits assigned in first article of this Convention for the french oyster fishery.

.
"Art : II.

"With a view to prevent the collisions² which now, from time to time, take place on the seas lying between the coasts of France and of Great Britain between the trawlers and the line and long net fishers of the two countries, the High Contracting Parties agree to appoint, a Commission who shall prepare a set of regulations for the guidance of the fishermen of the two countries, in the seas above-mentioned.

"The regulations so drawn up, shall be submitted to the two Governments for approval and confirmation ; and the High Contracting Parties engage to propose to the Legislatures of their respective countries such measures, as may be necessary for the purpose of carrying into effect the regulations which may be thus approved and confirmed".

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Of the above provisions, Article 3 is the one on which the French contention mainly turns. It will be seen presently that the United Kingdom Government not only dispute that Article 3 had the effect which the French contention assigns to it, but also deny that the Minquiers and the Ecréhous came under Article 3 at all. However, it will be convenient, for the purpose of the ensuing analysis of the French contention as to the effect of Article 3, to ignore the latter point, and proceed independently of whether the groups came within the Article or not. That issue will be dealt with later. For the moment the question will be : what effect, according to the French contention, did Article 3 have as respects any territory or waters to which it did in fact apply, and assuming the groups came within it ?

Sub-Section I : Analysis of the French Contention

26. The French contention concerning the effect of the 1839 Convention appears to be stated, or to be capable of statement, in two different ways. The first is that the Minquiers and Ecréhous are

¹ Cap Carteret and Menga are underlined in the French version ; Cape Carteret and Point Meinga are underlined in the English.

² This term is evidently used in the sense of conflicts or clashes, rather than of collisions of boats.

part of an area which, by reason of the Convention (and, in particular, of its Article 3), is, so to speak, impressed or invested with a status or régime common to France and the United Kingdom, and involving non-appropriability in the sense that neither country can assert any *exclusive* sovereignty there. (This is the "*leur mer commune*" argument.) The other way in which the contention can be stated is that the establishment of joint or common fishery rights in the area of the groups (if this was the effect of the Convention) implied that neither party would assert or claim exclusive sovereignty over them (presumably because this would be inconsistent with the common fishery rights).

27. This second method of argument is also based upon the doctrine of "*mer commune*", but in a different way. In their formal conclusion on page 403 of the Counter-Memorial, the Government of the French Republic speak of "*leur mer commune*", but elsewhere in the Counter-Memorial, for instance in the conclusion as stated on page 371 (see the citation in paragraph 4, above), the theme is stated in the form that the areas concerned, "*ont été placés dans la 'mer commune' par la convention de 1839*". Equally, and even more significantly, it is stated on page 357 that :

".... la France et le Royaume-Uni ont convenu en 1839 de mettre —ou de laisser—dans *la mer commune* les îlots, rochers ou espaces litigieux". [Italics added] ¹.

The same form is employed in another passage at the top of page 374 of the Counter-Memorial. This reads :

"Or, l'interprétation même littérale du texte conduit inéluctablement à la conclusion que les Écréhous et les Minquiers *ont été laissées*, ou si l'on veut, placées définitivement dans *la mer commune*". [Italics added] ².

Attention is drawn to these passages for good reason. Whatever may be the significance of the term "*leur mer commune*" used in the formal conclusion on page 403 of the Counter-Memorial (and this will be considered presently), the term "*la mer commune*" seems to denote, or to be an alternative for, "*high seas*" (*haute mer*) (see p. 373 of the Counter-Memorial, line 12 from the foot of the page). If that be the sense in which "*la mer commune*" be intended to be understood in the Counter-Memorial, it suggests, in combination with the use of the term "*laisser*"—i.e., the statement that the parties "*left*" the groups in the high seas—that what the French case (as put or summed up on these pages 357, 371 and 374) comes to is this : that the parties, by the 1839 Convention, agreed in effect

¹ ".... France and the United Kingdom agreed in 1839 to put—or it may be to leave—the disputed islands, rocks and areas in *the common sea*". [Italics added].

² "But even a literal interpretation of the text leads inevitably to the conclusion that the Écréhous and the Minquiers *were left*—or, if it is preferred, placed—definitively in *the common area*[sic]". [Italics added].

that an area, which then consisted of high seas, should, so far as they were concerned, *always remain high seas*, and that neither would seek to establish any exclusive sovereignty in or over the area. It is not indicated why this should result from, or be the effect of, a clause (Article 3) relative to a common oyster fishery (or even, indeed, if it were a common general fishery clause); but such, at all events, appears to be the argument in one of its aspects.

28. However, it is also necessary to consider the French contention upon its other basis, that the 1839 Convention impressed or invested the area with a special status or régime peculiar, and so to speak exclusive, to the two parties jointly—*"leur mer commune"*. This will be called Basis (a) and will be considered first. Thereafter Basis (b) will be considered, namely, that there was (*i.e.*, that the 1839 Convention constituted) an agreement that certain areas should remain high seas and *res nullius* so far as the two parties were concerned.

Basis (a) : That the 1839 Convention created an area common to the two parties jointly ("leur mer commune") in which neither could claim any exclusive sovereignty

29. This argument is based on the view frequently put forward by France in the diplomatic correspondence of the period 1876-1906, and as constantly denied by the United Kingdom (see Section E of Part I, below), that the 1839 Convention established three distinct zones: an exclusive French fishery zone, an exclusive British fishery zone, and a "common" or "neutral" zone; and that the common zone was or became a *"mer commune"* to the two parties, in which no exclusive rights of *any kind* could be claimed or asserted by either party. This doctrine does not explain why the establishment of common fishery rights in a certain area (if such were the effect of the 1839 Convention as regards the waters surrounding the Minquiers and the Ecréhous) should have the consequence of precluding all exclusive claims of any kind, nor in what manner (juridically speaking) a provision relative to such rights creates *per se* for the area a general status or régime common and exclusive to the two parties. However, the United Kingdom Government are not concerned at the moment to discuss the correctness of this particular French view of the effect of the 1839 Convention, which will be considered later. It is necessary to inquire first what it implies, and, in particular, what the theory of the *"mer commune"* involves.

The doctrine of the mer commune : does it imply an area which is under a condominium or an area which is res nullius ?

30. The doctrine of the *"mer commune"* is evidently an essential part of the French thesis, but its exact meaning and bearing is not clear. As stated above, it is employed in two distinct senses. The term *"mer commune"* normally seems to denote the "high seas"

(*haute mer*), but, on page 403 of the French Counter-Memorial, in the final conclusion, it appears to mean more than this, and the reference is to "*leur mer commune*" in the sense, apparently, of a sea common to the two parties, in which they assert, jointly, rights superior to those possessed in those waters by other countries. Since, however, it is clear that the parties could not legally assert exclusive rights of this kind over waters which consisted of high seas, it seems to follow that the French contention (upon this basis) involves that the waters concerned are not, in fact, high seas. But, if the waters be not high seas, this in turn involves, as a necessary consequence, that they be territorial waters. But, again, if they be territorial waters, there must be territory to which they are attached and this territory must be under the sovereignty of some country, or the waters would not be territorial except in the descriptive or contiguous sense. Yet, it is the whole essence of the French case that the Minquiers and the Ecréhous are not under the exclusive sovereignty of either France or the United Kingdom, and that neither country has the right to claim sovereignty. Therefore, it must follow that, according to the French contention, they are under joint Franco-British sovereignty—*i.e.*, a *condominium*.

31. Thus, if the doctrine of "*leur mer commune*" is not to involve an inadmissible claim to exclusive joint rights over parts of the high seas, and is not also to involve a contradiction in terms by admitting that they are under the sovereignty of one of the parties, when France claims that they are not, and cannot be, it must necessarily lead to the conclusion that, in the French view, the waters are under the common sovereignty of *both* parties, by way of a *condominium*; and (since there is no basis for sovereignty over waters except sovereignty over the adjacent territory) that the parties have such a *condominium* over the Minquiers and the Ecréhous. But, is this really what the Government of the French Republic mean by their theory of "*leur mer commune*", upon which the first French conclusion on page 403 of the Counter-Memorial is based? And, if they should mean this, is it a sustainable proposition? The United Kingdom Government will, in due course, submit that it is not, because (a) there is, in fact, absolutely no evidence of the existence of any *condominium* in the sense of a common Franco-British administration of the groups; and (b) it would be reading into a provision about common (oyster) fishery rights in certain waters far more than the language could possibly justify, if it were regarded as establishing a *condominium* of the parties over the waters concerned and over the adjacent territory.

32. If, however, there be no *condominium*, and if exclusive joint rights over the high seas cannot be asserted, there is clearly nothing left of the doctrine of "*leur mer commune*" as an area *peculiar to France and the United Kingdom*. This leads to a consideration of the French contention on the basis that the "*mer commune*"

referred to is "*la mer commune*" in the sense of the "high seas".

Basis (b) : That the existence of common fishery rights in certain areas of high seas is protected by the 1839 Convention, and this implies that the status of those areas will not be altered, and, consequently, involves an obligation not to assert or claim any exclusive sovereignty over territory in them

33. This way of putting the French contention involves two simple (though, in the opinion of the United Kingdom Government, quite erroneous) propositions, namely, (i) that the waters of the Minquiers and the Ecréhous are, and were in 1839, high seas and *res nullius*, in which both parties had, and have, the right to fish ; and (ii) that this right was, in effect, protected by the 1839 Convention, and that such protection involves, and implies, that neither party will seek to assert any exclusive sovereignty over the groups. The argument has to be put in this way, because, in waters which (on this hypothesis) were, and are, high seas, the parties would both have had a right of fishery in any case, under general principles of international law. No Convention would be necessary for that purpose, nor could any Convention actually create such a right, however much it might purport to do so. But, theoretically, a Convention could, as between the parties, preserve and protect the common or non-exclusive *status quo* in regard to fisheries, by creating for the parties an obligation to *maintain* this non-exclusive position, and do nothing to prejudice or terminate it.

34. It is clearly implicit in this argument, when applied to the present issue, that a claim of exclusive sovereignty over the groups must, in fact, prejudice or bring to an end the common or non-exclusive fishery position. This assumption (never proved and scarcely even discussed, but simply taken for granted) underlies the whole French contention.

Sub-Section 2 : Consequences and Implications of the foregoing Analysis

35. The United Kingdom Government desire to draw particular attention to certain consequences and implications that result from the foregoing analysis :

(a) It is inescapable that, if the French contention be correct, the groups are either under a Franco-British *condominium* or are *res nullius*. They obviously cannot be both, but they must be one or the other, because, if not, then they must be under the exclusive sovereignty of one of the parties only, which is exactly what the French contention asserts that they are not (though, of course, it is the United Kingdom view that they are—that is to say, that they are under British sovereignty).

(b) Of the actual existence of a *condominium* there is no evidence ; nor have the parties ever, at any time before or since 1839, conducted themselves in the least as if a *condominium* existed. It is

also not possible to see how a mere fishery agreement such as the 1839 Convention and a provision such as Article 3 of that Convention, concerning the oyster fishery in certain waters, could have produced such an effect as the establishment of a *condominium* with all the apparatus of joint sovereignty. On these grounds alone, this aspect of the French contention could perhaps be ruled out at once, as involving something manifestly contrary to fact and reason. However, since it is one of the theoretically possible consequences of the French contention, it will be further considered in due course.

(c) Nor, however, is the other (and the *only* other) alternative basis of the French contention free from *a priori* difficulties. It involves that the waters and the groups are *res nullius*; but, if so, they are open to appropriation in sovereignty by any other country (except France and the United Kingdom) which cares to take the necessary steps to establish sovereignty. This would seem to be a difficult position for France and the United Kingdom to admit; but the only escape from it which the French thesis permits of is the *condominium*.

(d) A similar problem arises over fishery rights. Since (unless there be a *condominium*) the French contention involves that the waters are high seas, it follows that *all* countries have fishery rights there—not merely France and the United Kingdom. The only difference between the position of the latter two countries and that of other countries is that (according to the French contention) France and the United Kingdom are under a mutual obligation to abide by a sort of restrictive covenant not to alter the *status quo* by claiming or asserting sovereign rights. But no other country is under any similar restriction (for the 1839 Convention is a purely Franco-British affair). Thus, not only could other countries claim an exclusive sovereignty, which neither France nor the United Kingdom can claim, but any country which did so could, as sovereign (and not being bound by any agreement to the contrary), put an end to all other fishery rights in the territorial waters of the groups. It is impossible, however, to see why two countries such as France and the United Kingdom, which obviously have the main interest, geographically, economically and in every other way, in these groups, should have placed themselves in this extraordinary situation, in which their own positions and rights are, so to speak, circumscribed, restricted and precarious, while those of all other countries remain free and unaffected. It will be appreciated, though it is perhaps unnecessary to point it out, that international law does not admit of anything in the way of what might be called suspensive or putative sovereignty, which the country concerned does not choose to assert itself, but which can yet operate as a bar to claims by other countries. Except in the case of an inchoate and purely temporary title to territory, arising from discovery, which is not here in question, it is not open to countries, without themselves asserting or claiming sovereignty, to deny the right of other

countries to do so. France and the United Kingdom could not, therefore, while not asserting their own sovereignty, yet seek to maintain that they had rights which prevented third States from asserting a claim¹.

(e) If, in order to avoid these consequences, the Government of the French Republic prefer to say that their contention does not involve a position of high seas and *res nullius*, and that there is sovereignty, but it is a joint sovereignty of *condominium*, and neither party can claim exclusively; then, once more, it must be asked: where are the manifestations of this joint sovereignty and where is the treaty provision establishing it? Just as no country can claim a sovereignty which is does not manifest by appropriate acts of sovereignty, so a joint sovereignty or *condominium* must be, and is, manifested by, or proved by reference to, appropriate joint acts of sovereignty and appropriate arrangements for the exercise of such sovereignty—e.g., as to joint administration, as to the law which is to apply, &c. But, in fact, there are no such arrangements. There are, and have been, manifestations of British sovereignty, and there may have been manifestations of purported French sovereignty. Never, at any time in the whole history of the case, have there been any acts of joint sovereignty, or overt manifestations of a *condominium*, or any arrangements about it between the parties. The necessary joint administration, in fact, does not exist.

36. The foregoing points have purposely been gone into at some length, because they shew that, whichever way the French contention be looked at, and allowing, or even seeking for, every reasonably plausible way in which it can be put, it is open to serious and almost conclusive objections on *a priori* grounds, *even before the interpretation of the 1839 Convention has been entered upon at all*. It would not be unreasonable to ask the Court to reject the French contention on these *a priori* grounds alone, as leading to results too improbable and unrealistic to be seriously entertained. However, there are other more positive, though no less cogent, reasons for rejecting this contention; and attention will now be drawn to certain further consequences and implications of the French contention, which have a direct bearing on the United Kingdom's own case, as will be stated in Section D of Part I, below.

37. Whichever way the French contention be looked at, and whether it be regarded as leading to a *condominium*, or to the groups being *res nullius* coupled with an obligation on the parties not to alter this position by claiming any exclusive sovereignty, it is a necessary consequence of the contention that the groups *were* *res nullius in 1839*. For if they were not, that is, if they were under the

¹ There being of course no *general* international agreement precluding claims to sovereignty in these localities.

exclusive sovereignty of one or other of the parties at that date, it would have to be supposed that this party, *in return for no quid pro quo whatever*, either admitted the other to share its hitherto exclusive rights (*condominium*) or relinquished them altogether (*res nullius*). Similarly, as regards fishery rights, it would have to be supposed that, again for no return¹, the party already having exclusive fishery rights by virtue of its sovereignty, suddenly became willing to share these with the other (*condominium*), or with all the world (*res nullius*). Even if it were suggested that there was, in fact, a *quid pro quo*, because one of the parties was sovereign over the Minquiers and the other over the Ecréhous, and both groups were, so to speak, placed in the pool (which, however, neither party does suggest), the internal evidence of the 1839 Convention itself, which will be considered presently, points overwhelmingly to the conclusion that only territory which was *res nullius* could have been included in the common fishery clause (Article 3)². The French Counter-Memorial itself adopts this view, which is, indeed, the only one consistent with realities. On page 373, after observing that "en 1824 et 1825, le Royaume-Uni considèrerait que les eaux où se trouvent situés les rochers des Ecréhous et des Minquiers appartenaient à la haute mer"³, it goes on :

"Le projet de convention de 1824 suppose que les négociateurs des deux nations considéraient que les espaces aujourd'hui litigieux appartenaient à la haute mer ou à la mer commune, mais non en propre à l'un d'entre eux. Or, cela demeure vrai de la convention de 1839". [Italics added]⁴.

With regard to the reference to "la mer commune" in this passage, in so far as it might denote anything different from the high seas (see paragraph 27, above), which could only mean a

¹ If any territory belonging exclusively to one of the parties was placed or came within the so-called common (Article 3) area, this would have been quite gratuitous unless territory belonging exclusively to the other party was similarly placed or came within the area. Since there is absolutely no evidence that either party intended to deal in this way with territory under its actual sovereignty, and the evidence is rather to the contrary, it must be assumed that Article 3 related entirely to areas which were *res nullius*.

² It is, of course, precisely for this reason that, on the United Kingdom side, it has always been argued that the groups, being British in 1839, could not have come under Article 3 of the 1839 Convention; whereas, on the French side, starting from the assumption that the groups were not British in 1839, it has been argued, first, that they came under Article 3, and then, that because they came under Article 3, they could not be, or have been, British. Thus, the parties have always been at cross-purposes, while the French argument has involved a double *petitio principii*.

³ "... in 1824 and 1825 the United Kingdom regarded the area in which the rocks of the Ecréhous and the Minquiers are situated as forming part of the high seas".

⁴ "The draft Convention of 1824 assumed that the negotiators of both nations considered that the areas now in dispute were part of the high seas, or to [*sic*] the common sea, but not as belonging to either of the two nations. And the same holds good in regard to the Convention of 1839". [Italics added].

condominium (see paragraphs 30 and 31, above), there was, of course, whatever else there may have been, no more a *condominium* at that time than there is now. Thus, the high seas or *res nullius* remains as the only practicable alternative. This also results from the fact that joint fishery rights would already have existed in waters which were under the joint sovereignty of the parties; and it would have been quite superfluous and absurd to have a special treaty clause by which the parties purported to confer these rights upon themselves¹.

38. From the fact that only territory which was then *res nullius* could have come under Article 3 of the Convention, two important consequences flow: (a) the Minquiers and the Ecréhous could not have come under Article 3 if they were at the time under either British or French sovereignty; (b) since the waters covered by Article 3 were high seas, the parties already both had a right to fish there, and, *however Article 3 was drafted*, and however much it may have purported to create such a right, it cannot in fact have done so. The implications of these two points will now be briefly considered.

Point (a)

39. On the United Kingdom side, it has always been quite consistently maintained that the Minquiers and the Ecréhous could not have come under Article 3 of the 1839 Convention because they were under British sovereignty at the time. On the French side there has been less logic; for, while maintaining that France has, and always has had, an historic title to the groups, the French authorities have simultaneously sought to maintain that they fell under Article 3 of the 1839 Convention. This process is repeated in the Counter-Memorial, Part III of which claims that the groups have always been French. But, Parts I and II virtually admit that the "common" (Article 3) area related to regions which were high seas and *res nullius*; and it is, indeed, precisely upon the basis that the Minquiers and the Ecréhous were not under either French or British sovereignty that France has claimed that they came under Article 3.

40. The United Kingdom Government submit that this process is not really a legitimate one, and that the Government of the French Republic must choose either to maintain that the groups were French in 1839 or not. If (as in Part III of the Counter-Memorial) the Government of the French Republic maintain that

¹ Strictly, it was equally superfluous if the waters were high seas, for the parties already had a general international law right to fish there. It was precisely for this reason that, relying upon their ordinary common law rights, the parties subsequently recognized that Article 3 was "unnecessary", and omitted it on that ground from the later 1867 Fishery Convention, which only did not come into force for extraneous reasons irrelevant to the present issue (see Section D of Part I, below).

they were French in 1839, then this means that France was apparently willing, *for no return of any kind*, (a) to give up the exclusive fishery rights she would have been enjoying in these waters ; and (b)—according to the French contention—to relinquish her entire sovereignty, or alternatively to share it with the United Kingdom (if it were a *condominium* that the Government of the French Republic say Article 3 established). If, on the other hand, it be obvious that no French Government would have been willing to act in this way if France had had sovereignty over the groups in 1839, then the claim that sovereignty existed must be renounced, if it is to be maintained that the groups came under Article 3.

Point (b)

41. If it has been correctly concluded above that the Article 3 areas were intended to be high seas, it will also follow that the parties already had a common law right of fishery there, and Article 3 was not necessary to establish this. It will be shewn later (see also note 20, above) that Article 3 was, in fact, unnecessary and could have been omitted. All it really meant was that the area it covered was open sea where the rights of all countries were equal, including those of France and the United Kingdom. However, assuming that the Article was not, so to speak, purely declaratory, then, since it did not, in fact, *create* any rights, its action must (according to the French thesis, and as suggested in paragraph 33, above) have been conservatory in character: it did not create rights, but it operated as a prohibition on their subsequent removal or impairment. Granted, for the sake of argument, that this was so, the next and final question in the analysis of the French contention and its implications is: what was the character of the rights which it was intended thus to preserve and what did their preservation involve?

42. Even if every possible concession be made to the French thesis, the rights preserved and, so to speak, protected by Article 3, were, evidently, no more than common or joint *fishery* rights in certain waters. Why, and in what way, this should entail a prohibition on the assertion of any claim to exclusive sovereignty is something which the French Counter-Memorial nowhere explains. The United Kingdom Government will submit, and will hope to shew in due course, that the enjoyment of common fishery rights by two countries in certain waters is perfectly compatible with the exercise of exclusive sovereignty by one of the two countries in all remaining ways. The right of the other country to continue to fish must, of course, be respected, either as a servitude to which the area concerned is subject, or as a personal obligation binding on the local sovereign, whichever of the two that sovereign may be. The position is one which is perfectly familiar in international law and practice. The French Counter-Memorial assumes that, once

common fishery rights are by agreement established or protected in a certain area¹, it follows, automatically, that none of the parties to the agreement can assert any exclusive sovereignty there. The United Kingdom Government submit that, on the contrary, all that the parties must not assert is any exclusive *fishery* right. There is, consequently, a vital step missing in the French argument, which fails to explain how or why an agreement establishing non-exclusivity of fishery rights in an area implies non-exclusivity for all purposes, or invests the area with such a status. This is the more striking in that (as will be seen in Section E of Part I, below) previous French administrations during the period 1876-1906 had no difficulty in recognizing, *as from the moment when France herself put forward claims of sovereignty to the groups*, that common fishery rights could be enjoyed irrespective of the question of sovereignty, and whichever country had sovereignty. This is, moreover, quite clearly the underlying basis of the 1951 Fishery Agreement (see paragraphs 19 and 20, above).

43. Basing themselves on the above analysis of the French contention, the United Kingdom Government will now develop their reasons for the view that the 1839 Convention did not preclude, and could not have precluded, the parties from asserting claims to exclusive sovereignty over the Minquiers and the Ecréhous, or have involved any disqualification or disability in the matter.

SECTION D

United Kingdom Contention II : That the 1839 Convention did not have the effect of rendering the Minquiers and the Ecréhous incapable of appropriation by France or the United Kingdom, and of precluding either country from asserting a claim to exclusive sovereignty over them

Sub-Section 1 : Introductory Remarks and Points to be made by the United Kingdom Government

44. The analysis of the French contention respecting the effect of the 1839 Convention given in the preceding Section indicates that there are two principal points which the Government of the French Republic must establish in order to prove their thesis, namely, (1) that the Minquiers and the Ecréhous came within the scope of Article 3 of the Convention (for it is on the implications to be drawn from this Article that the whole French thesis depends); and (2) that the effect of that Article was to preclude either party from asserting or seeking to assert any claim to exclusive sovereignty over the groups. The analysis also shewed it to be a consequence of the French thesis that, since the groups are (according

¹ It will be borne in mind that, according to the United Kingdom view, the Minquiers and the Ecréhous are *not*, in fact, included in any such area. But this is another, and a distinct, issue.

to that thesis) not under the exclusive sovereignty of either France or the United Kingdom, they must at this moment be either under a Franco-British *condominium*, or else *res nullius*. It was shewn, however, that both these suppositions gave rise to theoretical and practical difficulties of so serious a character as virtually to justify their rejection on *a priori* grounds, leaving the United Kingdom Contention as the sole tenable hypothesis, namely, that the groups are under the exclusive sovereignty of one or other of the two countries, and that the issue before the Court is to determine which.

45. The analysis also indicated that the areas to which Article 3 of the 1839 Convention were intended to relate must have been areas which, in 1839, were under the exclusive sovereignty of neither party, and which, therefore (since there is no evidence of the existence of any *condominium* by the parties over any localities that could have been concerned), were *res nullius* in 1839. It followed from this that the Minquiers and the Ecréhous could not come under Article 3 if they were under either French or British sovereignty in 1839, and, therefore, that the French contention that they were covered by that provision was quite inconsistent with the parallel French claim that, on historic grounds, the groups were French in 1839. It was suggested that the Government of the French Republic could not validly maintain, both that the groups were French in 1839, and that they fell under Article 3 at that date, because they could only have fallen under Article 3 if they were not at that date French (or British).

46. On the other hand, it had consistently been maintained on the United Kingdom side that the groups were, and always had been (and were in 1839), British, and that, *for that reason*, they could not have come under Article 3. It is, therefore, a principal factor in the United Kingdom case to demonstrate that, if the United Kingdom Government are right in their contention that the groups were British in 1839, they did not come under Article 3, whatever effect that provision may have had in regard to the areas it did cover.

47. The detailed analysis of the French contention also shewed that, if it were correct to say that Article 3 only applied to areas over which neither party had sovereignty in 1839, then it followed that, since the waters concerned were high seas, Article 3 cannot have created the common right of both countries to fish in them. At the most, it might have had the effect of preventing either party from thereafter seeking to alter the *status quo* in such a manner as to prejudice this common fishery right¹. But it was suggested that, in fact, a claim to exclusive sovereignty would not

¹ As will be seen, the United Kingdom Government do not admit that this was in fact the effect of Article 3, even as regards fishery rights.

have this result, for full effect could still be given to any existing fishery rights, either as a servitude attaching to the area, or as an obligation personally incumbent on whichever country claimed sovereignty, *i.e.*, to continue to respect the fishery rights of the other country while exercising exclusive sovereignty in all other respects. It was suggested that this position was familiar to international law and gave rise to no difficulties either of theory or practice. Consequently, it was not legitimate to read into Article 3 far-reaching implications about sovereignty, since no such implications were required in order to give full effect to the only matter that the Article specifically dealt with, namely, certain fishery rights.

48. Basing themselves on these foundations, the United Kingdom Government will advance the following principal arguments in support of their present contention, namely, that the 1839 Convention did not have the effect of rendering the Minquiers and the Ecréhous incapable of appropriation by France and the United Kingdom :

Point (1) : Article 3 of the 1839 Convention did not apply to the Minquiers and the Ecréhous for the following reasons :

- (a) The groups were dependencies of Jersey and, therefore, came under Article 2 of the Convention, as areas in which fishery was reserved exclusively to British subjects.
- (b) The groups, whether or not dependencies of Jersey, were British possessions in 1839 and, therefore, came under Article 9 of the Convention as "British Islands", in respect of which all fisheries were reserved exclusively to British subjects.
- (c) Article 3 of the 1839 Convention did not, in any event, apply to areas under the sovereignty of one of the parties, but only to areas which were *res nullius* or which consisted of high seas.

Point (2) : Even if, contrary to the foregoing arguments, Article 3 of the 1839 Convention were applicable to the Minquiers and the Ecréhous, it did not have the effect of preventing either party from claiming or exercising exclusive sovereignty over the groups, since :

- (a) it did not establish any Franco-British *condominium* over the groups ;
- (b) all that it established was that the areas covered by it consisted of open sea in which the rights of all States were equal, including those of France and the United Kingdom : it did not imply that this position must continue indefinitely, or that no step could be taken by either party to put an end to it ;

- (c) even if such an implication did result from Article 3, this was only in respect of the rights actually specified in the Article, namely, fishery rights¹, and constituted no bar to a claim of exclusive sovereignty, there being no incompatibility between such a claim and the continued enjoyment of common fishery rights by both parties.

Before the reasons in support of these arguments are developed, it will be necessary, in order to facilitate understanding of the position as a whole, to give some account of the background and history of the 1839 Convention, and of the light thrown on its real purpose and effect by the later Convention of 1867. This will be done in Sub-Sections 2 and 3 below, the main argument being resumed in Sub-Sections 4 and 5.

Sub-Section 2 : Nature, Object and Background of the 1839 Convention

49. The French Counter-Memorial discusses in considerable detail the negotiations leading up to the 1839 Convention. In the opinion of the United Kingdom Government, almost all this argument is completely irrelevant to the establishment of the French thesis, because it fails to shew what necessary connexion there is between an agreement for regulating certain fishery matters and establishing certain fishery limits, on the one hand, and the issue of sovereignty, on the other hand. Certainly the negotiations that led up to the Convention do not establish any such connexion. These negotiations, which lasted for a period of twenty years (1819-39), were very protracted and difficult ; but it is clear that the difficulties arose entirely from differences of a fishery character, and not because of any issue about sovereignty or claims to territory, which indeed were never mentioned. Moreover, these differences related entirely to the oyster banks and beds off the French coast and not round Jersey or the Minquiers or the Ecréhous. The difficulties involved appear quite clearly from the interchange of correspondence between the Prince de Polignac and Mr. Canning given as Annexes I and III to the French Counter-Memorial ; and also from a subsequent Letter, dated the 24th December, 1825, which the United Kingdom Government attach to the present Reply as Annex A 141, written by Mr. (later Sir) Robert Peel (who, as Home Secretary, was the Minister then responsible for the fishing industry and the Channel Islands) to Mr. Canning, the Foreign Secretary. A study of these documents makes it clear that there were three main difficulties, arising from the peculiar character of the oyster fishing industry. These were :

¹ Or, more correctly, *oyster* fishery rights. But, so far as the United Kingdom case is concerned, it does not really matter what particular fishery rights were involved (see paragraph 68, below).

- (a) The French fishermen regarded themselves as entitled to an exclusive right to fish certain oyster banks off the French coast outside the normal limits of French territorial waters. They considered that they had (as the French Counter-Memorial says, pp. 360-363) a quasi-proprietary right in these banks, or rather in the oyster beds on them, by reason of having cultivated them. No solution was acceptable to the French authorities which did not reserve to French fishermen the exclusive right to fish these particular banks, although the French authorities were apparently not unwilling, as regards certain other banks, to allow British fishermen to fish even within the limits of French territorial waters.
- (b) The United Kingdom authorities, while not unsympathetic to certain of the French claims in substance, believed that, in principle, exclusive rights to fisheries could not be claimed outside the limits of territorial waters, and feared that this principle would be prejudiced by the admission of special exceptions. They also pointed out that no agreement between France and the United Kingdom *inter se* could create a really exclusive right of fishery outside territorial waters, for it could not bind third States: thus, British fishermen might merely find themselves excluded from banks which would still remain open to fishing by the fishermen of other countries.
- (c) Supposing, however, that the United Kingdom authorities had been willing to admit certain special exceptions in favour of French fishermen, a further (and indeed the major) difficulty was the absence of any *quid pro quo* in favour of British fishermen which would have enabled the United Kingdom authorities, *vis-à-vis* Parliament, to justify asking for the special legislation necessary in order to restrain British fishermen from exploiting the oyster beds off the French coast, but outside French territorial waters, that were to be reserved exclusively for French fishing. This difficulty of finding a *quid pro quo* arose because, on the United Kingdom side (*i.e.*, along all British coasts), the oyster beds lay well within the limits of territorial waters. There were no outlying banks, where there could be an exclusive British right to fish, which would balance the exclusive right which, it was suggested, the French should have to fish certain outlying banks on the French side. For these reasons, as is well explained in the French Counter-Memorial, the negotiations that took place in the period up to 1824 came to nothing, and the Convention drafted in that year was never signed.

50. The foregoing facts have an important bearing on the correct interpretation of the eventual 1839 Convention, for it was in this Convention that the bargain *on fisheries* was finally arrived at, and

the *quid pro quo*, missing in 1824, was found. It seems to have been decided in the intervening period that the interests of the British (including especially Jersey) fishermen could be met, even if an exclusive right were reserved to French fishermen to fish for oysters in certain areas outside French territorial waters off Granville and in the Baie de Cancale, provided that British fishermen were allowed to fish in certain other areas *within French territorial waters*, i.e., certain areas north of the Iles Chausey which, being nearer to Jersey, were more easy of access to the Jersey fishermen, and the oyster banks of which the latter had discovered, as is stated on page 364 of the French Counter-Memorial. It was on the basis of this *quid pro quo* that the bargain was struck, and it was given effect to by drawing an *ad hoc* line on the chart annexed to the Convention—a line partly inside and partly outside the limits of territorial waters, within which French subjects were given exclusive rights. (A detailed analysis of this line, shewing its distance at various representative points from the French coast, is given in Annex A 142 to the present Reply). This result meant, in effect, that, in some places, the French had exclusive rights outside their territorial waters, but in other places they gave up exclusive rights even within their own territorial waters and admitted British fishermen to a common right in waters that would otherwise have been open only to French fishing. The position is accurately explained on page 374 of the French Counter-Memorial, as follows :

"The [1839] Convention, as it emerged from the hands of the experts, offered England a *quid pro quo*, which the Convention of 1824 failed to provide. To the north of the Chaussey[sic] the line of demarcation off Lingreville still lay inshore of the three mile limit, so that the British fishermen obtained access henceforth to some of the most fertile oyster-banks. That concession offset the advantages gained by France between the point off Lingreville and the Chaussey[sic] islands, and in the Bay of Cancale. This time the compensation was forthcoming on the spot. As regards Jersey, the limit of oyster fishing was brought down to three miles".

51. This shews that it was the *ad hoc* line described in Article 1 of the 1839 Convention, and traced on the chart annexed to it (and not any other provision such as Article 3), which was the essence of the solution reached, and the essence of the Convention itself. All other considerations were secondary to it ; for the whole dispute had arisen with reference to the oyster banks lying off the French mainland, and the tendency of the British fishermen to fish beds which the French fishermen regarded as their exclusive preserve, even though outside territorial water limits¹. The question

¹ This appears very clearly from pages 359-362 of the French Counter-Memorial, and evidence to the same effect is to be found in the Dispatch of the 12th June, 1820, from the French Ambassador in London to the Foreign Office, given at Annex A 24 in Vol. II of the United Kingdom Memorial, and in the Letter of the

of the limit round Jersey, on the other hand, had given rise to no dispute. So, where Jersey was concerned, the parties contended themselves with a reference to the general three-mile limit, just as they did under Article 9 with reference to all the rest of the coasts of the "British Islands" and all the rest of the French coasts¹.

52. Moreover this same Article 9 (which related to *all* fisheries) shews clearly that Article 3 of this Convention was not intended to apply to any areas then under French or British sovereignty, or there would have been a manifest contradiction between the two provisions; for, under one of them (Article 3), the oyster fishery in such areas was to be common to the subjects or citizens of both parties, whereas, under the other (Article 9), it was reserved (as part of the right of fishery in general) exclusively to the subjects and citizens of the party possessing sovereignty—with the sole exception of that part of the area off the French coast established by Article 1 which lay within French territorial waters, but outside the *ad hoc* line. (The significance of this last point and of the matter generally will be discussed in its appropriate place: see paragraph 62 (a), below).

Sub-Section 3: The 1867 Convention

53. The foregoing account of the steps leading up to the 1839 Convention shews, not only that Article 1 of that Convention was by far its most important provision and real *raison d'être*, but, in addition, that two of the Articles—namely, Articles 2 and 3—were, strictly, superfluous. The position as regards Article 2 is sufficiently explained at the end of paragraph 51, above, and in note 1 hereunder. As regards Article 3, if it be the case (see paragraphs 37

14th September, 1819, from the French Minister of Marine to the French Minister for Foreign Affairs, given at Annex A 25 in Vol. II of the Memorial.

¹ It may be asked why, in these circumstances, Jersey was mentioned at all. Since Jersey was to have the same three-mile limit as was provided by Article 9 for all "British Islands", it was, strictly speaking, not necessary to include Article 2, for Jersey would have been covered by Article 9. The explanation seems to be that the terms of reference of the Mixed Commission appointed in 1837 were, as stated in the Preamble of the 1839 Convention, to ascertain and define "the limits within which the subjects of the two countries respectively should be at liberty to fish for oysters between the Island of Jersey and the neighbouring coast of France". Having, therefore, by Article 1, and by the line drawn on the chart, defined the exclusive fishery limits on the one side of this area, "the neighbouring coast of France", the Commissioners included a second Article defining exclusive fishery limits on the other side (*i.e.*, off Jersey) even though in that case this may not have been strictly necessary, since it was merely a question of applying the normal three-mile limit rule. Article 2 was essentially a balancing provision, and this is proved by the fact that it was omitted in the later 1867 Convention (see paragraphs 56 and 57 (a), below). The attempt of the 1886 French Committee of Experts (Vol. II of the United Kingdom Memorial, Annex A 42, p. 238) to argue that the Channel Islands (Jersey, Guernsey, Alderney, &c.), did not come within the term "British Islands" was conclusively answered in the ensuing opinion of the Jersey Law Officers (*ibid.*, Annex A 47, pp. 255-257), and need not be discussed here.

and 52, above, and, further, in paragraphs 56 and 57 (c), below) that this provision did not apply to areas under sovereignty of either party, then (as stated in paragraph 41, above, and in note 1, page 447), it was superfluous, because a general international law right of fishery already existed in areas which were high seas or which were *res nullius*. It is, therefore, of the utmost significance, as bearing out these views, that the later (1867) Convention, which (as will be shewn) was intended to clarify, without affecting the substance of, the earlier (1839) Convention, in fact omitted both these provisions (Articles 2 and 3 of the 1839 Convention), precisely on the ground that they were unnecessary. The 1867 text, indeed, throws a considerable light on the various obscurities of the 1839 Convention, and must be considered in some detail.

54. The full text of the 1867 Convention is given in Annex A 28 in Volume II of the United Kingdom Memorial; and, despite the suggestion to the contrary made on page 376 of the French Counter-Memorial, the United Kingdom Government contend that it is legitimate to cite this Convention for illustrative and interpretive purposes. The reasons why it was not brought into operation had nothing to do with its substance; and these, if anything, tend to confirm that the parties were satisfied with it. It appears that the French authorities were dissatisfied, not with the Convention, but with certain provisions of the United Kingdom Sea Fisheries Act of 1868, which was passed mainly in order to give effect to the 1867 Convention, but which also contained a number of other provisions. Being so dissatisfied with these other provisions—and this implies satisfaction with the Convention itself—the French authorities were unwilling to join in fixing the date on which, under Article 39 of the Convention, it was to come into force, following on the passing of the United Kingdom Act of Parliament. The source of the French dissatisfaction was that, in some cases, heavier penalties were imposed in the United Kingdom than were imposed for corresponding offences in France. Accordingly, in 1870, the French Ambassador was instructed to urge that these penalties should be placed upon a uniform basis (see Annex A 143 to the present Reply). The United Kingdom Government, in reply, expressed their readiness to consider the question (see Annex A 144 to the present Reply); but it appears that no agreement was reached, and, therefore, the 1867 Convention never came into force. The failure to bring the 1867 Convention into force does not, however, impair its value as evidence of the purpose of the 1839 Convention, which both parties intended it to replace. Although the French Counter-Memorial now seems to deny this (p. 376), it has been admitted in the past by previous French administrations, which have themselves used the 1867 text for evidential purposes (see, for instance, Annexes A 38 and A 42 in Vol. II of the United Kingdom Memorial and, in particular, the passages on pp. 223-225 and 238 of those Annexes).

55. The 1839 Convention contained many obscurities and was badly drafted, a point insisted on by the French Counter-Memorial itself (see pp. 373-374). The 1867 Convention was intended to replace that of 1839, and its Article 41 (see p. 78¹ of Vol. II of the United Kingdom Memorial) provided that, upon the coming into force of the new Convention :

"The Convention concluded on the 2nd of August 1839, and the Regulations² of the 23rd of June 1843, shall altogether cease and determine".

But the 1867 Convention was not intended to bring about any substantive change in the position. Its Preamble read as follows :

"His Majesty the Emperor of the French and Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, having charged a Mixed Commission with preparing a revision of the Convention of the 2nd of August, 1839, and of the Regulation of June 23, 1843, relative to the fisheries in the seas situated between Great Britain and France ; and the Members of that Commission having agreed upon certain arrangements *which experience has shown would be useful*, and which appear to them such as will *advantageously modify and complete the former arrangements* in the common interest of the fishermen of the two countries ; Their said Majesties have judged it expedient that *the arrangements proposed by the said Commission should be sanctioned by a new Convention*, and have for that purpose named as their Plenipotentiaries, that is to say :"
[Italics added].

It is clear from this, especially from the passages italicized, that the parties did not conceive themselves, by means of the 1867 Convention, to be bringing about any fundamental alteration of their positions or rights as these had stood under the 1839 Convention, but to be effecting modifications of detail, and, in particular, to be completing and bringing up to date, in the light of the experience gained since 1839, the arrangements for the general administration and regulation of fisheries. This is also the conclusion to be drawn from the diplomatic correspondence which took place during the period 1883-1887 (see Annexes A 38-A 45 in Vol. II of the United Kingdom Memorial, pp. 223-246). It is shewn by M. Tissot's Note to Earl Granville, dated the 25th April, 1883 (Annex A 38), and still more clearly by the latter's reply, dated the 24th October, 1883 (Annex A 40), in which it was stated (United Kingdom Memorial, Vol. II, p. 101³), that :

".... it would be impossible, in the discussion of this question, to leave out of consideration the terms of the Convention of 1867, which did not purport to make any change in the fishery limits,

¹ See p. 203.

² These were Regulations concluded under, and in consequence of, Article 11 of the 1839 Convention. See the citation in paragraph 25 above, and see also Annex A 145 to the present Reply.

³ See p. 230.

and must be considered, therefore, as containing a more precise exposition of the meaning of the Convention of 1839"

Further evidence to the same effect will be found in Annexes A 40 and A 69 in Volume II of the United Kingdom Memorial, at the foot of page 101¹ and at the top of page 102¹, and in the fourth paragraph on page 150². In these circumstances, the United Kingdom Government are unable to agree with the assertion, made on page 376 of the French Counter-Memorial, that the 1867 Convention, had it come into force,

"would have involved renunciation by the French Government of the provisions of the Convention of 1839,"

for all the evidence goes to shew that the fundamental French rights would have remained the same. It is the French view of what were France's rights under the 1839 Convention that is mistaken.

56. If there were any room for doubt that the object and effect of the 1867 Convention were clarificatory of the parties' positions and rights, and not in substantive alteration of them, this would be removed by the records of the negotiations, which took place in Paris in 1866-7³. These also shew very exactly what changes were made, and for what reasons. The minutes of the meeting of the 28th December, 1866, state that Mr. Cave, a member of the British delegation, handed in a Memorandum "which the English Commissioners suggested should form the basis of the discussion as constituting the principal points for consideration". The Memorandum was referred to a sub-committee. Point 3 of the Memorandum was "the more precise definition of the Geographical limits over which the regulations shall extend". The minutes of the meeting of the 4th January, 1867, continue as follows:

"Taking as a basis the Memorandum above referred to the Sub-Committee proposed a new Article N° 1. founded on Articles Nos 9 and 10 of the Convention of 1839 subject to certain amendments.

"Mr Cave suggested that a Clause should be inserted to include the Channel Islands in the terms 'Iles Britanniques'—⁴

"Mr de Champeaux [France] resumed the reading of the proposed Articles—N° 2 of the new set to be identical with Article 1. of the Convention settling the fishing limits in the Bay of Granville—

"The original Chart signed in 1839 was produced and the Commissioners decided that it was not expedient to make any alteration in the boundaries—

"Article 2 of the Convention [*i.e.*, of 1839] is no longer required being embodied in the New Article N° 1.

¹ See p. 230.

² " " 283.

³ Foreign Office Papers, 97/447. These Minutes are contained in a bulky bound volume, but the relevant passages could be produced by photostat for the use of the Court, if necessary.

⁴ This was done. See Article 38 of the Convention.

"Article 3 [*i.e.*, of the 1839 Convention] for the same reason may be suppressed being treated of more fully in Article 16 of the regulations—¹

"Articles 9 and 10 [*i.e.*, of the 1839 Convention] have already been embodied in the new Article 1".

In addition to these simplifications and clarifications, an Article was introduced to define the term "British Islands", which figured in Article 1 of the new text, as it had done in Article 9 of the old. This provision—Article 38 of the new Convention—reads as follows :

"The terms 'British Islands' and 'United Kingdom', employed in this Convention, shall include the Islands of Jersey, Guernsey, Alderney, Sark, and Man, *with their dependencies*". [*Italics added*].

The limits off the French coast between *Cape Carteret* and *Point Meinga* were left exactly as they had been established by the *ad hoc* line referred to in Article 1 of the 1839 Convention, though re-defined with greater precision ; but the line on the chart annexed to the 1867 Convention (see Annex B 8 in Vol. III of the United Kingdom Memorial) remained identical with that on the chart annexed to the 1839 Convention (see Annex B 7 in Vol. III of the United Kingdom Memorial).

Conclusions to be Drawn from the 1867 Proceedings and Text

57. It is submitted that the following conclusions can legitimately be drawn from the proceedings of 1867 and from the text then drawn up :

(a) From the fact that Articles 2 and 9 of the 1839 Convention were considered as being replaced—though without any alteration in the general substantive effect—by that part of Article 1 of the 1867 Convention, which read : "British fishermen shall enjoy the exclusive right of fishery within the distance of three miles of low-water mark, along the whole extent of the coasts of the British Islands ;", it can be inferred (as was, indeed, stated in the minutes : see paragraph 56, above) that Article 2 of the 1839 Convention was superfluous for the reasons given in paragraph 51 above, namely, that Jersey, in any case, came under Article 9 as a "British Island".

(b) From the fact that there was no opposition on the part of the French negotiators to the "British Islands" being defined (Article 38 of the 1867 Convention) as including "the Islands of Jersey, Guernsey, Alderney, Sark, and Man, with their dependencies", it can be

¹ These were the Regulations of 1843 : see Annex A 145 to the present Reply. Article XVI of these Regulations reads "Trawl Fishing may be carried on during all Seasons in the Seas lying between the Fishery Limits which have been fixed for the Two Countries".

inferred, *first*, that the Minquiers and the Ecréhous, as dependencies of Jersey, were included in Article 2 of the 1839 Convention (see paragraph 60, below); and, *secondly*, that, in any case, they were "British Islands" (see paragraph 61, below), and were included in Article 9 of that Convention. On both counts, they did not come under Article 3.

(c) From the fact that Article 3 of the 1839 Convention was itself suppressed in the 1867 Convention as unnecessary (see the extracts from the minutes given in paragraph 56, above), it was evidently considered to follow *ipso facto* that, in any areas in which the Convention did not reserve exclusive fishery rights to one or other of the parties, and in which neither of them had exclusive rights by virtue of its sovereignty, they must both, automatically, enjoy fishery rights. *This suppression of Article 3 must, therefore, have implied the view that the areas to which it related were regions of open sea or res nullius, for only on that basis was it unnecessary to specify that both parties had fishery rights.*

(d) Equally, it cannot have been the view of either the French or the United Kingdom authorities in 1867 that Article 3 of the 1839 Convention involved an obligation to take no step to put an end to the common fishery position—still less that it involved, and was intended to involve, a bar on any claim to sovereignty; for, if the parties had regarded Article 3 as having these implications, they could not possibly have been prepared to omit it from the revised text they were drawing up. Alternatively, if they did regard it as having these effects, but were, nevertheless, ready to suppress it (as they clearly were), this necessarily constituted an abandonment of the view that Article 3 involved a bar on any claim to sovereignty, and a tacit acceptance of the view that Article 3 involved no positive obligations at all, but simply recorded a situation of fact—namely, that, in certain parts of the general area concerned, both parties had fishery rights.

(e) The reason given for the suppression of Article 3 is significant, and bears out this view. It was (see the extract from the minutes in paragraph 56, above) that the matter was already sufficiently dealt with by Article XVI of the Regulations of 1843 (see note 1, page 459), made under Article 11 of the Convention. What it dealt with, and what, indeed, the whole Regulations dealt with, was not fishery rights as such, but the methods and modes of carrying on the fishing industry. The emphasis in Article XVI is on the right to engage in trawl fishing within certain limits "*during all Seasons*", in contrast to certain other provisions (see, for instance, Article XLV) establishing a close season for certain types of fishery. Clearly, what interested the parties, as regards the so-called common or non-exclusive areas, was, not the right to fish there (which was assumed, because it was high seas), but the regulation of the fishery there. The fact that Article XVI of the Regulations deals with trawl fishing, whereas Article 3 of the Convention deals with oyster fish-

ing, is curious, but tends to support the view that the parties did not regard Article 3 as containing anything they wished to preserve.

Sub-Section 4 : Resumption of the Main United Kingdom Argument

58. In the light of the foregoing analysis of the 1839 and 1867 texts, and of the conclusions to be drawn from it, the arguments set out in paragraph 48 above will now be developed.

Point (1) in paragraph 48 : Article 3 of the 1839 Convention did not apply to the Minquiers and the Ecréhous

59. This contention is advanced on three grounds : (a) that the groups, being dependencies of Jersey, came under Article 2 of the Convention ; (b) that, even if not ranking as dependencies of Jersey, they were under British sovereignty in 1839 and were thereby removed from the scope of Article 3, by virtue of being "British Islands" within the meaning of Article 9 of the Convention ; and (c) that, in any case, they could not as British (or even if they were French) possessions, in 1839, have come under Article 3, which applied only to areas which were high seas or *res nullius*.

60. *Point (1)(a) in paragraph 48 : The Minquiers and the Ecréhous came within Article 2 of the 1839 Convention as being dependencies of Jersey.*—The grounds in support of this contention are as follows :

(a) *The Minquiers and the Ecréhous were, in fact, dependencies of Jersey.*—For this purpose, it is not necessary to do more than to refer to the summary of the evidence to that effect contained in paragraph 199 of the United Kingdom Memorial, set out in greater detail in paragraphs 200-206, and with still greater particularity in paragraphs 125-179. This evidence is not seriously controverted in the French Counter-Memorial, and is shewn in Part II of the present Reply to be valid and correct, despite the arguments to the contrary advanced by the Counter-Memorial.

(b) *Historical and traditional practice of regarding the term "Jersey" as inclusive of its dependencies.*—The United Kingdom Government here refer to paragraph 118 in Part II of the present Reply, in which details are given of the historical and traditional practice whereby, in the case of the Channel Islands and their dependencies, references to one Island of the group were treated as including the whole group, or the dependencies of the Island.

(c) *The evidence of the United Kingdom Sea Fisheries Act, 1843.*—Evidence that, on the United Kingdom side, the 1839 Convention was regarded as applying to dependencies of Jersey, where it applied to Jersey, is afforded by the Sea Fisheries Act, 1843 (see Annex A 145 to the present Reply), which was passed in order to give effect to the Regulations agreed upon by virtue of Article 11 of the

Convention (see note 1, page 457) ¹. Section XVIII of this Act runs as follows :

"And be it enacted, That in this Act the words "*British Vessel*" shall be construed to mean every *British* or *Irish* Fishing Vessel or Fishing Boat, and also every Fishing Vessel or Fishing Boat belonging to any of the Islands of *Guernsey, Jersey, Sark, Alderney, or Man*, or any Island thereunto belonging, and the Words "*British Port*" shall be construed to mean any Port of *Great Britain or Ireland*, or of any of the said Islands". [Italics in the original].

(d) *The evidence of the 1867 Convention.*—Reference is here made to paragraphs 56 and 57 (b) above. Article 38 of the Convention contained a clear definition of the term "British Islands" as including "*Jersey, Guernsey, Alderney, Sark, and Man, with their dependencies*". This was agreed to by both sides as the definition of the term "British Islands" for the purposes of Article 1 of the 1867 text, which replaced Articles 2 and 9 of the 1839 Convention, but reproduced textually the relevant parts of Article 9, Article 2 being suppressed.

61. *Point (1)(b) in paragraph 48.*—*Even if the Minquiers and the Ecréhous did not come under Article 2 of the 1839 Convention as dependencies of Jersey, they were "British Islands", and as such came under Article 9 of the Convention.*—If, as the United Kingdom Government contend, the Minquiers and the Ecréhous were under British sovereignty in 1839, then they would have come within the terms of Article 9 of the 1839 Convention ², which reserved to British subjects a general exclusive right of all fishery (including, therefore, oyster fishery) within a distance of three miles round the coasts of "the British Islands". Article 3, however, recognized the existence of common oyster fishery rights anywhere outside the exclusive limits laid down by *Articles 1 and 2 (i.e., as regards British possessions)*, outside three miles round Jersey. The apparent conflict thus created between Articles 3 and 9 is, of course, avoided, so far as the Minquiers and the Ecréhous are concerned, if these groups be regarded (which the United Kingdom Government contend is right) as being, and having, at all material times, been, dependencies of Jersey, and as such within the terms of Article 2 of the Convention. Even if, however, the groups be not regarded as coming under the term "the Island of Jersey" in Article 2, the United Kingdom Government maintain that they are, and were, "British Islands", and, therefore, came under Article 9. The arguments in support of this view are as follows :

(a) *The Minquiers and the Ecréhous were recognized as being under British sovereignty in the period 1819-39.*—The United Kingdom Government rely upon the arguments and facts, historical and

¹ This is clear from the full title and contents of the Act and its Schedule.

² And equally, of course, if they were French.

other, set out in their original Memorial, and upon Part II of the present Reply, as establishing that the Minquiers and the Ecréhous were under British sovereignty in 1839. Clear evidence of French recognition of this fact, at least as regards the Minquiers, is afforded by the antepenultimate paragraph of the Letter, dated the 14th September, 1819, from the French Minister of Marine to the French Foreign Minister (Annex A 25 in Vol. II of the United Kingdom Memorial), and also by the charts (Annexes B 4 and B 5 in Vol. III) attached to the fishery proposals made by the French Government in 1820 (Annex A 24 in Vol. II), the significance of which is discussed in paragraphs 210-213 of the Memorial. The phrase in the Minister of Marine's Letter, dated the 14th September, 1819 (Annex A 25), upon which the official proposals to the United Kingdom Government were based, is as follows :

"V.E. trouvera ci-joint des copies de ces tracés, la couleur bleue indique l'étendue de la mer Territoriale pour la France et la Couleur rouge l'étendue de cette Mer pour les Iles d'Aurigny, de Cers[Sark], de Jersey et des *Minquiers possédées par l'Angleterre*". [Italics added].

An interesting contemporary piece of evidence of a similar British view, as regards both the Minquiers and the Ecréhous, is afforded by the Letter of instructions, dated the 12th January, 1824, from Mr. Canning to Messrs. Hobhouse and Planta, the British negotiators in the discussions of that year, which is reproduced as Annex A 146 to the present Reply. A study of this Letter shews clearly that the instructions in question are only intelligible upon the assumption that the two groups were regarded as British¹.

(b) *The evidence of the 1867 Convention.*—The analysis of the 1867 Convention given in Sub-Section 3 above, where it was con-

¹ The argument is as follows :

The instructions to Messrs. Hobhouse and Planta were to press for a three-mile limit off the French mainland, and the Iles Chausey. This three-mile limit, apart from being the general rule, was said to be particularly desirable in this case "from the consideration that if a greater distance were fixed upon not only would the French Fishermen remain in possession of the most valuable part of the Fishery, but the two lines of demarcation would interfere with each other"—the distance invariably suggested at this period as an alternative to three miles was six miles. But, as was clear from the proposals made in 1819 (see United Kingdom Memorial, paragraphs 210-15, Annexes A 24 and A 25 in Vol. II, and Charts B 4 and B 5 in Vol. III), a six-mile limit measured from the Iles Chausey necessarily overlapped with a six-mile limit measured from the Minquiers, but with three-mile limits there would be no overlap, since the intervening distance is eight miles. Similarly, in the case of the Ecréhous, if these Islets were British and six-mile limits were drawn, an overlap was inevitable, since the Ecréhous are at one point only 6.6 miles from the mainland. With three-mile limits, however, there would be no overlap even if the Islets were British. Alternatively, if the Ecréhous were not British but were *res nullius*, there would be no overlap—even if six-mile limits were drawn both from Jersey and from the French mainland. Consequently, Mr. Canning's Letter insisting that a three-mile limit was desirable, in order to avoid overlapping, is only intelligible on the basis that both the Minquiers and the Ecréhous were British.

tended that this text can legitimately be used for the purpose of interpreting the 1839 Convention, establishes the following points :

- (i) The term "British Islands" in Article 9 of the 1839 Convention is to be understood as including dependencies of any of the Channel Islands and, therefore, as including the Minquiers and the Ecréhous.
- (ii) The same analysis has also shewn that Articles 2 and 3 of the 1839 Convention were superfluous, and were suppressed on that ground in the 1867 Convention. In effect, therefore, the 1839 Convention can—and, indeed, should—be read as if these two Articles were omitted from it, in the same way that they were omitted as unnecessary (because covered by the remaining Articles) in the 1867 Convention. It thus becomes clear that the Minquiers and the Ecréhous, as "British Islands", were areas where the fishing was reserved exclusively to British subjects (Article 1 of the 1867 Convention, and 9 of the 1839 Convention), and hence that they were not areas where the fishing was common and, therefore, did not come under Article 3 of the 1839 Convention.

62. *Point (1) (c) in paragraph 48 : Article 3 of the 1839 Convention did not in any event apply to areas under the sovereignty of one of the parties but only to areas which were res nullius or consisted of high seas.*—Since, therefore, both parties maintain that the groups were under their respective exclusive sovereignties in 1839, it follows from that fact alone that Article 3 can have had no application to them. This point was, it is submitted, adequately established on *a priori* grounds in the course of the analysis of the whole French contention contained in Section C above (see, in particular, paragraphs 37-41, above). It also followed from the analysis of the 1867 Convention (see paragraph 57 (c) and 57 (d), above). There is, however, further evidence to the same effect :

(a) *The evidence of Article 9 of the 1839 Convention*

- (i) The second paragraph of Article 9 assimilated the general fishery limits for the area *Cape Carteret to Point Meinga* to those specified for the oyster fishery by Article 1 of the Convention. Why was this not also done in respect of the area round Jersey (Article 2), and the so-called common area (Article 3) ? In the case of Jersey, there was, clearly, no need to make the assimilation, because, in any case, the oyster fishery limit and the general fishery limit coincided since Article 2 laid down three miles for oysters, and the first paragraph of Article 9 laid down three miles for fisheries in general. The need for an assimilatory provision only arose where there was a lack of such coincidence, as was the case for part of the Article 1 area off the French

coast where, it will be recollected (see paragraph 50, above), the line ran, in places inside, and in places outside, the three-mile limit. The effect of the second paragraph of Article 9, therefore, was that where French fishermen had exclusive oyster rights *outside* French territorial waters, they also had exclusive rights for all fisheries ; but, where the limit of their exclusive oyster rights fell short of the three-mile limit, this also constituted the boundary of their exclusive rights for other fisheries. In other words, there was an area between the oyster line, where it ran within the three-mile limit, and that limit itself, in which, because the oyster fishery was common, so also were all fisheries to be. Why, then, was the same principle not applied to the Article 3 common area ? (This principle was, evidently, that, where the oyster right was exclusive, all fisheries should be exclusive ; but, where it was shared, all should be shared. In short, a lack of coincidence between the two sets of rights was to be avoided).

- (ii) Now, if Article 3 had included any *territorial* waters (*i.e.*, the waters attached to any territory under the sovereignty of one of the parties), such a lack of coincidence would have arisen ; for, oyster fishing would, by reason of Article 3, have been common to both parties in those waters, but general fishing would, under the first paragraph of Article 9, have been exclusive to one of them. Consequently, the second paragraph of Article 9 should (if the common area had included any territorial waters) have been made applicable, not only to the Article 1 areas off the French coast, but also to the Article 3 areas. *The conclusion is inescapable. There was no need to make the second paragraph of Article 9 applicable to the Article 3 areas, because these areas did not in fact include, and were not intended to include, any localities under the sovereignty of either party—or, what amounts to the same thing, any localities in respect of which the general right of fishery was reserved to one of the parties by virtue of the first paragraph of Article 9.* Thus, if the Minquiers and the Ecréhous were under British sovereignty in 1839, and “British Islands” for the purposes of the first paragraph of Article 9 (as the United Kingdom Government maintain, and hope to have established), these groups cannot have come under Article 3 at all, for otherwise the second paragraph of Article 9 would have been made applicable to the Article 3 areas, there being no logical reason for any differentiation. If an assimilation of general fishery rights to oyster fishery rights was required in the areas off the French coast, it was equally necessary in the case of any other areas in which the two limits would otherwise have diverged. It was not

necessary in the case of the areas round Jersey (Article 2), as here the two limits were the same.

- (iii) In this connexion, it is not possible to accept the suggestion made in the French Counter-Memorial (p. 375) that the existence of a common *general* fishery right is to be inferred or assumed, wherever a common *oyster* fishery right exists, on the ground that it is not practicable to conduct the two separately. Not only is this incorrect factually (see paragraph 68 and 69, below, and Annex A 147 to the present Reply)—there is no difficulty in conducting a common oyster fishery in an area where other fisheries are reserved—but it is, in any case, negatived by the existence of the second paragraph of Article 9; for, if the French view be correct, there was no need for this paragraph. If, however, the paragraph were requisite because (as the United Kingdom Government contend) there is no necessary or inevitable assimilation of general fishery rights to oyster fishery rights, then it was necessary, not merely in respect of the Article 1 areas off the French coast, but also in respect of the Article 3 areas, *if those areas included any localities under the sovereignty of one of the parties*.

- (iv) If, on the other hand (as the United Kingdom Government contend), the Article 3 areas did *not* include any localities under the sovereignty of one of the parties, but only areas which were high seas or *res nullius*, then there was, of course, no need for any provision assimilating common general and common oyster fishery rights; for it followed, automatically, by operation of law that, in waters which were high seas, or in areas which were *res nullius*, common general, as well as oyster, fishery rights existed. In fact, as has been seen, there was really no need at all for Article 3 (since the common oyster fishery right in such waters and areas existed by operation of law), and Article 3 was omitted from the subsequent 1867 Convention as superfluous.

(b) *The Evidence of Probability*.—Quite apart from the general unlikelihood (to which attention has been drawn in paragraph 37, above) that, if one of the parties had possessed exclusive sovereignty, and, therefore, exclusive fishery rights, in 1839, it would have been willing to share these with the other party, it is, in any case, exceedingly improbable that the Minquiers and the Ecréhous, had they been under the sovereignty of *either* party at the time, would have been left to come within the ambit of Article 3; for such a transaction would have involved a complete lack of any compensation or *quid pro quo*. It has been seen that Article 1 of the Convention gave British fishermen a right in certain places to fish within French territorial waters. For this, the compensation given to the French

fishermen was a right in certain other places to the exclusive fishery *outside* their own territorial waters. But no compensation would have existed in the case of the Minquiers and the Ecréhous. Assuming that they were (as the United Kingdom Government contend) under British sovereignty, the effect of Article 3 would have been to admit French fishermen to British territorial waters without any corresponding right for British fishermen to fish in French waters, other than those in which they already had the right to fish by virtue of Article 1, particularly as the Îles Chaufey fell wholly on the French side of the Article 1 line. This point was made, with great force, in the Memorandum of the Jersey Law Officers (Annex A 47 in Vol. II of the United Kingdom Memorial) which was communicated to the French Government under cover of the Marquess of Salisbury's Dispatch dated the 27th October, 1887 (Annex A 43). In this Memorandum, it was stated (United Kingdom Memorial, Vol. II, p. 122¹) that :

"While admitting that the text of the Convention of 1839, literally interpreted, may, to some extent, seem to favour the claim of the French fishermen to participate in the oyster fishery within 3 miles of the Ecréhous as lying in the intermediate waters, yet this claim does not appear consistent with the spirit of the Convention, especially when interpreted in the light of Article XXXVIII of the Convention of 1867².

"No reason is anywhere adduced to explain why such an exceptional and one-sided concession should have been made to the French as is implied in the privilege claimed by them of fishing for oysters within British territorial waters at the Ecréhous ; nor is it explained why a privilege should have been granted to the French with regard to the oyster fishery off the Ecréhous, which was denied to them, by Article IV [*recte* IX] of the Convention, with regard to the general fishery in the same locality, and for which no reciprocal advantage was anywhere granted to the British fishermen".

It will be seen from this statement that the authorities on the United Kingdom side were as firmly convinced in 1887, as they are now, that the Minquiers and Ecréhous groups were British in 1839, and *for that reason* could not have come under Article 3 of the Convention. The Government of the French Republic, of course, deny that the groups were British ; but the United Kingdom Government desire to recall at this point their observations in paragraph 38 above, where attention was drawn to the fact that it is equally necessary to the French thesis *that the groups should not have been French in 1839*. Paragraphs 39 and 40 above, consequently, drew attention to the complete incompatibility between this thesis and the parallel French contention that the groups were, and always have been, French ; and it was suggested that the process whereby the French Counter-Memorial puts forward the French claim to sovereignty as

¹ See p. 256.

² See paragraph 56, above.

an alternative to the French contention regarding the 1839 Convention is not, in the circumstances, really an admissible one. If, on the other hand, the French claim that France enjoyed sovereignty over the groups in 1839 be serious, then, it follows that, since both parties are agreed that the groups were under the sovereignty of one of them in 1839, they must have fallen under Article 9 of the Convention, and not under Article 3.

63. The United Kingdom Government submit, therefore, that the question whether Article 3 ever applied to the Minquiers and the Ecréhous at all, is wholly bound up with the *status* of the groups in 1839. If they were *res nullius* in 1839, Article 3 would have applied to them; although, of course, the United Kingdom Government deny that this Article had the *effect* which the French Counter-Memorial suggests (see paragraphs 67-81, below). If, however, the groups were not *res nullius* in 1839, but under the sovereignty of one of the parties, it is submitted that, for the reasons given above, Article 3 can have had no application to them.

64. Thus, it will be seen that the whole French contention is based on a *petitio principii*. It is the status of the groups which governs the question whether Article 3 applies to them. The status of the groups in 1839 must first be determined before it can be decided which provision of the 1839 Convention they came under, or whether Article 3 applied to them at all.

Conclusion on Point (1)

65. The United Kingdom Government claim to have demonstrated in the preceding paragraphs that, if the Court agree with the United Kingdom Contention that the Minquiers and the Ecréhous were under British sovereignty in 1839, it follows automatically that, whether they fell under Article 2 as dependencies of Jersey, or under Article 9 as "British Islands", or whether, as British possessions, they did not fall under Article 3, because that provision only related to regions which were *res nullius*, the conclusion is the same: Article 3 did not apply to the Minquiers and the Ecréhous. The same conclusion would, of course, follow if the Court should hold that the groups were French in 1839.

66. It remains to consider the matter upon the basis that Article 3 did apply to the groups, either because they were, in fact, *res nullius* in 1839, and not either French or (as the United Kingdom Government contend) British; or because the Court may hold that the United Kingdom Government are wrong in maintaining that Article 3 could not have applied to the groups unless they were *res nullius*. Upon the basis that the Article did, in fact, apply to the groups, the remaining question is: what was its effect, and, in particular, did it (and, if so, in what way) preclude the subsequent assertion by either party of any claim to exclusive sovereignty? This will now be discussed as Point (2).

Point (2) in paragraph 48: Even if Article 3 of the 1839 Convention were applicable to the Minquiers and the Ecréhous, it did not have the effect of preventing either party from claiming or exercising exclusive sovereignty over the groups

67. The main grounds for this view, which were briefly stated in paragraph 48 above, are as follows:

(a) *Article 3 did not establish any Franco-British condominium over the groups such as would preclude either party from asserting exclusive sovereignty.*—The United Kingdom Government submit that this is apparent in the face of the Article itself, and of the facts and circumstances relating to the groups both in 1839 and at all times subsequently; and they refer to paragraphs 31 and 35 (b) and 35 (e) in Section C above, in support of this view. It was suggested, however, in the analysis of the French contention given in that Section (see paragraph 41, above) that Article 3, while not creating joint fishery rights, might, in theory at least, have registered their existence in such a way as to imply that the parties would take no step to disturb this position or to prejudice the joint rights of both. The next question, therefore, is whether this was so. The United Kingdom Government's view is given in (b) below.

(b) *Article 3 did not imply for the parties an obligation to take no step to prejudice or impair the joint fishery position.*—In the analysis of the 1839 and 1867 Conventions given in Sub-Sections 2 and 3 above, strong reasons have been given for the view that Article 3 had no positive effect at all. The parties were ready to omit it from the 1867 text revising the 1839 Convention, and had actually drawn up and signed a text containing no provision which corresponded to Article 3—a text which did not come into force for reasons of an extraneous character that had nothing to do with this point (see paragraph 54, above). It was shewn (paragraph 57 (d), above) that it was inconceivable that the parties would have been willing to make this omission if they had supposed that Article 3 involved some definite obligation. The grounds of the omission (see the citations from the minutes of the negotiations in paragraph 56, above) negative such a possibility; for the Article could never have been classified as superfluous if its object and effect had been to impose an obligation on the parties to refrain from any action which could alter the fishery *status quo*. It is clearly to be inferred, therefore, that this was not its object. While, however, for these reasons, the United Kingdom Government consider that Article 3 cannot properly be regarded as having had more than a species of declaratory effect, the manifest obscurity which surrounds the subject makes it necessary to consider it also upon the basis that this view is wrong, and upon the basis that Article 3 had some positive effect. The remaining question is, therefore, assuming that Article 3 did have some positive effect, what was that effect?

The United Kingdom Government's view on this question is given in (c) below.

(c) *If Article 3 applied to the Minquiers and the Ecréhous with positive effect, that effect was, at the most, to imply an obligation for the parties not to assert exclusive fishery rights in the waters of the groups.*—Upon this basis, the Article could not possibly imply an obligation not to claim sovereignty over the groups, unless it could be shewn that due effect could not otherwise be given to the joint fishery rights of the parties. But this is not the case; and it can be shewn that the exercise of exclusive sovereignty by one of the parties is perfectly compatible with the continued exercise of joint fishery rights by both. This point is of such fundamental importance to the whole issue that it must be dealt with in a separate Sub-Section.

Sub-Section 5 : Sovereignty and Fishery Rights

Principal Points to be made by the United Kingdom Government

68. In developing the view stated in paragraph 67 (c) immediately above, the United Kingdom Government will make the following principal points :

Point (1) : that, according to its natural and ordinary meaning (see note 2, above, p. 432), Article 3 of the 1839 Convention is a simple fishery provision indicating an area in which the parties recognize themselves to have a common right to fish a certain fishery (the oyster fishery), and that it has no wider implications ;

Point (2) : that such a major step as the relinquishment of sovereignty over territory or of the future right to assert it would normally be effected in express terms, and would not be left to be deduced by way of an implication ;

Point (3) : that such an inference can only legitimately be drawn if it be not merely a *possible* consequence of the language used, but a *necessary* one—in the sense that the Convention could not otherwise operate, and adequate effect could not otherwise be given to its terms ;

Point (4) : that, in the present case, such an inference would not be legitimate, because no such necessity arises, there being nothing in a common oyster fishery right (or for that matter in common general fishery rights) shared by two parties in certain waters, which would be incompatible with the possession by one of them of sovereignty over the territory to which those waters are attached, nor anything in such sovereignty to prevent due and full operation and effect being given to any common fishery rights and provisions.

It will be convenient to say a word here about the argument, upon which great stress is laid in the French Counter-Memorial, that common oyster fishery rights must be regarded as carrying with them a common right of fishery for all purposes. Upon the basis upon which the United Kingdom Government place their case, it is irrelevant whether or not this argument be correct. The four points made above are equally valid and applicable, whether the fishery rights concerned are confined to oysters or extend to all types of fish. The only real relevance of this particular issue is that it is, obviously, even more difficult to draw far-reaching implications about sovereignty from a provision confined to oyster fishing, than it is from a provision carrying a common general fishery right, which is, no doubt, why the French Counter-Memorial attaches so much importance to this particular contention. The United Kingdom Government submit, however, that, if slightly less difficult, such an inference is no more legitimate in the latter case than in the former. For these reasons, and because the United Kingdom arguments are equally applicable whether the fishery rights involved are general or confined to oyster fishing, the point will not be further discussed here; but in Annex A 147 to the present Reply, certain facts and observations are set out shewing that it is actually quite incorrect to say that common oyster fishery rights cannot be exercised except as part of a common general right of fishery.

Certain Preliminary Observations

69. Before the points set out in the preceding paragraph are developed, certain essential preliminary observations must be made:

(a) *The onus of proof in regard to the French contention about the effect of the 1839 Convention on the question of sovereignty rests upon the party advancing that contention—i.e., upon the Government of the French Republic.*—Reference is here made to paragraph 42 above. There is implicit in the French Counter-Memorial the assumption that, the moment two countries agree to share the fisheries of a certain area, they thereby, automatically, cease to be able to assert or claim any sovereignty over territory in that area. It is nowhere clearly explained in the Counter-Memorial by what process of reasoning this conclusion is reached: it is put forward as something apparently so self-evident that it is only necessary to shew the existence of the common fishery agreement for the conclusion about sovereignty to follow. The United Kingdom Government submit that this attitude is wholly misconceived, and that the conclusion in question, so far from being in any way obvious or necessary, is a very unusual and improbable one, and does not, in the least, follow from the premises. The United Kingdom Government, therefore, maintain that the onus of establishing this conclusion rests upon the Government of the French Republic, and that up to the present moment they have not discharged it, since the Counter-

Memorial does not advance one single convincing reason why what appears to be a simple fishery provision must or should have the far-reaching implications about sovereignty that are said to follow.

(b) *How is the French case actually put?*—An attempt to analyze the implications of the French contention about the effect of Article 3 of the 1839 Convention was made in Section C above. But it was repeatedly pointed out (see, for instance, paragraphs 27, 29 and 34 and, in particular, 42, above) that a vital step in the French argument was missing or assumed, namely, why, and in what way, common fishery rights in certain waters (assuming such rights to exist ¹) must operate as a bar to the exercise of any exclusive sovereignty by one of the parties concerned. On this essential question the Counter-Memorial is, for all practical purposes, silent; and the only specific arguments employed seem to be as follows:

- (i) It is argued that one of the main objects of the 1839 Convention was to create a régime founded upon the principle of a single limit common to *all* fisheries; that, in practice (and despite the fact that Articles 1, 2 and 3 of the Convention were in terms limited to the oyster fishery), a limit for oyster fishing alone is not practical: it must involve a corresponding limit for *all* fisheries. Therefore (so it is said), it was inherent in the 1839 Convention that a common right of oyster fishery necessarily involved a common right of fishery of all kinds. Consequently, a term is to be implied in the 1839 Convention, to the effect that, in the areas referred to in Article 3 of the Convention, not merely the oyster fishery, but also all fisheries shall be common to the subjects of both countries. In paragraph 62 (a)(iii), above, and in Annex A 147 to the present Reply, it is shewn that this argument is, in fact, incorrect. But, as stated at the end of paragraph 67 above, it is in any case irrelevant; for, even if it were conceded that a common oyster fishery right implies a common general fishery right, it would still have to be demonstrated how, and why, such a general common right involves a bar to the assertion of a claim of sovereignty. This, the Counter-Memorial does not do.
- (ii) Instead, the Counter-Memorial simply argues (or so it would seem) that, if there be a situation in which two countries have agreed that there shall be no exclusive fishery rights within certain waters, a further term is to be implied, to the effect that neither country will assert any exclusive sovereignty over those waters—or rather—over territory in them. At the same time, it is not stated why, or how,

¹ The United Kingdom Government, of course, deny that such rights do exist in the waters of the Minquiers and the Ecréhous, because they do not consider that Article 3 applies to those groups at all.

this term is to be implied, or in what way it follows from, or is in any way necessitated by, the common fishery rights.

(c) *Another way of putting the French case.*—It would seem that the simplest, and most effective, way in which the French case could be put would be as follows. The Government of the French Republic might point out that the possession of sovereignty over territory normally carries with it jurisdiction over its territorial waters, and an exclusive right of fishery there. Consequently, if two countries have agreed to share in common the fisheries in certain waters that are adjacent to certain territory, it might be said to be inconsistent with this agreement for one of them to assert or claim exclusive sovereignty over this territory; for such sovereignty would involve an exclusive right of fishery, and to exercise this would be contrary to the agreement. Therefore, sovereignty cannot be asserted or claimed.

(d) *Difficulties of this argument.*—(i) The argument involves one obvious fallacy. It is, no doubt, true that, in the ordinary way, sovereignty over territory carries with it the right of exclusive fishery in the adjacent territorial waters. But the sovereign Power is not obliged to exercise all its rights, and clearly must not exercise any rights that would bring it into conflict with the provisions of an already binding agreement. The effect of an agreement for the enjoyment of common fishery rights is not to prevent the existence or exercise of sovereignty *as such*, but to compel that sovereignty to be exercised in a certain way—*i.e.*, subject to, or in accordance with, the agreement—or, perhaps, to attach a *servitude* to the territory or waters concerned, subject to, and in conformity with which, the sovereignty must be exercised. The obligation involved is not to refrain from claiming sovereignty, but to honour the agreement, notwithstanding the sovereignty—assuming that there is, in fact, such an agreement.

(ii) The point is still more clearly seen if the French contention be considered in connexion with territory *already* under the sovereignty of one of the parties to an agreement about common fishery rights. Evidently, this contention could not be valid in such a case; for, otherwise (to take a possible modern example) it would follow that, if France to-day granted to Italy the right to participate in the fisheries of Corsica, France would thereby be held to have renounced her sovereignty over Corsica, as being inconsistent with Italy's common fishery rights. This conclusion has only to be stated for its absurdity immediately to be manifest ¹.

¹ Let it be noted, in parenthesis, that, if absurd of Corsica to-day, the argument would equally have been absurd of the Minquiers and the Ecréhous in 1839, if those groups were, as the United Kingdom Government maintain, under British sovereignty at the time (or, for that matter, under French sovereignty, as the Government of the French Republic, in another part of their case, maintain). This, therefore, is an additional reason for the view constantly suggested in the present Reply,

(iii) But, if it be correct that a common right of fishery with another country in certain waters is not in any way inconsistent with the continued exercise of an *already existing* exclusive sovereignty over the area by one of the two countries, it is *prima facie* not at all clear why common fishery rights should be impossible to reconcile with an *after-acquired* sovereignty, or should constitute a bar to its assertion.

70. The foregoing preliminary observations now enable the exact point at issue clearly to be stated, bringing the matter back to the formulation of the French contention given in paragraphs 33 and 34 of Section C above. That contention must be taken to amount to this: that the parties to the 1839 Convention, in effect, agreed that, in a certain area, and so long as the agreement was in force, neither of them would assert exclusive fishery rights against the other. From this, it is to be inferred (so the argument must proceed) that neither party would take any step which might involve the assertion of such an exclusive right. A claim to exclusive sovereignty would be such a step. Therefore, such a claim is prohibited, and the parties are debarred from making one. Ultimately, therefore, the precise question involved is the following: would, or would not, a claim to exclusive sovereignty over certain territory be inconsistent with the continued existence of common fishery rights in its waters? And, if not, is there anything to prevent the assertion of such a claim? Put in another form, the question is: does a claim to exclusive sovereignty over certain territory necessarily involve the repudiation of an agreement for common fishery rights in its waters, or a situation in which it is no longer possible to give effect to such an agreement? It will now be shewn why, in the United Kingdom view, these questions must all be answered in the negative.

Development of Points (1)-(4) in paragraph 68

71. *Point (1): Article 3 of the 1839 Convention was a simple provision about fishery rights and had no other implications.*—Applying the principles of interpretation which the Court has laid down in other cases¹, Article 3 of the 1839 Convention should be read according to its natural and ordinary meaning in the context in which it occurs. This leads to the following results:

(a) It has already been shewn, in some detail (see Sub-Section 2, paragraphs 49-52, above), that this context was an agreement intended to settle a dispute that had nothing to do with sovereignty, or with any specifically territorial issue, but which related entirely to fisheries, mainly to oyster fisheries and to the right to conduct them.

that Article 3 of the 1839 Convention could only have applied to areas which were *res nullius* and not under the sovereignty of one of the parties in 1839, and, therefore, did not apply to the Minquiers and the Ecréhous at all because these groups were already British possessions in 1839.

¹ See note 2, above, p. 432.

(b) It has also been shewn (see paragraphs 50 and 51, above) that this dispute related mainly, if not wholly, to the oyster banks and beds in the regions off the French mainland coast between Cape Carteret and Point Meinga, not to those off Jersey or the Minquiers or the Ecréhous; and that the essence of the settlement reached was the *ad hoc* line established by Article 1 which, while giving French fishermen exclusive rights outside territorial waters in certain places, in other places confined their exclusive rights within a limit falling short of the full extent of territorial waters. Apart from form or appearance, Articles 2 and 3 had so little significance in substance that, when the parties came to revise or clarify the text in 1867, they were prepared to omit, and did omit, these provisions from the revised text as being unnecessary.

(c) The conclusion to be drawn from these considerations is that, according to its natural and ordinary meaning in the context in which it occurs, Article 3 of the 1839 Convention, so far from having the far-reaching implications about sovereignty which the French contention attributes to it, was a very restricted provision indeed, with a strictly limited scope and effect. This is, clearly, not the type of provision which can reasonably or legitimately be interpreted as constituting a quasi-permanent bar to the assertion of any claim to sovereignty over territory in the area to which it is supposed to relate.

72. *Point (2): Necessity for parties to use express terms or, at any rate, clear and definite language when renouncing sovereignty or the right to claim it.*—This point does not require to be elaborated. It is obvious that, when two countries really intend to renounce¹ sovereignty over certain territory or in a certain region, or to bind themselves not to claim it, they will normally do so in express terms, and will not leave the renunciation to be deduced by way of inference from a clause, the exact effect of which is at best uncertain, and which can only be made to yield this inference by means of a complex and controversial process of reasoning. Where an agreement, which is alleged to have these effects, does not employ express terms for the purpose, it is incumbent upon the party alleging them, to establish affirmatively that such is the necessary result of the language used. Sovereignty, and the right to claim it, where grounds of title exist, are not rights with which States lightly or unwittingly part; and the intention to do so cannot be ascribed to them unless it be clearly expressed, or as clearly implied.

73. *Point (3): A renunciation of sovereignty, or of the right to claim it, can only legitimately be implied if the implication be a necessary, and not merely a possible, one.*—The Court has already, in more than

¹ As regards the possibility of a *renunciation* of sovereignty, it has been shewn (see paragraph 69 (d) (ii), above) that the idea that Article 3 could, in 1839, have implied or involved a renunciation of *existing* sovereignty over the Minquiers and the Ecréhous is completely unrealistic.

one case¹, applied the principle that binding obligations must in general be *expressed*, and that, where they rest upon implication, the implication must be a necessary one. It is not sufficient that the implication be a *possible* one, in the sense that it is not absolutely excluded by, or inconsistent with, the language used : it must follow from that language, in the sense that a failure to give effect to the implication would lead to inconsistency and contradiction. This would, of course, be particularly true of such an important issue as sovereignty, or any matter affecting it, or the right to claim it. Applied to the present case, this principle involves shewing that the interpretation of Article 3 of the 1839 Convention, advanced by the French Counter-Memorial, is an interpretation which the language demands, in the sense that due effect could not be given to Article 3 except by means of this interpretation. The final question is, therefore, whether this interpretation be in any way necessary or inevitable, in order that due effect should be given to Article 3.

74. *Point (4): The interpretation or implication involved by the French contention is in no way necessary or inevitable in order to give due effect to Article 3.*—The specific question involved is this : is it a necessary consequence of entering into an agreement not to assert exclusive fishery rights in certain waters that no claim to sovereignty shall be made or asserted to any territory located in those waters ? Or, to put the matter in another way : is there any necessary inconsistency in the exercise of sovereignty over certain territory, or the claim to exercise it, with an obligation not to assert exclusive fishery rights in the waters of that territory ? Or again : is there anything in the exercise of sovereignty over territory, or the assertion of a claim to exercise it, which would make it impossible—or even especially difficult—to give due effect to the fishery rights of another country in the waters of that territory ? The United Kingdom Government answer no to all these questions, and believe that this answer is really inherent in the questions themselves, and that no other answer is reasonably possible. They will, nevertheless, give positive reasons why this must be the answer.

Compatibility of the sovereignty of one country over territory with the exercise of fishery rights by another country in the waters of that territory

75. The United Kingdom Government submit that complete effect can be given to an agreement for the exercise of common

¹ See, for instance, the case concerning the *International Status of South-West Africa* (I.C.J. Reports 1950, p. 128) where the Court said (at p. 140) :

“Had the parties to the Charter intended to create an obligation of this kind for a mandatory State, such intention would necessarily have been expressed in positive terms”.

See also the case concerning the *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania (Second Phase)*, I.C.J. Reports 1950, p. 221, at pp. 227-9; and the case concerning *Rights of Nationals of the United States of America in Morocco* (I.C.J. Reports 1952, p. 176, at pp. 196-9).

fishery rights in certain waters, notwithstanding the assertion and exercise by one of the parties of exclusive sovereign rights over the territory to which those waters are adjacent; and that, even if Article 3 of the 1839 Convention had the effect of preventing either country from asserting exclusive fishery (strictly, *oyster* fishery) rights against the other, it meant no more than that, and could not have been a bar to a claim of sovereignty, because complete effect could be given to this agreement by the country claiming and exercising the sovereignty. There is, in fact, nothing unusual in a situation in which a claim to sovereignty, or the exercise of sovereignty itself, can only be maintained, subject to giving effect to certain prior or existing rights. Sovereignty over territory is constantly exercised subject to limitations arising from agreement with other countries, or to the operation of servitudes in those cases where the obligations concerned are to be regarded as inherent in, or attaching to, and passing with, the territory concerned, or its waters. Such a position, so far from being novel or unknown to international law, is, and has been, common. The entire law relating to international servitudes proves it. Even if every reasonable concession be made to the French point of view—even if it be admitted that Article 3 of the 1839 Convention created a status or régime of permanent communality of fishery rights in the waters concerned, and impressed those waters with a servitude to that effect—this would not mean that no country could be, or could become, sovereign over territory in those waters: it would merely mean that whatever country was, or became, sovereign, could only be, or become so, upon the basis of the status or régime, or subject to the servitude, concerned. To read more into a provision of this nature would not only be to put into it far more than it contains, or than its language naturally warrants, but also to ascribe to it a meaning in no way required in order to give the provision full and adequate effect and operation—an interpretation which would not, therefore, be legitimate.

76. History furnishes examples, both old and recent, of fishery rights accorded to one country in the waters of another, shewing that no necessary incompatibility exists between the concession and enjoyment of such rights and the exercise of sovereignty over the adjacent territory, and over the waters generally. Two well-known historical examples are those of the cession of Newfoundland and Nova Scotia by France to Great Britain under the Treaty of Utrecht of 1713, when certain rights were reserved to French fishermen in the waters of the ceded territories (see Annex A 148 to the present Reply). Again, by the Treaty of Paris of 1783, between the United States of America and Great Britain, United States fishermen were granted fishing rights in Canadian waters (see Annex A 149 to the present Reply). A very recent example is afforded by an Agreement dated the 20th December, 1950, between Norway and

Sweden, by which the fishermen of each country were accorded certain fishery rights in the territorial waters of the other (see Annex A 150 to the present Reply). Obviously, it could not be argued that, by entering into such an agreement, Norway and Sweden had renounced or forfeited their sovereignty over the areas concerned.

77. If, however, the Norwegian-Swedish Agreement just mentioned shew that the existence of common fishery rights is no bar to the exercise of sovereignty by one of the parties concerned (any more than it would be as regards France and Italy, for instance, if they mutually accorded each other fishing rights in the waters of Corsica and Sardinia)—if this Agreement shew, in other words, that sovereignty is quite capable of being exercised without any prejudice to mutual fishery rights—it must follow automatically that the existence of these rights can constitute no bar to the *acquisition* of sovereignty, since this sovereignty, when acquired, will itself not prevent full effect being given to the common fishery rights. An agreement instituting such rights could only act as a bar to the acquisition of sovereignty by one of the parties if its exercise were, in the particular circumstances, incompatible with the enjoyment of the fishery rights by the other party. No doubt, it is inherent in an agreement for common fishery rights that nothing shall be done by either party which would render the execution of the agreement impossible or unduly difficult ; but there is nothing in the exercise of ordinary sovereign rights which need have any such effect.

78. It is, in fact, easy to shew that there is no incompatibility between the exercise of the two sets of rights. For, after all, what does the carrying on of common fisheries involve, or rather what is involved when one country has the right to fish in the waters of another ? The fishing vessels must be allowed to enter the waters concerned, and to take fish there ; and certain ancillary rights may also be involved—for instance, a right to land at certain places and to set up establishments on shore. There may be further rights, depending upon circumstances, such as transit and transport facilities, and exemptions from certain classes of dues. But, all these are things which it is perfectly easy for the sovereign Power to grant, and to which effect can be given, without any disturbance of the normal exercise of sovereignty in the territory or area. They involve little or nothing more than what occurs all over the world—wherever, for instance, there exists a Free Port. In all other matters, such as the enforcement of customs regulations, the punishment of crime, the preservation of law and order, and administration generally, the exclusive right would remain with the sovereign Power ; and its exercise would not interfere in the least with, or impede, the conduct of the common fisheries.

79. The failure of the French Counter-Memorial even to discuss what is obviously the one really essential question involved in the

French contention—namely, whether there does, in fact, exist any incompatibility between the exercise of sovereignty by one country (and, therefore, the assertion of a claim to it), and the enjoyment of common fishery rights by another¹—is the more striking, because previous French Governments have repeatedly recognized and admitted the principle which the United Kingdom Government maintain to be correct. A study of the diplomatic correspondence from 1876 to 1938 (given as Annexes A 31-A 78 in Vol. II of the United Kingdom Memorial) shews this quite clearly. Thus, in the Report of the French Committee of Experts, dated November, 1886 (Annex A 42), enclosed in M. Waddington's Note, dated the 15th December, 1886, to the Earl of Iddesleigh (Annex A 41), after a statement that the negotiators of the 1839 Convention intended all fisheries round the Minquiers and the Ecréhous to be common, the following remarks appear (Annex A 42, p. 240) :

".... Peu importe donc, en ce qui concerne les droits des pêcheurs Anglais ou Français, que la France établisse sa souveraineté sur le plateau des Ecréhous, ou que l'Angleterre y maintienne ses prétentions. Quand même les Ecréhous seraient terre Française, la France ne pourrait pas placer le point de départ des trois milles réservés à partir de la laisse de basse mer de ce banc de rochers [*i.e.*, reserve the fishery of the Ecréhous waters for herself]. Quand même les revendications de l'Angleterre sur cette ancienne île seraient fondées, elle ne pourrait compter sa zone[*sic*] réservée des Ecréhous, au lieu de la compter de Jersey".

In M. Waddington's above-mentioned Note, enclosing this Report of the French Experts, there was an even more explicit recognition of the principle involved. After putting forward a formal claim to French sovereignty over the Ecréhous, the Note continues as follows (Annex A 41, p. 232) :

"Il en serait de même au sujet du droit de pêche. Le libre exercice de ce droit en faveur des sujets anglais ne saurait en tout état de cause être contesté, en présence de l'interprétation que le Gouvernement français croit devoir donner aux conventions existantes sur la pêche dans ces parages, et particulièrement à la convention de 1839".

In an earlier Note from Earl Granville to M. Waddington, dated the 24th October, 1883 (Annex A 40, p. 228), a similar attitude had been taken up on the United Kingdom side :

"Her Majesty's Government, therefore, do not consider it necessary to discuss the sovereignty of Great Britain over those islets ; and the only question which arises is whether, the Ecréhous being British territory, French fishermen are entitled, under the

¹ The Counter-Memorial apparently assumes that the incompatibility is self-evident and needs no demonstrating.

terms of the Convention of 1839, to participate either in the oyster fishery or in the general fishery within 3 miles of those islets"¹.

An equally explicit recognition of the same principle was given in M. Waddington's later Note, dated the 26th January, 1888, to the Marquess of Salisbury (Annex A 48, p. 261) :

"Pour me résumer, mon Gouvernement croit devoir maintenir ses précédentes conclusions en ce qui concerne l'objet principal des présents pourparlers c'est-à-dire la nationalité des Ecrehous ; il considère ces îlots comme une dépendance du territoire français. Quant à la pêche générale, il nous semble que, *même en considérant les Ecrehous comme appartenant à la Couronne d'Angleterre*, nos pêcheurs d'après les considérations qui précèdent, tirées des dispositions de la convention de 1839, ont le droit de s'y livrer concurremment avec les pêcheurs anglais". [Italics added].

80. These passages constitute the clearest possible admission (indeed, it was the contention formally advanced in behalf of France) that the fishery rights involved by the 1839 Convention did not preclude claims to exclusive sovereignty, and that the exercise of the latter was compatible with the former. These passages, and the correspondence as a whole, make it very clear what the positions of the parties were. Each side claimed sovereignty ; but each recognized that such sovereignty must be exercised subject to the right of the other country to fish the waters. Moreover, the French Government evidently recognized that there was no impossibility or impracticability about that. The difference between the views of the two countries lay simply in this : that the United Kingdom Government did not consider that any common fishery rights existed at all, because they did not regard the Minquiers and the Ecréhous as coming, or as ever having come, within Article 3 of the 1839 Convention². That is still the position of the United Kingdom Government ; but, they contend that, even if it were not so, and even if common fishery rights in these waters existed to which effect must be given, this would not be any bar to the assertion of a claim to exclusive sovereignty over them, and they contend that this stands admitted by France upon the basis of the previous diplomatic correspondence.

¹ The Note went on, as might be expected, to argue that Article 3 had no application to the general fishery, which was governed by Article 9, and that the Minquiers and the Ecréhous came within the latter provision as "British Islands". See the argument in paragraph 61, above.

² It should, therefore, be noticed that, if during the period 1839 to 1951 (when the 1951 Fishery Agreement was entered into : see Section B, above), the United Kingdom Government denied that France had any fishery rights in the waters of the groups, this was not because the exercise of such rights would have been regarded as incompatible with the existence of exclusive British sovereignty, but because, for the reasons given in Sub-Section 4 of this Section (see paragraphs 59 *et seq.*, above), Article 3 was never regarded as applicable to the waters of the groups, and no common fishery rights were considered to exist there.

Conclusion on 'Sub-Section 5

81. The United Kingdom Government hope to have established by the above argument : first, that Article 3 of the 1839 Convention had no direct relevance to any question of sovereignty ; and, secondly, that if a provision of this kind could, by implication, prevent the establishment of sovereignty over any area, this could only be if the implication were an absolutely necessary one to be drawn in the circumstances—*i.e.*, if due effect to the provision could not be given otherwise. The United Kingdom Government claim, further, to have shewn that there is nothing in the exercise of sovereignty over an area which would be inconsistent with the enjoyment of fishery rights by another country in that area, and nothing in the establishment or assertion of a claim to sovereignty which would in any way prevent the continued enjoyment of any such fishery rights already in existence, or which would make it impossible or unduly difficult to give due effect to an agreement for the enjoyment of such rights. This being so, the United Kingdom Government submit that the French contention that Article 3 of the 1839 Convention precludes either party from asserting a claim to sovereignty over the Minquiers and the Ecréhous must fail, even if those groups can properly be regarded as coming within the scope of that Article.

CONCLUSION ON UNITED KINGDOM CONTENTION II

82. The United Kingdom Government submit that, for the reasons given above, Article 3 of the 1839 Convention did not apply to the Minquiers and the Ecréhous, or, if it did so apply, it did not have the effect suggested by the French Counter-Memorial ; and that, in consequence, the Convention did not render the groups incapable of appropriation either by France or by the United Kingdom.

83. The United Kingdom Government will now (in Section E, below) develop their third main Contention (see paragraph 2, above), that, even if United Kingdom Contention II conclusion be wrong, and the 1839 Convention have the effect attributed to it by the French Counter-Memorial, the parties subsequently conducted themselves in a manner which was wholly inconsistent with that view ; and, in so far as they once held it, they must be held to have abandoned it, and now to be free to assert a claim to sovereignty. The United Kingdom Government would here recall what was said in paragraph 9 above (under Section B dealing with United Kingdom Contention I), that the 1951 Fishery Agreement, and the Compromis of the 29th December, 1950 itself, were part of this process of conduct—a process irreconcilable with the view that France and the United Kingdom are precluded from asserting a claim to exclusive sovereignty over the Minquiers and the Ecréhous. These Agreements were, indeed, the culminating point of this pro-

cess. They are, however, dealt with separately in Section B above, for the reasons given in paragraph 9 above.

SECTION E

United Kingdom Contention III: That, even if, contrary to United Kingdom Contention II, the 1839 Convention did, at the time of its conclusion, have the effect suggested by the French Counter-Memorial, the subsequent conduct of the parties was inconsistent with, or involved a mutual abandonment of, that view, and was such as to entitle them (and entitles them now) to put forward claims to exclusive sovereignty over the groups

Sub-Section 1: Introductory Remarks and Points to be made by the United Kingdom Government

84. United Kingdom Contention III (see paragraph 2, above) depends upon certain issues which are logically and formally distinct, but, nevertheless, so closely connected in substance that they cannot be considered apart. These issues involve the following propositions:

- (a) The attitude and conduct of the parties subsequent to 1839 was so inconsistent with the view of the effect of the 1839 Convention suggested in the French Counter-Memorial as to indicate that the Convention, in fact, never had any such effect.

This argument, which is really directed to the question of the correct interpretation of the 1839 Convention, should logically figure as part of the United Kingdom's Contention II, developed in Section D above. However, it will be convenient to deal with it here, since it relates wholly to the period 1839-1951, and is based upon the same facts as those which are material to the next point involved, namely:

- (b) Even if the view of the 1839 Convention suggested in the French Counter-Memorial represent what was originally the correct interpretation of the Convention, the parties, by their subsequent conduct, abandoned that view of the effect of the Convention, as from a certain date, and eventually resumed, or regained, their freedom to assert claims to sovereignty over the Minquiers and the Ecréhous.

This proposition could be put in another way:

- (c) Even if Article 3 of the 1839 Convention involved an agreement not to claim sovereignty over the groups, the parties, by their conduct subsequently, tacitly abrogated this agreement, and are now free to assert claims.

It is not of particular moment which way the matter is put, since the underlying issue is in each case the same ; and the United Kingdom Government propose, therefore, to deal with the whole topic as constituting one basic Contention.

85. The principal points which will be made in connexion with this Contention are the following :

- (1) It is an accepted principle of legal interpretation that the way in which parties to an agreement interpret it in *practice* is legitimate, though not necessarily conclusive, evidence of what the correct interpretation really is.
- (2) So far as the joint actions of the parties are concerned, as exemplified in the agreements on the subject drawn up by them since 1839—namely, the 1867 Convention, the 1951 Fishery Agreement and the Compromis of the 29th December, 1950—these were all based upon a view of the 1839 Convention diametrically opposed to that now put forward by the French Counter-Memorial, either presupposing the right of the parties to claim exclusive sovereignty, or regarding Article 3 as superfluous and lacking in positive, or obligatory, force.
- (3) So far as their separate or individual actions and attitudes were concerned :
 - (a) One of the parties (the United Kingdom) cannot be said ever to have accepted, or acted upon, the interpretation of the 1839 Convention put forward in the French Counter-Memorial ; and the other (France) only for a time, and then not consistently.
 - (b) France, while originally maintaining that the 1839 Convention precluded any claim to exclusive sovereignty, subsequently recognized that such a claim would not, in fact, prevent due effect being given to any fishery rights possessed in common by the parties. This was, in substance, an admission that the 1839 Convention did not preclude the assertion of exclusive sovereignty.
 - (c) The United Kingdom, having, at all material times, maintained its claim to sovereignty over the groups, France, as from a certain date, also put forward claims to sovereignty. These claims were clearly inconsistent with the view that the parties were disqualified, by reason of a prior agreement, from asserting such claims. Alternatively, they involved an abandonment of this view.
- (4) France, having put forward claims to exclusive sovereignty over the groups, and maintained them for many years—a course of conduct which presupposed that France

regarded herself as having capacity to make such a claim — cannot now assert that such capacity does not, and did not, exist.

Points (1)-(3) above will be discussed in Sub-Section 2 below. Point (4) (which raises the question of the compatibility of the French claim to sovereignty with the contention that the 1839 Convention precludes such a claim, and, in consequence, the question of the legitimacy and admissibility of this latter contention in the face of past and present French claims to exclusive sovereignty) will be discussed in Sub-Section 3 below.

Sub-Section 2 : The Post-1839 Conduct of the Parties

Point (1): Probative value of the subsequent conduct of parties to a Treaty, as evidence of its correct interpretation

86. It will be sufficient on this point to recall the weight which the Court has attached, in several cases, to the probative value of the subsequent practice or conduct of the parties in relation to a Treaty, as affording evidence of its correct interpretation, and of what the parties themselves intended by it. Some extracts from the cases are given in Annex A 151 to the present Reply.

Point (2): The post-1839 Agreements

87. The conduct of the parties as evidenced by these Agreements, and the view taken by them of the position created by the 1839 Convention, as it is to be deduced from these later Agreements, has been fully dealt with in Section B above, in respect of the 1951 Fishery Agreement and the Compromis, and in Sub-Section 3 of Section D above, in respect of the 1867 Convention.

Point (3): The post-1839 events and diplomatic interchanges relative to the Minquiers and the Ecréhous

88. It will be convenient to consider the three divisions of Point (3) as one issue, for the relevant events and diplomatic interchanges affect all three. These events and interchanges are fully set out in the original United Kingdom Memorial, and it would be superfluous to recapitulate them here. But attention will be drawn to certain salient points directly affecting the present issue.

The general United Kingdom attitude in the post-1839 period

89. As to this, the United Kingdom Government refer to Part II of Volume I of their Memorial—and, in particular, to paragraphs 125-179—as shewing that, from long before 1839 and, thereafter, uninterruptedly down to the present day, the United Kingdom, by occupation, user, administration, and acts of legislation, exercised, in respect of the groups, all the usual manifestations of sovereignty. Paragraphs 138 (c), 141, 149-150, 167 and 173-175 of the United

Kingdom Memorial shew that a number of these manifestations occurred during the period 1839-1870—*i.e.*, immediately subsequent to the conclusion of the 1839 Convention. Since it is reasonable to credit the United Kingdom with not intending deliberately to infringe an international agreement immediately following its conclusion, these occurrences are only explicable upon the assumption that the United Kingdom Government, at that time, never imagined that the 1839 Convention had, or could have, the effect of preventing the assertion, or exercise, of exclusive sovereignty over the groups. Indeed, as the groups were clearly regarded, on the United Kingdom side, as being British (this is evident from the whole character of the United Kingdom attitude), they could never be, and, evidently, were never, regarded as coming under the common fishery provision of the 1839 Convention at all.

The French attitude in the post-1839 period: French claims to sovereignty. Admission that the exercise of exclusive sovereignty was compatible with the enjoyment of common fishery rights

90. (a) *The Ecréhous*.—There is no evidence of any protest from the French authorities at the above-mentioned manifestations of British sovereignty until 1876, as regards the Ecréhous (see Annex A 31 in Vol. II of the United Kingdom Memorial), and 1888, as regards the Minquiers (see Annex A 53). The protests concerning the Ecréhous were, at first, based upon the 1839 Convention. But, in 1886 (see Annex A 41), a claim was made that the Ecréhous were under French sovereignty; and, it has already been shewn (see paragraph 79, above) that the Report of the French Committee of Experts (upon which this claim was based) admitted, and, indeed, proceeded upon the footing, that sovereignty was exercisable consistently with the fishery provisions of the 1839 Convention—in short, that the latter were *not* a bar to a claim of sovereignty. This claim of French sovereignty over the Ecréhous was repeated in 1888 in a Note (see Annex A 48) which, while citing the 1839 Convention, did so upon exactly the same footing. The relevant passage has already been quoted (see paragraph 79, above), shewing the French authorities as taking the view that the fishery provisions of the 1839 Convention were in the nature of a servitude or charge on sovereignty, and not a bar to it¹. After the Note of 1888, no further com-

¹ There was, indeed, a noticeable change on the French side in the tone of the correspondence from M. Waddington's Note, dated the 15th December, 1886 (Annex A 41), onwards. Up to that point, the French authorities had been disposed to argue (if not very convincingly) that Article 3 precluded claims to sovereignty (although then, as now, giving no reasons why this should follow from a provision for a common fishery); but, after that point, they put forward claims to sovereignty themselves, and admitted that due effect could be given to Article 3 (notwithstanding such claims), by arguing that, whatever the position or outcome about sovereignty, effect must, and could, still be given to the fishery provisions of Article 3. In addition to the passages already referred to and cited earlier (see paragraph 79, above), the following extract from a Letter from the French Ministry of Foreign Affairs to

munication of any kind was ever received from the French Government on the subject of the Ecréhous, although the British acts of sovereignty over this group continued unabated to the present day.

(b) *The Minquiers*.—The protest against the manifestations of British sovereignty over the Minquiers, made for the first time in 1888 (see under (a), above), was not based upon—nor did it so much as mention—the 1839 Convention, but put forward a claim to exclusive French sovereignty over this group; and, what is even more striking, a claim said to be a long standing one. M. Waddington's Note (see Annex A 53), for instance, spoke of "les droits immémoriaux et fréquemment exercés de la France sur ces îlots[sic]". More important still, as regards its bearing on the French contention about the 1839 Convention, this Note referred to French acts of sovereignty occurring in the immediate past. Thus, it said that "le Gouvernement de la Reine ne peut certainement pas ignorer les travaux exécutés par nous depuis trente ans sur ces récifs". [Italics added]. The French authorities, therefore, claimed to have been actively manifesting, since 1858 at least, sovereignty over Islets which they now say the parties were, by the 1839 Convention, precluded from claiming in sovereignty. M. Waddington's Note proceeded:

"Ainsi, l'hydrographie de l'archipel a été exécutée par l'ingénieur français Beautemps Beaupré et le balisage et l'éclairage de ces îles est également notre œuvre. Le Gouvernement français a placé dès 1861 un feu flottant près de la pointe sud-ouest du plateau et depuis lors, nous avons pourvu à l'entretien, au personnel et au matériel de ce bateau feu. Plus récemment, en 1883, nous avons mouillé au côté Est une bouée qui a toujours appartenu, comme le feu, au Ministère français des Travaux publics. J'ai à peine besoin d'ajouter que ces actes de souveraineté n'ont provoqué et ne pouvaient provoquer aucune observation de la part du Gouvernement de la Reine;" [Italics added].

These observations shew clearly that, at a time when France was supposed to be maintaining the view that the 1839 Convention precluded the assertion or claim of sovereignty over the Minquiers, she was not only claiming it, but was actively endeavouring to manifest it by various concrete acts, which were quite openly declared to be "actes de souveraineté". Whether or not, in fact,

the French Ministry of Marine, dated the 26th March, 1884 (United Kingdom Memorial Vol. II, Annex A 46, p. 246), makes very clear the fact that the French authorities did not regard a claim of sovereignty as being inconsistent with the exercise of common fishery rights:

"Mon département, étudié en ce moment la question internationale soulevée par l'intervention de l'Angleterre aux Ecréhous[sic]; mais il est certain, dans tous les cas, que la prise de possession effectuée par les autorités britanniques, laisse subsister la convention du 2 août 1839, d'après laquelle la pêche aux huîtres est commune aux sujets des deux pays dans les parages où se trouvent les rochers des Ecréhous [sic]. Rien ne s'oppose dès lors, à ce que les habitants de Port-Bail et Carteret, s'y rendent pour s'y livrer exclusivement à ce genre de pêche".

these acts assist the French claim, is another matter, which is discussed elsewhere: the immediate point is that they are quite inconsistent with the view which the Government of the French Republic now seek to maintain regarding the effect of the 1839 Convention. They shew that, not long after the conclusion of the Convention, France was doing the very thing which she now says the Convention forbade. This conduct was not, therefore, compatible with the view of the Convention now put forward by the Government of the French Republic. Indeed, all that M. Waddington's Note said on the fishery question was this:

".... Sans doute nous avons laissé aux pêcheurs de toutes nationalités pleine liberté pour y exercer leur industrie, mais nous n'y avons pas moins fait en tout temps acte de souveraineté dans la limite que comporte la situation de ces rochers stériles".

This was, again, a clear admission that any fishery rights involved were a charge, burden or servitude on sovereignty, but not a bar to its exercise. Later French communications—in 1902, 1903, and in 1904 (see Annexes A 55, A 61, A 64 and A 68 in Vol. II of the United Kingdom Memorial)—also strongly affirmed the French claim, and equally referred to acts in assertion of sovereignty carried out by France in respect of the Minquiers. However, after 1906, no further communication was received from the Government of the French Republic for thirty-one years, when M. Corbin's Note, dated the 5th October, 1937 (see Annex A 76), protested against British manifestations of sovereignty, reaffirmed French sovereignty, but principally insisted once more on the existence of common fishery rights as something independent of the question of sovereignty.

United Kingdom reaction to the French attitude

91. (a) *The parties were at cross-purposes.*—Throughout the correspondence, the parties were evidently at cross-purposes, because, on the United Kingdom side, the French representations about the effect of the 1839 Convention (see Annexes A 40, A 43, A 47, A 54 and A 69 in Vol. II of the United Kingdom Memorial) were consistently met with the contention that the Minquiers and Ecréhous did not come under Article 3 of the Convention, but came under Articles 2 or 9, as being, and always having been, under British sovereignty. Consequently, the French argument (so far as seriously advanced) that Article 3, not only created common fishery rights, but also constituted a bar to the assertion of a claim to sovereignty, was seldom *directly* on the United Kingdom side, because, according to the United Kingdom view, the point could not arise; since, even for fishery purposes, Article 3 did not apply to the groups, these being British according to that view. On the other hand, the United Kingdom authorities invariably denied the French claim (see the French Notes in, for instance,

Annexes A 38, A 41 and A 48) that the 1839 Convention had created three distinct zones—an exclusive French zone, an exclusive British zone, and a common zone—and that these were marked on the chart attached to the Convention. This claim, however, was controverted on the United Kingdom side (see Annexes A 40, A 43, A 47, A 54 and A 69); and, it was pointed out, *inter alia*, that the chart marked one line or zone only, namely, the Article 1 line and zone off the French coast :

".... Neither the British zone nor the intermediate zone are delineated on the Chart, and therefore the question whether the Ecréhos are in the 'mer commune', or within the exclusive British fishery limits, cannot be solved by reference to the Chart, but depends entirely on the construction of the Convention" (Annex A 40, United Kingdom Memorial, Vol. II, p. 101¹).

"No line was drawn on the map attached to the Convention defining the limits of the British Islands, and there is nothing to show that the Minquiers were not included in those limits...." (Annex A 69, p. 283).

The United Kingdom Government maintained, in fact (see paragraphs 58-64, above), that the question, whether the waters of any particular Island or Islet were waters in which common fishery rights existed, was one which depended upon its territorial status. Once more, the parties were at cross-purposes, for the French authorities maintained (in so far as they seriously urged that the 1839 Convention precluded claims to sovereignty), that the status of territory in the area was determined by Article 3 of the Convention; whereas, on the United Kingdom side, it was maintained that the status of the territory must first be determined before it could be decided which Article of the Convention was applicable. The French authorities, therefore, based themselves upon the same *petitio principii* which was noticed in paragraph 64 above, in connexion with the present French Counter-Memorial. On the United Kingdom side, it was consistently maintained (it would be tedious to cite all the passages; but see Annexes A 40, A 43, A 47, A 54 and A 69) that the groups were British, and dependencies of Jersey, and, therefore, fell under Articles 2 and 9 of the 1839 Convention, and not under Article 3; and that, if any doubts could arise from the text of the 1839 Convention, they were set at rest by that of the 1867 Convention.

(b) *United Kingdom attitude on sovereignty and fishery rights.*—Taking their stand on the view that the groups were British, and did not fall under Article 3 at all, the United Kingdom authorities, as has been seen, were not concerned to argue that Article 3 did not preclude a claim to exclusive sovereignty. But the view that there was no incompatibility between the sovereignty of one country over an area, and the enjoyment of common fishery rights there by another, was certainly implicit in the United Kingdom

¹ See p. 230.

attitude (see, for instance, the passage from Earl Granville's Note, dated the 24th October, 1883 (see Annex A 40), cited in paragraph 79, above). It was also implicit in a formal offer, made in 1905 (see Annex A 69), to *accord* certain fishery rights to France in the waters of the Minquiers, upon the basis of a recognition that this group was British territory—an offer to which no reply, beyond a formal acknowledgement (see Annex A 70) was ever received. The United Kingdom authorities, in short, denied that the 1839 Convention had anything to do with the question of sovereignty. For instance, in the United Kingdom Note to the French Ambassador in London, dated the 17th August, 1905 (see Annex A 69, p. 282), the following passage occurs :

“It is stated in M. Cambon's Memorandum of the 18th January, 1904 [see Annex A 67], that the British claim to sovereignty over the Minquiers is formally controverted by the text of the Convention of 1839. His Majesty's Government are unable to acquiesce in this contention. The object of this Convention was to define and regulate the limits of the exclusive rights of oyster and other fishery on the coasts of Great Britain and France”.

Further inconsistencies of the French attitude

92. Not only did the attitude of the French authorities exhibit the inconsistencies already noticed, but they proceeded to an extreme of inconsistency ; for, they eventually argued that the 1839 Convention precluded a *United Kingdom* claim to sovereignty, yet, at the same time, a claim to exclusive *French* sovereignty was being made. For instance, the Memorandum of M. Cambon referred to in the passage just quoted above (see Annex A 67 in Vol. II of the United Kingdom Memorial), after protesting against, “l'affirmation de la souveraineté britannique qui est formellement contredite par le texte de la convention de 1839”, went on to refer to the “droits de la France sur ces rochers”, and continued as follows :

“L'ambassadeur de France ne peut, dans ces conditions, que rappeler ses Notes précédentes par lesquelles il a affirmé les droits de la France sur les Minquiers”

Yet, if the 1839 Convention precluded a British claim to sovereignty, why did it not also preclude a French claim ? This point is further discussed in Sub-Section 3 below.

Deductions and conclusions to be drawn from the post-1839 facts and diplomatic interchanges

93. The United Kingdom Government submit that the foregoing analysis justifies the following conclusions :

- (a) The attitude and conduct of the parties was not consistent with the view of the effect of the 1839 Convention now put forward by the Government of the French Republic,

and (in so far as they held that view) amounted to, and involved, a mutual abandonment of it.

- (b) The attitude and conduct of the parties in the post-1839 period is evidence that the interpretation of the 1839 Convention now advanced by the Government of the French Republic is an incorrect interpretation, never admitted or acted upon by one of the parties, and abandoned either expressly, or by conduct, by the other party.
- (c) The conduct of the parties in the post-1839 period amounted to, and involved :
 - (i) a mutual release from any restrictions upon the assertion of claims to sovereignty over the Minquiers and the Ecréhous which the 1839 Convention may have implied, and a recognition of the right to advance such claims ;
 - (ii) a tacit agreement to treat any such restrictions as being abrogated or terminated, and to resume full freedom of action.

As was stated at the beginning of this Section (see paragraph 84, above), these conclusions amount to different ways of putting the same basic point that has already been fully argued. It is only necessary to add that, since the United Kingdom authorities never at any time suggested, or attempted to contend, that the 1839 Convention implied, or involved, any restrictions upon the assertion of claims to sovereignty, the conduct referred to, and relied upon, is mainly that of the French authorities, and is constituted by the two principal facts : (1) that French claims to sovereignty were advanced in the most unequivocal terms (see, for instance, Annexes A 41, A 48, A 53, A 55, A 61, A 64 and A 67 in Vol. II of the United Kingdom Memorial) ; and (2) that the pretension that the exercise of sovereignty was incompatible with giving due effect to common fishery rights was, in so far as originally maintained, subsequently abandoned by France—both expressly, and also tacitly—as an inevitable consequence of the very fact that France claimed sovereignty, yet urged the continuance of a common fishery position. This leads to the next, and last, issue on this part of the case—namely, how far it is admissible, and open, to the Government of the French Republic, having made these unequivocal claims to sovereignty, now to revert once more (as their Counter-Memorial does) to the contention that both parties are disqualified from claiming exclusive sovereignty.

Sub-Section 3 : A Claim of Sovereignty precludes a simultaneous or subsequent Plea of Incapacity to Claim

94. In this Sub-Section, the United Kingdom Government will maintain that, when a country formally claims sovereignty over

territory (as France claimed it over the Minquiers and the Ecréhous during the period 1886-1906 and later), it thereby necessarily affirms its capacity to make such a claim, and cannot subsequently employ arguments involving the plea that there was a general disqualification from making all such claims, because of a Treaty binding the parties not to do so. Consequently, the Government of the French Republic cannot now revive the disqualification issue.

95. On this matter, the French Counter-Memorial (i) pleads, *in the alternative*, that the parties are disqualified from asserting or claiming sovereignty, but that, if they be not, then, of the two claims, that of France is the better; and (ii) contends that the action of the Government of the French Republic from 1886 and later, in claiming sovereignty over the groups, does not preclude that Government from now asserting that the parties are disqualified from making any claim. This last contention is formulated as follows (Counter-Memorial, pp. 357-358):

"The Government of the French Republic has not, since then, changed its attitude, even though the United Kingdom Government, oblivious of the true import of the Convention of 1839¹, has claimed rights of exclusive sovereignty over the areas now in dispute.

"Though, in the course of years, the French Government has been obliged to follow the British Government on to the ground of reciprocal claims for sovereignty, put forward in conversations that were frequently interrupted for long periods, it has done so most unwillingly, and only *in order to protect its rights*. This explains why the Government of the French Republic, unlike Her Majesty's Government, has presented its submissions in regard to exclusive sovereignty as alternative submissions. Once again, it maintains that the territorial status of the areas now in dispute was settled in 1839, and that conclusion rules out any exclusive appropriation in the sense of the British submissions". [*Italics added*].

It may be remarked, at once, that the phrase italicized in this passage exhibits in itself the inherent contradiction involved in the French position. The Government of the French Republic, it is said, were forced to advance a claim to sovereignty in order to conserve their rights. But what rights? Presumably, their rights of, or claims to, sovereignty. But, simultaneously, the Government of the French Republic were saying, and are now saying, in effect, that they have, and had, no rights and could make no claims, because there was, and is, an agreement precluding the parties from asserting rights of sovereignty. The two pleas are irreconcilable. It will be seen from the analysis of the diplomatic correspond-

¹ This is not, of course, in any case, an accurate description of the attitude of the United Kingdom authorities, who clearly could not be said to have "lost sight of" a view which, as the facts and correspondence analyzed above shew, they never at any time entertained.

ence given above (and certain further arguments to the same effect will be adduced presently) that, at a certain stage of the interchanges between the parties, the French authorities, in fact, *elected* to claim sovereignty in circumstances where they were not obliged to do so. Having done so, and having maintained that position for many years (in the case of the Minquiers up to 1938), they are not now entitled either to say or to plead, that the parties (including, therefore, the Government of the French Republic themselves) are, *and always have been*, since 1839, *disqualified* from claiming: for why, then, did France claim? Because the United Kingdom claimed, is the answer given. But it will be shewn presently that France was not obliged to claim because the United Kingdom did so; or, alternatively, that, if France elected to claim, she followed the United Kingdom onto the ground taken up by the latter, *that there was, in fact, no bar to a claim by reason of the 1839 Convention*.

96. It follows from the above that the admissibility of the present French plea of disqualification coupled with an alternative claim of sovereignty cannot, in the proceedings before the Court, be considered in isolation, and without reference to previous events. An assertion of exclusive sovereignty, such as France made during the period 1886-1906 and later, involves an affirmation of capacity to claim it. A claim to sovereignty necessarily requires, and, indeed, presupposes, that the party making it at least *believes* that it is entitled to make the claim, and that it is not suffering under any disability in the matter—at any rate, if it be acting in good faith, as, of course, France was. Consequently, the French authorities must necessarily have considered that they were entitled to make their claim; and they could not have thought this, if they had supposed that they were labouring under a disability arising from an international agreement. For this purpose, it is immaterial whether they had reached that position, either because they never really held the view of the 1839 Convention which the Government of the French Republic now put forward, or because they had ceased to hold it, or, again, because (as is quite probable) they had come to the conclusion that no useful purpose would be served by continuing to maintain it. Whatever the reason, the decision to claim sovereignty involved an abandonment of the position that there was no capacity to claim—a plea which cannot now legitimately be revived.

97. The explanation of all this given in the Counter-Memorial is that the refusal of the United Kingdom Government to accept the view of the 1839 Convention advanced by the Government of the French Republic compelled the latter to claim sovereignty themselves. The United Kingdom Government submit that this explanation cannot be accepted in justification of the present revival of the disqualification issue. It is wrong to say that the attitude of the United Kingdom Government compelled the Govern-

ment of the French Republic *to claim sovereignty*. What this attitude did compel the French authorities to do was *to make a choice*, which is altogether a different matter. Faced with the fact that the United Kingdom authorities took a different and—at the least—a perfectly arguable, and possible, view of the effect of the 1839 Convention, and of the position of the Minquiers and the Ecréhous under it, the French authorities had two courses open to them. They could continue to maintain their view of the 1839 Convention, and contest the United Kingdom claim on that ground—proposing, if necessary, that the question of the effect of the Convention be referred to international arbitration—or they could put forward a claim to sovereignty themselves. But the latter course necessarily involved following the United Kingdom onto the ground that the 1839 Convention was no bar to such a claim. The French authorities *elected* to take this latter course. This, they were perfectly entitled to do. What they were not, and are not, entitled to do (while taking this second course and making a claim) was to maintain that, strictly, the parties still remained, and would continue to remain, under a legal disability to make any claim; for, in making the claim, *as a claim of legal right*, the French authorities necessarily, and by that very act, affirmed their capacity and denied the existence of any legal disability¹.

98. It thus appears that the United Kingdom attitude did not, as the French Counter-Memorial contends, compel the French authorities to claim sovereignty. It merely placed them in a position where they had to decide whether or not to do so. It is really implicit in the French contention on this aspect of the subject that, if the attitude of one country face another with the necessity of making a choice, and that necessity be an unwelcome one, the latter country is entitled subsequently to go back upon its choice and to deny its implications. The United Kingdom Government know of no warrant for such a proposition, and numerous examples in disproof of it could be given. If, having to choose, the French authorities thought that France's interests would best be served by ceasing to contend that the 1839 Convention precluded claims to sovereignty, and by advancing such a claim themselves, that was both their affair and their right. But, they cannot now argue that they are entitled to revert to their former contention regarding the effect of the 1839 Convention, upon the ground that it was only the United Kingdom attitude which caused them to depart from it. Underlying this argument there is an obvious *petitio principii*. The United Kingdom

¹ Still more indefensible was it (see paragraph 92, above), while asserting France's title, to deny the United Kingdom title by reference to a Convention which, if it applied at all, necessarily applied to claims by *both* countries (see M. Cambon's Memorandum of the 18th January, 1904: Annex A 67 in Vol. II of the United Kingdom Memorial). In short, the French authorities, at that stage, sought to maintain the 1839 Convention only as a bar to *United Kingdom*, not to French, claims.

attitude was wrong and indefensible—so it is said : therefore, the Government of the French Republic were forced to shift their ground, and are now entitled to shift it back again. But, it has yet to be established that the United Kingdom attitude was wrong and indefensible. Even if it had been wrong in law, as regards the correct interpretation of the 1839 Convention, it was certainly not indefensible, nor had anything of the kind been established at the period in question ; and the Government of the French Republic had taken none of the steps—such as a proposal for arbitration—which might have established that it was a wrong and indefensible attitude. The choice was, therefore, that of the Government of the French Republic, and it was freely made ; but, since it necessarily involved an assertion of capacity, and a tacit denial of any legal disability, and since this attitude of being an active, rightful—and *qualified*—claimant was maintained over many years, the Government of the French Republic cannot now say that the 1839 Convention has all along rendered, and still renders, any claim of exclusive sovereignty illegitimate. Such a contention is now inadmissible ; and, neither of the parties, in view of their respective claims to sovereignty, is entitled to put it forward. The fact that the language of the recent Agreements between the parties, the Compromis and the 1951 Fishery Agreement, is so totally inconsistent with the idea that any disqualification exists, is a further confirmation of the view contended for in the present Sub-Section.

CONCLUSION ON UNITED KINGDOM CONTENTION III

99. The United Kingdom Government submit that the post-1839 evidence justifies the following conclusions :

- (a) that the attitude, practice and conduct of the parties during this period was inconsistent with the interpretation of the 1839 Convention now put forward by the Government of the French Republic, and is evidence that that interpretation is wrong ;
- (b) that even if, at its inception, the 1839 Convention involved restrictions upon the right to claim sovereignty over the Minquiers and the Ecréhous, the parties, by their subsequent conduct, mutually released each other from these restrictions, and tacitly abrogated or treated them as at an end ;
- (c) that both the parties, having put forward (and, over considerable, if varying, periods maintained) claims to sovereignty, are now precluded and estopped from denying their own capacity to put forward claims to sovereignty, or from alleging each other's incapacity to do so.

Final Submission on Part I of the Present Reply

100. The United Kingdom Government submit that, on the grounds given in this Part of the present Reply, they have established the three main Contentions set out in paragraph 2, which may be briefly restated as follows :

- I. The French contention as to the effect of the 1839 Convention is inconsistent with the Compromis and the 1951 Fishery Agreement, and the later Agreements must prevail.
- II. The 1839 Convention did not have the effect of rendering the Minquiers and the Ecréhous incapable of appropriation by France or the United Kingdom, and of precluding the two countries from asserting a claim to exclusive sovereignty over them.
- III. (a) Even if, at its inception, the 1839 Convention had this effect, it no longer has it now, and the parties are, accordingly, free to put forward claims ; (b) the plea of preclusion or disqualification has been rendered illegitimate and inadmissible by—because irreconcilable with—the past conduct of the parties in asserting claims to sovereignty over the groups.

These submissions are in answer to the first French conclusion on page 403 of the Counter-Memorial. If they be correct, it follows that each of the parties is entitled to put forward its claim to exclusive sovereignty over the Minquiers and the Ecréhous ; and that the real issue in the present case, which the Court has to decide, is which claim is the better. The grounds in support of the United Kingdom claim were set out in detail in the United Kingdom Memorial. It now remains to answer the second conclusion on page 403 of the French Counter-Memorial—namely, that the facts and considerations advanced in Part III of the Counter-Memorial shew that France has the better right to sovereignty over the groups. This will be done in Part II of the present Reply.

PART II

THE SECOND FRENCH CONCLUSION : THAT, IF SOVEREIGNTY OVER THE MINQUIERS AND THE ECREHOUS HAS TO BE ASSIGNED EXCLUSIVELY TO ONE OR OTHER OF THE PARTIES, THE TITLES AND FACTS INVOKED BY FRANCE INVOLVE THE RECOGNITION OF HER SOVEREIGNTY OVER THESE GROUPS

Contentions of the United Kingdom Government

101. The United Kingdom Government will put forward the following main Contentions regarding this part of the case :

- I. That the original title of the English Crown to the whole of the Channel Islands can be traced back to 1066 ; that, from 1204 onwards, although Continental Normandy was held by the French Kings, the Channel Islands, as an entity, were held by the English Kings ; that this *de facto* situation was placed on a legal basis by the Treaty of Paris of 1259 ; that this situation was unaffected by any subsequent Treaties or Truces ; that these conclusions can be substantiated with particular reference to the Minquiers and the Ecréhous groups of Islets ; and that these groups (as well as the Channel Islands, as a whole) remained in the possession of the English Kings from the 13th to the 18th centuries.
- II. That the evidence of acts of sovereignty exercised by the Government of the United Kingdom over the Minquiers and Ecréhous groups of Islets during the 19th and 20th centuries is sufficient to maintain the United Kingdom's original title to sovereignty over the groups (if such original title existed) or (if such original title did not exist) is sufficient in itself to establish the United Kingdom's title to sovereignty over the groups.

Contentions I and II will be developed in Sections A and B below, respectively.

SECTION A

Sovereignty over the Minquiers and the Ecréhous Groups of Islets down to the end of the 18th Century

Submissions of the Government of the French Republic

102. In this Section of the Reply, the Government of the United Kingdom will deal with the submissions in the French Counter-Memorial (Part III, pp. 401-402), to the effect that French sovereignty existed over the Minquiers and the Ecréhous groups of Islets from 1204 to the end of the 18th century. These submissions are :

- (a) "That the French Republic is entitled to claim as its own all the islands which are dependencies of the former Duchy of Normandy, excepting those which remained in possession of the King of England, as was declared in Article 4 of the Treaty of Paris of 1259, and in Article 6 of the Treaty of Calais of 1360".
- (b) "It is on the Government of the United Kingdom that the burden rests to furnish proof of its possession. As it has not furnished that proof in the case of the Ecréhous and the Minquiers, those islands must be assigned to France".
- (c) "It is moreover established that, since 1204, the island of Ecréhou has been under French sovereignty, through the intermediary of the abbey of Val Richer, to which it had been given in free alms".
- (d) "That the facts alleged by the British Government in its Memorial in no way prove that it had performed any acts involving territorial sovereignty on the Ecréhous or the Minquiers before the end of the eighteenth century".

103. The evidence which the French Counter-Memorial brings forward to support these submissions is based on :

- (a) Diplomatic Acts (1202-1655) relating to the Channel Islands (pp. 377-383) ;
- (b) Acts relating to the Ecréhous Islets (pp. 384-396) ;
- (c) Acts relating to the Minquiers Islets (pp. 397-399).

The United Kingdom Government will seek to shew that the conclusions drawn from the above Acts neither rebut the United Kingdom's title to sovereignty nor establish any French title to sovereignty. Diplomatic Acts (1202-1655) relating to the Channel Islands will be dealt with in Sub-Section 1, and Acts relating to the Minquiers and the Ecréhous, in particular, from the 13th to the 18th centuries, will be dealt with in Sub-Section 2.

Sub-Section 1 : Diplomatic Acts (1202-1655) relating to the Channel Islands

104. The first Diplomatic Act on which the French Counter-Memorial relies is a judgement of the Court of King Philip II (Philip Augustus) of France in 1202. This judgement, it is alleged :

- (a) "in accordance with feudal law", deprived King John of England of "all the lands which he held from the King of France" (p. 383) ;
- (b) "authorised the King [of France] to take possession of the Channel Islands which were dependencies of Normandy" (p. 378).

105. The judgement is, therefore, claimed in the French Counter-Memorial to establish a satisfactory "juridical starting point" (p. 383) in the case. On this basis, the French Counter-Memorial

proceeds to argue that, since the legal effect of the judgement was to give sovereignty over the Channel Islands to the King of France as a part of the Duchy of Normandy, the onus of proving that the Minquiers and the Ecréhous (like the rest of the Channel Islands) escaped the legal consequences of the judgement rests upon the United Kingdom Government. The subsequent Diplomatic Acts do not, according to the French Counter-Memorial, provide proof that the Minquiers and the Ecréhous escaped these consequences.

Submissions of the United Kingdom Government

106. The United Kingdom Government, on the contrary, will submit that :

- I. The original title of the English Crown to the whole of the Channel Islands can be traced back to 1066, when William, Duke of Normandy, became King of England.
 - II. The judgement of 1202 by which, as the French Counter-Memorial alleges, King John was legally condemned to forfeit all that he held of the French King, is an Act whose legality can be challenged, and is, therefore, not a satisfactory basis for the French submissions.
 - III. The situation of fact after 1204 was that the King of France held Continental Normandy, and the King of England held the Channel Islands¹.
 - IV. The above situation of fact was placed on a legal basis by the Treaty of Paris of 1259.
 - V. The subsequent Treaties and Truces in no way affected, as regards the Channel Islands, the legal settlement made by the Treaty of Paris of 1259.
 - VI. It is for the Government of the French Republic to shew that the Minquiers and the Ecréhous were excluded from the general settlement of 1259, which did not disturb the King of England in his continuous possession of the Channel Islands as a whole.
- I. *The original title of the English Crown to the whole of the Channel Islands can be traced back to 1066, when William, Duke of Normandy, became King of England*

107. The origin of the United Kingdom's title to the whole of the Channel Islands goes back to 1066. In that year, the Battle of Senlac Hill, at which William, Duke of Normandy, defeated the English King, Harold II, resulted in the union of the Duchy

¹ The United Kingdom Government do not consider that the temporary occupation of the Islands by the French during certain short periods in the 14th and subsequent centuries affects the general validity of this submission.

of Normandy with the Kingdom of England¹. Between 1087, the date of William I's death, and 1154, the date of the accession of Henry II, there were two occasions when the union of England and Normandy was temporarily weakened, although never broken. The first occasion was the partition of William's dominions under his will, by which he gave England to his second son, William II, and Normandy to his eldest son, Robert. In 1100, however, when William II died without issue, Henry, the youngest son of William I (afterwards Henry I), seized the throne of England and, in 1106, also ousted his brother, Robert, from the Duchy. The second occasion arose from the dispute over succession to the Crown between Maud, Henry I's daughter, and Stephen, his nephew, who, immediately after his uncle's death in 1135, had himself crowned King of England. Taking advantage of civil war in England between Stephen and Maud, Geoffrey, Count of Anjou, the latter's husband, occupied the whole of the Duchy which, in 1150, he formally made over to their son, Henry. In 1153, Stephen, whose own son had just died, agreed to acknowledge Henry as his heir. Thus, when Henry (already in possession of the Duchy) succeeded Stephen as Henry II of England in 1154, Kingdom and Duchy were once more united under one ruler. Henceforth, the Duchy remained firmly in English hands until the continental portion was lost by King John to King Philip II of France in 1204. But, as the United Kingdom Government will shew, the insular portion (*i.e.*, the Channel Islands) was retained.

II. *The judgement of 1202, by which, as the French Counter-Memorial alleges, King John was legally condemned to forfeit all that he held of the French King, is an Act whose legality can be challenged, and is, therefore, not a satisfactory basis for the French submissions*

108. In considering the validity of the judgement of 1202, it is necessary to appreciate the motive behind the steps which Philip II took to deprive King John of his French possessions, and of the Duchy of Normandy in particular. French Kings had long been alarmed by the threat of a powerful Normandy² in the possession of an independent sovereign, and Philip was seeking a legal pretext to rid himself of such a danger. In the words of the eminent French historian, C. Petit-Dutaillis :

"Les raisons de la brouille entre Jean et les Poitevins³ ne nous importent pas.... Philippe Auguste eut la volonté d'agrandir le

¹ The Channel Islands themselves had been incorporated by the Dukes of Normandy within their possessions early in the 10th century, when they began to extend their conquests towards the West.

² At least since the middle of the 11th century, successive French Kings had shewn the greatest concern at the expansionist policy pursued by the Dukes of Normandy.

³ It was a dispute between King John of England and his tenant, the Count de la Marche, both vassals of the King of France, which gave Philip II the opportunity of intervening with the intention of furthering his own ends.

débat et prit ses mesures pour faire tomber en commise *tous les fiefs français* des rois d'Angleterre, y compris la Normandie. La Normandie était l'objet de sa convoitise..." [Italics in the original] ¹.

It is widely accepted that Philip was prepared to employ any means to oust John from his French possessions, and from the Duchy of Normandy, in particular. There are, therefore, strong grounds for suspecting that Philip would not be overscrupulous in the methods which he was prepared to employ to drive John from his possessions.

109. In the second place, no official record of the text of the judgement of 1202 is known to exist. All that has come down to us is a report of the proceedings in Ralph of Coggeshall's *Chronicon Anglicanum* ². According to Petit-Dutaillis, the sentence was passed probably by the acclamation of the assembled Peers of France, and was never "rédigée" (*i.e.*, engrossed as an official document). This absence of any official record could, however, well lead to errors in Coggeshall's account ³.

110. In addition to the foregoing considerations, the legality of the sentence as reported by Coggeshall has been challenged by modern scholars and by contemporary chroniclers (amongst them Coggeshall himself). Considerable doubts are expressed whether the judgement included John's Duchy of Normandy at all. Coggeshall himself merely states that John was summoned "*quasi comes Aquitanie et Andegavie*" ⁴ ("as though Count of Aquitaine and Anjou"). Sir Maurice Powicke, the distinguished English medieval historian, observes:

"It should be remembered that the learned [French] jurist M. Guilhiermoz doubts whether the sentence passed on John by the French court in 1202 could be applied to Normandy. The point is not whether this view is correct, but that there was room for doubt" ⁵.

Petit-Dutaillis repeats the above doubts:

"Il [Philip II] engagea donc avec Jean une longue discussion, qui lui permit de faire ses préparatifs et d'attendre des circonstances politiques favorables; puis, alors qu'il avait cité d'abord son adversaire *comme comte d'Aquitaine et non pas comme duc de Normandie* [italics added], il fit volte-face, avec le sans-gêne qui lui

¹ C. Petit-Dutaillis, *Le Déshéritement de Jean Sans Terre et le Meurtre d'Arthur de Bretagne* (Paris, 1925), p. 6.

² *Radulphi de Coggeshall, Chronicon Anglicanum* (Ed. J. Stevenson, Rolls Series), pp. 135-6.

³ There even exists some doubt whether a trial was ever held. Such a doubt, for example, is (according to Petit-Dutaillis) expressed by the distinguished French medieval historian, Charles Bémont.

⁴ Coggeshall, *op. cit.*, p. 135.

⁵ F. M. Powicke. *The Loss of Normandy (1189-1204)* (Manchester, 1913), p. 397, n. 5.

était habituel, et obtint de sa cour une sentence générale, qui privait Jean de *tous ses fiefs français*; sentence fondée, non point sur des faits particuliers au Poitou, *mais sur les refus d'obéissance vassaliques de Jean et de ses ancêtres*" [Italics in the original]¹.

III. Even assuming that John was summoned as Duke of Normandy, Coggeshall reports that Philip's action in ordering him to come to Paris was considered illegal, because, according to an ancient privilege, the Duke of Normandy could not be summoned to appear for any of his French possessions outside his Duchy².

III2. Other significant facts which render suspect the legality of the judgement are as follows:

- (a) In 1217 the Treaty of Lambeth between Henry III and Louis, Philip's eldest son, was signed³. Then, Louis, according to Roger of Wendover and an anonymous London chronicler, promised the return of Henry's lost possessions (*i.e.*, those on the Continent), when Louis should succeed his father; "and this promise, whatever its origin and character may have been, was the basis of Henry's later contention that in spite of the conquests of Philip and the judgments of his court, the succession to Normandy and the other continental lands still lay in himself"⁴.
- (b) Doubts were subsequently expressed also on the question of the legality of disinheriting John's heir, Henry III, who, since he was not born in 1202 (he was, in fact, born in 1207), could not be said to have been involved in his father's forfeiture.
- (c) In addition, certain French chroniclers suggest that King Louis IX (Saint Louis) himself doubted its legality. Thus, the anonymous Minstrel of Rheims says:
 "But some people say. 'Wherefore, if he [King John] had failed to appear at the Court of his Lord, he had no land to forfeit, for he had committed no criminal act against the King [Philip II]'. Some say that the King of France could with justice seize the land because of King John's default, and collect the revenues; but if King John or his heirs wished to come to the King, and asked him for the possession of their land to establish their rights, and if they wished to make amends for the default by the judgement of their peers, he [Louis IX] ought to return it to them. And because of this doubt and of others as

¹ Petit-Dutaillis, *op. cit.*, p. 6.

² Coggeshall, *op. cit.*, p. 136.

³ Rymer, *Fœdera, &c.* (Revised Ed.), vol. i, pt. i, p. 148.

⁴ Powicke, *op. cit.*, pp. 394-5.

well, he [Louis IX] made peace with the King of England, and re-established friendly relations" ¹.

Louis IX was, it should be noted, evidently prepared for various reasons to negotiate with Henry III to bring about a cessation of the hostilities which had arisen out of the partial seizure by Philip II of the English King's possessions in France ². Thus, the judgement of 1202 cannot be accepted as a satisfactory basis for the French submissions, because (i) doubts exist concerning the actual sentence it contained; (ii) the validity of any sentence has been challenged; (iii) it was regarded as an unsatisfactory instrument by the French Crown itself; and (iv) it was never completely carried out, and resulted in a long and inconclusive struggle with England.

III. *The situation of fact after 1204 was that the King of France held Continental Normandy, and the King of England held the Channel Islands*

113. Philip II began his seizure of Normandy in 1202, using the judgement of that year as his legal pretext. By 1204 he had completely conquered Continental Normandy. But the Channel Islands, though some of them changed hands during the ensuing thirteen years, were firmly in English hands by the end of 1217. There were two main reasons for this fact. First, the English, realizing that the Islands were a convenient base for future operations against their lost possessions on the mainland, strengthened the defences of the Islands, and held on to them with determination. Secondly, the majority of the population in the Islands was in favour of John's rule. As R. Besnier, the French historian, summarizes the situation :

¹ *Récits d'un Ménestrel de Reims au Treizième Siècle* (Ed. Natalis de Wailly, Paris, 1876), p. 235. The French text is as follows :

"Mais aucunes genz dient. 'Pour ce s'il [King John] defailli à la court le roi son seigneur, n'avoit il pas terre forfaite à perdre; car il n'avoit fait envers le roi nul fait crimineil'. Si dient que li rois de France pot par raison saisir la terre par la defaute dou roi Jehan, et penre les issues; mais se li rois Jehans ou si oir vousissent venir au roi, et li requaissent saisine de leur terre parmi droit faisant, et amendeir les defautes par le jugement des pers, il [Louis IX] la deust ravoir.

"Et pour ceste doute et pour autres a il [Louis IX] fait pais au roi d'Engleterre et bon acort".

² M. Gavrilovitch, *Etude sur le Traité de Paris de 1259* (Paris, 1899), pp. 43-4, states :

"Il n'est pas étonnant alors que Guillaume de Nangis, le Ménestrel de Reims, et beaucoup d'autres admettent, comme Mathieu de Paris, que ce soit seulement la piété, la générosité et les scrupules de conscience qui ont poussé saint Louis [Louis IX] à faire cette paix avec le roi d'Angleterre [Henry III], et cela pour satisfaire uniquement sa conscience timorée à l'égard de la légitimité de la confiscation prononcée contre Jean Sans-Terre". And, again (*ibid.*, p. 44) : "C'est d'abord le fait que saint Louis avait obtenu du pape [Alexander IV] la permission de transformer en aumône (ob conscientia scrupulum evitandum) ce qu'il croyait posséder injustement et dont il ne savait à qui faire la restitution. Ce cas de conscience le préoccupait vivement".

"Malgré tout [*i.e.*, the support which King Philip received in the Islands], le roi de France échoue [*i.e.*, in his attempt to take them] ; la majorité de la population lui est hostile, car le vainqueur ne peut accorder ce que le roi d'Angleterre, duc de Normandie, promet pour ne pas tout perdre. Les Français occupent en vain les îles de 1204 à 1205...."¹.

114. Evidence that the English did drive the French out of any of the Channel Islands which they might have occupied for a time is shewn by a Plea before the English King's Justices in 1309. In this, it was put to the Norman Abbot of Blanchelande, who was defending his right to the advowson of St. Martin's Church, Guernsey, that :

".... he [the Abbot] cannot deny but that a certain King of France disinherited the lord John formerly King of England of the Duchy of Normandy & then the said King of France on two occasions had ejected the said lord John the King &c. from these islands and occupied them as annexed to the said Duchy. And the said lord J. the King with armed force on two occasions reconquered these islands from the said King of France. And from that his said second conquest he & his posterity Kings of England have held these islands up to the present time"².

115. Again, by the Treaty of Lambeth of 1217 (see paragraph 112 (a), above), it was agreed that any of the Islands held at that time by the followers of Eustace the Monk, a temporary adherent of Louis, who had forsaken the English cause, were to be returned to the English King.

"*Item, de insulis sic fiet ; dominus Lodovicus mittet litteras suas patentes fratribus Eustachii Monachi, præcipiens quod illas reddant domino Henrico Regi Angliæ....*" ("Also, let the islands be dealt with thus ; let the lord Louis send his letters patent to the brethren of Eustace the Monk, notably that they [the Islands] may be returned to the lord Henry King of England....")³.

116. After 1217, Henry III held the Channel Islands *de facto*. Moreover, he continued to urge his claim to Continental Normandy, but made no attempt to wrest the Duchy from the French. He did, however, make half-hearted expeditions to Poitou (which he had lost in 1224) in 1230, and to Gascony in 1244. In 1229, he had been willing to accept the loss of Continental Normandy, provided that the other lost territories on the mainland were restored to him ; and, according to the celebrated chronicler, Matthew Paris, Louis IX would not only have been prepared to accept a compromise, but also even to restore Normandy itself⁴. In the end, however, Henry,

¹ R. Besnier, *La Coutume de Normandie, Histoire Externe* (Paris, 1935), p. 254.

² *Rolls of the Assizes held in the Channel Island A.D. 1309* (Société Jersiaise, 18th Pubn.), pp. 11-12.

³ Rymer, *loc. cit.*

⁴ Powicke, *op. cit.*, p. 396.

after protracted negotiations, was obliged to accept from Louis a far less advantageous arrangement regarding his lost possessions—namely, the Treaty of Paris of October, 1259.

IV. *The above situation of fact was placed on a legal basis by the Treaty of Paris of 1259*

117. By 1259 (the year of the Treaty of Paris) the situation of fact was, therefore, as follows. The French Kings, Philip II, Louis VIII and Louis IX, had consolidated their hold on Continental Normandy, but the Channel Islands remained in the hands of the English King. In other words, the judgement of 1202, even if it had legitimately (which is doubtful) included the Duchy of Normandy within its scope, had been limited in its practical application to Continental Normandy. The Treaty of Paris of 1259 (see Annex A 1, United Kingdom Memorial, Vol. II) gave legal effect to the conquests of Philip II and Louis VIII, which hitherto had been contested, and so put an end to the dispute for which the judgement of 1202 had been responsible. The feudal position, as it existed before 1202, was restored¹, except that the English Kings now recognized in name the loss of Continental Normandy, Anjou, Maine, Touraine, and Poitou (*i.e.*, those territories which had been indisputably conquered by Philip II and Louis VIII). Nowhere in the Treaty are the Channel Islands expressly mentioned by name², for they were then firmly in English hands. Thus, when Henry III granted the Islands in fee to the Lord Edward, his son (afterwards Edward I) in 1254, they were granted on condition that they "should never be separated from the English Crown, and that no one, by reason of the grant, might at any time claim any right therein, but that they remain wholly to the Kings of England for ever"³.

118. The fact that the Channel Islands were (as they still are) considered an entity, physically distinct from Continental Normandy in the Middle Ages, cannot be stressed too strongly. Indeed, French historians and geographers themselves refer to them as "un archipel" or "les Iles Anglo-Normandes". Thus, it is incorrect to say, as is frequently alleged by the French Counter-Memorial, that a failure to enumerate by name any particular Island in any relevant document, implies that any Island lay outside this entity. When it was desired in those days to refer to them as a group, phrases such as "*Les Isles*", "*Les îles de Guernese*", "*Insule de Gerneseye, Jerseye, Serk et Aurneye*" (the most usual form), "*Gerneria et Geresey et*

¹ As Besnier rightly remarks (*op. cit.*, p. 255) "... les relations franco-anglaises provisoirement réglées en 1214, 1217, 1220, fixent officiellement la situation internationale des îles dans le traité de 1259 ;"

² The significance of Article 6 of this Treaty is discussed in paragraph 126, below.

³ J. H. Le Patourel, *The Medieval Administration of the Channel Islands 1199-1399* (London, 1937), p. 38.

ceteræ insulæ maris", "*Insulæ de Geresey et de Gerneseye*", etc., etc., were used. So far as the Channel Islands are concerned, abundant examples of the failure to enumerate individually the several Islands which the English indisputably possessed may be found on the English Chancery Rolls and in various diplomatic documents. An example, indeed, is to be found in the Truce of London of 1471 (see Annex A 152 to the present Reply), between Henry VI and Louis XI, cited by the French Counter-Memorial itself (p. 382). Because only Guernsey, Jersey and Alderney are mentioned in the Truce, the French Counter-Memorial argues that the Minquiers and the Ecréhous were not in the possession of the English King. But it will be noted also that neither Sark, nor Herm, nor Jethou (Islands indisputably in English hands) is mentioned. Thus, any attempt to see a "*caractère limitatif*" (French Counter-Memorial, p. 382), in the wording of the Truce itself, and elsewhere, is without foundation.

119. The fact that the Channel Islands were considered to be an entity is also shewn by numerous Administrative Acts which deal exclusively with them. Already, before the end of the 12th century, they were administered locally¹, and there is ample evidence that they continued to be so administered during the 13th century, and subsequently. Thus, to find anything "restrictive" in a failure to give a detailed enumeration of every small Island of the group (as the French Counter-Memorial (p. 382) would try to do) is to read into the texts of medieval documents a significance which they are incapable of bearing.

120. The above contentions, namely, that the Channel Islands are to be regarded as an entity distinct from Continental Normandy, and, further, that, as an entity (though with an autonomous administration), they remained in English hands, are supported even by the opinions of several well-known French historians. A brief selection may be cited. For instance, J. Havet remarks :

"L'archipel qui est situé dans la Manche, à l'ouest de la presqu'île de Cotentin, fit jusqu'au XIII^e siècle partie du duché de Normandie ; à ce titre, il était compris dans les domaines du roi d'Angleterre, qui tenait le duché en fief du roi de France. Au commencement du XIII^e siècle, le roi de France, Philippe-Auguste, ayant prononcé la confiscation du fief, conquit toute la partie continentale du duché et la réunit à son domaine direct ; il ne put prendre les îles du Cotentin, qui restèrent au roi d'Angleterre, Jean, et furent ainsi de fait séparées de la Normandie. En droit, cette séparation fut consacrée par le traité de 1259, entre les rois de France et d'Angleterre, qui attribua définitivement au premier

¹ "The Islands appear to have been farmed as one unit by William de Courcy before 1177 ; they are grouped together under the heading 'Insule' in the [Norman Exchequer] roll of 1180 ; the Islands were held as one unit by Count John [afterwards King John], c. 1198 ; they were granted by him to Peter de Préaux in 1200, and they were certainly so administered in the thirteenth century" (Le Patourel, *op. cit.*, p. 27, note 5).

la Normandie continentale en toute souveraineté, au second les îles à tenir par foi et hommage du roi de France"¹.

121. R. Besnier stresses the "autonomie des îles"² in mentioning that Henry III proclaimed their autonomous state on the 20th May, 1226, when he ordered Richard de Grey, Warden of the Islands, to

"traiter les hommes loyaux de Jersey, Guernesey et autres îles confiées à sa garde d'après les mêmes libertés et mêmes coutumes qu'ils étaient traités du temps du roi Henry notre grand-père, du roi Richard notre oncle, et du roi Jean notre père".

Later, Besnier, in explaining the large degree of administrative autonomy which the Islands gained during the 13th century, observes :

"La capitulation de Jean concrétise le succès des îles normandes sur le roi [*i.e.*, John]; pour les insulaires, le souverain anglais ne sera jamais que le duc de Normandie. D'autre part, les relations franco-anglaises provisoirement réglées en 1214, 1217, 1220, fixent officiellement la situation des îles dans le traité de 1259; le roi de France, outre les autres possessions des Plantagenets, acquiert définitivement la souveraineté de la Normandie continentale, mais le roi d'Angleterre continue à tenir les îles par foi et hommage du roi de France"³.

Such examples serve to illustrate the views held by French historians about the Channel Islands. They distinguish between "la Normandie continentale" (which was acquired, as they point out, by the French King), and "l'archipel" or "les îles normandes" (which they admit remained in the possession of the English Kings).

122. With specific reference to the Treaty of Paris, the Channel Islands, as the French Counter-Memorial itself mentions (p. 379), are only referred to in vague terms. In Article 4 it is stated :

"... And for what we [Louis IX] have given the king of england and his heirs in fee and in demesne, the king of england and his heirs will do liege homage to us and to our heirs, kings of france, and also for Bordeaux, and for Bayonne, and for Gascony and all the land which he holds on this side of * the sea of england in fee and in demesne and for the islands, if any there be which the king of england holds which are of the realm of france, and he shall hold of us as peer of france and duke of Aquitaine;" (United Kingdom Memorial, Vol. II, Annex A 1, p. 142).

¹ J. Havet, *Les Cours Royales des Îles Normandes* (Paris, 1878), p. 1. Havet, it will be observed, states that the Islands continued to be held of the King of France "par foi et hommage" (as also does Besnier : see paragraph 121, above). The United Kingdom Government will shew (see paragraphs 124 and 125, below) that probably even this formal link had disappeared by 1259.

² Besnier, *op. cit.*, p. 255, n. 2, citing Sélosse, *L'Île de Serk* (Paris, 1928), p. 21.

³ Besnier, *loc. cit.* The instruments referred to by Besnier, as "provisionally settling" Anglo-French relations, were : the Truce of Chinon (1214), the Treaty of Lambeth (1217) (see paragraphs 112 (a) and 115, above) and the renewed Truce of Chinon (1220).

* In Annex A 1 to the United Kingdom Memorial, the word "*deca*" was mistranslated "beyond".

By Article 6, the King of England, Henry III, agreed to relinquish :

".... to us [Louis IX] and to our brothers any right the kings of england have or ever had in the things which we or our brother hold or ever used to hold, that is to say in the duchy and all the land of Normandy, in the county and all the land of anjou, of Touraine and Maine, and in the county and all the land of Poitiers or elsewhere in any part of the Realm of france or in the islands, if any are held by us or by our brother [*i.e.*, by Louis IX or by his brother] or by others in our or their behalf, and all arrears". (*Ibid.*)

123. The French Counter-Memorial (p. 379) alleges that Article 4 of the Treaty "shows that the King of England owed homage in respect of all the islands belonging to the Kingdom of France which he held". These "islands", the French Counter-Memorial contends, included not only "the oceanic islands off Aunis and Saintonge"¹, but also "those in the Channel situated 'on this side of the English sea' which had formerly belonged to the Duchy of Normandy".

124. It is, however, by no means certain that the Channel Islands were included at all within the provisions of Articles 4 and 6 of the Treaty of Paris. The lands referred to in Article 4, for all of which, it should be noted, the King of England was to do homage as "peer of france and duke of Aquitaine", are divided into three categories : (i) those which the King of France is giving to the King of England ; (ii) those which the King of England holds, *i.e.*, Bordeaux, Bayonne and Gascony, together with "all the land which he holds on this side of the sea of england in fee and in demesne" ; (iii) "the islands, if any there be, which the king of england holds which are of the realm of france." The Channel Islands are certainly not included in (i) because, as the United Kingdom Government will shew (see paragraph 127, below), these were in the possession of the King of England at the time when the Treaty was being negotiated ; nor can they have been included in (ii), because all the territories here referred to are on the mainland in the south-west of France.

125. The question of interpretation can, therefore, be confined to the significance of (iii), *i.e.*, "for the islands, if any there be, which the king of england holds which are of the realm of france...." It would seem probable that such islands must refer to the "oceanic islands off Aunis and Saintonge". Such an inference is supported by the following consideration. The King of England held his French possessions as "peer of france and duke of Aquitaine" : it would, indeed, be unlikely that he would do homage for the Channel Islands in this capacity, since these territories could never be regarded as appurtenant to, still less a parcel of, the Duchy of Aquitaine, which lay in south-western France.

¹ Saintonge was an area lying on the northern shore of the estuary of the Gironde. Aunis (which was not mentioned in Article 4 of the Treaty of Paris) was an area lying immediately to north of Saintonge.

126. As regards Article 6, there are grounds for holding that the Channel Islands did not come within the scope of its provisions. This Article states that the King of England undertook to relinquish all that he and his brothers held "in the duchy and all the land of Normandy, in the county and all the land of anjou, of Touraine and Maine, and in the county and all the land of Poitiers or elsewhere in any part of the Realm of France or in the islands, if any are held by us or by our brother [*i.e.*, by Louis IX or by his brother] or by others...." Here, it will be observed, the King of England was completely *relinquishing* the territories specified, and, accordingly, not undertaking to do homage in respect of them; for, as has been stated in paragraphs 115 to 117, above (see also paragraph 127, below), the Channel Islands were, at the date of the Treaty, in fact held by the King of England. Accordingly, they cannot have been among the islands held by the King of France, over which all rights were, by virtue of Article 6, relinquished by the King of England. It should also be noted that the French Counter-Memorial (p. 379) asserts that the King of England owed homage in respect of the Channel Islands. If this contention be correct (which the United Kingdom Government are not prepared to admit), it follows that the Government of the French Republic must themselves be taken to have admitted that the King of England did not *relinquish* the Channel Islands, and that they are, therefore, outside the scope of Article 6.

127. Even if it were conceded that the King of England did homage for the Channel Islands in 1259, it should be clearly understood that this in no wise affected the *de facto* possession of the Channel Islands by the King of England. That he was in *de facto* possession of these Islands, at the very time when the Treaty was being drafted¹, is shewn by an order of Henry III, dated the 5th July, 1258, to Drew de Barentin, Sub-Warden of the Islands, in the following terms:

"Mandate to Drew de Barentino [*sic*], on his fealty and homage and on pain of his body and lands, to guard the islands of Gernere and Jeresey, and the *king's other islands* in his keeping; not permitting Edward the king's son, or any one on his behalf, to put any constables in the castles or munitions of the said islands; or the said Edward or any one who can use force against the said Drew, to enter the said islands, castles or munitions without the king's special mandate"². [*Italics added*].

128. Moreover, even if it could be shewn that the Kings of France claimed suzerainty over the Channel Islands in 1259, the

¹ The text of the Articles of the Treaty was agreed in May, 1258, though the Treaty was not actually ratified until October, 1259. See the paper by the French historian, Dr. P. Chaplais, "The Making of the Treaty of Paris (1259) and the Royal Style" (*English Historical Review*, April, 1952, p. 240).

² *Cal. Patent Rolls, 1247-1258*, p. 640.

United Kingdom Government contend that such a suzerainty would only have been of a very tenuous nature. There is no evidence that the French Kings ever, in any way, exercised it as, for example, they did in Gascony¹. Furthermore, because of a failure to exercise even a tenuous sovereignty, such sovereignty (supposing it ever to have existed) certainly ceased in time to be even a matter of form. The last occasion on which an English King did homage for anything which he held of the King of France was in 1329. This was when Edward III did homage for the Duchy of Guyenne and its appurtenances (in which the Channel Islands were not included)². In any case, all semblance of homage for anything which the King of England held of the King of France automatically disappeared when Edward III put forward his claim to the Kingdom of France in 1336.

129. The legal settlement established by the Treaty of Paris was, therefore, as follows. The King of England acknowledged the suzerainty of the King of France over any of his possessions in France itself, and also for any islands which he held off Aunis and Saintonge. But it appears improbable that the Channel Islands were included in the Treaty as territories for which the King of England was required to do homage. Even if he did homage for the Islands, this was purely formal, and for a limited period. In any case, both before and after the Treaty of Paris, they were firmly in the hands of the English King.

V. *The subsequent Treaties and Truces in no way affected, as regards the Channel Islands, the legal settlement made by the Treaty of Paris of 1259*

The Treaty of Calais (or Brétigny) of 1360

130. In discussing the significance of Article 6 of the Treaty of Calais³ the French Counter-Memorial (p. 380) distinguishes two kinds of islands: "the islands adjacent to the lands, districts

¹ In Gascony, the Kings of France exercised a suzerainty which consisted in the hearing of appeals from the Gascon Courts in the *Parlement* of Paris. This, the Kings of England during the 13th and 14th centuries, did their best to prevent, and ultimately set up a sovereign Court in Aquitaine. Gascon appeals were addressed to the King and Council in England in such numbers that Triers of Gascon petitions were often appointed at the opening of the English Parliament. But, as regards the Channel Islands, petitions were certainly addressed to the King and Council in England, and never (so far as can be ascertained) to the King of France.

² Rymer, *Foedera*, &c. (Revised Ed.), vol. ii, pt. ii, p. 765.

³ The first five Articles are concerned with the cession to the King of England of certain territories on the mainland of France, together with confirmation to him of others already in his possession, namely, Guyenne and Gascony, Agenais, Périgord, Quercy, Rouergue, the County of Bigorre, Limousin, Saintonge, Angoumois and Poitou (in the West and South-West), and the Counties of Montreuil, Ponthieu and Guînes (in the North); in addition, Calais, which the King had captured in 1347, was to be retained by him. It will be noted that Normandy is not mentioned.

and places mentioned above', that is to say, first, the Oceanic Islands, Noirmoutiers, Rê[sic], Yeu, Oléron and others, dependencies of the provinces ceded by the King of France" (p. 380), and "the islands which the King of England already held, namely, the Channel Islands adjacent to Normandy not forming part of the districts specified above" (p. 380). It then proceeds in regard to the latter islands to suggest a second distinction, namely, that: "The King of France, who retained Normandy, continued to be lord of the islands near the coast, which were dependencies of Normandy and were not at that time held by the King of England" (p. 380), though the remainder continued in the possession of the King of England. But the French Counter-Memorial brings forward no evidence in support of this last statement, which is, indeed, pure conjecture. Nor does the Treaty itself contain any evidence whatsoever in support of a distinction being made between some of the Channel Islands lying near the Normandy coast of which the King of France is alleged to be "lord", and others of the same group, which were held by the King of England. If, indeed, it were a question of geographical proximity, Alderney (which the French Counter-Memorial (p. 383) admits to have been English) is nearer to the Normandy coast than are the Minquiers.

131. The distinction made by the Treaty clearly lies between those islands adjacent to the lands which the King of France was ceding to the King of England under this Treaty (*i.e.*, Noirmoutiers, etc.), and those "which the King of England now holds", *i.e.*, the Channel Islands *as a whole*. Proof that this is so lies in the general considerations advanced above (see paragraphs 118-121) that the whole group of the Channel Islands constituted an entity in the Middle Ages. In addition, specific proof that the Minquiers and the Ecréhous were included in the group is found in Letters Patent, dated the 28th June, 1360, (*i.e.*, at a time when the Treaty of Calais itself was being drafted at Brétigny), by which Edward III of England granted to:

"... Edmund Cheyne, keeper of the islands of Gerneseye, Jere-seye, Serk and Aurneye, and *the other islands adjacent thereto*, that he may have the said keeping for a further year beyond the term of 3 years from 2 April, 32 Edward III [1358], for which it was committed to him by letters patent of 6 [*recte* 7] May in the same year...., rendering 300*l.* yearly at the Exchequer by equal portions at Michaelmas and Easter"¹. [*Italics added*].

Such a grant clearly shews that the larger islands and the smaller ones adjacent to them—in other words, the whole archipelago of the Channel Islands—were in English hands.

132. It cannot, therefore, be argued, as the French Counter-Memorial appears to argue, that the Treaty of 1360 furnishes

¹ *Cal. Fine Rolls*, vii, 128.

evidence that certain of the Channel Islands were not in the possession of the King of England, and that the onus of proving that the Minquiers and the Ecréhous escaped this alleged limitation rests upon the United Kingdom Government. Nor can it be maintained, as the French Counter-Memorial appears to claim, that the King of France remained lord of any "islands near the coast" of Normandy. The United Kingdom Government, therefore, maintain that, in 1360, just as in 1259, the Channel Islands, *as a whole*, were firmly in English hands. The onus of proving that any of them escaped this possession, whether by Articles in the Treaty of Calais or of Paris, rests upon the Government of the French Republic. Such proof, the United Kingdom Government maintain, has not been adduced by the French interpretation of either of these two Treaties. The contemporary evidence which has been exhibited above proves, on the other hand, that an interpretation, which maintains that the whole archipelago was an English possession, is the correct one.

The Treaty of Troyes of 1420

133. The legal and feudal situation as regards the Channel Islands was in no way altered by the Treaty of Troyes of 1420, between Charles VI of France and Henry V of England (see *United Kingdom Memorial, Vol. II, Annex A 3*), despite the contention of the French Counter-Memorial (pp. 381-382) that this Treaty established a new situation. In support of this contention, the French Counter-Memorial cites in particular Article 18¹ of the Treaty:

"Also, when it shall happen that our said son, King Henry, come to the crown of france, the Duchy of normandy and also the other places and each of them conquered by him in the Kingdom of france shall be under the Jurisdiction, obedience and monarchy of the said crown of france".

Into this Article the French Counter-Memorial would read the significance that, when Charles VI of France was succeeded as King of France by Henry VI of England in 1422 (Henry V of England having died shortly before Charles VI), "it was to France that the Anglo-Norman islands and all the lands conquered, in general, by the English were then attached. It may therefore be said that the Treaty of Troyes annulled the Treaty of Calais and re-established the unity of the Kingdom of France" (pp. 381-382).

134. This Article, it will be observed, refers to "the Duchy of normandy and also the other places and each of them conquered by him [Henry V] in the Kingdom of france shall be under the Jurisdiction of the said crown of france". But Henry V

¹ Article 22 in the text of the Treaty as printed (from the original MS.) in the *United Kingdom Memorial, Vol. II, Annex A 3*, p. 148.

certainly had no need to *conquer*, and would not have *conquered*, the Channel Islands, for they had been held by the English Crown (except for the temporary occupation of some of them) ever since 1204, and were firmly in his possession before he invaded France. Consequently, there is no mention of them in the Treaty of Troyes as one of Henry's conquests. Moreover, that there was no intention by Henry to merge them with the other possessions of the French King is shewn by the fact that John, Duke of Bedford, the King's brother, to whom the Islands, with their appurtenances, were granted in tail male in 1415¹, continued to hold them until his death without surviving heirs in 1435. They then reverted to the King of England, and were re-granted to Humphrey, Duke of Gloucester, Henry VI's uncle, in 1437². Both these grants were made by Letters Patent issuing from the English Chancery.

135. In face of the above evidence, it cannot be held that the Treaty of Troyes created a new situation of fact, by which the Channel Islands were attached to France. On the contrary, all the available evidence shews that they remained an entity in the possession of the English Crown.

The Truce of London of 1471, and the Treaties of Picquigny-Amiens of 1475 and of Etaples of 1492

136. The remaining diplomatic instruments cited in the French Counter-Memorial (pp. 382-383), which include two 17th century Treaties (see paragraph 138, below), can be treated more briefly. In Article 2 of the Truce of London of 1471 (see Annex A 152 to the present Reply) between the restored King Henry VI*, and King Louis XI of France the words "the islands of Guernsey, Jersey and Aimersy [*sic*] [Alderney], and other countries, islands, lands and seigneuries which are, or shall be, held and possessed by the said King of England or by his subjects", are alleged by the French Counter-Memorial (p. 382) to signify that "the only Islands specified are those which, as exceptions, did not belong to the Kingdom of France" (p. 382). The French Counter-Memorial, however, ignores the phrase in the Article "and other countries, islands, lands and seigneuries", where "islands" obviously refers to the remaining Channel Islands. Moreover, if the Article possess a "caractère limitatif", as alleged by the French Counter-Memorial, in that it names only the Islands which were in English possession (*i.e.*, Guernsey, Jersey and Alderney), how is this to be reconciled

¹ *Forty-fourth Annual Report of the Deputy Keeper of the Public Records* (London, 1883), p. 575, citing French Rolls, 3 Hen. V., m. 6. "In tail male": *i.e.*, to his heirs male.

² *Forty-eighth Annual Report of the Deputy Keeper of the Public Records* (London, 1887), p. 317, citing *ibid.*, 15 Hen. VI., m. 5.

* Henry VI (1422-1461) was restored to the throne of England during the brief exile of Edward IV (1461-1483), from October, 1470, to April, 1471.

with the statement (p. 383) that the United Kingdom Government "can easily prove prolonged possession in the case of Jersey, Guernsey, Alderney, Sark, Herm and Jethou"? As the United Kingdom Government have stated before (see paragraph 118, above), there is no justification for assuming that this or any other document implies, by a failure to enumerate in full all the individual Islands of the archipelago, that certain of them were in the possession of the French Crown.

137. As for the Treaty of Picquigny-Amiens of 1475, between Edward IV of England and Louis XI of France, and that of Etaples of 1492 ¹, between Henry VII of England and Charles VIII of France, neither of these instruments contains any reference whatsoever to the Channel Islands. They were simply agreements on the part of the English sovereigns that they would evacuate French territory on the mainland.

The Treaties of 1606 and 1655

138. Finally, the French Counter-Memorial (p. 383) cites two Treaties of the 17th century—one of 1606, between James I of England and Henry IV of France, the other of 1655, between Oliver Cromwell, Lord Protector of England, and Louis XIV of France. These were both commercial agreements. Only Jersey and Guernsey are mentioned, because it was only between those two Islands and France that there was any appreciable volume of trade. Here again, the French Counter-Memorial, in effect, insists upon a "caractère limitatif" by asserting that, because only two Islands are mentioned, therefore neither the Minquiers nor the Ecréhous were then in English possession. But neither is there any mention, for example, of Alderney or Sark, Herm or Jethou: yet they were indisputably in English hands. Thus, the remarks made in paragraph 136 above, regarding the interpretation of the Truce of 1471, apply equally to these Treaties of 1606 and of 1655.

VI. *It is for the Government of the French Republic to shew that the Minquiers and the Ecréhous were excluded from the general settlement of 1259, which did not disturb the King of England in his continuous possession of the Channel Islands as a whole*

139. The French Counter-Memorial has attempted to throw on the United Kingdom the onus of shewing by name that the individual Islands, and, in particular, the Minquiers and the Ecréhous, remained in the possession of the English Crown ².

¹ Rymer, *op. cit.* (Orig. Ed.), xii. 497-504, 505-9.

² The Government of the United Kingdom, while denying that the onus rests upon them to do so, will nevertheless in Sub-Section 2, below, adduce detailed evidence to prove that the Minquiers and the Ecréhous did in fact remain in the possession of the English Crown.

The allegation that the burden of this proof rests upon the United Kingdom Government is based upon the statements that a "juridical starting point" was established by the judgement of 1202, which condemned the King of England "to forfeit all the lands which he held from the King of France" (p. 383); and that, though the United Kingdom Government can prove possession of some, "the Memorial it has submitted in the present dispute does not furnish any useful evidence that England ever possessed the Ecréhous and the Minquiers" (p. 383).

140. The United Kingdom Government, however, dispute this allegation that any burden of proof rests upon them. The judgement which is the basis for this French contention has been shewn to be a suspect and unsatisfactory instrument (see paragraphs 108-112, above). On the other hand, all the available evidence shews that the English Crown had title to, and possession of, the Channel Islands, as an entity, from 1066.

141. The Treaty of Paris of 1259, whose legality is unassailable, was a general settlement of the disputes which had resulted from the judgement of 1202, by which Henry III of England acknowledged the conquests of Philip II, Louis VIII and Louis IX. On the other hand, anything outside these conquests, such as the Channel Islands (which had remained an English possession since 1066), was, in effect, confirmed to the King of England. The onus of proving that the Minquiers and the Ecréhous were amongst the conquests of the French Kings, and that they were not a part of the Channel Islands as an entity, rests, therefore, upon the Government of the French Republic. There is nothing to shew that this is so in the evidence produced by the French Counter-Memorial in its study of the Treaty of Paris or any other Diplomatic Act.

142. The United Kingdom Government will now proceed to support the foregoing submissions about the significance of the Diplomatic Acts, shewing that the Channel Islands, as an entity, remained in the possession of the English Kings, by examination and rejection of the interpretations placed by the French Counter-Memorial on evidence relating specifically to the Minquiers and Ecréhous groups of Islets.

Sub-Section 2 : Evidence derived from Acts Concerning the Ecréhous and the Minquiers Groups of Islets from the 13th to 18th Centuries

Summary of Acts Concerning the Ecréhous and the Minquiers Groups of Islets

143. In this Sub-Section the United Kingdom Government will analyze in detail the evidence derived from Acts concerning the Minquiers and the Ecréhous groups of Islets from the 13th to the

18th Centuries. They will examine and refute the interpretations placed in the French Counter-Memorial (pp. 377-399) upon certain evidence which the United Kingdom Memorial (see paragraphs 125-134, and 153-157) submitted to establish the Contention that the Minquiers and the Ecréhous have, since medieval times, been in the possession of the English Crown. This Sub-Section will also contain additional evidence to support this contention. As in the Memorial, the United Kingdom Government will consider, first, the main evidence relating to the Ecréhous and, then, the main evidence relating to the Minquiers. Certain minor points raised by the French Counter-Memorial, which the United Kingdom Government consider of little value or irrelevant to the dispute, will be more briefly treated in the concluding paragraphs of this Sub-Section, or referred to in notes.

144. The items of evidence will be considered in the following order :

A : Acts Concerning the Ecréhous Islets

- (i) The Charters of 1200 and 1203.
- (ii) The *Quo Warranto* Proceedings of 1309.
- (iii) The Letters of Protection of 1337.
- (iv) The Rental of the 15th Century.
- (v) The Payment in the Account of the Warden of the Channel Islands, Sir John de Roches, for 1328-9.
- (vi) The Prior of the Ecréhous and Legal Proceedings in Jersey, 1323-31.
- (vii) The Confiscation of the 'Alien Priors'.
- (viii) The Drowning of Jerseymen at the Ecréhous in 1309.
- (ix) Passages from Le Geyt concerning Fish-Tithes.
- (x) Acts during the 17th Century.

B : Acts Concerning the Minquiers Islets

- (i) The possession of the Iles Chausey and the alleged dependence upon them of the Minquiers.
- (ii) The Courts Rolls of the Seignory of Noirmont, 1615-17.
- (iii) The Appeal of Deborah Dumaresq against the Judgment of the Royal Court of Jersey, 1692.

A : Acts Concerning the Ecréhous Islets

(i) *The Charters of 1200 and 1203*

145. The United Kingdom Government will first consider the Charters of 1200 and 1203 (see United Kingdom Memorial, Vol. II, Annexes A 8 and A 7), laying stress on what they consider to be the true significance of these Charters, and refuting the erroneous interpretation given to them by the French Counter-Memorial. The French contention (p. 385) concerning the effect of the grant of the

Ecréhous in 1203 by Piers des Préaux to the Abey of Val-Richer is that :

"Piers de Préaux's gift was therefore not a sub-infeudation, as the British Memorial states in paragraph 126. The effect of the free alms¹ was to sever the earlier feudal link. Henceforth, the island of Ecréhous had no other temporal lord than Notre Dame de Val Richer, which possessed it in full ownership, as a freehold. It was no longer part of the fief of the [Channel] islands". (Counter-Memorial, p. 385).

The French argument in support of this contention rests on two assumptions :

- (a) That a grant "*in liberam et puram et perpetuam elemosynam*" (i.e., in "*franche aumône*" or 'frankalmoin')¹ extinguished completely the rights of the overlord : that is, it made the grant an 'allodium' (*alleu*) rather than a 'fee'—an 'allodium' being land held in absolute dominion and thus freed of the superior rights of an overlord.
- (b) That any tenant could make a grant in 'frankalmoin' provided that it did not damage his overlord. Thus, in the present case, Piers himself, in making his own grant to the Abbey of Val-Richer, could alienate the Ecréhous in this way, because, as the Ecréhous were worthless, he did not damage his overlord, King John.

Of these two assumptions, the first, namely, that a grant in 'frankalmoin' was not a "sub-infeudation", but the complete surrender of land to be held "in full ownership, as a freehold"², is the crucial one. Such an interpretation of a grant in 'frankalmoin' is, it will be shewn, erroneous.

146. All land was held, according to Anglo-Norman law, by the King as lord of all the soil, or of him by his tenants-in-chief or their subordinate tenants. Thus, there might intervene between the King and the ultimate tenant a number of sub-tenants, each linked to a grantor immediately superior to himself. But neither the King nor any superior of any grantee ever lost (unless by his own direct act) *his own rights over the land granted*. A grantor could free a gift of land from any obligations due to himself personally, but this did not free it from the services owed to his own superiors. Even a gift in 'frankalmoin' could not extinguish the feudal rights of this chain of grants, as the French Counter-Memorial attempts to maintain. Moreover,

¹ The Registry translate "*franche aumône*" as "free alms". The United Kingdom Government will, however, use the equivalent expression 'frankalmoin'. It should be understood that, about 1200, the various combinations of 'free', 'pure' and 'perpetual' were used without clear distinctions being made between them.

² The French text uses "*alleu*" ('allodium') which means "land held in absolute dominion outside the feudal system". Thus, the Registry translation of "freehold" is inaccurate, because, unlike to-day, a freehold in the Middle Ages did not mean "land held in absolute dominion".

if, as a result of Piers' gift, the Ecréhous became an 'allodium', how can it be maintained, as the French Counter-Memorial repeatedly does, that these same Islets, nevertheless, entered into the lordship of the King of France ¹?

147. That a grant in 'frankalmoin' extinguished altogether the rights of the King and any mesne lords, thus making it an 'allodium', is, so far as the United Kingdom Government are aware, unsupported by any evidence either in English or in Norman legal history. It is, moreover, not supported by the very authority on which the Government of the French Republic themselves rely, namely E. Blum's paper on *Les Origines du bref d'ief lai et d'aumône*². In this paper (p. 376) Blum states:

"Même la *pura elemosina* sur laquelle aucune juridiction laïque ne s'exerçait, restait toujours une tenure, sur laquelle, il est vrai, le donateur ne retenait rien, fors des prières". [Italics added].

Thus, Blum himself maintains that even a grant in "*pura elemosina*" and liberated from any secular jurisdiction, still remained "une tenure", that is, property over which the feudal rights of the King and mesne lords had not been extinguished³. Further, the *Summa de Legibus Normannie in curia laicali*⁴ speaks (XXX, 1) with complete clarity of holders in almon as "tenants".

Again, the foremost English medieval legal historians, Pollock and Maitland, state:

"Beside this, we constantly find religious houses taking land in socage or in fee farm at rents and at substantial rents, and though a gift in frankalmoin might proceed from the king, it could often proceed from a mesne lord. In this case the mere gift could not render the land free from all secular service; in the donor's hand it was burdened; with such service and so burdened it passed into the hands of the donee". [Italics added]⁵.

¹ For example on page 385 of the French Counter-Memorial it is stated that "L'aumône est dite franche ou libre quand elle fait du bien donné un alleu qui est libéré de toute mouvance féodale.... Par l'effet de la franche aumône, le lien féodal antérieur est rompu. Désormais, l'île d'Ecréhous n'a d'autre seigneur temporel que Notre-Dame de Val Richer qui la possède en pleine propriété comme un alleu. Elle ne relève plus du fief des îles". (The French text is here given, in view of the number of technical terms employed.) But on page 380, the French Counter-Memorial states that "The King of France, who retained Normandy, continued [i.e., in 1360] to be lord of the islands near the coast...." [Italics added.]

² This is contained in *Travaux de la Semaine d'histoire du droit normand tenue à Jersey du 24 au 27 Mai, 1923* (Caen, 1925).

³ It is clear from the context of the passage cited (p. 376) above that Blum uses "*pura*" as affecting jurisdiction and dignity. See also Blum, *op. cit.*, p. 371, n. 2, where he cites the *Summa de Legibus Normannie in curia laicali* (ed. E. J. Tardif), vol. II, c. 115: "*Elemosina autem pura est in qua princeps nihil sibi terrene retinet jurisdictionis seu dignitatis*" ("But alms are 'pure' when the prince retains nothing for himself of the earthly jurisdiction or dignity".)

⁴ This is the body of Norman customary laws from the 12th Century onwards.

⁵ *History of English Law* (Cambridge, 1898), i. 244. 'Socage': "To hold in socage is to hold of any Lord lands or tenements, yielding to him a certaine rent by the

Thus, a grant in 'frankalmoin' could never of itself free a piece of land from burdens incumbent upon it while it was in the donor's hands.

148. Moreover, that a gift in 'frankalmoin' could not have been an 'allodium' (*allue*) is shewn by the fact that 'allodia' had long ceased to exist in both England and Normandy before 1200. When the word 'allodium' is used in the *Summa de Legibus Normannie in curia laicali* (XXVI, 5), it is merely to indicate that 'allodia' were held in burgage tenure¹. In earlier centuries, the word 'allodium' does appear in Normandy; but the 'allodium', then, nevertheless, had a lord over it. Thus, the Duke of Normandy himself held the Duchy as an 'allodium' for which he did service to the king of France².

149. Accordingly, the contention of the French Counter-Memorial that the effect of a grant in 'frankalmoin' was "to sever the earlier feudal link" and to free the land of the superior rights of the overlord has been shewn to be erroneous. Land granted in 'frankalmoin' was not freed of feudal services; it did remain subject to the rights of the King and any mesne lords. A grant in 'frankalmoin' was, in other words, a sub-infeudation.

150. The second assumption of the French Counter-Memorial, namely, that a tenant could make a gift in 'frankalmoin', provided that he did not damage his lord, is equally erroneous, but can be more briefly dismissed in view of the fact that the first, and more important, assumption has been disproved. It is clearly stated in the *Summa de Legibus Normannie in curia laicali* that:

"No man can make a grant in almain of any land except that which only is in his ownership" (XXX, 2)³;

and: "From this also it is to be observed that, since the Duke has the jurisdiction and rights of his own lordship over the lands of all who are subject to him, he alone can make gifts in almain free or pure" (XXX, 2)⁴.

These statements are a reiteration of the general principle of all law, namely, that *Nemo dat quod non habet*. A tenant could not, in making a grant—irrespective of its value and, therefore, of its

yeare for all manner of services" (see Stroud, *The Judicial Dictionary* (2nd Ed.) (London, 1903), vol. iii, s.v., citing *Termes de la Ley*); 'fee farm': an estate in fee granted in perpetuity subject to a rent (see Wharton's *Law Lexicon* (Ed. A. S. Oppé) (14th Ed.) (London, 1938), s.v.).

¹ 'Burgage tenure': land held by burghers (townsmen) of the King or other lord for a yearly rent. (See Wharton, *op. cit.*, s.v.).

² Pollock and Maitland, *op. cit.*, i. 70-1.

³ XXX, 2. "Nullus autem elemosinare potest ex aliqua terra, nisi hoc solum quod suum est in eadem".

⁴ XXX, 2. "Ex hoc etiam notandum est quod cum dux justiciam et jura principatus sui in terris omnium habeat subditorum, ipse solus elemosinas potest liberas facere sive puras".

damage to the overlord—give away something which was not his to give away, *i.e.*, land freed of services due to an overlord.

151. The only exception to this principle would be if the overlord expressly consented (either by concurring in his tenant's grant or in a separate grant) to his own rights being given away at the same time that the tenant made the grant. In the present case, Piers held the Channel Islands of John for certain services. Any grant made by Piers of the Channel Islands remained subject to John's rights to these services, and John could always demand that any grantee from Piers should render the services owed to John. Only John himself could dispose of his own rights; any lack of damage in the making of a grant by Piers did not nullify this principle of *Nemo dat quod non habet*.

152. However, this principle alone would not have prevented a tenant from disposing of his own feudal rights in such a way that the lord's rights might become, in fact, unenforceable. Thus, a second feudal principle was evolved, namely, that any grant by a tenant might require the consent of his lord. The result of this principle—as of the principle of *Nemo dat quod non habet*—was that only John himself could dispose of his own rights. Piers could not give away John's rights.

153. To sum up, a gift in 'frankalmoin' did not free the land so granted from the rights of the superior lord from whom the grantor held it; the gift could not have this effect even if those rights were so valueless that the superior lord would suffer no real loss. Only the superior lord himself could give his rights away. In the present case, Piers could not give away John's rights, and there is no evidence that John himself gave them away, either by concurrence in Piers' grant or by separate grant. Piers des Préaux's grant, therefore, cannot have had the effect for which the French Counter-Memorial contends.

(ii) *The Quo Warranto Proceedings of 1309*

154. The second point on which the United Kingdom Government place special emphasis is the significance of the *Quo Warranto* proceedings of 1309 (see Annex A 12 to the United Kingdom Memorial). At these proceedings, the Abbot of Val-Richer (who has represented by the Prior of the Ecréhous) was summoned to answer the King of England concerning a plea that he should surrender a mill in the Parish of St. Saviour, Jersey, and the advowson of the Priory of the Ecréhous, and also to answer a plea by what warrant he claimed to receive 20s. a year from the Royal Revenues of Jersey.

155. The argument of the French Counter-Memorial makes the following two points:

- (a) "There is nothing to show that the King of England exercised any authority over the priory" (p. 389).

- (b) "The King [of England] was not entitled to the advowson of the priory of Ecréhous because since 1203 it no longer formed part of the fief of the islands" (p. 390).

These points constitute, however, no adequate answer to paragraph 129 of the United Kingdom Memorial, in which it is explained why the Abbot was required to answer for the advowson of the Priory on the Ecréhous. This very summons establishes that the Justices of the Crown considered the Ecréhous to be part of the King's territory, and thus falling within their jurisdiction. Finding a Priory on this territory, which they believed to be part of the King's demesne, they claimed for the King its advowson.

156. The French Counter-Memorial is directed to shewing that the King's claim to the advowson¹ was not justified. The United Kingdom Memorial, however, did not claim that it was. On the contrary, it pointed out that the Abbot could have produced a sufficient answer why he was entitled to the advowson. But the fact that the Abbot was allowed to retain the advowson does not imply an admission on the part of the King of England that he did not exercise suzerainty over the Ecréhous (as the French Counter-Memorial apparently infers). The exercise of jurisdiction in the *Quo Warranto* proceedings is itself the exercise of "authority over the priory", and thus an assertion of suzerainty.

157. With regard to the second French contention, namely, that the King of England was not entitled to the advowson of the Priory because, since 1203, it no longer formed part of the fief of the Islands, the Government of the United Kingdom, as explained above, would observe that the ownership of the advowson is not the point which is being advanced for the suzerainty of the English King over the Islet, and secondly, even if it were, the French major premise (that, since 1203, the Ecréhous no longer formed part of the fief of the Channel Islands) is incorrect, as it depends upon an erroneous view of the nature of 'frankalmoin' (see paragraphs 145-153, above).

158. The *Quo Warranto* proceedings, apart from the question of the Abbot's being summoned to answer for the advowson of the Priory, reveal plainly that the Prior (who answered for the Abbot) believed that the Priory and the land on which it stood belonged to the English King. This is shewn, for example, by his statement that he and his fellow monk "*semper celebrant pro domino Rege [of England] et eius progenitoribus*" ("celebrate, as always, for the Lord the King and his progenitors"). The French Counter-Memorial would dismiss this statement with the explanation that : "The Church has

¹ The French Counter-Memorial apparently interprets the term "advowson" as the protection which was given by a layman to an ecclesiastical foundation (p. 390). This interpretation is here incorrect (though this does not effect the issue), and is apparently based on a Continental practice of the 10th and 11th centuries. "Advowson" was the right to appoint someone to an ecclesiastical living.

always been willing to pray for any Christian, even for an alien". This may be so, but it supplies no adequate explanation of this statement. The French Counter-Memorial ignores the pertinent fact that, in this case, the offering of prayers for the King of England and his ancestors was based on a specific reason and not a general desire to pray "for any Christian". The original obligation (*i.e.*, a feudal service) placed on the monks of the Priory was that of celebrating Masses for King John of England, for Piers des Préaux himself, his parents and his ancestors. When Piers forfeited the Channel Islands after 1204, that feudal service reverted to his overlord, the King of England¹. That this was so, and, moreover, that it continued to be so, is shewn by the fact that, in 1309, the Prior and his companion were celebrating for the reigning Edward II of England as well as for "his ancestors" as always ("*semper*").

159. Thus, the *Quo Warranto* proceedings, when correctly interpreted, furnish strong proof that the Ecréhous were possessions of the King of England. Briefly, this is shewn to be so by the following facts. The Justices of the English King considered that they could lay claim to the advowson of the Priory because it lay within the King's demesne. The Prior, who came as the duly constituted proctor and attorney of the Abbot of Val-Richer, did not protest. He gave a factual description of the poverty of the Ecréhous, and justified his tenancy by asserting that he was continuing the feudal service of prayers for the King of England, and that he maintained a beacon to warn mariners². Therefore, it was "permitted to the said Prior to hold the premises as he holds them [*i.e.*, in the manner, and subject to the same conditions, in which he and his predecessors had done] as long as it shall please the lord the King" (Annex A 12). It would even appear that these words are susceptible of the construction that the Abbot offered to relinquish the Islet, that the offer was accepted, and that the Prior was allowed to hold, for the future, at the pleasure of the King³.

¹ There exist other parallels of this, *e.g.*, when the Vernons forfeited the lordship of Sark because they sided with Philip II against King John in 1203, the obligation to pray for the family placed upon the Chapel of St. Magloire, which they had founded, was transferred to the King of England.

² The 20 shillings which he received from the King of England were for this particular purpose: *cf. Rolls of the Assizes held in the Channel Islands A.D. 1309 (Société Jersiaise, 18th Pubn.), p. 319.*

³ Clearly, the Priory of the Ecréhous was a heavy drain on the mother house of Val-Richer and did not pay for its upkeep. However, the Abbot of Val-Richer still, for a time, seems to have furnished monks from his house to keep the Priory running (see United Kingdom Memorial, Vol. I, paragraph 47; and Reply, n. 1, p. 523). Evidently, he regarded this as a duty not incompatible with surrendering the ownership of the property in the site (*i.e.*, the Islet itself). The many small benefactions, both in Jersey and in France (see Memorial, Vol. II, Annex A 18), had, presumably, made it possible to provide the bare necessities to keep the Priory alive, until the endowments in Jersey were confiscated in the 15th century (see paragraphs 169-176, below).

(iii) *The Letters of Protection of 1337*

160. The French Counter-Memorial in Section V (pp. 391-392) challenges the statement in the United Kingdom Memorial (paragraphs 48 and 131) that the granting of the Letters of Protection in 1337 to the Prior of the Ecréhous, together with the Priors of other houses in Jersey and Guernsey, provides further evidence that the Ecréhous were a dependency of Jersey (United Kingdom Memorial, Vol. II, Annex A 17).

161. According to the French Counter-Memorial (p. 392), the translation by the United Kingdom Memorial of the phrase "*Prior, de Acrehowe de Insula de Iereseye*" should not be "[*prieur d'*] *Ecréhou de l'île de Jersey*" ("Ecréhou of the island of Jersey"), but "*prieur d'Ecréhou quant à l'île de Jersey*" ("Prior of Ecréhou in respect of the island of Jersey"). In order to support its own translation, the French Counter-Memorial alleges that similar Letters of Protection were given to the "*Prior de Blanca Landa [Blanchelande] de insula de Gernereye*" (i.e., an identical wording to that above); and, as this Priory was established, asserts the French Counter-Memorial, not in Guernsey but in Normandy, the translation of "*de*", in this case, is "*quant à*" ("as regards" or "for"). The French Counter-Memorial is, however, confusing the Priory of Blanchelande, which was certainly in Guernsey¹, with the Abbey of Blanchelande (its mother house) which was in Normandy. The indisputable fact that there was a Priory of Blanchelande in Guernsey, which is the one mentioned in the Letters of Protection, is proof that the rendering in the United Kingdom Memorial of "*de*" as meaning "of" or "belonging to", and not "in respect of" as the French Counter-Memorial would have it, is the correct one². Had there been no territorial link between Jersey and Guernsey and any of the Priories mentioned in these Letters of Protection, it is certain that a different formula would have been used.

162. Secondly, the French Counter-Memorial asserts that, because the Letters of Protection include the phrase "*quamdiu Regi placuerit*" ("for as long as it shall please the King"), these necessarily were granted to foreigners, as such, because:

"Such a restriction would be meaningless if the Priors had been subjects of the English King, for the subjects of a prince are always under his protection and it cannot be arbitrarily withdrawn from them" (p. 392).

This assertion is based on a complete misapprehension of the nature of such documents. All Letters of Protection (also of Safe-Conduct) granted by English Kings during the Middle Ages were

¹ Cf. *Cartulaire des Iles Normandes (Société Jersiaise, 1924)* and Assize Rolls, *passim*.

² The Latin equivalent of *quant à* (in respect of) would be *quoad*.

made to denizens and foreigners alike, for a limited or unlimited period and *invariably during the King's pleasure*. This restriction—that they were granted during the King's pleasure—was intended to give the King the right to revoke them at will: it in no wise meant that the person to whom they were granted must be a foreigner. Moreover, Letters of Protection were normally instruments by which the King took the grantee's property on English soil into his protection while the grantee was abroad on the King's service, or otherwise unable to look after the interests of his property personally. The issue of such Letters, therefore, implied that the grantee held property subject to the jurisdiction of the King of England.

163. In reality, however, the question whether the Prior of the Ecréhous was or was not a foreigner does not affect the issue of sovereignty. The concept of nationality is out of place in the Middle Ages, when the overriding factor was feudal allegiance. In any case, it can be shewn that the Priors of many Channel Islands Priories (in addition to the Priory of the Ecréhous) were Normans, owing a personal allegiance to the King of France. But, what is to be noted above all, is that, in respect of their possessions in the Channel Islands, all of which were held of the King of England, they owed allegiance to the King of England¹.

(iv) *The Rental of the 15th Century*²

164. The French Counter-Memorial (pp. 387-388) attempts to shew that the Ecréhous did not belong to the English King, by asserting that, because the Rental (see Annex 18 of the United Kingdom

¹ The French Counter-Memorial (p. 392) states that the Prior of the Ecréhous was not a "British" subject, and proof of this alleged to be shewn by the despatch of two monks (one of whom, presumably, was a new Prior) by the Abbot of Val-Richer to the Ecréhous in 1338 (see paragraphs 47, 48 and 131 of the United Kingdom Memorial), when England and France were at war. The United Kingdom Government do not dispute the fact that the Abbot had probably the right of presentation to the Priory, and that the Prior may have been a French subject. But this, in no respect, signifies that the Islet itself was ever considered a French possession. The French Counter-Memorial rejects the year 1337 for this event (as in *Gallia Christiana*, vol. xi, col. 447), and places it in 1338, though the former date was accepted by the French Committee of Experts in their Report on the Ecréhous Islets in 1886 (see *United Kingdom Memorial*, Annex A 42, p. 235). The acceptance of 1338 as the date is based upon a system of reckoning known as the *Mos Gallicanus*, which reckoned the year from Easter to Easter, and which was introduced into the French Chancery by Philip II to mark his conquest of the English possessions in France. Because of its obvious inconvenience, "it never became uniform for the whole of France, or popular outside court circles" (cf. C. R. Cheney, *Handbook of Dates for Students of English History* (Royal Historical Society, 1945), pp. 5-6).

² The French Counter-Memorial (p. 387) complains that the Rental, as printed in Annex A 18 of Vol. II of the *United Kingdom Memorial*, is inaccurate, since it tends to obscure the fact that a few Frenchmen were benefactors of the Priory. It is, however, accurately reproduced from the text as printed by the *Société Jersiaise* (which is given as its authority). Moreover, the title given to Annex A 18 shews that the benefactors had not only come from Jersey and Guernsey, but also from France.

Memorial) shews that two or three Frenchmen made donations to the Priory of the Ecréhous in the early 13th century, this is evidence of French sovereignty. These Frenchmen, it is alleged, would not have endowed a priory in foreign hands. In the words of the French Counter-Memorial :

“These donations, granted on the mainland, after 1204, are evidence that the subjects of the King of France did not regard the island of Ecréhou as foreign territory” (p. 388).

First, it should be understood that, during the Middle Ages, “national consciousness” can hardly be said to have existed, especially so far as benefactions to the Church were concerned ; and for the French Counter-Memorial to read implications of sovereignty into the grants by Frenchmen to the Priory is totally unwarranted. Secondly, even if conclusions bearing on the question of national sovereignty could be drawn from the territorial origins of these benefactions, it will be noted by reference to the Rental that more than thirty Jersey men, compared with only three Frenchmen, were benefactors of the Priory. It is unlikely that all these Jersey men made their benefactions in the year 1203, when the Charter was granted, and the Islet indisputably an English possession. Even in 1309, the Prior was complaining about the poverty-stricken nature of the endowments. The majority of the benefactors, therefore, probably, made the gifts during the course of the 14th century. Hence, following the reasoning of the French Counter-Memorial itself, there are stronger grounds for presuming English possession than French possession on the evidence to be derived from the domicile of the benefactors.

165. In actual fact, the evidence that a small part of the endowments of the Priory of the Ecréhous lay in France proves nothing about the allegiance of the Priory itself. That some of these endowments were in France is merely the converse of the fact that many French monasteries held lands in the Channel Islands and in England. To imply, as does the French Counter-Memorial, that the subjects of the King of France would not have made donations to the Ecréhous merely because they were an English possession, is a conjecture which is entirely without foundation. All the Channel Islands were at this time in the Diocese of Coutances ; their law was still the law of Normandy ; the Islanders frequented the Montmartin Fair, near Coutances on the mainland ; their language—even their dialect—was identical with that of the Norman mainland. The Rental was included in the Memorial chiefly as an item in the historical background of the Ecréhous Islets ; but, if any attempt be made to draw from it arguments as to sovereignty over the Islets, this is a piece of evidence which tells more in the favour of the Government of the United Kingdom than in that of the Government of the French Republic.

(v) *The Payment in the Account of the Warden of the Channel Islands, Sir John de Roches, for 1328-9*

166. The French Counter-Memorial (p. 391) asserts that a payment, found in the Account of Sir John de Roches, 1328-9 (see United Kingdom Memorial, Vol. II, Annex A 15), of 20^s. to the Priory of the Ecréhous (or "the Chapel of the Blessed Mary of Ekerho in the sea" as the Account calls it) is "certainly not evidence that the Priory of Ecréhous was under British sovereignty". The United Kingdom Memorial did not draw any conclusions from this Account, which was mentioned (paragraph 47) merely for the purpose of giving such historical details as could be found about the Ecréhous. The French Counter-Memorial, in addition to denying that this payment furnishes proof of English sovereignty, would appear to imply that it might, on the other hand, supply evidence of French sovereignty. This implication appears to be based on an assertion that the payment of 20s. was made in money of Tours (*tournois*) and not sterling, just as a payment to the Abbey of Holy Trinity, Caen, in Normandy, was made (it is alleged) in the same currency.

167. If such an assertion be advanced by the French Counter-Memorial, it can readily be disproved. First, if the 20s. were paid in money of Tours (*tournois*), this does not mean that the use of such currency was made because it was in payment to a foundation on French soil. The money current in all the Channel Islands throughout the Middle Ages (and, indeed, until the middle of last century) was money of Tours¹. Secondly, an examination of the Account does not reveal that the payments were made in money of Tours to the Priory of the Ecréhous and to Holy Trinity, Caen, alone, and to no other foundations or persons. The total disbursements, it will be noted, referring to various English foundations (other than the Priory) and officials, as well as to Holy Trinity, Caen, are given in money of Tours (*tournois*), and then converted into sterling. Moreover, the French Counter-Memorial cannot claim that the word *tournois*, inserted in the body of the text (Annex A 15, line 20 of p. 162), only refers to two items of payment made several lines above, namely, to the "Abbey of Holy Trinity [La Trinité], Caen", and to "the Chapel of the Blessed Mary of Ekerho in the sea [the Priory of the Ecréhous]". In addition, it must refer also to payments placed nearer to it, *e.g.*, those made to the various officials of the King of England's Court. There can be little doubt that the scribe, in drawing up the document, inserted *tournois* here, and later on (see lines 26, 30 and 31 of p. 162, Annex A 15) as a periodic note to signify that all the payments were in money of Tours. His final addition was then given in this currency, and equated with sterling.

¹ This money is still at the present day money of account in the Islands.

(vi) *The Prior of the Ecréhous and Legal Proceedings in Jersey, 1323-31*

168. The United Kingdom Memorial in paragraph 47 referred to several incidents wherein the Prior of the Ecréhous was concerned in legal proceedings which took place in Jersey (see United Kingdom Memorial, Vol. II, Annexes A 13, A 14 and A 16). These incidents concern: (a) the alleged encroachment upon the King's highway by the wall round the Prior's manse in Jersey, 1323; (b) the robbery of some of the Prior's goods in Jersey, 1325, and (c) an assault by the Prior on a widow in Jersey, 1331. The French Counter-Memorial contends (possibly with reason) that the jurisdiction of the English Justices was exercised merely because these actions took place in Jersey (*i.e.*, on English soil), and not because the Prior was considered to be an English subject¹. That may or may not have been so. These incidents also, however, like the payments in the Account of Sir John de Roches, were mentioned in the United Kingdom Memorial for the purpose of giving such historical details as are known about the Ecréhous; and no significance, it will be noted, was drawn from the legal proceedings concerning them. In the opinion of the United Kingdom Government, no evidence can be drawn from them to support either the United Kingdom or the French case.

(vii) *The Confiscation of the 'Alien Priors'*

169. On page 393 of their Counter-Memorial, the Government of the French Republic refer to the *Extente* of 1528 (see United Kingdom Memorial, Vol. II, Annex A 19, p. 167) where certain wheat-rents, formerly due to the Priory of the Ecréhous, are shewn probably to have been appropriated by the English Crown. The Government of the French Republic argue that, since these wheat-rents are shewn as having been confiscated by 1528, the confiscation cannot have been due to the measures taken by Henry VIII against the English religious foundations (namely, the 'Dissolution of the Monasteries')², but must have been "the result of measures taken against the 'alien priories' ". The United Kingdom Government accept this contention, but they join issue with the Government of the French Republic as to the meaning of the term 'alien priories'.

¹ The French Counter-Memorial advances a similar argument (b) on p. 402 with regard to the more recent Acts of Sovereignty exercised by the Jersey authorities over both groups of Islets. The United Kingdom Government's reply to this argument is given in paragraphs 208-213, below.

² The measures known as the 'Dissolution of the Monasteries' took place after 1535. The French Counter-Memorial refers, in this connexion, to a "British memorandum" of the 2nd August, 1947. This document, which gave a brief summary of the United Kingdom case on the subject of sovereignty over the Minquiers and the Ecréhous, contained the statement that: "Rents paid to the priory of 'Ecrého' by various persons in Jersey were confiscated to the British Crown at the time of the Reformation in about 1550". It is now admitted that this statement was not accurate, the rents having probably been confiscated a good deal earlier.

The French Counter-Memorial states that :

"The confiscation of the Ecréhous rents can only be ascribed to the fact that this priory [*i.e.*, of the Ecréhous] was regarded as foreign ; it was the result of measures taken against the 'alien priories' " (p. 393) ;

and that :

"It should also be noted that the *extente* only mentions rents due to the priory of Ecréhous, but not the priory itself. The confiscation only applied to estates belonging to foreigners and situated in English territory. The King of England had indeed appropriated *rents due by cause of Escrehou [recte Escreehoo]* in the island of Jersey, which was under his rule ; but he had not taken possession of the island of Ecréhous or of the chapel which stood there. That is evidence that the island is not regarded as British territory" (p. 394) [*Italics added*].

170. According to the French argument, as stated in the first of the two citations given above, the term 'alien priories' seems to mean a priory situated on foreign—that is, French soil—but that is not the meaning of the term at all. The term 'alien priory' did not mean a priory which was itself situated on foreign soil—such a priory, obviously, could never have been confiscated—but a priory (or daughter house) established on English soil, whose mother house was situated on foreign soil. The Priory of the Ecréhous was, indeed (as the French Counter-Memorial says on page 393), an 'alien priory' ; but it was an 'alien priory' because it was the daughter house on English soil of a French abbey—the Abbey of Val-Richer—and not because it was 'alien' in the commonly accepted sense of the word, merely 'foreign'—that is, situated on soil other than English soil¹.

171. The Government of the French Republic, however, make a further point. They say that "it should also be noted that the *extente* only mentions rents due to the priory of Ecréhous, but not the priory itself" (p. 394). In other words, according to the French Counter-Memorial, although the Priory's endowments in Jersey were confiscated, the Priory itself on the Ecréhous was not. No significance is, however, to be attached to the omission in the *Extente* of any mention of confiscation of the Priory buildings on the Ecréhous. The *Extente* was merely a list of wheat-rents payable by certain Jersey parishes in respect of the Priory of the Ecréhous—probably to the English Crown. The Priory itself on the Ecréhous produced no revenue of any kind ; rather it had to be supported from outside (*e.g.*, by endowments on the mainland of France, as well as in Jersey, and an annual revenue of twenty shillings from

¹ The Priory of the Ecréhous was, therefore, in the same relation to the Abbey of Val-Richer, as the Priory of Lihou (near Guernsey) was to the Abbey of Mont-Saint-Michel on the French mainland. The Priory of Lihou was also a genuine "alien priory", and, as such, had its property in Guernsey confiscated.

the English Exchequer). This being so, it was hardly to be expected that the Priory would itself be capable of paying rents to the Crown, such as would be recorded in an *Extente* of this kind, even if it had been confiscated.

172. Even if, however, there is no known documentary evidence shewing that the Priory itself was confiscated, something is known of its subsequent fate. There is no doubt at all that the Priory fell into decay and disuse, even though the exact date at which this happened is obscure. The United Kingdom Government submit that the probable explanation of the decay of the Priory is that it was confiscated *in toto*, along with its endowments in Jersey, as being an 'alien priory' (*i.e.*, the daughter house on English soil of the French Abbey of Val-Richer). At the very least, even if there was no actual confiscation of the Priory buildings on the Ecréhous, the dependence of the Priory on its connexion with Jersey was almost certainly so great that, without its Jersey endowments, it could not survive—unless the loss of the Jersey endowments was compensated for by further financial support from France. That this support was not forthcoming is surely an indication that the Ecréhous were an English possession. The Abbey of Val-Richer would hardly have abandoned so completely a Priory standing on French soil.

173. The French Counter-Memorial attempts to explain (p. 394) the decay of the Priory by saying that it was destroyed by the English. This suggestion is apparently based upon the work of a local historian, Hermant¹, and also upon the fact that English Protestants committed acts of destruction of the same kind on the continental mainland during the reign of Queen Elizabeth. It is even stated that:

"It might even be argued that, if the island [*i.e.*, the Ecréhous] had been regarded as English territory, the English would not have destroyed the chapel: it would have been confiscated and handed over to the Anglican Church" (p. 394).

174. It is true that some former Catholic monastic houses were taken over by the Anglican Church, but this only occurred when there was a local population of sufficient size to justify using the conventual church as a parish church. Where there was no need of a parish church—and the ruins of many Abbeys in England itself bear witness to this fact—the monastic house was either destroyed or fell into decay. The implication, therefore, that the destruction of the Priory by the English—assuming that it took place²—proves that the Ecréhous were not English territory, is totally untrue: if anything, the English would be just as likely

¹ The relevant passage is not cited in the French Counter-Memorial.

² As has been shewn above, the date and actual circumstances of this alleged destruction are obscure.

to destroy the Priory, if it were standing on English soil, as if it were standing on French soil.

175. The decay of the Priory of the Ecréhous is, thus, a fact easily explained, if the Ecréhous were English territory, but not so easy to explain if they were French territory. The Government of the French Republic, realizing this, have given yet a further explanation of the Priory's decay. This second explanation seems to the United Kingdom Government to be even more improbable than the first one. It is alleged that the chapel (having been destroyed by the English) was not restored—though standing on French soil—because by 1689, the Ecréhous Islet

“.... which began to be run over by the waves, had become uninhabitable. It was broken up, and became an archipelago consisting of several islets. Even if the chapel had come safely through the religious wars, it could not long have resisted the tides and storms.

“It cannot be argued that this invasion of the sea terminated the French sovereignty, which had till then been exercised through the abbey of Val Richer. The archipelago of the Ecréhous ceased to be inhabited; but it did not cease to be French”¹ (p. 394).

176. Yet Hermant himself (the authority upon whom the Government of the French Republic rely) says that the “island of Ecréhou” was one league long and half a league wide at the end of the 17th century²—hardly insufficient space for a small Priory.

(viii) *The Drowning of Jerseymen at the Ecréhous in 1309*

177. The French Counter-Memorial (p. 395) also deals with the incident in the Assize Roll of 1309, namely, that of the drowning of twenty-four Jerseymen at the Ecréhous. This incident was cited in the United Kingdom Memorial (paragraphs 46 and 131) as evidence that Jerseymen “occasionally frequented the Ecréhous Islets at this time”. Into the fact that an inquiry was held upon their deaths, the French Counter-Memorial has read a claim on the part of the United Kingdom Memorial that this was an act of jurisdiction which shewed the Ecréhous to be English possessions. This claim it then dismisses on the grounds that such an inquiry was held *ratione personæ*, because the victims were Jerseymen, and not *ratione soli*, because the Ecréhous were English. The point, however, which the United Kingdom Memorial made was that the incident clearly indicates that Jerseymen did visit the Ecréhous to collect wreck of the sea, and that this is a further

¹ In this passage the Government of the French Republic appear to be admitting that habitability is not the test of appropriability in law. See paragraph 5, above, and note 1 thereto.

² See the 1886 Report by the French Committee of Experts. (United Kingdom Memorial, Vol. II, Annex A 42, at p. 236.)

(if minor) piece of evidence about the connexion of the Islet with Jersey in the Middle Ages (see also paragraph 209, below).

(ix) *Passages from Le Geyt concerning Fish-Tithes*

178. In paragraph 49 of their Memorial, the United Kingdom Government referred to the fact that Philippe Lè Geyt, a Jersey historian, stated that, in 1692, fish-tithes were payable in Jersey, in respect of fish caught off Jersey, and the "enclaves". Extracts from Le Geyt's work were cited in Annex A 69 (p. 285), where it will be seen that Le Geyt means by "enclaves", the Minquiers, the Iles Chausey, the Ecréhous and certain other Islets. The French Counter-Memorial (p. 395) insists that the word "enclaves" does not mean "dependencies"; it may rather mean "an area which is completely independent, but is inset in another area"; so that, in this passage, "enclaves" means not the dependencies of Jersey, but merely Islets which are inset in the same sea area as Jersey. The United Kingdom Government must not be taken as accepting that this definition of the word is correct. The principal argument on which the French interpretation rests, namely, that the Iles Chausey were "undoubtedly French islands" at this time is incorrect (see paragraphs 180-185, below). Nevertheless, whatever the precise meaning of the word "enclaves", the passage certainly indicates that, at this time, Jersey fishermen were wont to visit the Ecréhous, as well as the Minquiers and Iles Chausey. This was the purpose for which the United Kingdom Government cited the passage in their Memorial.

(x) *Acts during the 17th Century*

179. Finally, the French Counter-Memorial (p. 396) deals with two Acts of the States of Jersey in 1646 and 1692, which forbade Jerseymen to set foot on either the Ecréhous (or the Iles Chausey) without special permission. These were merely emergency measures (taken in time of war) to prevent the Ecréhous being used as a stepping-stone to France, and were particularly aimed at preventing the transport of suspicious characters *en route* for the mainland. They can be supplemented by others, issued by the authorities of Jersey. Such regulations prove nothing as to French sovereignty over the Islets. On the other hand, indeed, they can be interpreted as a further exercise of English sovereignty.

B: *Acts Concerning the Minquiers Islets*

(i) *The Possession of the Iles Chausey and the alleged dependence upon them of the Minquiers*

180. In considering the situation of the Minquiers Islets (about which no evidence earlier than the 17th century appears to exist), the French Counter-Memorial (p. 397) endeavours to associate them with the Iles Chausey as a dependency, and to prove that, as

the Iles Chausey were (according to the French Counter-Memorial) French, therefore the Minquiers must also be assumed to be French. There are, therefore, two questions to be answered: to whom did the Iles Chausey initially belong, and was there any association between them and the Minquiers?

181. In these paragraphs, the United Kingdom Government will shew that, during the Middle Ages and probably down to at least the middle of the 17th century the Iles Chausey, although they may have fallen temporarily into French hands during periods of war, remained an English possession, within the entity of the Channel Islands. Secondly, the United Kingdom Government will maintain that the evidence of an association between the Iles Chausey and the Minquiers rests on a very slender foundation; but, if this evidence be accepted, then, in so far as the United Kingdom Government can shew that the English Crown was in possession of the Iles Chausey during the Middle Ages, such possession would render it the more likely that the Minquiers also belonged to the English Crown during this period. In any case, when the Iles Chausey did finally pass into French hands, there is abundant evidence that the Minquiers still continued in the possession of the English Crown.

182. As regards possession of the Iles Chausey during the Middle Ages, the French Counter-Memorial bases its evidence entirely, it would appear, on the work of Father de Gibon, writing in the present century. Even admitting the accuracy of his statements, there is little in them to prove the assertion in the French Counter-Memorial that the Iles Chausey "have therefore been under French sovereignty ever since the reunion of Normandy with France" (p. 397). The principal item of evidence is that Philip VI, King of France, confirmed in 1343¹ a grant by the Abbey of Mont-Saint-Michel to the Friars Minor of the Order of St. Francis of the Priory on the Iles Chausey. Even if this statement by de Gibon be accurate, little significance is to be placed on it. The confirmation was, no doubt, made by Philip in anticipation of the capture of the Channel Islands. Following raids on Guernsey, Alderney and Sark by the French in 1338 (the year after the outbreak of the Hundred Years' War), Philip granted the whole of the Channel Islands (which he did not possess) to his heir, the Dauphin. By 1343, he may have captured and held for a while the Iles Chausey. But the French occupation of any of the Channel Islands was brief; for, by the English victory at Crécy in 1346, French military power was decisively broken for several years to come.

¹ According to the 17th century Jersey historian, Jean Poingdestre (see United Kingdom Memorial, paragraph 30), it was in this year that the French captured the Iles Chausey (*Cæsarea or A Discourse of the Island of Jersey* (Société Jersiaise, 10th Pubn.), p. 98).

183. On the other hand, there is evidence that, in the 14th century, the Iles Chausey were considered to be a possession of the English Crown. Thus, the Assize of 1309—the same Assize as that which dealt with the *Quo Warranto* proceedings relating to the Priory—shews that the Abbot of Mont-Saint-Michel had put forward a plea in the Court of the French King that he could not be sued there in respect to the Iles Chausey, because these Islands were in the fee of the King of England. This plea had been allowed him by the French King's Court, and the plaintiff had been non-suited there¹. Further, in 1337 (*i.e.*, the year in which the Hundred Years' War broke out), Nicholas, Abbot of Mont-Saint-Michel, declared that the Isles Chausey were "*in regno Anglie*"².

184. On the strength of a phrase in a Bull of Pope Alexander III (1178)—"*totam insulam de cause cum pertinentiis suis*" ("all the island of Chausey with its appurtenances") the French Counter-Memorial (p. 397) would infer that the Minquiers were included among the appurtenances of the Iles Chausey³. This appears to be most unlikely, for the phrase "*cum pertinentiis suis*" is a commonplace of charters and deeds; but, even if this contention of the French Counter-Memorial could be maintained, it is additional proof that, during the 14th century, the Minquiers were in English possession. For the Iles Chausey were "*in regno Anglie*", and, if the Minquiers were dependent on the Iles Chausey (as, according to the French contention, they were), they must likewise also have been "*in regno Anglie*".

185. In the early 15th century, a few years after war had broken out between Henry V of England and Charles VI of France, the English used the Iles Chausey as a base for operations against the last remaining stronghold held in Continental Normandy by the French, Mont-Saint-Michel. That the Iles Chausey were still held by the English in 1500 is shewn by a Bull of Pope Alexander VI (see Annex A 6 of the United Kingdom Memorial), transferring

¹ "A memorandum is made concerning the Abbots Island of Chausey, as to which the Abbot cannot deny that it is of the fee of the lord the King & that this was allowed him in the court of the King of France at the suit of a certain merchant complaining of him". (*Rolls of the Assizes held in the Channel Islands A.D. 1309 (Société Jersiaise, 18th Pubn.)*, p. 108.)

² The context of this phrase is: "*Item in Constanciensi dyocesi quinque prioratus quorum unus est in Regno Francie videlicet prioratus de Sancto Germano super E et quatuor in Regno Anglie qui sunt in insulis maris que sunt dicte Constanciensis dyocesis videlicet prioratus de Sancto Clemente, prioratus de Laic, prioratus de Lihou et prioratus de Chauseio*". ("Item, in the diocese of Coutances there are five Priories, one of which is in the Kingdom of France, namely, the Priory of Saint-Germain-sur-Ay, and four in the Kingdom of England, which are in the Channel Islands (themselves in the diocese of Coutances), namely, the Priory of St. Clement, the Priory of Lecq, the Priory of Lihou, and the Priory of the Chausey"). (*Cartulaire des Iles Normandes (Soc. Jersiaise, 1924)*, p. 43, No. 26.)

³ The distance separating these two groups of Islands is, it should be noted, 8 sea-miles.

the Channel Islands from the Diocese of Coutances to that of Winchester. In listing the Islands—Jersey, Guernsey, Chausey, Alderney, Herm and Sark—the Bull expressly states that these are "*sub suo* [Henry VII] *temporali dominio*" ("under his [Henry VII's] temporal dominion").

(ii) *The Court Rolls of the Seignory of Noirmont, 1615-17*

186. In their Counter-Memorial (p. 398) the Government of the French Republic reject the conclusions drawn from the Rolls of the Seignorial Court of Noirmont by the United Kingdom Memorial (paragraphs 154 and 204). An essential fact to be stressed regarding the Fief of Noirmont is that the Minquiers were considered to be part of that Fief, which, at this time, was directly held by the King of England. The Fief had been Church property during the Middle Ages, and was consequently acquired by the Crown as a result of the confiscation of the 'alien priories'. Certainly from the reign of Edward VI (1547-1553) until 1643 (in the reign of Charles I), when it was granted to Sir George de Carteret, the King of England was the Seigneur, as the United Kingdom Memorial has proved (p. 88, paragraph 153 and note 3).

187. In the submission of the Government of the United Kingdom, the Minquiers were included within the Fief of Noirmont by the Crown's exercise of its manorial right to wreck of the sea¹ cast up on the reef during the years 1615, 1616 and 1617 (see Annex A 20 of the United Kingdom Memorial). Whether the King was exercising this right as Seigneur of the Fief, or as Sovereign, or indeed, as both Seigneur and Sovereign, is thus really immaterial. The question raised by the French Counter-Memorial (p. 398), whether or not the Court did grant the wreck to the Seigneur or the King, could only have arisen if the Seigneur and the King had been two different individuals. Again, though the French Counter-Memorial (p. 398) questions whether the Court did give the wreck to the Seigneur, this appears to have been so, since the Court ordered its serjeant to impound it, in one case at least, "until other provision shall have been made". The significance of the evidence of these Court Rolls lies in the fact that the Seigneur of Noirmont (who happened at this time to be the King of England) laid claim to wreck cast up on the Minquiers, because these Islands were a part of his Fief.

¹ The French Counter-Memorial (p. 398) rightly corrects the United Kingdom Government's interpretation (Memorial, paragraphs 146 and 206) of the medieval term "*vraic*" from "seaweed" to "wreckage". This correction also applies to paragraph 49 of the Memorial. The distinction is, however, immaterial to the argument.

(iii) *The Appeal of Deborah Dumaresq against the Judgement of the Royal Court of Jersey, 1692*¹

188. That wreck of the sea, when cast up on the Minquiers belonged rather to the King—a point left open by the proceedings of 1617—than to the Seigneur is shewn by the judgement of the Royal Court of Jersey on the 6th August, 1692 (see Annex A 21 of the United Kingdom Memorial), when the Crown, now not directly in possession² of the Fief, claimed the wrecks of French ships. The Seigneur, it is true, appealed to the Privy Council³ against the judgement of the Royal Court, which had found in favour of the Crown. The assertion of the French Counter-Memorial (p. 399) that this wreck was claimed by the Crown as wreck of enemy (*i.e.*, French) ships, and thus prizes of war, is untenable. Had this been the fact, it would certainly have been mentioned in the proceedings of the Court. But nowhere in the pleadings is there any reference to "enemy ships" or to "prize of war". The Crown was merely claiming the wrecks by virtue of Section 13 of the 14th century Statute, *de Prerogativa Regis* (see paragraphs 51 and 154 of the United Kingdom Memorial), which gave it the right to "wreck of the sea throughout the whole realm except in such places as were privileged by the King." The evidence provided by the above case serves to reinforce the contention of the United Kingdom Government in regard to that provided by the Noirmont Court Rolls in 1615-17, namely, that the Minquiers Islets were a part of the Fief of Noirmont, and that, because the ultimate lord of that Fief was the King, it follows that the Minquiers were an English possession.

SUMMARY OF SECTION A

189. In Sub-Section 1 of this Section of their Reply, the United Kingdom Government have proved that the original title of the English Crown to the whole of the Channel Islands can be traced back to 1066; that, from 1204 onwards, although Continental Normandy was held by the French Kings, the Channel Islands, as an entity, were held by the English Kings; that this *de facto* situation was placed on a legal basis by the Treaty of Paris (1259); and that this situation was unaffected by any subsequent Treaties or Truces. In Sub-Section 2 of this Section of their Reply, the United Kingdom Government have substantiated these conclusions

¹ This constitutes a fourth example of evidence in the United Kingdom's Memorial to support the right to claim wreck of the sea. The assertion of the French Counter-Memorial (p. 398) that there are only three cases is, therefore, incorrect.

² The Seigneur was now the infant son and heir of Philip Dumaresq. He was in the guardianship of his mother (Deborah Dumaresq) at the time of the action.

³ The Privy Council Registers are, unfortunately, silent as to the final outcome of the case.

with particular reference to the Minquiers and the Ecréhous groups of Islets, and have proved that these particular groups (as well as the Channel Islands as a whole) remained in the possession of the English Kings from the 13th to the 18th centuries.

SECTION B

Sovereignty over the Minquiers and the Ecréhous Groups of Islets during the 19th and 20th Centuries

Sub-Section 1 : Introductory Remarks and Points made by the Government of the French Republic

190. In Section B of Part II of their Reply, the United Kingdom Government will answer that part of the French Counter-Memorial (pp. 399-402), in which the Government of the French Republic have considered the evidence relating to the exercise of sovereignty set out, with regard to the Ecréhous, in Section A of Part II of the United Kingdom Memorial, and, with regard to the Minquiers, in Section B of the same Part.

191. The Government of the French Republic, on pages 399-402 of their Counter-Memorial, have made the following points :

- (1) "As regards the subsequent period, the Government of the French Republic thinks it unnecessary to make a detailed examination of the factual arguments brought forward in the British Memorial".
- (2) "For an examination of these facts shows that they were nearly all subsequent to the birth of the dispute, that is, to the year 1869, in the case of the Minquiers, and to 1876, in the case of the Ecréhous".
- (3) "The few acts belonging to the period before the birth of the dispute, and likewise those subsequent thereto, never failed to encounter protests by the French Government, as is indeed shown by the British Memorial (Section C, Part I, Section E, Part III)".
- (4) "Acts of possession which are subsequent to the birth of a dispute, or which were contested by the State concerned, are devoid of value as means for the solution of the dispute. There is therefore no question of British 'possession' of these islets, and still less of 'peaceable' possession".
- (5) "In all these matters, the Jersey authorities were exercising a personal jurisdiction over their own subjects who had sailed to the Minquiers or the Ecréhous, just as they would have done had they returned from a voyage on the open sea. The British Memorial does not adduce any act of jurisdiction performed at the actual places in question which would have involved territorial jurisdiction".

192. In Sub-Section 2 below, the United Kingdom Government will make certain preliminary observations on these French points. In Sub-Section 3 below, they will put forward their own positive Contentions with regard to the validity of the United Kingdom title to sovereignty over the Minquiers and the Ecréhous groups during the 19th and 20th centuries. In Sub-Section 4, they will consider the claim of the Government of the French Republic that they can adduce, for their part, "acts of possession performed at the same periods as those relied on by the United Kingdom and of such a kind as to outweigh them" (Counter-Memorial, p. 401).

Sub-Section 2 : Preliminary Observations on the French Points

French Point (1) : That it is "unnecessary to make a detailed examination of the factual arguments brought forward in the British Memorial"

193. The first French point is that it is "unnecessary to make a detailed examination of the factual arguments brought forward in the British Memorial" (p. 399). With regard to this point, the United Kingdom Government submit that it can hardly be maintained seriously that the evidence of acts manifesting sovereignty does not merit detailed examination by the Court. The United Kingdom Government are confident that the Court itself will wish to consider this factual evidence, in the light of the legal submissions on the issue of sovereignty set forth in paragraph 184 of the United Kingdom Memorial. The reasons supporting this Contention are given generally in Sub-Section 3 below.

French Point (2) : That the facts cited in the United Kingdom Memorial "were nearly all subsequent to the birth of the dispute"

194. The second French point is that "an examination of these facts shows that they were nearly all subsequent to the birth of the dispute, that is, to the year 1869, in the case of the Minquiers, and to 1876, in the case of the Ecréhous" (p. 399). With regard to this point, the United Kingdom Government submit that it is incorrect to state that most of the evidence concerned relates to a period subsequent to the birth of the dispute. The United Kingdom Government do not accept the French contention that the dispute was "born" in 1869, as regards the Minquiers, and in 1876, as regards the Ecréhous, in the sense that the Court must exclude from its consideration all evidence subsequent to those dates. The United Kingdom Government will, in Sub-Section 3 below, give their view as to the latest date up to which the Court may take into consideration evidence of acts involving the exercise of sovereignty over both groups—in other words, their view as to what is the "critical date"—and the reasons why, in their view, this date is, in respect of both groups, the date of the signature of the Compromis, namely, the 29th December, 1950. Meanwhile, the United

Kingdom Government will simply observe that there appears to be no justification whatsoever for selecting the particular dates which the Government of the French Republic have, in effect, selected as the "critical dates".

195. *The United Kingdom Government fail to understand how the dispute as to sovereignty over the Minquiers can be said to have been "born" in 1869.* All that happened in 1869 was that the United Kingdom Chargé d'Affaires in Paris addressed a Note (Annex A 51) to the French Ministry for Foreign Affairs, protesting against depredations by French fishermen at the Minquiers. The French Note in reply (Annex A 52), delivered in the following year, merely stated that it had been impossible to trace the offenders, but that warnings had been issued to prevent any future interference by French fishermen with the tackle of Jersey fishermen who resorted to the Minquiers. The French Note made no reference to any French claim to sovereignty over the Minquiers. The first claim to French sovereignty over the Minquiers was made in M. Waddington's Note, dated the 27th August, 1888 (Annex A 53), although, for the reasons given in paragraphs 202-205 below, this does not mean that 1888 is to be taken as the "critical date", and that all evidence subsequent to 1888 must be excluded.

196. As regards the Ecréhous, the United Kingdom Government similarly fail to understand how the dispute as to sovereignty over this group can be said to have been "born" in 1876. What happened in 1876 was that the French Government delivered a Note on the 27th February (Annex A 31), alleging that the United Kingdom Treasury Warrant of 1875 (Annex A 30), which constituted the Island of Jersey as a Port of the Channel Islands, and which included the Ecréhous within the limits of that Port, was contrary to the 1839 Convention. No claim to French sovereignty was made in this Note. Such a claim was first advanced in M. Waddington's Note of the 15th December, 1886 (Annex A 41), although, for the reasons given in paragraphs 202-205 below, this does not mean that 1886 is to be taken as the "critical date", and that all evidence subsequent to 1886 must be excluded.

197. Even if, however, the Court felt itself obliged to exclude from its consideration all evidence subsequent to 1869 (or 1888), in the case of the Minquiers, and all evidence subsequent to 1876 (or 1886), in the case of the Ecréhous, the United Kingdom Government still submit that there is a considerable—and, indeed, an overwhelming—body of evidence that, at these dates, the Minquiers and the Ecréhous were British possessions.

198. For example, as is shewn in paragraphs 166-169 of Volume I of the United Kingdom Memorial and also in Annex A 129, from the beginning of the 19th century onwards, Jersey fishermen owned a number of properties at Maitresse Ile of the Minquiers, and these

fishermen were even sufficiently influential to cause certain quarrying operations, which had been begun at the Islet, to be brought to an end. The French Government of that time in no way conducted themselves as if the Minquiers were a French possession, and took no action against the Jersey fishermen who had so firmly established themselves there.

199. Similarly, in the case of the Ecréhous, the United Kingdom Government invite the attention of the Court to the criminal proceedings taken against George Romeril in 1826 (Annex A 80), to the licensing of Philippe Pinel's fishing boat in 1872 and the cancellation of the licence in 1882 (Annex A 87), and to the registration in 1863 of a Contract of Sale of a house in Jersey, which included property at the Ecréhous (Annex A 91), as definite evidence of the exercise of United Kingdom sovereignty, in respect of this group. Jerseymen also owned property at, and inhabited, the Ecréhous at this time—for instance, the stone hut in which Philippe Pinel lived (Memorial, paragraph 143(a)), and the huts recorded by Captain Martin White, R.N., in his survey (*ibid.*, paragraph 144(a)). But, again, the conduct of the French authorities was completely negative, and was not consistent with the view that the Ecréhous were a French possession.

French Point (3): That "The few acts belonging to the period before the birth of the dispute, and likewise those subsequent thereto, never failed to encounter protests by the French Government"

200. The third French point is that "The few acts belonging to the period before the birth of the dispute, and likewise those subsequent thereto, never failed to encounter protests by the French Government, as is indeed shown by the British Memorial (Section C, Part I, Section E, Part III)" (p. 399). With regard to this point the United Kingdom Government call attention to the fact that there were many United Kingdom acts of sovereignty, in relation to both groups of Islets, both before 1869 and 1876, and after these dates, against which the French authorities did not protest. An examination of the United Kingdom Memorial shews that France protested in 1876, against the Treasury Warrant of 1875, which included the Ecréhous within the limits of the Port of Jersey (see United Kingdom Memorial, Vol. I, paragraph 85); twice in 1883, against a supposed Jersey "projet de loi tendant à interdire aux pêcheurs Français l'accès des Ecrehous[sic]," (*ibid.*, paragraphs 86-89); in 1888, against the official visit of the Committee of Piers and Harbours of the States of Jersey to the Minquiers (*ibid.*, paragraph 101); in 1902-1904, against the erection of a flagstaff at Maîtresse Ile (*ibid.*, paragraphs 104-111); and in 1937-38, against certain measures taken by the Jersey authorities at the Minquiers (*ibid.*, paragraphs 115-117). There was, however, no protest by the French authorities against various other acts

manifesting United Kingdom sovereignty referred to in paragraphs 135-152 and 158-179 of Volume I of the United Kingdom Memorial, including, for example :

- (a) The erection of the notice at the Ecréhous (paragraph 136(a)(ii)).
- (b) The rating of houses at the Ecréhous (paragraph 136(b)).
- (c) The holding of inquests on bodies found at the Ecréhous (paragraph 137).
- (d) The exercise of Customs authority over the Ecréhous (paragraph 138).
- (e) The holding of Census enumerations at the Ecréhous (paragraph 139).
- (f) The grant of Crown leases of Maître Ile of the Ecréhous (paragraph 140).
- (g) The purchase of houses by the Jersey authorities, and the registration of deeds relating to real property, at the Ecréhous (paragraph 141).
- (h) The flying of the British flag at the Ecréhous (paragraph 142(a)).
- (i) The construction of a slipway, and the establishment of a mooring-buoy, at the Ecréhous (paragraph 142(b)).
- (j) Official visits of Jersey authorities to the Ecréhous (paragraph 142(c)).
- (k) The rating of houses at the Minquiers (paragraph 159(b)).
- (l) The holding of inquests on bodies found at the Minquiers (paragraph 160).
- (m) The exercise of Customs authority over the Minquiers (paragraph 161).
- (n) The holding of Census enumerations at the Minquiers (paragraphs 162-3).
- (o) The purchase and construction of houses by the Jersey authorities, and the registration of deeds relating to real property, at the Minquiers (paragraph 164).
- (p) The construction of a slipway at the Minquiers (paragraph 165(c)).
- (q) The establishment of Beacons and Buoys at the Minquiers (paragraph 165(d)).
- (r) Official visits of Jersey authorities to the Minquiers (paragraph 165(e)).

The United Kingdom Government submit, therefore, that the third French contention is substantially wrong in fact, and, in particular, that what might be called the day-to-day routine manifestations of ordinary sovereignty over the groups passed without protest, or even comment, by the French authorities.

French Point (4) : That "Acts of possession which are subsequent to the birth of a dispute, or which were contested by the State concerned, are devoid of value as means for the solution of the dispute"

201. The fourth French point is that "Acts of possession which are subsequent to the birth of a dispute, or which were contested by the State concerned, are devoid of value as means for the solution of the dispute. There is therefore no question of British 'possession' of these islets, and still less of 'peaceable' possession" (p. 399).

With regard to this point, the United Kingdom Government have the following preliminary observations to make :

- (a) It is not acts of possession which are subsequent to the birth of a dispute which are devoid of value as a means for the solution of the dispute, but only acts of possession which are subsequent to the "critical date" (paragraphs 202-205, below).
- (b) It is agreed that, in certain circumstances, acts of possession which were contested by the other State are devoid of value as a means for the solution of the dispute, but these circumstances do not exist when the State whose title is contested is relying upon an original title supported by evidence of effective possession (paragraphs 206-207, below).

Preliminary Observation (a) : It is not acts of possession which are subsequent to the birth of a dispute which are devoid of value as a means for the solution of the dispute, but only acts of possession which are subsequent to the "critical date"

202. The United Kingdom Government agree that, whenever any dispute as to sovereignty is referred to an international judicial or arbitral tribunal, there is a date subsequent to which the legal rights of one party cannot be affected by any action which the other party may take. Consequently, it can serve no purpose for the latter party to put before the tribunal evidence of any acts which are subsequent to this date, which is generally referred to as the "critical date". The selection of the "critical date" is essentially a matter for the tribunal, although, naturally, the parties are entitled to submit their views on the subject. The selection of the "critical date" is, moreover, a very serious matter, because—although the facts will vary with every dispute—on the selection of the "critical date" may well depend the entire decision of the tribunal.

203. In many cases, a dispute as to sovereignty turns upon a clear, and distinct, fact or event, such as a law or decree, proclaiming sovereignty (promulgated by the one party and challenged by the other) ; and the issue is the validity, under international law, of such law or decree. On these occasions, the "critical date" is the date of the promulgation of the law or decree. So it was, for instance, in the case on the *Legal Status of Eastern Greenland* (Series A./B.—

Fasc. No. 53), where the issue was the validity, as against Denmark, of the Norwegian royal proclamation of the 10th July, 1931, proclaiming Norwegian sovereignty over Eastern Greenland. This proclamation was described by the Permanent Court of International Justice as the matter which "gave rise to the present dispute" (p. 26). Accordingly, the Court said :

"The date at which such Danish sovereignty must have existed in order to render the Norwegian occupation invalid is the date at which the occupation took place, viz., July 10th, 1931" (p. 45).

Later, in describing this date as the "critical date", the Court said :

"... it is not necessary that sovereignty over Greenland should have existed throughout the period during which the Danish Government maintains that it was in being. Even if the material submitted to the Court might be thought insufficient to establish the existence of that sovereignty during the earlier periods, this would not exclude a finding that it is sufficient to establish a valid title in the period immediately preceding the occupation" (*ibid.*).

In other words : was Denmark entitled to sovereignty over Eastern Greenland on the 10th July, 1931, or was this territory *res nullius* on that date ? The Norwegian-Danish dispute over Eastern Greenland undoubtedly "began", or was "born", in one sense in 1814, when the Union between Denmark and Norway was terminated ; and, indeed, the Court described the events of 1814-1819 as "of special importance in regard to the dispute concerning Greenland" (p. 31). From 1921 onwards, it is quite plain that Norway was openly disputing Denmark's claim to sovereignty over Eastern Greenland (pp. 37 *et seq.*). Yet, the Court selected the 10th July, 1931, as the "critical date", and admitted evidence of all events prior to that date, because it was on that date that there occurred the precise event which focused the dispute. Indeed, to have excluded all evidence subsequent to the "birth" of the dispute, in the sense of the controversy or difference of view which began in 1814, and certainly existed in 1921, would have been a *reductio ad absurdum*, and would have made it impossible for the Court to give a decision at all.

204. In the *Island of Palmas* arbitration ¹, a similar importance was attached by the arbitrator, Dr. Max Huber, to the "critical date". According to Article 1 of the Compromis, signed in 1925, "The sole duty of the arbitrator shall be to determine whether the Island of Palmas (or Miangas) in its entirety *forms* a part of territory belonging to the United States of America or of Netherlands territory" ². The United Kingdom Government have italicized the word "forms" in order to shew that the question was put in the present tense in 1925. Yet Dr. Huber stated : "The questions to be solved in the present case are the following : *Was the Island of Palmas (or*

¹ *American Journal of International Law* (1928), xxii. 867-912.

² *Ibid.*, p. 868

Miangas) in 1898 a part of territory under Netherlands sovereignty? Did this sovereignty actually exist in 1898 in regard to Palmas (or *Miangas*) and are the facts proved which were alleged on this subject?" [Italics in original] ¹. In other words, Dr. Huber selected 1898 as the "critical date". He did so, because this was the date of the coming into force of the Treaty of Paris, which—had there then been Spanish sovereignty over the Island—would, undoubtedly, have transferred such sovereignty to the United States of America. Accordingly, Dr. Huber referred to 1898 as the "critical moment" ². In this case, as in the case on the *Legal Status of Eastern Greenland*, there was a definite fact or event which focused the event, namely, the Treaty of Paris; and the issue was the validity, or otherwise, of the purported transfer under that Treaty of the title to the Island from Spain to the United States. As it was put in a Letter, dated the 7th April, 1900, from the Secretary of State of the United States of America to the Spanish Minister at Washington: "Was it Spain's to give? If valid title belonged to Spain, it passed; if Spain had no valid title, she could convey none" ³. It is significant, however, that Dr. Huber chose this date of 1898 as the "critical date", and not 1648, the date of the Treaty of Münster, which he described as "the earliest treaty to define the relations between Spain and the Netherlands in the regions in question" ⁴—the date, in other words, when the dispute may be said to have been "born".

205. From these two important precedents, therefore, it appears that the tendency of international tribunals is not to identify the "critical date" with the earliest origins of the dispute, or to put the "critical date" a long way back in history so as to exclude the later evidence. Such a tendency would, in fact, be completely inconsistent with the practice of international jurisprudence which, it is known, applies more liberal rules of evidence than most municipal systems do, and rightly attaches more importance to the later evidence than to the earlier evidence.

Preliminary Observation (b): It is agreed that, in certain circumstances, acts of possession which were contested by the other State are devoid of value as a means for the solution of the dispute; but these circumstances do not exist when the State whose title is contested is relying upon an original title supported by evidence of effective possession

206. The United Kingdom Government do not dissent from the proposition that, in certain circumstances, it is not permissible for the State whose title is contested (State A) to rely upon acts of possession, the legitimacy of which were contested at the time of

¹ *Ibid.*, p. 896.

² *Ibid.*, pp. 880, 907.

³ *Ibid.*, p. 880.

⁴ *Ibid.*, p. 882.

their performance by the other State (State B). These circumstances exist when the State whose title is contested is basing its claim upon occupation or prescription. If State A's claim is based upon occupation, the fact that State B contests, and has contested, the validity of the occupation, may have resulted in a situation in which there has not been that continuous and peaceful display of State A's sovereignty which international law requires. In the case on the *Legal Status of Eastern Greenland*, the Court stressed that :

"Another circumstance which must be taken into account by any tribunal which has to adjudicate upon a claim to sovereignty over a particular territory, is the extent to which the sovereignty is also claimed by some other Power" (p. 46).

The Court described it as "one of the peculiar features of the present case", and, undoubtedly, made it a ground of its decision in favour of Denmark that, "up to 1931 (the critical date) there was no claim by any Power other than Denmark to the sovereignty over Greenland" (*ibid.*). Similarly, if State A's claim be based upon prescription, the fact that State B contests, and has contested, the validity of the acts of sovereignty, may have resulted in a situation in which State A's possession has not been continuous and peaceful, such as international law requires. Thus, in the *Anglo-Norwegian Fisheries* case, the Court gave, among its reasons for holding that Norway had an historic (prescriptive) title to certain waters, "the general toleration of foreign States", and, in particular, the fact that "For a period of more than sixty years the United Kingdom Government itself (the plaintiff Government) in no way contested" the Norwegian practice of delimiting territorial waters (*I.C.J. Reports 1951*, p. 138).

207. Where, however, a State is relying upon an original title supported by evidence of effective possession, the circumstances are altogether different. In those circumstances, provided that the original title be good, and provided that there has been effective possession, despite contestation by other States, then, the fact that another State has contested, or is contesting, the possession is without legal significance. If this were not so, there would be no such thing as security of title in international law. Every State's title to its own territory would be open to challenge ; and, by the simple process of making a challenge, however formal or nominal, another State could render valueless all subsequent possession by the sovereign State, however continuous and peaceful was the previous possession.

French Point (5) : That the Jersey authorities have only exercised jurisdiction ratione personæ, and not ratione soli

208. The fifth French point is that "In all these matters, the Jersey authorities were exercising a personal jurisdiction over their

own subjects who had sailed to the Minquiers or the Ecréhous, just as they would have done had they returned from a voyage on the open sea. The British Memorial does not adduce any act of jurisdiction performed at the actual places in question which would have involved territorial jurisdiction" (p. 402). The United Kingdom Government submit that this contention is decisively refuted by the new evidence cited in Annexes A 153, A 155 and A 156 of the present Reply. This evidence consists of affidavits sworn by past or present officials of the Island of Jersey, and makes it absolutely clear that, not only have the Jersey authorities always considered themselves as exercising jurisdiction *ratione soli* over the Minquiers and the Ecréhous, but also that it would have been *illegal for them, from the point of view of Jersey law, to exercise jurisdiction in respect of acts occurring within the groups upon any other basis.*

209. From the affidavit of the former Solicitor-General and Attorney-General for Jersey, Mr. C. W. Duret Aubin (Annex A 153), in particular, it is evident that the "Royal Court of Jersey has cognizance of all causes, civil, mixed and criminal arising within the Bailiwick of Jersey", except for certain very serious cases. Further, this jurisdiction "*does not extend to causes arising outside the Bailiwick*" [italics added], and "*The Royal Court of Jersey has therefore no jurisdiction in the matter of a criminal offence committed outside the Bailiwick, even though that offence be committed by a British subject domiciled or ordinarily resident within the Bailiwick*" [italics added]. It is true that some States exercise jurisdiction, *ratione personæ*, over their subjects abroad; but the Jersey authorities, by the ancient Constitutions dating back to the reign of King John (1199-1216), exercise no jurisdiction upon this basis (see Annex A 154). The only jurisdiction they are, and always have been, entitled to exercise is jurisdiction *ratione soli*. It must, therefore, have been *ratione soli* that the prosecution of George Romeril took place in 1826 (United Kingdom Memorial, Volume I, paragraph 136 (a)). It may also have been *ratione soli* that the inquiry was held in 1309 into the drowning of twenty-four Jersey men returning from the Ecréhous, although it will be recalled that the United Kingdom Government cited this particular incident, not so much as evidence of jurisdiction *ratione soli* over the Ecréhous by the Jersey authorities—although perhaps it could be so cited—but rather as evidence of the close connexion between Jersey and the Ecréhous during the Middle Ages (see United Kingdom Memorial, Volume I, paragraph 131; French Counter-Memorial, p. 395; and the United Kingdom Reply, Part II, Section B, paragraph 177).

210. The affidavit of Mr. C. W. Duret Aubin states, therefore, the general principle that the Jersey authorities exercise no jurisdiction at all, *ratione personæ*, outside the Bailiwick of Jersey. From this, the United Kingdom Government submit that it is legitimate to draw the deduction that any jurisdiction that the Jersey authorities

may have exercised, in medieval or modern times, in respect of occurrences at the Minquiers or the Ecréhous, must have been exercised, so far as Jersey law was concerned, *ratione soli*. Whether this exercise of jurisdiction was valid internationally is, of course, another issue. It is one of international law, and is, indeed, the issue now before the Court. The United Kingdom Government, naturally, do not submit that the affidavit evidence of the Jersey authorities is decisive in itself from the point of view of international law; but they do submit that it is evidence of a cogent character, which the Court is entitled to take into account, that there is in Jersey a constant tradition that the Minquiers and the Ecréhous are dependencies of Jersey—or, to use the local expression, are areas falling “within the Bailiwick of Jersey”, over which the Jersey authorities may properly exercise jurisdiction¹.

211. The United Kingdom Government submit that the general principle stated in the affidavit of Mr. C. W. Duret Aubin is confirmed in detail by the affidavit of the present Sergent de Justice and Acting Viscount of the Island of Jersey, Mr. H. V. Benest (Annex A 155), who states: (a) “That the law of Jersey has for centuries required the holding of an inquest on any corpse found within the territory of the Bailiwick where it was not clear that death was due to natural causes”, and (b) “That the ordering of an inquest is in no way affected by the question whether or not the deceased was a British subject or resident in Jersey, the determining factor being, as is stated above, whether or not the corpse was found within the territory of the Bailiwick”. There could be no clearer statement of the principle that inquests are held by the Jersey authorities *ratione soli* and upon no other basis. This principle applies whether it be a matter of holding an inquest upon persons drowned in 1309 (United Kingdom Memorial, Volume I, paragraph 131, and Volume II, Annex A 79), or in 1917 (*ibid.*, paragraphs 137 (a) and Annex A 84), or in 1948 (*ibid.*, paragraph 137 (b) and Annex A 85).

212. The United Kingdom Government submit that yet further detailed confirmation of the general principle stated in the affidavit of Mr. C. W. Duret Aubin is to be found in the affidavit of the present Judicial Greffier of the Island of Jersey, Mr. P. E. Le Couteur (Annex A 156), who states that “.... the title to all real

¹ In the case between Germany and Spain over the *Caroline Islands* in 1885 (Moore's *International Arbitrations*, 1898, v. 5043), His Holiness Pope Leo XIII gave, as a reason for proposing that the Spanish title to the Islands should be recognized, “a series of acts accomplished at different periods by the Spanish Government”, which series of acts, coupled with the fact that “no other government has ever exercised a similar action over them” explained, according to His Holiness, “the constant tradition, which must be taken into account, and the conviction of the Spanish people relative to that [*i.e.*, Spanish] sovereignty”. His Holiness' proposition was accepted by the two Governments and embodied in a protocol.

property situate within the limits of the jurisdiction of the Royal Court of the said Island passes by matter of record....", and that a Registry of Deeds was established for this purpose in pursuance of an Ordinance of 1602. Evidence has been given in paragraphs 208-211 above, that the Royal Court of Jersey has traditionally regarded the Minquiers and the Ecréhous as being within the limits of its jurisdiction; but still further evidence of this fact may be derived from the Registry of Deeds established in 1602. In paragraphs 141 and 164 of the United Kingdom Memorial, reference was made to a number of contracts and other transactions involving real property at the Ecréhous and the Minquiers, respectively, which were passed before the Royal Court of Jersey (in accordance with the procedure described by Mr. P. E. Le Couteur); and details of these transactions are given at Annexes A 86, A 89-A 93, and A 116-A 122, of Volume II of the Memorial. For these transactions to be recorded in the Jersey Registry of Deeds at all, it was necessary for them to relate, at any rate, so far as Jersey law was concerned, to "real property situate within the limits of the jurisdiction of the Royal Court" of Jersey¹.

213. The United Kingdom Government submit that the evidence contained in these three affidavits is decisive; in that, from the point of view of Jersey law, public as well as private, the Minquiers and the Ecréhous are "within the Bailiwick of Jersey". This evidence is not, of course, decisive from the point of view of international law; but it is strong, persuasive evidence, especially—and the United Kingdom Government wish to emphasize this point—in the absence of any similar, or corresponding, evidence on the other side.

Sub-Section 3 : United Kingdom Contentions

General Remarks and Statement of Contentions

214. The United Kingdom Government will now advance their own positive Contentions in regard to those arguments in the French Counter-Memorial which relate to this part of the case, namely, that, during the 19th and 20th centuries, the United Kingdom

¹ On page 400 of their Counter-Memorial the Government of the French Republic state that "even if there were British[sic] houses on the disputed rocks, the existence of private property would not suffice to decide the question of sovereignty of the disputed territories" and refer to M. F. Lindley's book on *The Acquisition and Government of Backward Territory in International Law* (London, 1926) at page 23. The United Kingdom Government agree that the mere existence on disputed territory of private property belonging to the nationals of one State is not decisive on the issue of sovereignty, although (coupled with other factors) it may be cogent evidence in favour of that State's sovereignty. But it is a different matter when all transactions relating to the real property of the individuals concerned are recorded in that State's official Registry of Deeds and when the Registry of Deeds is only authorized to record transactions relating to "real property situate within the limits of the jurisdiction...." The recording of the transactions then becomes a State act, not a private act.

either maintained the original title which it already had over the Minquiers and the Ecréhous, *or* (if it had no such original title), that it has acquired, and maintained, a valid title during the 19th and 20th centuries.

215. The United Kingdom Government repeat the submissions in paragraph 235 of the Memorial, namely :

“(1) that the United Kingdom is entitled to exercise sovereignty over the Islets and Rocks of both the Ecréhous and the Minquiers groups by reason of having established the existence of a root of title in ancient times which is supported by effective possession in recent times to be found in acts which manifest a continuous and peaceful display of sovereignty over the territories ;

Alternatively,

(2) that the United Kingdom is entitled to exercise sovereignty over the Islets and Rocks of both the Ecréhous and the Minquiers groups by reason of having established title by effective possession alone, such possession being found in acts which manifest a continuous and peaceful display of sovereignty over the territories.”

216. The United Kingdom Government maintain that submission (1) above is unaffected by the French Counter-Memorial, because the Counter-Memorial has failed to shew either :

- (a) that the United Kingdom has not established the existence of a root of title in ancient times (see Section A of Part II, above) ; or
- (b) that the United Kingdom has not supported this title by effective possession in recent times (see paragraph 218, below).

217. The United Kingdom Government maintain that submission (2) above is unaffected by the French Counter-Memorial, because the Counter-Memorial has failed to shew that the United Kingdom has not established title by effective possession alone (see paragraphs 219-231, below).

218. On the assumption that, in ancient times, the United Kingdom had a valid original title to sovereignty over the Minquiers and the Ecréhous groups (Section A, of Part II, above), the United Kingdom can only have lost that title through one or other of the following means : (a) cession ; (b) abandonment ; (c) prescription. The United Kingdom Government have clearly never ceded sovereignty over the Minquiers and the Ecréhous to any other State ; and the evidence adduced in Sections A and B of Part II of the Memorial—even if (which the United Kingdom Government deny) it were insufficient of itself to *establish* a title—is, at the very least, sufficient to *prevent* its being held, either that the United Kingdom

has ever abandoned, or failed to maintain, its original title to the groups, or that France has acquired a title to the groups on the basis of prescription.

219. The United Kingdom Government submit, further, that the Counter-Memorial has failed to shew that the United Kingdom have not established title to the Minquiers and the Ecréhous by effective possession alone. The United Kingdom Government's Contentions on this point are as follows :

- I. The Court is entitled to consider evidence of all acts of possession which took place before the "critical date".
- II. The "critical date" in the present case is the 29th December, 1950.
- III. Of the acts of possession exercised by the Jersey authorities before the 29th December, 1950, the majority encountered no protest on the part of the Government of the French Republic.
- IV. Such protests as the Government of the French Republic did make were, in any case, incapable of preventing the acquisition of title to the groups by the United Kingdom, either by occupation or by prescription.
- V. The acts of possession relied upon by the United Kingdom Government were such as may properly be relied upon for the purpose of acquiring title, either by occupation or by prescription.

220. The United Kingdom arguments in support of the Contentions listed in paragraph 219 above, will now be developed.

United Kingdom Convention I : The Court is entitled to consider evidence of all acts of possession which took place before the "critical date"

221. The United Kingdom Government have already considered this question in paragraphs 202-205 above, and they believe that they have shewn that, in arbitrations over sovereignty, it is the practice of international tribunals to select a certain date as the "critical date", and to admit evidence of all acts of possession relating to the dispute which took place before the "critical date". This matter will not, therefore, be considered again here.

United Kingdom Contention II : The "critical date" in the present case is the 20th December, 1950

222. The United Kingdom Government submit that the "critical date" in this particular case is the date of the signature attached to the Compromis, *i.e.*, the 29th December, 1950. It has already been shewn (paragraph 203, above) that the "critical date" in a dispute depends upon the precise event that focuses the dispute. The precise

event which focused this dispute was the decision taken by the two Governments on the 29th December, 1950, to ask the Court to determine "whether the sovereignty over the islets and rocks (in so far as they are capable of appropriation) of the Minquiers and Ecrehos groups respectively *belongs* to the United Kingdom or the French Republic" [*Italics added*]. Since, in this case, neither side bases its claim to sovereignty upon a proclamation (as in the case on the *Legal Status of Eastern Greenland*) or upon a Treaty (as in the *Island of Palmas* case), there is no instrument or event other than the Compromis itself which can focus the dispute, and hence form the basis for the determination of the "critical date". The Compromis does not merely confer jurisdiction on the Court: it also contains the core of the matter which the Court is asked to determine on the merits. When the parties signed the Compromis, the question which they put before the Court was essentially: "Does sovereignty over the Minquiers and the Ecr  hous *belong now* (in 1950) to the United Kingdom or to France?" They did not ask the Court to determine whether the United Kingdom Government had the right to complain about the depredations of the French fishermen on the Minquiers in 1869, or whether France had the right to *claim sovereignty over the Minquiers in 1888*, or whether the United Kingdom Government had the right to include the Ecr  hous within the limits of the Port of Jersey in 1875, or whether France had the right to claim sovereignty over the Ecr  hous in 1886. These dates, like the important date of 1839 itself, are but stopping-places or stages in a dispute which, to be pedantic (but also accurate), must be said to have "begun", or been "born", in 1202-4¹, or, possibly, in 1066. There is no reason for stopping at 1869 and 1876 rather than earlier. If the French argument were carried to its logical conclusion, the Court would have to place the date of the birth of the dispute at some point in the Middle Ages, and would be prevented from considering any later evidence. This would be a *reductio ad absurdum*.

223. It may be objected that, in the *Island of Palmas* case, although the Compromis was signed in 1925, yet the arbitrator selected 1898 as the "critical date". That was, however, because of a special feature. As has been seen (paragraph 204, above), the Treaty of Paris (which purported to transfer the sovereignty over the Island from Spain to the United States of America) came into force in that year; and, unless Spain had title in 1898, no title could have been transferred to the United States. It is true that an American General had visited the Island in 1906; but this visit—described by the arbitrator as "the first entry into contact by the American authorities with the island"²—arose out of the purported

¹ It is to be noted that the French Counter-Memorial (p. 383) describes 1202 as "the juridical starting point".

² Dr. Huber described this event as "the origin of the dispute". It seems, therefore, possible for "the origin of the dispute" to be a later date than the "critical moment", which in this case was 1898 (*American Journal of International Law*, xxii. 872).

cession of the Island by Spain, and led immediately to diplomatic correspondence between the United States and Netherlands Governments, which culminated in the conclusion of the Compromis in 1925. The arbitrator, accordingly, ruled that evidence of events subsequent to 1906 was to be excluded, but that, as for events occurring during the period 1898-1906, they "cannot in themselves serve to indicate the legal situation of the island at the critical moment when the cession of the Philippines by Spain took place. They are however indirectly of a certain interest, owing to the light they might throw on the period immediately preceding" ¹. He consequently allowed evidence to be admitted of a contract made in 1899, of taxation tables for 1904-5, of the continuance in office until 1917 of a headman instituted in 1889, and of assistance given in the Island after the typhoon of 1904 ².

224. With regard to the *Island of Palmas* precedent, the United Kingdom Government, therefore, submit :

- (a) that, in the absence in the present case of a Treaty (such as the Treaty of Paris of 1898), or of any other international instrument or act forming the clear ground of focus of the dispute, the Court has no alternative but to regard the Compromis itself as the focusing point of the dispute ; and, hence, the course of the "critical date" ;
- (b) that, even if the Court were to select some earlier date as the "critical date", the events between that date and the 29th December, 1950, would be "indirectly of a certain interest, owing to the light they might throw on the period immediately preceding".

225. The United Kingdom Government submit with confidence, therefore, that, in the present case, the Court is entitled to admit, and to evaluate on its own merits, evidence of any facts prior to the 29th December, 1950. Even if, however, the French contention were correct, and 1869 and 1876 were at one time "critical dates" in the dispute, the United Kingdom Government submit that, by reason of the subsequent attitude adopted by the Government of the French Republic, these dates ceased to have the character of "critical dates". In the case of the Minquiers, the United Kingdom Government communicated to the Government of the French Republic in 1905 a Memorandum containing a full and unequivocal assertion of the United Kingdom title to sovereignty over that group. The Government of the French Republic acknowledged receipt of, but never replied to, this Memorandum (Memorial, Vol. I, paragraphs 112-113, and Annexes A 69 and A 70). Further, when, in 1929, it was reported that a French national, M. le Roux, who purported to hold a lease granted to him by a document signed by

¹ *Ibid.*, xxii. 907.

² *Ibid.*, *loc. cit.*

three French departmental officials, was attempting to erect a hut on Maitresse Ile of the Minquiers, the Foreign Office addressed a Note to the French Ambassador in London on the 26th July, 1929 (Annex A 75), stating that, as no reply, other than an acknowledgment, had ever been received to the 1905 Memorandum, the United Kingdom Government had "accordingly always assumed that the French Government had no desire to dissent from the views expressed in the memorandum, and they think that there must be some misunderstanding if a lease has actually been granted to Monsieur Leroux by a French authority, as alleged". No reply was received to this Note, but M. Le Roux withdrew from Maitresse Ile, having only constructed a foundation wall some eighteen inches high (Memorial, Vol. I, paragraphs 114 and 168, and Annexes A 75, A 135-137 and C 20). This immediate reaction by the United Kingdom Government may be contrasted with the inaction of the French authorities towards the construction of houses at the Minquiers during the 19th century, which was referred to in paragraph 200 above, and which occurred at a time when even the Government of the French Republic admit that the Court is entitled to take note of such incidents.

226. In fact, during the interval between the exchanges of 1903-1905 and the exchanges which led up to the conclusion of the Compromis in 1950, the Government of the French Republic made no formal claim to sovereignty over the Minquiers Islets, apart from the Notes of the 5th October, 1937, and the 10th January, 1938, which were replied to by the United Kingdom Government in a Note of the 18th July, 1938 (Memorial, Vol. I, paragraphs 115-118, and Vol. II, Annexes A 76-78). An examination of these Notes shews that, while France had not "le dessein de renoncer à ses droits souverains sur les Iles Minquiers", her principal preoccupation then (as on some other occasions) was not with sovereignty, but with fishery rights, and that, when Mr. (later Sir) William Strang gave the assurance that no interference with these fishery rights was intended, the correspondence ceased. As for the Ecréhous, there is no record of any formal French claim to sovereignty having been made between 1888 and 1950. This was so, despite the fact that, during this period, in the case of this group, as well as in that of the Minquiers, there occurred a number of acts manifesting United Kingdom sovereignty, a large proportion of which not only provoked no counter-claim to sovereignty on the part of the Government of the French Republic, but did not even give rise to any protest (see paragraph 200, above).

227. These facts lead the United Kingdom Government to submit that it cannot be open to a State artificially to create a "critical date" by the mere process of making claims which are only pressed up to a certain point, or which are subsequently abandoned, or revived only after a more or less prolonged interval—particularly

where the claim is not accompanied by any proposal which would lead to a final settlement of the dispute (e.g., a reference to international adjudication). If it were open to States to create "critical dates" in this fashion, it would be possible for one State to keep alive indefinitely claims which it did not press to any final or definite issue, and, at the same time, to maintain that all the acts of user, administration, etc., carried out by the State in possession after the date of the original claim, had no evidential value and were periodically nullified¹. It is submitted that a claim can only *per se* give rise to a "critical date", if it be accompanied, or followed within a reasonable time, by concrete proposals for its settlement (e.g., arbitration) or, at least, by some attempt to bring it to a definite issue. In the present case, France certainly made claims to the groups; and, as has been demonstrated in Section E of Part I of the present Reply, these were sufficiently unequivocal to destroy completely the whole basis of the French contention that, by reason of the 1839 Convention, neither party was qualified to make a claim. But, the claims were not accompanied, or followed by, any proposals for arbitration or other definite method of settlement (as to the possibilities of which see paragraph 230, below); and they were either not pressed any further (in the case of the Ecréhous), or else (in the case of the Minquiers) pressed for a time but not kept up, and, eventually, revived only after a prolonged interval of over thirty years. It is submitted that, in these circumstances, the claims (and still less any anterior event) could not possibly give rise to a "critical date" in the sense of nullifying the evidential value of all acts or events subsequently occurring; that, since the dispute does not turn upon the legal effect of any one definite act or instrument (such as a treaty of cession, or proclamation of sovereignty), but upon the cumulative effect of acts of ordinary user and administration going back many decades, if not centuries, the "critical date" can only be the date upon which the parties decided and agreed by the Compromis to submit the issue to the Court; and that both parties are fully entitled to put forward, as evidence in support of their respective claims, any facts or events occurring, or the existence of any situation which was in being, before and right up to that date.

¹ While the United Kingdom Government do not, for a moment, impute any such motive to the Government of the French Republic in the present case, it is well known that territorial claims are not infrequently put forward for tactical or other ulterior reasons of some kind, and without any real expectation or intention of pressing them to a solution. The "nuisance value" of such claims would, obviously, be enormously increased if they at once gave rise to a "critical date" having a nullifying effect upon all evidence subsequent to that date.

United Kingdom Contention III : Of the acts of possession exercised by the Jersey authorities before the 29th December, 1950, the majority encountered no protest on the part of the Government of the French Republic

228. The United Kingdom Government submit that it has already been shewn in paragraph 200 above, that the majority of the acts of possession exercised by the Jersey authorities before the 29th December, 1950, encountered no protest on the part of the Government of the French Republic.

United Kingdom Contention IV : Such protests as the Government of the French Republic did make were, in any case, incapable of preventing the acquisition of title to the groups by the United Kingdom, either by occupation or by prescription

229. The next question which falls to be considered is whether the French protests—an account of such protests as there were is given in paragraph 200 above—were capable of preventing the acquisition of title to the groups by the United Kingdom, either by occupation or by prescription.

230. The United Kingdom Government do not dissent from the proposition that, where a State is seeking to establish title upon the basis of occupation or prescription, the fact that (particularly in the period immediately preceding the "critical date") the other State contested the acts relied upon as acts of sovereignty, may render those acts devoid of legal value. So far as occupation is concerned, the opposition of the other State may have been such that there simply has not been a "continuous and peaceful display of sovereignty" such as the law requires. In the case on the *Legal Status of Eastern Greenland* (Series A./B.—Fasc. No. 53), the Permanent Court of International Justice stressed that "another circumstance which must be taken into account by any tribunal which has to adjudicate upon a claim to sovereignty over a particular territory, is the extent to which the sovereignty is also claimed by some other Power" (p. 46). The Court described as "one of the peculiar features" of that case the fact that, "up to 1931 there was no claim by any Power other than Denmark to the sovereignty over Greenland" (p. 46); and this feature was undoubtedly one of the reasons why the decision went in favour of Denmark. Similarly, if it be sought to establish title upon the basis of prescription, the fact that the possession has been contested may well render the acts of possession relied upon devoid of legal value. For there then will not have been the "peaceable possession" which the law requires. The question arises, however, in any particular case, whether the contestation has been sufficient to prevent the acquisition of title by prescription. This question usually presents itself in this form: are diplomatic protests, unsupported by any other

action, sufficient to prevent the acquisition of title by occupation or prescription? The United Kingdom Government submit that, under international law, diplomatic protests may act as a temporary bar to the acquisition of title, but that they do not act as a complete bar unless, within a reasonable time, they are followed up by reference of the dispute to the appropriate international organization or international tribunal—where such a course is possible—or, at the least, by proposals to that effect, which the other party rejects or fails to take up. In the case of the Minquiers or the Ecréhous, France could have invoked the procedure laid down in the Franco-British Arbitration Agreement of the 14th October, 1903¹, or she might, perhaps, have brought the matter before the League of Nations. Alternatively, she could have proposed a reference to the Permanent Court of International Justice or to the present Court by agreement; and there were, of course, other possibilities. It is submitted that the failure to adopt any of these courses renders France's protests incapable of preventing the acquisition by the United Kingdom of any title which would otherwise be conferred by occupation or prescription.

United Kingdom Contention V: That the acts of possession relied upon by the United Kingdom Government were such as may properly be relied upon for the purpose of acquiring title, either by occupation or by prescription

231. The United Kingdom Government submit that, having regard to the physical nature of the territories in question, and upon the basis of the legal submissions made in paragraph 184 of the Memorial, the acts of possession relied upon by the United Kingdom as evidence of its sovereignty over the Minquiers and the Ecréhous groups were such as may properly be relied upon under international law for the purpose of acquiring title, either by occupation or by prescription.

Sub-Section 4: United Kingdom denial of the claim of the Government of the French Republic that French acts of possession during the 19th and 20th Centuries outweigh those of the United Kingdom

232. The Government of the French Republic claim, on page 401 of their Counter-Memorial, that they can adduce, for their part, "acts of possession performed at the same periods as those relied on by the United Kingdom and of such a kind as to outweigh them". It is stated in particular that France "assumed the sole charge of the lighting and buoying of the islands for more than seventy-five years without having encountered any objection on the part of the British Government", and that "France assumed that public service of her own accord in 1861, twenty years before any dispute had arisen".

¹ *British and Foreign State Papers*, xcvi. 35.

The Buoys established by the French authorities in the channel to the south-west of the Minquiers

233. So far as the United Kingdom Government are aware, the only works of lighting and buoying undertaken by the French authorities are those referred to in paragraphs 101-112 of Volume I of the United Kingdom Memorial (see also Annexes A 64, A 66, A 67 and A 69 of Vol. II of the Memorial). These works, it will be seen, were established by the French authorities during the second half of the 19th century in the vicinity of the Minquiers, to assist navigation to the French ports of the mainland; and, so far as the United Kingdom Government are aware, the French authorities have never maintained any lights at or round the Ecréhous.

234. In 1903-5 it was disputed between M. Cambon and the Foreign Office whether the lights in the vicinity of the Minquiers were inside or outside territorial waters; but, in the Memorandum handed to M. Cambon dated the 17th August, 1905 (Annex A 69)—a Memorandum to which the Government of the French Republic never replied beyond a formal acknowledgment—the Foreign Office said that:

“M. Cambon, in his Memorandum of the 18th January last [Annex A 67], above referred to, demurs to the statement in the Foreign Office Memorandum of the 23rd December, 1903 [Annex A 66], that the works of lighting and buoying, alluded to in His Excellency's Memorandum of the 15th July, 1903 [Annex A 64], have all been outside the 3-mile limit of the Minquiers, and His Excellency lays stress on the fact that the only works executed at the Minquiers for the use of navigators have been carried out at the expense of the French Government. His Excellency would appear, however, to be under a misapprehension, as, according to the information of His Majesty's Government, no works of any kind have been executed by the French Government at the Minquiers, nor even in the immediate vicinity of the islands. It is known that in order to assist the navigation of vessels to the neighbouring French ports, the French Government, in 1865, placed a floating light, which was replaced in 1891 by light buoys, in the channel to the south-west of the Minquiers, at a distance of somewhat more than 3 miles from the low-water mark of the main rocks, though within a distance of 3 miles from certain appurtenant rocks and shoals visible only at low water. His Majesty's Government have not objected to the establishment of these buoys, being unwilling, unless in case of absolute necessity and in rebuttal of a direct claim of right, to assert British sovereignty in opposition to a work of public utility which *per se* prejudiced in no way British interests. They cannot, however, admit that the placing of such lights, to facilitate the navigation of ships bound to St. Malo, in the deep channel to the southward of the Minquiers, can be held to establish a claim of any sort to the sovereignty of those islets”.

235. There can be little doubt that, according to the contemporary rules of international law governing the delimitation of territorial waters, the lights established by the French authorities in the vicinity of the Minquiers were outside the territorial waters of the latter. The normal rule prevalent at the time was that territorial waters were measured from the mainland and from off-lying permanently dry islands, though not from banks and rocks which were dry at low water only. It is true that Article 2 of the North Sea Fisheries Convention of 1882¹ provided for the measurement of territorial waters not only from the mainland, but also "*des îles et des bancs qui en dépendent*" ("from dependent islands and banks"), but this reference to "dependent banks" was a novel feature introduced in the Convention by way of derogation from the normal rule. Further, the North Sea Fisheries Convention of 1882 did not cover that part of the French coast near which the Channel Islands are situated². The principal treaty provision for this area was the Anglo-French Fishery Convention of 1839 (Annex A 27), which referred in its Articles 2 and 9 simply to "low water mark", a definition which gave rise to difficulties, but which seems to have been interpreted as referring only to the low water mark on permanently dry land (including islands), and not to formations dry at low water only³.

236. The United Kingdom Government submit, therefore, that the lights established by the French authorities in the channel leading to St. Malo lay outside the territorial waters of the Minquiers as delimited in the 1839 Convention. They further submit that, even if it were held that these lights (or some of them) lay within the territorial waters of the Minquiers, this would not affect the sovereign title of the United Kingdom to the group as a whole. It can hardly be maintained that the single operation of establishing and maintaining such lights "outweighs" the whole of the acts of possession of the Jersey authorities mentioned in paragraphs 158-179 of Volume I of the United Kingdom Memorial. The most that France can derive from these works is that, in the event of the United Kingdom's being held sovereign over the Minquiers, and on the assumption that the lights are within territorial waters, France has a prescriptive right, in the nature of a servitude, to maintain these lights without let or hindrance from the Jersey authorities, as an aid to shipping proceeding to French ports.

The Survey of the Minquiers by M. Beauteemps-Beaupré in 1831

237. The Government of the French Republic further argue on page 401 of their Counter-Memorial that it was a Frenchman,

¹ *British and Foreign State Papers*, lxxiii. 39.

² See Article 4 of the Convention; and see also T. W. Fulton, *Sovereignty of the Sea* (Edinburgh & London, 1911), pp. 643-4.

³ Fulton, *op. cit.*, pp. 618, 639-43.

M. Beauteemps-Beaupré, and not an Englishman, Captain Martin White, R.N., who made the first hydrographic survey of the Minquiers. The United Kingdom Government have no wish to depreciate the work of M. Beauteemps-Beaupré, who undoubtedly surveyed the Minquiers in 1831 (and who was, apparently, known to his contemporaries as "Père de l'hydrographie"¹); but they would draw the attention of the Court again to paragraphs 143, 144 and 169 of Volume I of the United Kingdom Memorial. From these paragraphs, it is clear that Captain White not only surveyed the Ecréhous as well as the Minquiers, but also that he surveyed both groups in 1813-15²—more than a decade and a half before M. Beauteemps-Beaupré; and, furthermore, that, at the time of his survey, he regarded the Minquiers at any rate as a British possession.

The Survey of the Minquiers by the French Hydrographic Mission in 1888

238. It is also contended by the Government of the French Republic that France is entitled to sovereignty over the Minquiers, because, in 1888, a French mission erected some provisional beacons there. "These sea-marks", it is said, "were respected, and no protest was made against the French works undertaken in these waters" (Counter-Memorial, p. 401). The mission which the Government of the French Republic have in mind is, no doubt, the surveying party referred to in the first sentence of paragraph 101 of Volume I of the United Kingdom Memorial, and which may have helped to provoke the diplomatic correspondence referred to in paragraph 102. At any rate, in a long Note addressed to M. Waddington, dated the 21st November, 1888 (Annex A 54), to which the Government of the French Republic did not reply, the Marquess of Salisbury dealt, *inter alia*, with certain hydrographic activities of the French authorities at points round the Minquiers, pointing out that these activities "cannot be cited as proofs of sovereignty over the rocks themselves....", and concluding with the remark that "H.M.'s Govt have every confidence that your Government, having the above stated facts brought to their remembrance, will at once admit that the right of Sovereignty of the British Crown over the Minquiers Group of Islets can no longer be considered as open to doubt". It may be correct for the Government

¹ M. Dupperé, a Member of the French Academy, delivering a funeral oration on M. Beauteemps-Beaupré in 1854, observed that his work had excited "l'admiration des étrangers, notamment des Anglais, qui ont décerné à son auteur le titre de 'Père de l'hydrographie'" (*Discours prononcés Aux Funérailles de M. Beauteemps-Beaupré* (Paris, n.d.), p. 10).

² A chart entitled "A Survey of the Island of Jersey and its Surrounding Dangers, by Captain Martin White", which incorporated his work in the Ecréhous group was, in fact, published by the British Admiralty on the 26th June, 1821; and a further chart, No. 59, which included his work at the Minquiers, was published by the same authority on the 1st May, 1826.

of the French Republic to say that the hydrographic activities of the French authorities did not in themselves encounter any protest on the part of the United Kingdom Government¹, but the reason for this, as stated in the Foreign Office Memorandum, dated the 17th August, 1905 (Annex A 69), was that :

"His Majesty's Government have not objected to the establishment of these buoys, being unwilling, unless in the case of absolute necessity and in rebuttal of a direct claim of right, to assert British sovereignty in opposition to a work of public utility which *per se* prejudiced in no way British interests".

On the other hand, the United Kingdom Government have always made it clear—as also stated in the Memorandum of 1905—that :

"They cannot, admit that the placing of such lights, to facilitate the navigation of ships bound to St. Malo, in the deep channel to the southward of the Minquiers, can be held to establish a claim of any sort to the sovereignty of those islets".

239. Leaving aside the separate, and difficult, issue whether the French lights were inside or outside the territorial waters of the Minquiers, it is submitted that the attitude of the United Kingdom Government to these hydrographic activities has always been a reasonable one. This attitude has been, not only to make no objection to the maintenance of the lights established by the French hydrographic service, but also to provide that service with every facility. At the same time, it has been strenuously and continuously denied that any activity on the part of the French

¹ At the same time, there is interesting contemporary evidence that the work of the French mission did meet with a certain amount of opposition. The French official publication, *Annales Hydrographiques*, 4e Série, Tome premier(bis), Année 1950 (Étude Historique sur les ingénieurs hydrographiques et le service hydrographique de la Marine, 1814-1914 : Paris, 1951), p. 189, describing the hydrographic missions of 1888-9 to the Minquiers says :

"Ces deux missions entraînèrent quelques difficultés diplomatiques, la nationalité du plateau des Minquiers n'étant pas définie avec certitude. Des pêcheurs anglais de Jersey s'étaient établis sur la maîtresse-île et hissèrent le pavillon anglais à l'approche du bâtiment qui portait la mission. Bien que ce fut le gouvernement français qui entretint le balisage, on avait recommandé aux ingénieurs de n'élever aucun signal durable sur les îles, de n'effectuer aucun travail hydrographique dans les eaux anglaises de Jersey et de ne soulever aucun incident. D'ailleurs les pêcheurs anglais de la maîtresse-île accueillirent sans difficulté les observateurs de marée qui y furent placés et donnèrent l'hospitalité à des sous-ingénieurs qui durent y passer la nuit, surpris par le mauvais temps et ne pouvant regagner le bâtiment. Les journaux anglais des îles anglaises récriminèrent cependant assez violemment, mais cette campagne n'eut aucune suite" *.

* "Dès 1888 cependant le Ministre des Affaires Étrangères d'Angleterre avait adressé à son collègue français, une lettre où il revendiquait pour son pays la souveraineté sur le plateau. Des recherches faites en France dans les Archives et les bibliothèques donnèrent lieu à un rapport de GERMAIN et du Capitaine de frégate BANARE qui concluaient qu'on devait considérer le plateau comme n'appartenant à personne".

hydrographic service could give rise to a French claim to sovereignty.

SUMMARY OF SECTION B

240. In Section B of Part II of this Reply, the United Kingdom Government began by making some preliminary observations on a number of French points all directed to the conclusion that the Court was not entitled to take into account the bulk of the evidence cited in the United Kingdom Memorial concerning the acts of sovereignty exercised by the Jersey authorities over the Minquiers and the Ecréhous during the 19th and 20th centuries. The United Kingdom Government rebutted, in particular, the point that the Court should not take into account evidence subsequent to 1869, in the case of the Minquiers, and subsequent to 1876, in the case of the Ecréhous. It was then shewn that, even if all evidence subsequent to these dates had to be excluded, there was overwhelming evidence that, at these dates, both groups were British possessions. It was further shewn that only a few of the acts of authority exercised by the Jersey authorities over the groups had encountered French protests, and it was stressed that, while, in certain circumstances, protests may prevent or delay the acquisition of a title by occupation or prescription, the position is different when, as in the present case, a State is relying *mainly* upon an original title supported by evidence of effective possession, and only *secondarily* or *alternatively* on occupation or prescription. It was also pointed out that the French argument that the acts of the Jersey authorities in the groups were exercised *ratione personæ*, rather than *ratione soli*, was entirely misconceived.

241. The United Kingdom Government then put forward their own positive Contentions on this part of the case. They argued, in the first place, that the evidence of the acts of the Jersey authorities during the 19th and 20th centuries—even if (which the United Kingdom Government denied) it were insufficient of itself to *establish* a title to the groups—was, at the very least, sufficient to prevent its being held that the United Kingdom had abandoned, or failed to maintain, its own original title, or that France had acquired a title on the basis of prescription.

242. It was argued, secondly, that, even if the United Kingdom had no original title to the groups, the United Kingdom could, nevertheless, establish title to them on the basis of effective possession alone (*i.e.*, by occupation or prescription). It was contended that the Court is entitled, as a matter of principle, to consider evidence of all acts of possession which take place before the "critical date". The term "critical date" is a legal term of art not necessarily synonymous with the "birth of the dispute", but rather—on the authority of the *Legal Status of Eastern Greenland and Island of*

Palmas cases—the date on which there occurred the event which could be said to have focused the dispute. In the present case, the event which focused the dispute was the signature of the Compromis on the 29th December, 1950, so that this date is the “critical date”. It was then argued that, even if the Court were to select some earlier date as the “critical date”, events between that date and the 29th December, 1950, would, following the precedent of the *Island of Palmas* case, at least be “indirectly of a certain interest, owing to the light they might throw on the period immediately preceding”; that the Government of the French Republic made no formal claim to sovereignty over the Minquiers between 1904-5 and 1950 (apart from two Notes in 1937-38, mainly concerned with fishery rights, in which the sovereignty issue was raised only incidentally and dropped when the United Kingdom Government gave the necessary assurances about fishery rights), or to the Ecréhous between 1888 and 1950; that, during all this time, the Jersey authorities exercised a continuous and peaceful display of sovereignty over both groups, whereas the Government of the French Republic exercised no sovereignty of their own, and confined themselves to occasional and spasmodic protests; and that these protests covered only a few out of the many Jersey acts of sovereignty.

243. The United Kingdom Government next submitted that France's claims to sovereignty over the groups, though sufficiently unequivocal to destroy completely the whole basis of the French contention that, by reason of the 1839 Convention, neither party was qualified to make a claim, were unaccompanied by any proposal for a final settlement of the dispute. The French claims, therefore, could not be said to have focused the dispute, and so they did not bring into being any “critical date”. Similarly, the spasmodic French protests, unaccompanied as they were by any proposals for settlement, could not be said to have been sufficient to prevent or bar the acquisition of title to the groups by the United Kingdom, either by occupation or by prescription. On the contrary, as the United Kingdom Government have submitted, the correct position—having regard to the physical nature of the territories in question and to the rules of international law on the subject—is that the acts of possession exercised by the Jersey authorities over both groups were such as can properly be relied upon for the purpose of acquiring title, either by occupation or by prescription.

244. Finally, the United Kingdom Government refuted the claim of the Government of the French Republic that their own acts of possession outweighed those of the United Kingdom. It was pointed out that these acts of possession (which in any case related to the Minquiers only) were not such as to affect the issue of sovereignty at all.

FINAL CONCLUSIONS OF THE UNITED KINGDOM GOVERNMENT

245. For the reasons set out in the preceding paragraphs of this Reply, the United Kingdom Government request the Court :

- (1) to reject *in toto* the conclusions of the Government of the French Republic, set out on page 403 of their Counter-Memorial ;
- (2) to adjudge and declare that the United Kingdom is entitled, under international law, to full and undivided sovereignty over all those Islets and Rocks of the Minquiers and Ecréhous groups which are physically capable of appropriation.

(Signed) R. S. B. BEST,
*Agent for the Government of the
United Kingdom.*

3rd November, 1952.

Annexes to the Reply submitted by the Government of the United Kingdom of Great Britain and Northern Ireland

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ANNEX A 141

Letter from the Rt. Hon. R. Peel, Home Secretary, 24th December 1825, to the Rt. Hon. G. Canning, Foreign Secretary, giving detailed Information about the Oyster Fishery off the Coast of the Cotentin, carried on by British (including Jersey) and French Fishermen

[*Foreign Office Papers*, 27/340]

Whitehall 24th Dec^r. 1825.

My dear Canning,

I had a long interview some days since with two persons from Jersey well acquainted with the Oyster Fishery on the Coast of Normandy, and who in answer to various questions put to them by me, gave me Information of which the following is the substance.

I should first state that one of my informants is Colonel Touzel a very respectable and intelligent Native of Jersey, who was employed by the British Government in the year 1823 as a Commissioner in the Negotiation which was then carried on with France respecting the Oyster Fishery. The other, a Man of the name of Richardson who for some time acted as Pilot of a Man of War, but for the last four years has been practically engaged in the Oyster Fishery in the actual dredging for the Oysters.

The Fishery by the British and Jersey Boats commences in January, and continues until June, and sometimes until July—

The French commence the Fishery in October, and end in conformity with their regulations, on the 30^h April.

The Period at which the Oyster spawns is from May to August, and the Fishery is therefore carried on by our Fishermen for a portion of the time at a period of the year when it is very destructive.

The French and the British Fishermen fish alike for the full grown Oyster only.

The French are compelled to bring ashore what is called the Cutch (that is, the Animal in its intermediate state between Spawn and oyster) and deposit it on preserved Beds near the Shore.

The British throw the Cutch overboard, without regard to the place of its deposit.

Nearly the whole of the Oysters caught by the British and Jersey Fishermen is consumed in England—The Consumption of Jersey does not amount to the five hundredth part of it—The Oysters are brought to England, placed upon artificial Beds, and after having been fattened, are sent to the London Market.

The produce of our Fishery from the Months of February to October in each of the years under mentioned has been as follows ;

Tubs of Oysters

1821	—————	178000.
1822	—————	197000.
1823	—————	235000.
1824	—————	198000.
1825	—————	197000.

The Tub of Oysters contains from 5 to 600 Oysters.

Our Fishery is carried on by British Boats and by Jersey Boats.

The Jersey Boat is from 10 to 15 Tons burthen, and employs four hands—

The British Boat is from 15 to 30 Tons burthen, and employs from four to seven Men.

The Places from which the British Boats chiefly come are these,

Portsmouth	Ramsgate
Queenborough	London
Rochester	Malden[sic]
Southampton	Poole
Colchester	Cowes
Milton	and
Feversham[sic]	Chichester

Guernsey employs about 20 or 30 Boats.

The following Lists will give the number of boats employed in the Fishery in each of the following years.

	British Boats	Jersey Boats	Total
1819	— 157	— 82	— 259
1820	— 145	— 94	— 239
1821	— 138	— 111	— 249
1822	— 118	— 122	— 230
1823	— 107	— 132	— 239
1824	— 90	— 138	— 228
1824	— 60	— 160	— 220

You will perceive that there has been from 1819 to the present year, a gradual diminution in the number of British boats—and very nearly a corresponding increase in the number of Jersey boats.

The provisional limits of the Fishery, now in force, under which our Boats are for the present interdicted from fishing within six miles of the French Coast were established in September 1824.

The Fishery of the present year has been therefore carried on, subject to the restriction which they impose, and it appears from the Return of fish caught, that the Produce of the last year was as great as that of any of the five preceding years excepting the year 1823—It fell short indeed of that of 1824 by one thousand barrels.

I asked Colonel Touzel and Richardson how this was to be accounted for—how it had happened that the British Boats when forbidden to approach within 6 miles of the Norman Coast, had been very nearly as successful as they were first, when no regulation at all was in force :—and secondly, when the regulation imposed only the limit of three miles.

On being asked this question, they admitted that very nearly all the Oysters taken by the British and Jersey Fishermen had been taken *within*¹ the limit of six miles—They said the British and Jersey Boats had been in the habit of dredging by night, and either escaped the vigilance of the French Cruizers, or were purposely left unmolested by them, except indeed in some case of flagrant violation of the Orders.

¹ Underlined in the original MS.

They considered that not less than four fifths of the Oysters taken by us were taken within our assigned limit of six miles—and that, were that limit rigidly enforced, there would be an end to our Fishery—They said that Captain Freemantle of the *Jasper*, had, by way of experiment, dredged for Oysters along or just outside the Line which is parallel to the French Coast at a distance of six miles—that is—the Line of our present Limits, but without success.

At this distance from the Shore, the depth of water is from 9 to 12 fathoms—Between the limits of 3 and 6 miles, the depth is from 6 to 8 fathoms.

In their opinion the French Cruizers did not interfere with our Fishermen during the last year, because the French have almost a superfluous supply of Oysters for their market within 3 miles of the Shore—and very rarely fish beyond that distance.

In the year 1814, Oysters sold at Granville for 14 livres a thousand, now they sell for 2 livres a thousand.

The French employ about 120 Boats in their Fishery.

About 2000 persons including women and children are employed in Jersey in picking and cleaning the Oysters and packing them for the English Market.

I think I have now detailed all the information which I received on the subject of the Oyster Fishery.

It is perhaps desultory and unconnected from having been given in answer to Questions put by me to my Informants in the course of our Conversation. I hope however there is no material point connected with the mere practical detail of the fishery, omitted.

Believe me
My dear Canning,
Very faithfully Yours
ROBERT PEEL.

The Right Honorable
George Canning
&c &c &c

ANNEX A 142

Detailed analysis of The Lines drawn on the Chart referred to in Article 1 of the Anglo-French Fishery Convention of 1839, defining Fishery Limits on the Coasts of Great Britain and France

Point A.—3 miles from the low water line of the mainland at Point Meinga.

Between Points A and B.—The furthest distance of any point on the line from the nearest drying rock lying off any feature permanently above water is 5.2 miles. The nearest distance from a point on the line to a drying rock off the *Iles Chausey* is 2.5 miles.

Point B.—3½ miles from the nearest drying rock of the *Iles Chausey* and about the same distance from a drying rock 1.6 miles from *Maitresse Isle* (Minquiers).

Between Points B and C.—The nearest point on the line to a rock of the Iles Chausey is 2.9 miles distant.

Point C.—3.2 miles from the nearest rock of the Iles Chausey.

Between Points C and D.—The shortest distance from the line to the nearest rock of the Iles Chausey is 2.85 miles.

Point D.—2.85 miles from the nearest rock of the Iles Chausey.

Between Points D and E.—The furthest distance from the low water line of the mainland, or to a rock off the Iles Chausey, is 5 miles. The nearest distance to the mainland low water line is 5 miles. The furthest distance from the line to a drying rock lying off the mainland is $4\frac{1}{2}$ miles. The nearest distance from the line to a drying rock within 3 miles of the mainland low water line is 2.8 miles.

Point E.—4.7 miles from the nearest point on the low water line of the French mainland and 3.75 miles from the nearest off-lying drying rock.

Between Points E and F.—The line runs directly towards the mainland.

Point F.—2.4 miles from the low water line of the mainland and 1.6 miles from the nearest off-lying drying rock.

Between Points F and G.—The point on the line furthest from the low water line of the mainland is 2.4 miles distant (at F). The point nearest to the low water line is 1.8 miles distant. The point nearest to an off-lying drying rock of the mainland is 0.9 mile distant.

Point G.—Distance from the nearest point of the low water line of the mainland is 2.2 miles. Distance from the nearest off-lying drying rock is $1\frac{1}{4}$ miles. Distance from Chaussée des Bœufs is about $2\frac{1}{4}$ miles.

Between Points G and H.—The point on the line nearest to the low water line of the mainland is 1.8 miles away. The point furthest away is at Point G (2.2 miles).

Point H.—1.95 miles from the nearest point on the low water line of the mainland and 1.3 miles from the nearest off-lying drying rock.

Between Points H and I.—The furthest distance from the low water line of the mainland to a point on the line is 2.1 miles. The nearest distance is 1.5 miles at Point I. (A rough average distance is 1.9 miles).

Point I.—1.5 miles from the nearest low water line of the mainland, 3.5 miles from a drying rock on Basses de Taillepied and $5\frac{1}{4}$ miles from drying rocks of the Ecréhous group.

Between Points I and K.—The furthest distance from the low water line of the mainland to the line is 2.9 miles (at Point K), the nearest distance is 1.5 miles (at Point I). A rough average distance is 2 miles.

Point K.—2.9 miles to the nearest point on the low water line of the mainland. 3.4 miles from the low water line at Cape Carteret. 3.7 miles from the nearest drying rock of the Ecréhous group.

ANNEX A 143

Dispatch from the French Ambassador, 11th February 1870, to the Foreign Office, urging Uniformity of Penalties to be imposed on British and French Fishermen for Fishery Offences

[Foreign Office Papers, 97/448]

Londres 11 Février 1870.

Monsieur le Comte,

Ainsi que le sait Votre Excellence, la mise en vigueur de la convention sur les pêcheries conclue le 11 novembre 1867¹ entre l'Angleterre et la France, a été retardée jusqu'à ce jour par des causes diverses. L'approbation du Parlement ayant été expressément réservée, cet Acte international a dû être sanctionné d'abord par un bill[*sic*] qui porte la date du 13 juillet 1868², mais qui imposait à l'administration britannique l'obligation de procéder au préalable à l'enregistrement général de tous les bateaux de pêche du Royaume Uni[*sic*]. En France, d'autre part, M^r le Garde des Sceaux a reconnu la nécessité[*sic*] de présenter au Corps Législatif un projet de loi destiné à remplacer la loi de 1846 sur les pêcheries, pour mettre celle-ci en harmonie avec les dispositions nouvelles de la Convention relatives à la juridiction et aux pénalités. Le Département de la Justice s'est trouvé, à cette occasion, amené à examiner attentivement la législation anglaise sur la matière et l'étude qu'il a faite du Bill du 13 juillet 1868 lui a donné lieu de constater que ce Bill s'écartait, sur certains points importants, du texte même de la Convention.

En présence de ce défaut de concordance, le Gouvernement de l'Empereur a cru devoir réunir les membres français de la Commission internationale qui avait été chargée de préparer la Convention du 11 Novembre 1867 et il leur a confié le soin d'examiner s'il était possible d'accepter toutes les combinaisons de la loi anglaise, et d'introduire, le cas échéant, dans notre législation, une réglementation[*sic*] analogue qui eût pour effet d'établir entre les pêcheurs des deux nations une complète réciprocité de traitement.

La Commission Française[*sic*] a consigné le résultat de ses études dans une note dont j'ai l'honneur de transmettre ci-joint copie³ à Votre Excellence. Elle fait ressortir, à la fois, d'une part l'exagération des pénalités dont sont passibles les pêcheurs français pour contraventions commises en dehors des limites de pêche comparées à celles que stipule la Convention pour la mer commune ; d'autre part, l'impossibilité où nous serions d'introduire, par réciprocité, dans notre propre législation, des dispositions analogues à celles du Bill de 1868.

En me priant d'entretenir Votre Excellence à ce sujet, le Ministre des Affaires Étrangères de l'Empereur ne se dissimule pas, Monsieur le Comte, le côté délicat de la question qui le préoccupe. Il ne saurait méconnaître, en effet[*sic*], le droit que le principe de la souveraineté territoriale, donne au Gouvernement Britannique, de régler, comme il le

¹ See Annex A 28 (United Kingdom Memorial, Vol. II, pp. 187-208).

² Sea Fisheries Act, 1868 (31 & 32 Vict. c. 45).

³ Not printed.

juge convenable, l'exercice de la pêche dans la mer réservée. Mais il lui semble difficile, d'un autre côté, d'admettre que les pêcheurs[sic] des deux nations déjà liées par une Convention de pêche[sic], puissent être respectivement soumis des deux côtés du détroit et contrairement à l'application du principe de la réciprocité, à des pénalités aussi différentes. Le Gouvernement de l'Empereur, adoptant les conclusions de la Commission, a pensé qu'il était indispensable que la législation pénale fût identique dans les eaux territoriales des deux pays, et que les pénalités ne s'écartassent pas de celles qui ont été fixées par la Convention de 1867 et par le Bill du 22 août 1843¹.

M^r le Comte Daru exprime l'espoir que le Gouvernement de la Reine, frappé des considérations développées dans la note ci-jointe² ne se refusera pas à user du droit que lui confère l'Art[sic] 7 du 13 juillet 1868, pour apporter à ce même Bill les modifications qu'il semble comporter.

Le Gouvernement de l'Empereur attacherait d'autant plus de prix à voir accueillir ses suggestions, à cet égard, qu'il éprouverait un plus vif regret[sic], dans le cas contraire, a[sic] se voir dans l'obligation de recourir à la combinaison éventuellement proposée par la Commission et qui consisterait à édicter des pénalités[sic] semblables à celles qui sont en vigueur sur les côtes d'Angleterre, mais qui seraient uniquement applicables, à titre de réciprocité, aux pêcheurs[sic] anglais délinquants dans les eaux territoriales françaises.

La mise à exécution de la Convention de 1867, étant d'ailleurs subordonnée au vote du projet de loi qui doit être soumis au Corps Législatif dans le cours de la présente session, M^r le Comte Daru aurait un très grand intérêt à ce que la décision du Gouvernement Britannique lui fût connue dans le plus bref délai possible.

Permettez moi[sic], Monsieur le Comte, de me faire auprès de vous l'interprète de ce vœu et de saisir cette nouvelle occasion pour vous prier d'agréer les assurances de la très haute considération avec laquelle j'ai l'honneur d'être,

de Votre Excellence,
le très humble et très
obéissant serviteur.
LAVALETTE.

Son Excellence Monsieur
le Comte de Clarendon.

¹ Sea Fisheries Act, 1843 (6 & 7 Vict. c. 79). See Annex A 145 to the present Reply.

² Not printed.

ANNEX A 144

Dispatch from the Foreign Office, 13th April 1870, to the French Ambassador, expressing readiness to consider the question of the Uniformity of Penalties for Fishery Offences
[Foreign Office Papers, 97/448]

F O Apl 13. 1870.

M. l. Amb^r

If I have hitherto delayed in replying to Y E note of the 11th of Feb. regarding the present position of the Fisheries Convenⁿ it has been owing to the anxious desire of H Ms'[sic] Govt to see whether means cannot be found to arrive at a satisfactory understanding on the points to which the French Govt have called attention. Dft.
M. de
Lavalette.

With this object I have considered the matter with The Lords of Trade. It appears however that it is not competent for H Ms Govt to establish in the matter of the Fishery Regulations a scale of penalties identical with the scale which is the rule in France. With a view, however, to a solution of the matter H Ms'[sic] Govt will be ready to consider any particular penalty imposed here to which the French Govt specially objects in order to see whether that penalty can be reduced consistently with other Brit : Legisl.ⁿ & with the due maintenance of order within British Waters.

In requesting Y E. to have the goodness to invite explanations on these points from the Impr Govt I have &c

C[LARENDON]

ANNEX A 145

Sea Fisheries Act, 1843 (6 & 7 Vict. c. 79)

[Statutes at Large, xxxiv. 860-70]

CAP. LXXIX.

An Act to carry into effect a Convention between Her Majesty and the King of the *French* concerning the Fisheries in the Seas between the *British* Islands and *France*. [22d August 1843.]

'WHEREAS a Convention was concluded between Her Majesty and the King of the *French* on the Second Day of *August* in the Year One thousand eight hundred and thirty-nine defining the Limits of the Oyster Fishery between the Island of *Jersey* and the neighbouring Coast of *France*, and also defining the Limits of the exclusive Right of Fishery on all other Parts of the Coasts of the *British* Islands and *France* : And whereas by the Eleventh Article of the said Convention it is stipulated and agreed, that "With a view to prevent the Collisions which now from Time to Time take place on the Seas lying between the Coasts of *Great Britain* and of *France* between the Trawlers and

'the Line and long Net Fishers of the Two Countries, the High Contracting Parties agree to appoint, within Two Months after the Exchange of the Ratifications of the present Convention, a Commission, consisting of an equal Number of Individuals of each Nation, who shall prepare a Set of Regulations for the Guidance of the Fishermen of the Two Countries in the Seas above mentioned; the Regulations so drawn up shall be submitted by the said Commissioners to the Two Governments respectively for Approval and Confirmation; and the High Contracting Parties engage to propose to the Legislatures of their respective Countries such Measures as may be necessary for the Purpose of carrying into effect the Regulations which may be thus approved and confirmed.' And whereas, pursuant to the said Convention, Commissioners duly appointed and authorized by Her Majesty and His Majesty the King of the *French* respectively have agreed upon certain Articles set forth in the Schedule annexed to this Act for the Guidance of the Fishermen of the Two Countries in the Seas lying between the Coasts of the United Kingdom of *Great Britain* and *Ireland* and those of the Kingdom of *France*, which Articles, in further Fulfilment of the said Convention, have been approved and confirmed on the Part of Her Majesty by One of Her Majesty's Principal Secretaries of State, and on the Part of His Majesty the King of the *French* by the Ambassador Extraordinary of His said Majesty to the Court of *London*: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That the said Articles shall be binding on all Persons, and shall have the Force of Law, as fully as if they were herein severally and specially enacted.

Confirmation
of Articles.

Amendment
of 13 & 14
Car. 2. c. 28.

II. 'And whereas by the said Convention and Articles *French* Fishermen are forbidden to fish in the Seas between the *British* Islands and *France* within the Distance of Three Miles from Low-water Mark, as defined in the said Convention and Articles, but are not forbidden to fish anywhere beyond the said Distance of Three Miles: and whereas by an Act passed in the Reign of King *Charles* the Second, intituled *An Act for the Regulation of the Pilchard Fishery in the Counties of Devon and Cornwall*, the taking of Fish in the Manner therein mentioned is forbidden, unless it be at the Distance of One League and a Half at least from the Shores of *Devon* and *Cornwall* respectively; be it enacted, That after the passing of this Act the said Act of the Reign of King *Charles* the Second shall be construed as if instead of the Distance of One League and a Half the Distance specified in the said Convention and Articles had been therein inserted and specified as the Distance within which such taking of Fish as is therein mentioned is forbidden, that is to say, the Distance of Three geographical Miles (of which Sixty make a Degree of Latitude), which Distance shall be reckoned from Low-water Mark, except in Bays, the Mouths of which do not exceed Ten such geographical Miles in Width; and for such Bays shall be reckoned from a straight Line drawn from Low-water Mark off one Headland to Low-water Mark off the other Headland of such Bays respectively.

For enforcing
Convention
and Articles.

III. And be it enacted, That it shall be lawful for the Lords of the Committee of Her Majesty's Privy Council appointed for Trade and Foreign Plantations, if and when they shall think fit, to appoint so many Persons as they shall think necessary to ensure the due Execution of the

said Convention and Articles, and it shall be lawful for every Person so authorized, at all reasonable Times, upon producing his Authority, if required, to board or enter upon and examine every *British Vessel*, and to examine the Nets, Instruments, and Implements of Fishing thereunto belonging or used therewith; and if any of the Nets, Instruments, or Implements of Fishing shall be found in contravention of the said Convention and Articles they shall be forfeited to Her Majesty, and the Person in whose Possession the same shall be found shall, on Conviction, be liable to a Penalty of not less than Eight Shillings or more than Three Pounds, or to be imprisoned, with or without hard Labour, for any Time not less than Two Days and not longer than Ten Days, or if convicted more than once of having such unlawful Nets, Instruments, or Implements in his Possession, shall be liable to a Penalty not more than Six Pounds, or to be imprisoned, with or without hard Labour, for any Time not longer than Twenty Days.

IV. And be it enacted, That it shall be lawful for the Lords of the Committee of Her Majesty's Privy Council appointed for Trade and Foreign Plantations, from Time to Time as may become necessary, to make and ordain such Rules and Bye Laws as to them shall seem expedient for the more effectual Performance of the said Convention and Articles, and from Time to Time to annul or alter the same, and substitute others instead thereof; and it shall be lawful for the Lords of the said Committee to impose any Penalty not exceeding Five Pounds in all Cases where any Penalty is not fixed by this Act or by the said Articles for any Breach of the said Rules and Bye Laws, and to direct that all Nets, Instruments, or Implements of Fishing whatsoever used contrary to any of such Rules and Bye Laws shall be forfeited, destroyed, or removed, as the Case may require; provided always, that all such Rules and Bye Laws shall be approved by Her Majesty, with the Advice of Her Privy Council, and all the said Rules and Bye Laws, when so approved and confirmed, and until annulled or altered by the like Authority, shall be binding on all Persons as if the same had been herein enacted.

Board of Trade empowered to make Bye Laws for Protection of Fisheries.

V. And be it enacted, That the said Rules and Bye Laws, when approved as aforesaid, shall be printed, and a Copy of the same shall be deposited with the Clerk of the Peace for each County adjoining the Seas in which such Rules and Bye Laws are proposed to be enforced, and in the Islands of *Guernsey*, *Jersey*, *Sark*, *Alderney*, and *Man*, and with all the Collectors of the Customs and Coastguard Officers at the different Stations, and in such and so many Places as to the Lords of the said Committee shall seem fit; and printed Copies of the said Rules and Bye Laws shall be provided by the Lords of the said Committee, and sold at a Price not exceeding One Shilling for each Copy; and Notice, both of the Publication of the same, and the Place or Places where the same may be bought, shall be given for Three Calendar Months subsequent to Publication thereof in such of the Metropolitan and Provincial Newspapers as the Lords of the said Committee shall appoint; and for the Purpose of convicting any Person offending against the said Rules and Bye Laws, a printed Copy of such Rules and Bye Laws obtained from the Office of any Clerk of the Peace with whom the same may be lodged, and certified by him to be a true Copy thereof, shall be taken as Evidence of such Rules and Bye Laws, and the due Publication thereof.

Publication of Bye Laws.

VI. 'And whereas an Act was passed in the last Session of Parliament, intituled *An Act to regulate the Irish Fisheries*, and it is not expedient

Articles may be suspended

in Ireland
while there is
no Mixed
Fishery there.
5 & 6. Vict. c.
106.

' to interfere with the Provisions of the said Act further than is necessary for giving full Effect to the said Convention and Articles ;' be it enacted, That it shall be lawful for the Lords of the said Committee, by a Rule or Rules to be made by them from Time to Time, and approved of by Her Majesty with the Advice of Her Privy Council, to suspend the Operation of the said Articles of this Act, or such Part of them as to them shall seem fit, with respect to the Fisheries on the Coast of *Ireland*, or on any Part thereof, so long as such Fisheries shall be carried on exclusively by the Subjects of Her Majesty, and also, with the like Approval, to make such Bye Laws as to them shall seem fit for enforcing the said Articles and this Act on the said Coast of *Ireland*, or on any Part thereof, as soon as the same shall be frequented for the Purpose of Fishery by *French* Fishermen.

Rules and
Bye Laws to
be laid before
Parliament.

VII. And be it enacted, That all Rules and Bye Laws made by the Lords of the said Committee in pursuance of this Act shall be laid before Parliament within Six Weeks next after the Approval thereof by Her Majesty, if Parliament be then sitting, or if not, then within Six Weeks next after the next Meeting of Parliament.

Repeal of
Part of
5 & 6 Vict. c.
106.

VIII. And be it enacted, That so much of the last-recited Act as provides that the Commissioners of Public Works in *Ireland* shall divide the Coast of *Ireland* into Districts, for the Purpose of keeping a Registry of all Vessels engaged in Fishing on the said Coast, shall be repealed ; and that the several Collectorships of Customs on the Coast of *Ireland* shall be substituted for the Districts established under the Authority of the said Act ; and that the Numbers, Marks, and Letters by which all *British* Vessels engaged in Fishing between the Coasts of the United Kingdom and *France* shall be distinguished shall be in conformity with the said Convention and Articles ; and the Registry of all such Vessels shall be kept under the Superintendence of the Commissioners of Her Majesty's Customs, and in conformity with the said Convention and Articles.

Officers and
Men of Her
Majesty's
Cruisers, and
Officers and
Men of Reve-
nue and
Coast-guard
Service,
empowered to
enforce the
Provisions of
this Act.

IX. And be it enacted, That it shall be lawful for such Officers and Petty Officers belonging to Her Majesty's Navy or Revenue Service, and for such Officers and Men of the Coast-guard Stations as shall be thereunto authorized by the Commissioners of Her Majesty's Customs, and such Persons as shall be appointed as aforesaid by the Lords of the said Committee, subject to such Directions as the Lords of the said Committee shall from Time to Time think fit to prescribe, to go on board any *British* Vessel employed in Fishing, and examine the Certificate of Registry, and Nets, Instruments, and Implements of Fishing belonging to or used with such Vessel, and whether the Regulations of this Act have been complied with, and whether the Master or other Persons on board such Vessel are carrying on the said Fishery in the Manner hereby required, and to seize any Nets, Instruments, or Implements of Fishing which are illegal or used contrary to the Provisions of this Act, or any of the Rules or Bye Laws made by the Lords of the said Committee ; and it shall be lawful for the Officers and Men employed in Her Majesty's Navy or Revenue Service, and in the Coast-guard Service, and such other Persons as shall be appointed for that Purpose by the Lords of the said Committee, to execute for the Purpose of this Act, on Sea or on Land, the Warrants of any Justice or Justices of the Peace as fully as any Person authorized to execute Warrants of any Justice of the Peace may now execute the same on Land within their respective Districts,

and also to do all such other Acts on Sea or Land, in relation to the Preservation of the Peace among Persons engaged in Fishing, and the Enforcement of the Provisions of this Act, as any Constable may lawfully do within the Limits of his Jurisdiction.

X. And be it enacted, That every Person assaulting, resisting, or wilfully obstructing any other Person, duly authorized under the Provisions of this Act to enforce the Execution of the said Articles, in the Performance of his Duty, on Conviction before any Magistrate or Justice of the Peace by the Oath of any credible Witness, or upon his own Confession, shall be liable to a Penalty not more than Five Pounds, or may be imprisoned, with or without hard Labour, for any Time not longer than Twenty-one Days.

Penalty for obstructing Persons on Duty.

XI. And be it enacted, That all Offences against the said Articles, or against any Rule or Bye Law made in pursuance of this Act, committed by any of Her Majesty's Subjects, may be heard and determined upon the Oath of any credible Witness or Witnesses, or upon the Confession of the Party accused, by any Magistrate or Justice of the Peace having Jurisdiction in the County or Place in which or in the Waters adjacent to which the Offence shall be committed or to which the Offender shall be brought; and every such Magistrate or Justice of the Peace shall have Power to award the Penalties provided by the said Articles, or by any such Rule or Bye Law respectively, for the Offence of which the Offender shall be convicted; and whenever any pecuniary Penalty and Forfeiture shall be imposed on any such Offender, and shall not be forthwith paid, with the reasonable Costs and Charges attending the Conviction, the same shall be levied by Distress and Sale of the Goods of the Offender by Warrant under the Hand and Seal of such Magistrate or Justice of the Peace.

Who shall have cognizance of Offences by British Subjects.

XII. And be it enacted, That all Offences against the said Articles, or against any Rule or Bye Law made in pursuance of this Act, committed by any Subject of the King of the *French*, or any Person serving on board any *French* Fishing Boat or Vessel, within the Limits within which the general Right of Fishery is by the said Articles exclusively reserved to the Subjects of Her Majesty, may be heard and determined upon the Oath of any credible Witness or Witnesses, or upon the Confession of the Party Accused, by any Magistrate or Justice of the Peace having Jurisdiction in the County or Place in which or in the Waters adjacent to which the Offence shall have been committed or to which the Offender shall be brought; and the Offender, upon Conviction, shall pay such Penalty not exceeding Ten Pounds as the Magistrate or Justice of the Peace shall award, or instead of awarding a pecuniary Penalty, and also in case of the Nonpayment of any pecuniary Penalty awarded, it shall be lawful for the Magistrate or Justice of the Peace to order that the Vessel to which the Offender belongs shall be detained for any Period not exceeding Three Calendar Months.

Who shall have cognizance of Offences by French Subjects within the British Fishery Limits.

XIII. And be it enacted, That whenever any Subject of the King of the *French*, or any Person serving on board any *French* Fishing Boat or Vessel, charged with any Transgression against the said Convention and Articles, shall be brought into any *British* Port, pursuant to the Sixty-fifth Article, in order that the Offence may be duly established, it shall be lawful for the Person by whom such supposed Offender shall be so brought; or for any Person acting under his Authority, to take such supposed Offender forthwith before a Magistrate or Justice of the Peace,

Proceedings in case of Offences by French Subjects beyond the British Fishery Limits.

and all Constables and Peace Officers and others shall be required, if necessary, to give their Assistance for that Purpose ; and it shall be lawful for the Magistrate or Justice of the Peace before whom any such supposed Offender shall be brought to inquire by all lawful Ways and Means into the Case ; and a Copy of the Depositions, Minutes of Proceedings, and all other Documents concerning the Transgression shall be authenticated under the Hand of the Collector of Customs, and shall be sent by him to the *British* Consular Agent residing in the Port to which the Offender's Boat or Vessel belongs.

Compensation
for Damage.

XIV. And be it enacted, That in all Cases where the Breach of any of the said Articles, or of any such Rules or Bye Laws, by any of the Subjects of the King of the *French* within the Limits within which the general Right of Fishery is by the said Articles exclusively reserved to the Subjects of Her Majesty, or by any of Her Majesty's Subjects, whether or not within the said Limits, shall have caused any Loss or Damage to any other Party or Parties, it shall be lawful for any Magistrate or Justice of the Peace before whom the Offence shall be inquired into to take Evidence of such Loss or Damage, and to award Compensation to the injured Party, and to enforce Payment of such Compensation, in like Manner as the Payment of any pecuniary Penalty for any Offence against the said Articles may be enforced.

Salvage for
Boats, &c.
picked up at
Sea.

XV. And be it enacted, That whenever any fishing Boat, Rigging, Gear, or any other Appurtenances of any Fishing Boat, or any Net, Buoy, Float, or other Fishing Implement, shall have been found or picked up at Sea and brought into a *British* Port, and shall not be forthwith delivered to the Collector of Customs, pursuant to the Sixty-first Article, it shall be lawful for any Magistrate or Justice of the Peace, on Application of the said Collector, to issue his Warrant for delivering of the said Articles to such Collector, who shall take possession of the same, and deliver the same to the Owner thereof or his Representative, on Payment to him, for behoof of the Salvors, of such Compensation as the said Collector shall award pursuant to the Sixty-second Article.

Conviction
not to be
quashed for
Want of
Form.

XVI. And be it enacted, That no Conviction under this Act shall be quashed, set aside, or adjudged void or insufficient for Want of Form only, or liable to be removed, by Certiorari or otherwise, into Her Majesty's Court of Queen's Bench, or any other of Her Majesty's Courts of Record, but every such Conviction shall be final to all Intents and Purposes unless the same shall be reserved on Appeal as herein-after provided ; provided always, that no Person shall be convicted of any Offence committed against the Provisions of this Act unless the Prosecution for the same shall be commenced within Three Calendar Months from the Time of the Commission of such Offence.

Appeal.

XVII. And be it enacted, That, in any Case of a summary Conviction before any Magistrate or Justice of the Peace, any Person who shall think himself aggrieved by the Conviction may appeal to the Court of General or Quarter Sessions of the Peace to be next holden for the County or Place wherein the Cause of Complaint shall have arisen, if such Court shall not be holden within Twenty-one Days next after such Conviction, otherwise to the next Court but One, provided that such Person at the Time of the Conviction, or within Forty-eight Hours thereafter, shall enter into a Recognizance, with Two sufficient Securities conditioned personally to appear at the said Session, to try such Appeal, and to abide the further Judgment of the Court at such Session, and to pay such Costs

as shall be by the last-mentioned Court awarded ; and it shall be lawful for the Magistrate or Justice of the Peace by whom such Conviction shall have been made to bind over the Witnesses who shall have been examined in sufficient Recognizances to attend and be examined at the Hearing of such Appeal, and that every such Witness, on producing a Certificate of his being so bound, under the Hand of the said Magistrate or Justice of the Peace, shall be allowed Compensation for his Time, Trouble, and Expences in attending the Appeal, which Compensation shall be paid, in the first instance, by the Treasurer of the County or Borough, in like Manner as in Cases of Misdemeanor, under the Provisions of an Act passed in the Seventh Year of the Reign of King George the Fourth, 7 G. 4. c. 64. intituled *An Act for improving the Administration of Criminal Justice in England* ; and in case the Appeal shall be dismissed, and the Conviction affirmed, the reasonable Expences of all such Witnesses attending as aforesaid, to be ascertained by the Court, shall be repaid to the Treasurer of the County or Borough by the Appellant.

XVIII. And be it enacted, That in this Act the Words "*British Vessel*" shall be construed to mean every *British* or *Irish* Fishing Vessel or Fishing Boat, and also every Fishing Vessel or Fishing Boat belonging to any of the Islands of *Guernsey*, *Jersey*, *Sark*, *Alderney*, or *Man*, or any Island thereunto belonging, and the Words "*British Port*" shall be construed to mean any Port of *Great Britain* or *Ireland*, or of any of the said Islands.

Meaning of
"British Ves-
sel," &c.

XIX. And be it enacted, That this Act may be amended or repealed by any Act to be passed in this Session of Parliament.

Act may be
amended, &c.

SCHEDULE to which the foregoing Act refers.

REGULATIONS for the Guidance of the Fishermen of Great Britain and of France, in the Seas lying between the Coasts of the Two Countries ; prepared in pursuance of the Provisions of the Eleventh Article of the Convention concluded at Paris on the 2d of August 1839 between Her Majesty and the King of the French.

DECLARATION.

The undersigned, Her Britannic Majesty's Principal Secretary of State for Foreign Affairs on the one Part, and the Ambassador Extraordinary of His Majesty the King of the French at the Court of London on the other Part, having examined the annexed Regulations for the Guidance of the Fishermen of Great Britain and of France, in the Seas lying between the Coasts of the Two Countries, which Regulations have been prepared, in pursuance of the Provisions of the Eleventh Article of the Convention concluded at Paris on the 2d of August 1839 between Her Britannic Majesty and His Majesty the King of the French, by the Two Commissioners duly authorized to that Effect by their said Majesties, have, in the Name and on the Behalf of Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, and of His Majesty the King of the French, and by virtue of their respective full Powers, approved and confirmed, and do by these Presents approve and confirm, the said Regulations ; reserving to their respective Governments, conformably to the Terms of the above-mentioned Article, to propose, if

necessary, to the Legislatures of both Countries the Measures which may be required for carrying the said Regulations into execution.

In witness whereof the undersigned have signed the present Declaration, and have affixed thereto the Seals of their Arms.

Done at London, the Twenty-third Day of June in the Year of our Lord One thousand eight hundred and forty-three.

(L.S.) ABERDEEN.

(L.S.) STE. AULAIRE.

The undersigned, namely,—

On the Part of the United Kingdom of Great Britain and Ireland, Anthony Perrier, Esquire, Her Britannic Majesty's Consul for the Departments of Finistère, Morbihan, and Côtes du Nord in France ;

And on the Part of the Kingdom of France, François Lange, Knight of the Royal Order of the Legion of Honour and Commissary of Marine of the First Class ;

Duly appointed and authorized by their respective Governments to act as Commissioners for the Purpose of preparing a Set of Regulations for the Guidance of the Fishermen of the Two Countries, in the Seas lying between the Coasts of the United Kingdom and those of the Kingdom of France, in conformity with Article XI. of the Convention between Great Britain and France, signed at Paris on the 2d August 1839 :

Have agreed upon the following Articles, which they submit to their respective Governments for Approval and Confirmation :—

ARTICLE I.—British and French Subjects fishing in the Seas lying between the Coasts of the United Kingdom of Great Britain and Ireland and those of the Kingdom of France shall conform to the following Regulations.

ARTICLE II.—The Limits within which the general Right of Fishery is exclusively reserved to the Subjects of the Two Kingdoms respectively are fixed (with the Exception of those in Granville Bay) at Three Miles Distance from Low-Water Mark.

With respect to Bays, the Mouths of which do not exceed Ten Miles in Width, the Three Mile Distance is measured from a straight Line drawn from Headland to Headland.

ARTICLE III.—The Miles mentioned in the present Regulations are geographical Miles, of which Sixty make a Degree of Latitude.

ARTICLE IV.—The Fishery Limits of Granville Bay, established upon special Principles, are defined in the First Article of the Convention of the Second of August One thousand eight hundred and thirty-nine, as follow :

The Lines drawn between the Points designated by the Letters A., B., C., D., E., F., G., H., I., K. on the Chart annexed to the Convention are acknowledged as defining the Limits between which and the French Shore the Oyster Fishery shall be reserved exclusively to French Subjects ; and these Lines are as follow ; that is to say :—

The First Line runs from the Point A., Three Miles from Low-water Mark (Point Meinga bearing South), to the Point B., of which the Land-marks are Agon Tower on with the Clump of Trees upon Mount Huchon, and the Summit of Gros Mont in a Line with the Signal Post on Grand Isle.

The Second Line runs from the said Point B., towards Agon Tower and the Clump of Trees upon Mount Huchon in the Direction North, Sixty-four Degrees East, until at the Point C. it brings the Windmill of Lingreville to bear due East.

The Third Line runs from Point C. due East towards Lingreville Windmill until the Grand Huguenant is brought to bear on the Etat Rock at Point D.

The Fourth Line runs from Point D. Northward, and keeping the Grand Huguenant in one with the Etat Rock, until it intersects at E. a Line whose Land-marks are Agon Tower on with Coustances Cathedral.

The Fifth Line runs Eastwards from Point E. to Point F., where the Steeple of Pirou is brought to bear in a Line with the Senequet Rock.

The Sixth Line runs from Point F., due North, to Point G., where the Steeple of Blainville is brought in a Line with the Senequet Rock.

The Seventh Line runs from Point G. (in the Direction of Pirou Steeple) to Point H., where the Lighthouse on Cape Carteret bears North, Twenty-four Degrees West.

The Eighth Line runs from Point H. to Point I. nearly abreast of Port Bail; Point I. having for Land-marks the Fort of Port Bail in a Line with the Steeple of Port Bail.

And finally, the Ninth Line runs from Point I. to the Three Grunes at Point K., where Cape Carteret bears East, Ten Degrees North, in a Line with Barneville Church.

All the Bearings specified in the present Article are to be taken according to the true Meridian, and not according to the Magnetic Meridian.

ARTICLE V.—It is forbidden to British Fishermen to set their Nets or to fish in any Manner whatsoever within the French Limits; and it is equally forbidden to French Fishermen to set their Nets or to fish in any Manner whatsoever within the British Limits.

ARTICLE VI.—All British and French Fishing Boats shall be numbered.

There shall be a Series of Numbers for the Fishing Boats belonging to each Collectorship of Customs in the United Kingdom, and a Series of Numbers for the Fishing Boats belonging to each District of Maritime Registry in France; and to these Numbers shall be prefixed the initial Letters of the Names of the respective Collectorships or Districts.

ARTICLE VII.—Whereas there are in the United Kingdom several Collectorships of Customs, and in France several Districts of Maritime Registry, the Names of which begin with the same Letter, in which Case the initial Letter alone would not suffice; the distinguishing Letter or Letters for the Boats of each Collectorship or District shall be designated by the Board of Customs in the United Kingdom, and by the Ministry of Marine in France.

ARTICLE VIII.—The Letters and Numbers shall be placed on each Bow of the Boat, Three or Four Inches (Eight or Ten Centimètres French) below the Gunnel, and they shall be painted in White Oil Colour on a Black Ground.

For Boats of Fifteen Tons Burthen and upwards, the Dimensions of these Letters and Numbers shall be Eighteen Inches (Forty-five Centimètres French) in Height, and Two, and a Half Inches (Six Centimètres French) in Breadth.

For Boats of less than Fifteen Tons Burthen, the Dimensions shall be Ten Inches (Twenty-five Centimètres French) in Height, and One and Three Quarter Inch (Four Centimètres French) in Breadth.

The same Letters and Numbers shall also be painted on each Side of the Main Sail of the Boat in Black Oil Colour on White Sails, and in White Oil Colour on Tanned or Black Sails.

These Letters and Numbers on the Sails shall be One Third larger in every Way than those placed on the Bows of the Boat.

ARTICLE IX.—In order that the Fishing Boats of Jersey, Guernsey, and other Islands of the same Cluster may be distinguished from the Fishing Boats of the other British Islands, their Numbers shall precede the initial Letter of the Name of the Island to which such Boats may belong.

Each of these Islands shall have a separate Series of Numbers.

ARTICLE X.—All the Buoys, Barrels, and principal Floats of each Net, and all other Implements of Fishery, shall be marked with the same Letters and Numbers as those of the Boats to which they belong.

These Letters and Numbers shall be large enough to be easily distinguished. The Owners of Nets or other Fishing Implements may further distinguish them by any private Marks they judge proper.

ARTICLE XI.—The Letters and Numbers of British Fishing Boats shall be inserted on the Licences of those Boats, after having been entered in the Registry Book kept at the Collectorship of Customs.

The Letters and Numbers of French Fishing Boats shall be inserted on the Muster Rolls of those Boats, after being entered in the Registry Book kept at the Maritime Registry Office.

ARTICLE XII.—The Licences of British Fishing Boats and the Muster Rolls of French Fishing Boats shall contain the Description and Tonnage of each Boat, as well as the Names of its Owner and of its Master.

ARTICLE XIII.—The Fishermen of both Countries shall, when required, exhibit their Licences or Muster Rolls to the Commanders of the Fishing Cruisers, and to all other Persons of either Country, appointed to superintend the Fisheries.

ARTICLE XIV.—The Name of each Fishing Boat, and that of the Port to which she belongs, shall be painted in White Oil Colour on a Black Ground on the Stern of the said Boat, in Letters which shall be at least Three Inches (Eight Centimètres French) in Height, and Half an Inch (Twelve Millimètres French) in Breadth.

ARTICLE XV.—It is forbidden to efface, cover, or conceal, in any Manner whatsoever, the Letters, Numbers, and Names placed on the Boats and on their Sails.

ARTICLE XVI.—Trawl Fishing may be carried on during all Seasons in the Seas lying between the Fishery Limits which have been fixed for the Two Countries.

ARTICLE XVII.—Trawls shall be made with Nets, the Meshes of which shall be at least One Inch and Three Quarters (Forty-five Millimètres French) square, from Knot to Knot, along the Line.

ARTICLE XVIII.—The Length of the Wooden Yard or Beam to which the upper Part of the Mouth of each Trawl-net shall be fastened shall not exceed Thirty-eight Feet (Eleven Mètres Five hundred Millimètres French).

ARTICLE XIX.—The under Part of the Trawl-net, to a Length of Ten Feet (Three Mètres French) from its Extremity, may be strengthened by Rubbing Pieces made of old Nets; but these Rubbing Pieces shall be so fastened that they shall not cross or narrow the Meshes of the Trawl-net, which must always remain at least One Inch and Three Quarters (Forty-five Millimètres French) from Knot to Knot, along the Line, open and unobstructed.

ARTICLE XX.—The Size of the Meshes of any supplementary Nets which may be added to Trawls shall be at least Two Inches (Fifty Millimètres French) square, from Knot to Knot, along the Line.

ARTICLE XXI.—Such supplementary Nets shall be so fitted as not to cross or narrow the Meshes of the Trawl-net, which must always remain at least One Inch and Three Quarters (Forty-five Millimètres French) from Knot to Knot, along the Line, open and unobstructed.

ARTICLE XXII.—The total Weight of the Two Irons or Head pieces of a Trawl shall not exceed Two hundred and eighty-seven Pounds (One hundred and thirty Kilogrammes French).

ARTICLE XXIII.—The total Weight of Iron Chains or Leads used for loading the Ground Rope of a Trawl shall not exceed One hundred and ten Pounds (Fifty Kilogrammes French).

ARTICLE XXIV.—Trawl Fishing is forbidden in all Places where there are Boats engaged in Herring or Mackerel Drift-net Fishing.

ARTICLE XXV.—Trawl Boats shall always keep at a Distance of at least Three Miles from all Boats fishing for Herrings or Mackerel with Drift-nets.

ARTICLE XXVI.—Whenever Herring or Mackerel Boats shall commence Drift-net Fishing in any Place whatever, the Trawl Boats which may be already fishing in such Place shall depart therefrom, and shall keep at a Distance of at least Three Miles from the said Drift-net Herring or Mackerel Boats.

ARTICLE XXVII.—Herring Fishing is free all the Year round.

ARTICLE XXVIII.—The Meshes of all Nets used for Herring Fishing shall not be less than One Inch (Twenty-five Millimètres French) square, from Knot to Knot, along the Line.

ARTICLE XXIX.—Whenever decked Herring Boats and undecked Herring Boats shall commence shooting their Nets at the same Time, the undecked Boats shall shoot their Nets to Windward of the decked Boats, except they should prefer going to Leeward, to a Distance of at least Half a Mile, to shoot their Nets.

ARTICLE XXX.—The decked Boats on their Part shall shoot their Nets to Leeward of the undecked Boats, unless they prefer going to Windward, to a Distance of at least Half a Mile, to shoot their Nets.

ARTICLE XXXI.—When decked Boats shall arrive on Grounds where fishing is already begun by other Boats, amongst which shall be undecked Boats, the decked Boats so arriving shall shoot their Nets to Leeward of the undecked Boats, except they should prefer going to Windward, to a Distance of at least Half a Mile, to shoot their Nets.

ARTICLE XXXII.—When undecked Boats shall arrive on Grounds where fishing is already begun by other Boats, amongst which shall be decked Boats, the undecked Boats so arriving shall shoot their Nets to Windward of the decked Boats, except they prefer going to Leeward, to a Distance of at least Half a Mile, to shoot their Nets.

ARTICLE XXXIII.—If, however, it should happen that the Spot where fishing is going on, and consequently where the Herrings are, should be so near to the Fishery Limits of One of the Two Countries that the Boats of the other Country would by observing the above-mentioned Regulations, be prevented from taking Part in the Fishery, the said Boats of the other Country shall be at liberty to shoot their Nets at a less Distance than that prescribed in the preceding Articles for decked and undecked Boats; but such Fishermen as may take advantage of this Permission shall be responsible for any Damage or Losses which their drifting may cause to the other Boats.

ARTICLE XXXIV.—Fishermen of the one Country shall not avail themselves of the Circumstances mentioned in the preceding Article, nor of any other Circumstances whatsoever, to shoot their Nets within the Fishery Limits of the other Country.

ARTICLE XXXV.—Whenever set Nets are employed for the Purpose of taking Herrings, the Boats engaged in this Fishery shall always remain over their Nets.

These Boats shall moreover be bound to observe the Prohibition contained in Article LVII. in favour of Drift-net Fishing.

ARTICLE XXXVI.—Mackerel Fishing is free all the Year round.

ARTICLE XXXVII.—The Meshes of all Nets used for Mackerel Fishing shall not be less than One Inch and One Sixth (Thirty Millimètres French) square, from Knot to Knot, along the Line.

ARTICLE XXXVIII.—It is forbidden to all Fishermen to load the lower Parts of Mackerel Drift-nets with Leads or Stones.

ARTICLE XXXIX.—Boats going to fish for Mackerel with Drift-nets are required, when they shall arrive on the Fishing Ground, to lower all Sails, to show that they have taken their Berths.

ARTICLE XL.—The Boats mentioned in the preceding Article shall keep Three Quarters of a Mile at least apart from one another when they shoot their Nets.

ARTICLE XLI.—The Meshes of Nets known by the Name of Bratt Nets shall not be less than Four Inches and One Third (Eleven Centimètres French) square, from Knot to Knot, along the Line.

ARTICLE XLII.—The Meshes of the middle Nets of Trammels shall be at least Two Inches (Five Centimètres French) square, from Knot to Knot, along the Line.

The Meshes of both of the outer Nets of Trammels shall be at least Six Inches (Fifteen Centimètres French) square, from Knot to Knot, along the Line.

ARTICLE XLIII.—Fishermen using Bratt Nets, Trammels, and other set or anchored Nets shall place Buoys on such Nets, in order that Vessels sailing in those Places may avoid them.

ARTICLE XLIV.—Such Bratt Nets, Trammels, or other set or anchored Nets shall not, except in unavoidable Cases, remain more than Twenty-four Hours in the Sea without being taken up.

ARTICLES XLV.—Oyster Fishings shall open on the First of September and shall close on the Thirtieth of April.

ARTICLE XLVI.—From the First of May to the Thirty-first of August no Boat shall have on board any Dredge or other Implement whatsoever for catching Oysters.

ARTICLE XLVII.—It is forbidden to dredge for Oysters between Sunset and Sunrise.

ARTICLE XLVIII.—The Fishermen shall cull the Oysters on the Fishing Ground, and shall immediately throw back into the Sea all Oysters less than Two and a Half Inches (Six Centimètres French) in the greatest Diameter of the Shell, and also all Sand, Gravel, and Fragments of Shells.

ARTICLE XLIX.—It is forbidden to throw into the Sea on Oyster Fishing Grounds the Ballast of Boats, or any other Thing whatsoever which might be detrimental to the Oyster Fishery.

ARTICLE L.—For the Purpose of distinguishing by Day Drift-net Fishing Boats from Trawl-Boats, both shall carry at the Mast-head Vanes, which shall be at least Eight Inches (Twenty Centimètres French) in Height, and Two Feet (Sixty-one Centimètres) in Length.

The Colours of these Vanes shall be, for—

British Trawl Boats, Red.

French Trawl Boats, Blue.

British Drift Boats, White and Red.

French Drift Boats, White and Blue.

It is understood that the Vanes of Drift Boats shall be divided vertically into Two equal Parts, of which the White shall be nearest to the Mast.

ARTICLE LI.—It is forbidden to all other Fishing Boats to carry Vanes similar to those mentioned in the preceding Article.

ARTICLE LII.—It is forbidden to all Boats to anchor between Sunset and Sunrise on Grounds where Herring or Mackerel Drift-net Fishing is going on.

This Prohibition does not apply to Anchorages which may take place in consequence of Accidents or any other compulsory Circumstances, but in such Case the Master of the Boat thus obliged to anchor shall hoist, so that they shall be seen from a Distance, Two Lights placed horizontally about Three Feet (One Mètre French) apart, and shall keep these Lights up all the Time the Boat shall remain at anchor.

ARTICLE LIII.—In order that Boats fishing with Drift-nets may be easily recognized at Night, the Masters of these Boats shall hoist on one of their Masts Two Lights, one over the other, Three Feet (One Mètre French) apart.

These Lights shall be kept up during all the Time their Nets shall be in the Sea between Sunset and Sunrise.

ARTICLE LIV.—All Fishermen are forbidden, except in Cases of absolute Necessity, to show Lights under any other Circumstances than those mentioned in the present Regulations.

ARTICLE LV.—The Meshes of the various Nets before mentioned shall be of the prescribed Dimensions, measured when the Net is wet.

ARTICLE LVI.—It is forbidden to use Nets for any other Kind of Fishing than that for which each of those Nets may be lawfully employed, with respect to the Size of its Meshes, or of its Fittings.

ARTICLE LVII.—It is forbidden to set or anchor Nets, or any other Fishing Implement, in any Place where Herring or Mackerel Drift-net Fishing is going on.

ARTICLE LVIII.—No Boat shall be made fast or held on to the Nets, Buoys, Floats, or to any Part of the Fishing Tackle, belonging to another Boat.

ARTICLE LIX.—It is forbidden to all Persons to hook or lift up the Nets, Lines, or other Fishing Implements belonging to others, under any Pretence whatsoever.

ARTICLE LX.—When Nets of different Boats get foul of each other, the Masters of the said Boats shall not cut them, except by mutual Consent, unless it shall have been found impossible to clear them by other Means.

ARTICLE LXI.—All Fishing Boats, all Rigging, Gear, or other Appurtenances of Fishing Boats, all Nets, Buoys, Floats, or other Fishing Implements whatsoever, found or picked up at Sea, shall, as soon as possible, be delivered to the Collector of Customs, if the Article saved be taken into England, and to the Commissary of Marine, if the Article saved is taken into France.

ARTICLE LXII.—The Collector of Customs, or the Commissary of Marine, as the Case may be, shall restore the Articles saved to the Owners thereof, or to their Representatives.

These Functionaries may, when the Circumstances are such as to call for it, award to the Salvors a suitable Compensation for their Trouble and Care. This Compensation, which shall in no Case

exceed One Fourth of the actual Value of the Articles saved, shall be paid by the Owners.

ARTICLE LXIII.—The Execution of the Regulations concerning the Fittings of Nets and the Size of their Meshes, the Weight and Dimensions of Fishing Instruments, and, in short, concerning every thing connected with the Implements of Fishing, is placed, with respect to the Fishermen of each of the Two Nations, under the exclusive Superintendence of the Cruisers and Agents of their own Nation.

Nevertheless, the Commanders of the Cruisers of each Nation shall mutually acquaint the Commanders of the other Nation with any Transgressions of the above-mentioned Regulations, committed by the Fishermen of the other Nation, which may come to their Knowledge.

ARTICLE LXIV.—Infractions of Regulations concerning the placing of Boats, the Distances to be observed, the Prohibition of certain Fisheries by Day or by Night, or during certain Periods of the Year, and concerning every other Operation connected with the Act of Fishing, and more particularly, as to Circumstances likely to cause Damage shall be taken cognizance of by the Cruisers of both Nations, whichever may be the Nation to which the Fishermen guilty of such Infractions may belong.

ARTICLE LXV.—The Commanders of Cruisers of both Countries shall exercise their Judgment as to the Causes of any Transgressions committed by British or French Fishing Boats in the Seas where the said Boats have the Right to fish in common; and when the said Commanders shall be satisfied of the Fact of the Transgression, they shall detain the Boats having thus infringed the established Regulations, and may take them into the Port nearest to the Scene of the Occurrence, in order that the Offence may be duly established, as well by comparing the Declarations and counter Declarations of Parties interested, as by the Testimony of those who may have witnessed the Facts.

ARTICLE LXVI.—When the Offence shall not be such as to require exemplary Punishment, but shall, nevertheless, have caused Injury to any Fisherman, the Commanders of Cruisers shall be at liberty, should the Circumstances admit of it, to arbitrate at Sea between the Parties concerned, and on Refusal of the Offenders to defer to their Arbitration, the said Commanders shall take both them and their Boats into the nearest Port, to be dealt with as stated in the preceding Article.

ARTICLE LXVII.—Every Fishing Boat which shall have been taken into a Foreign Port, under either of the Two preceding Articles, shall be sent back to her own Country for Trial as soon as the Transgression for which she may have been detained shall have been duly established. Neither the Boat nor her Crew shall, however, be detained in the Foreign Port more than Four Days.

ARTICLE LXVIII.—The Depositions, Minutes of Proceedings, and all other Documents concerning the Transgression, after being authenticated by the Collector of Customs, or by the Commissary of Marine, according to the Country into which the Boat may have

been taken, shall be transmitted by that Functionary to the Consular Agent of his Nation residing in the Port where the Trial is to take place.

This Consular Agent shall communicate these Documents to the Collector of Customs, if in the United Kingdom, or to the Commissary of Marine, if in France; and if, after having conferred with that Functionary, it shall be necessary for the Interest of his Countrymen, he shall proceed with the Affair before the competent Tribunal or Magistrates.

ARTICLE LXIX.—All Transgressions of these Regulations established for the Protection of Fisheries in the Seas lying between the Coasts of the British Islands and those of France shall, in both Countries, be submitted to the exclusive Jurisdiction of the Tribunal or the Magistrates which shall be designated by Law.

This Tribunal, or these Magistrates, shall also settle all Differences, and decide all Contentions, whether arising between Fishermen of the same Country, or between Fishermen of the Two Countries, and which cannot have been settled by the Commanders of Cruisers, or by the Consular Agents and the Collectors of Customs, or Commissaries of Marine, according to the Country.

The above-mentioned Jurisdiction shall not, however, be understood to apply to Murder, Felony, or any other grave Crime; all such Crimes remaining subject to the ordinary Laws of each Country respectively.

ARTICLE LXX.—The Trial and Judgment of the Transgressions mentioned in the preceding Article shall always take place in a summary Manner, and at as little Expence as possible.

ARTICLE LXXI.—In both Countries the competent Tribunal or Magistrates shall be empowered to adjudge the following Penalties for Offences against the Regulations committed by Fishermen subject to their Jurisdiction :—

First. Forfeiture and Destruction of Nets or other Fishing Implements which are not conformable to the Regulations.

Secondly. Fines from Eight Shillings (Ten Francs) to Ten Pounds Sterling (Two hundred and fifty Francs), or Imprisonment for not less than Two Days, and not more than One Month.

ARTICLE LXXII.—The Use of Nets or other Fishing Implements of which the Fittings, Size of Meshes, Dimensions, or Weight shall not be conformable to the Regulations established for each Kind of Fishery shall subject the said Nets or Implements to Seizure and Destruction, and the Offenders to a Fine of not less than Eight Shillings (Ten Francs) nor more than Three Pounds Sterling (Seventy-five Francs), or to Imprisonment from Two to Ten Days.

In Cases of Repetition of the Offence, the Fine or Imprisonment may be doubled.

ARTICLE LXXIII.—All Persons shall be condemned to a Fine of from Eight Shillings to Five Pounds Sterling (Ten Francs to One hundred and twenty-five Francs), or to Imprisonment from Five to Fifteen Days, who either by Night or by Day, conjointly or separately, shall offend against the Measures established by the Regulations

for the Preservation of Peace and good Order, and specifically against those concerning—

First. The Letters, Numbers, and Names to be placed on the Boats and their Sails, and on Nets, Buoys, &c.

Secondly. The Vanes to be carried by the Boats.

Thirdly. The Distances to be observed between the Boats.

Fourthly. The placing and anchoring of Boats.

Fifthly. The placing or shooting of Nets, and taking them up.

Sixthly. The clearing of Nets.

Seventhly. The placing of Buoys upon Nets.

Eighthly. Lastly, the Lights to be shown.

In Cases of Repetition of any of these Offences, the Fine or Imprisonment may be doubled.

ARTICLE LXXIV.—In all Cases of Assault committed at Sea by Fishermen on other Fishermen, or whenever they shall have intentionally caused Damages or Loss, the competent Tribunal or Magistrates may condemn the Delinquents to a Term of Imprisonment not exceeding Twenty Days, or to a Fine not exceeding Five Pounds Sterling (One hundred and twenty-five Francs).

Should there have been at the same Time any Infringement of the Regulations, the Imprisonment or Fine above mentioned may be awarded over and above the Penalties to which the said Infringement shall have given rise.

ARTICLE LXXV.—The competent Tribunal or Magistrates shall, when the Circumstances are such as to call for it, award, over and above all Penalties inflicted for Offences against the Regulations, the Payment of Damages to the injured Parties, and shall determine the Amount of such Damages.

ARTICLE LXXVI.—The Conditions under which the Fishing Boats of either of the Two Countries shall be at liberty to come within the Fishery Limits of the other Country are laid down in the following Articles, which also specify and regulate the Penalties to be inflicted for Infraction of the said Articles.

ARTICLE LXXVII.—The competent Tribunal or Magistrates shall exclusively take cognizance (in the same Manner as stipulated in Article LXIX.) of the Infractions mentioned in Article LXXVI.

ARTICLE LXXVIII.—The putting into the Chausey Islands by British Oyster Fishing Boats is regulated by the Six following Articles.

ARTICLE LXXIX.—The putting into the Chausey Islands by British Fishing Boats, in consequence of Damage, evident bad Weather, or any other compulsory Circumstances, is a Right confirmed by Article VII of the Convention of the Second of August One thousand eight hundred and thirty-nine.

ARTICLE LXXX.—The Expediency of putting in, under any of the Circumstances mentioned in the preceding Article, must naturally be determined by those Fishermen who may find it necessary to avail themselves of this Right.

Nevertheless, whenever the British Fishing Boats shall be able to communicate with the Commander of the British Station, they shall

not put in until they are authorized so to do by the said Commander's hoisting the following Signal,—a Blue Ensign at the Mast-head.

ARTICLE LXXXI.—The Commander of the English Station may, when he shall consider this Measure necessary, authorize the weaker Boats, which are consequently the most exposed to the Effects of bad Weather, to put into the Chausey Islands whilst the other Boats shall continue to fish.

This Permission shall be made known by the following Signal,—a Red Ensign at the Mast-head.

ARTICLE LXXXII.—When the Commander of the English Station shall have authorized the Whole or Part of the British Boats to seek Shelter in the Chausey Islands, in consequence of the above-mentioned Causes, he shall give Notice thereof immediately afterwards to the French Cruisers by means of the following Signals; viz.—

For the Anchorage of all the Boats (provided for in Article LXXX.), a Blue Peter placed under the Blue Ensign at the Mast-head.

For the Anchorage of the weaker Boats (provided for in Article LXXXI.), a Blue Peter placed under the Red Ensign at the Mast-head.

ARTICLE LXXXIII.—Whenever the Appearance of the Weather, although it be not actually stormy at the Time, yet shall be so threatening that Boats could not gain Shelter of the British Channel Islands before it comes on, the British Commander, taking on himself the Responsibility of the Measure, may authorize the said Boats to anchor at Chausey, by hoisting a Blue Peter.

This Permission shall, at the same Time, be made known to the French Cruisers by means of a French Flag hoisted at the Mast-head over the said Blue Peter.

These Flags shall not be hauled down until the French Cruisers shall have understood the Signal, and answered it by hoisting, also at the Mast-head, an English Flag.

ARTICLE LXXXIV.—When British Fishing Boats put into Chausey they shall keep together in the same Part of the Anchorage.

Should any compulsory Circumstances prevent their doing so, the Commander of the English Station shall inform the French Station thereof by hoisting, in addition to the Flags flying to announce the putting in of the Boats, an Union Jack under the said Flags.

ARTICLE LXXXV.—The Fishing Boats of the one Country shall not approach nearer to any Part of the Coast of the other Country than the Limit of Three Miles, specified in Article IX. of the Convention signed at Paris on the Second of August One thousand eight hundred and thirty-nine, except under the following Circumstances :—

First. When driven by Stress of Weather or by evident Damage to seek Shelter in the Harbour, or within the Fishery Limits of the other Country.

Secondly. When carried within the Limits established for the Fishery of the other Country, by contrary Winds, by strong Tides, or by any other Cause independent of the Will of the Master and Crew.

Thirdly. When obliged by contrary Winds or Tide to beat up in order to reach their Fishing Ground ; and when, from the same Cause of contrary Wind or Tide, they could not, if they remained outside, be able to hold on their Course to their Fishing Ground. Fourthly. When, during the Herring Fishing Season, the Herring Fishing Boats of the one Country shall find it expedient to anchor under Shelter of the Coasts of the other Country, in order to await a favourable Opportunity for proceeding to their lawful Fishery outside of the Limits defined by Article IX. of the Convention of the Second of August One thousand eight hundred and thirty-nine.

ARTICLE LXXXVI.—Whenever, in any of the Cases of Exception specified in the preceding Article, the Fishing Boats of either Nation shall have occasion to sail or anchor within the Limits defined by the Convention of the Second of August One thousand eight hundred and thirty-nine, the Masters of such Boats shall immediately hoist a Blue Flag, Two Feet high and Three Feet long, and shall keep this Flag flying at the Mast-head so long as they shall remain within the said Limits ; consequently this Flag shall not be hauled down until the Boats are actually outside of those Limits.

These Boats, when within the aforesaid Limits, are not only prohibited from fishing themselves, but are also forbidden to send their small Boats to fish, even outside of the Limits in question. They must all (with the Exception of Herring Boats which may be waiting, as they have the Privilege of doing, for a favourable Opportunity to proceed to their lawful Fishery,) return outside the said Limits, so soon as the Causes shall have ceased which obliged them to come in under the Cases of Exception specified.

It is further agreed, conformably to the Tenor of the present Regulations, that the Fishing Boats of the one Country shall not use the Ports of the other Country for the greater Convenience of their Fishery Operations, either in proceeding from thence to their lawful Fishery in the Seas common to both, or in returning thereunto after Fishing ; it being understood, however, that this Stipulation does not in any Manner impair the Right of putting into Port in the Case of Exception specified in Article LXXXV.

ARTICLE LXXXVII.—It is forbidden to Herring Drift-net Fishing Boats to shoot their Nets earlier in the Day than Half an Hour before Sunset, except in Places where it is customary to carry on this Drift-net Fishing by Daylight.

ARTICLE LXXXVIII.—Herring Fishermen, being within the Fishery Limits of either Country, shall comply with the Laws and Regulations of the said Country respecting the Prohibition of fishing on the Sabbath Day.

ARTICLE LXXXIX.—The Commanders of the Cruiser of each of the Two Countries, and all Officers or other Agents whatsoever appointed to superintend the Fisheries, shall exercise their Judgment as to the Causes of any Transgressions committed by the Fishing Boats of the other Country, and when they shall be satisfied of the Fact of the Transgression they shall detain or cause to be detained the Boats having thus transgressed the preceding Regulations (from

Article LXXVI.), and shall take them or cause them to be taken into Port, where, upon clear Proof of the Transgression being brought by the detaining Party before the competent Tribunal or Magistrates, the said Boats so transgressing may be condemned to be kept for a Period not exceeding Three Months, or to a Fine not exceeding Ten Pounds Sterling (Two hundred and fifty Francs).

In testimony whereof the respective Commissioners have signed the present Regulations, and have thereto affixed their Seals.

Done in *London*, the Twenty-fourth Day of *May* in the Year of our Lord One thousand eight hundred and forty-three.

(L.S.) ANTHONY PERRIER.

(L.S.) F. LANGE.

ANNEX A 146

Letter from the Rt. Hon. G. Canning, Foreign Secretary, 12th January 1824, to Messrs. H. Hobhouse and J. Planta, instructing them to negotiate with the French Ambassador on the basis of a 3-Mile Limit for the Oyster Fisheries off the Coast of the Cotentin

[*Foreign Office Papers*, 27/322]

Foreign Office,
January 12—1824

Gentlemen/

His Majesty's Government, and that of France having respectively agreed to name Commissioners, for the purpose of coming to some amicable adjustment of the differences, which have arisen between the subjects of the two Countries, respecting the Oyster Fisheries on the Coast of France, and the Island of Jersey, and you having been selected to be His Majesty's Commissioners for the adjustment of this question, I am to direct you to meet the Prince de Polignac, who has been named by His Most Christian Majesty to treat on the subject, on the part of the King of France.—

As you are acquainted with the previous discussions, I have now only to state to you, the principles upon which His Majesty's Government are willing to come to a final settlement of this question.

The basis already proposed of a specifick distance from the Low Water Mark, appears to be the one, on which the Negotiation, and Settlement, may be most easily and properly founded.—

It remains then only to agree upon that distance— The proposition which you will bring forward on the part of your Govt, is, that each nation shall possess an exclusive Fishery within one marine League from its own Shore, and that the small Islands of Chausey, although uninhabited shall enjoy the same privilege in this respect, as the continental parts of France— the space between these two distances to be left for the Mutual Fisheries of both countries.—

This distance of one Marine League is fixed upon as being that which has been most usually adopted by nations, in questions of territorial jurisdiction in the waters adjacent to their Shores; and it is more particularly to be enforced in this case from the consideration that if a greater distance were fixed upon not only would the French Fishermen remain in possession of the most valuable part of the Fishery, but the two lines of demarcation would interfere with each other.—

You will therefore use your best endeavours to obtain this Settlement from the French Ambassador.—

There would be two ways of applying this line when fixed either strictly and generally, or by reciprocal Modification as to particular parts of the Coast, in which latter case attention will be required to local interests, in respect to which, much must be left to your discretion.—

It is however not improbable that a boundary line of land marks, or Buoys may be proposed as more practicable and better adapted to the end in view, than a strict adherence in every case to the Marine League; if so, you are authorized to consent to such modifications.

If in the course of the discussions you should find that facilities will be afforded to an amicable arrangement by imposing on British fishermen in this part of the channel restrictions as to the time and mode of carrying on their employment analogous (as far as they may be found applicable) to the regulations which are understood to be imposed by the French Government on its[sic] own Subjects, you are at liberty to enter into a stipulation to that effect; but you will bear in mind that in order to meet the general convenience, it will be necessary that these restrictions and regulations should be as simple and distinct as possible.—

In order to put you in possession of the reasoning by which the several points of these instructions are to be supported, I enclose a copy of the report from the King's Advocate General to the Secretary of State for the Home Department in conformity to which these instructions have been drawn.—

I am,
Gentlemen
Your Most obedient
Humble Servant
GEORGE CANNING.

Henry Hobhouse Esqr
&
Joseph Planta Esqr
&c &c &c

ANNEX A 147

Reasons why a Common Oyster Fishery Right does not imply or involve a Common General Right of Fishery

1. As was stated in paragraph 68 of the Reply, it is immaterial for the purposes of the United Kingdom argument whether or not the Government of the French Republic are right in their contention that a common

right of fishery for oysters must involve a general right of fishery in the area, and that, therefore, Article 3 of the 1839 Convention must be read in the sense of conferring on British and French fishermen a common right to participate in all the fisheries off the Minquiers and the Ecréhous. As the United Kingdom Government hope to have shewn (paragraphs 75-80 of the Reply), the French contention about the existence of a bar to claims of sovereignty would not follow any more from this position than it would follow from a position in which there was simply a common right to fish for oysters. Nevertheless, the United Kingdom Government contend that (in respect of whatever operative effect it may have had) Article 3 was, in fact, confined to the oyster fishery for the following reasons :

(a) The whole Convention, as its title, its preamble and its previous history (see paragraphs 49-52 of the Reply) indicate, had as its main purpose the regulation of the oyster fishery and the settlement of disputes that had arisen about that type of fishery.

(b) Article 3 itself in terms related to the oyster fishery only, and it has been shewn earlier (see paragraph 62 of the Reply) that the second paragraph of Article 9 had no application as such to Article 3, and cannot legitimately be read as having such an application by inference.

(c) The technique of the oyster fishery is a distinctive one ; and there is, in fact, no physical or administrative impracticability about a position in which two countries have common oyster fishery rights in a certain area, but all other fisheries are exclusive to one of them. Oyster dredging is a distinct form of fishing, considerably more ancient than trawling. The implements used, namely, oyster dredges, comprise a triangular iron frame with a scraping bar which is towed along the bottom, objects dislodged by the scraper collecting in the net and wire mesh bag attached to the back of the dredge frame. It is contended by some that the trawl was developed from the oyster dredge by extending its width and depth of mouth, and by dispensing with the triangular frame, the towing ropes being attached directly to iron runners held apart by a beam, the iron scraping bar being replaced by a foot rope. An oyster dredge is designed to scrape inanimate objects off the bottom. It cannot be used to catch fish which can easily escape from the shallow bag or avoid the dredge altogether, since, to work effectively, it must be dragged very slowly along the bottom. The only other shellfish of commercial importance which can be taken by oyster dredges are escallops and their very near relatives "queens". It would clearly be feasible, however, to return such escallops to the sea since they are not damaged in any way during dredging.

2. The present French view is not one which has invariably been maintained by the French authorities, as is shewn by the correspondence which took place in 1884 between the French Minister for Foreign Affairs, the Minister of Marine, and the Préfet Maritime of Brest given in Annex A 46 of Volume II of the United Kingdom Memorial, and referred to in the Marquess of Salisbury's Note to Count d'Aubigny of the 27th October 1887 (Annex A 43). In the course of this correspondence, M. Peyron, the French Minister of Marine, said (Annex A 46) :

"M. le président du conseil pense que la convention du 2 août 1839, autorise nos nationaux à pratiquer la pêche des huîtres, près des Ecréhous, mais que la revendication de propriété de ces roches,

formée par l'Angleterre, ne permet pas à nos marins d'y exercer d'autre genre de pêche, à moins qu'ils ne se tiennent à la distance de trois milles desdits rochers."

This statement, incidentally, implies precisely what the United Kingdom Government have contended in the Reply, namely, first, that a general fishery right in the waters of the groups could only have existed if the region had clearly been *res nullius* (and then because of that fact); and, secondly, that sovereignty, or a claim to sovereignty, over a given area, in no way prevents the continued exercise in that area of a fishery right vested in another country.

ANNEX A 148

Article 13 of the Treaty of Utrecht, 11th April 1713

[*State Papers*, 108/73¹]

13.

L'Isle de Terre-neuve, avec les Isles adjacentes apartiendra desormais ² et absolument a la g^{de} Bretagne, et a cette fin Le Roy Tres chrestien fera remettre a ceux qui se trouueront a ce commis en ce Pays la dans l'espace de sept mois a compter du jour de l'eschange des ratifications de ce Traité, ou plutost si faire se peut, la ville et le fort de Plaisance, et autres lieux que les Francois pourroient encore posseder dans lad'. Isle, sans que led'. Roy Tres chrestien ses heritiers et successeurs, ou quelques uns de ses sujets, puissent desormais pretendre quoyque ce soit et en quelque tems que ce soit sur lad'. Isle, et les Isles adjacentes en tout ou en partie. Il ne leur sera pas permis non plus d'y fortifier aucun lieu, ny d'y establir aucune habitation en façon quelconque, Si ce n'est des Echafauts et cabanes necessaires et vsitées ³ pour secher le poisson, ny aborder dans lad'. Isle dans d'autretems que celui qui est propre pour pescher, et necessaire pour secher le poisson. Dans laquelle Isle il ne sera permis ausdits sujets de la france de pescher et de secher le poisson en aucune autre partie, que depuis le lieu appelé Cap de bona vista, jusqu'a l'extremité septentrionale de la dite Isle et dela en suiuant la partie occidentale, jusqu'au lieu appellé Pointe riche. Mais l'Isle dite Cap Breton, et toutes les autres quelconques situées dans l'embouchure et dans le golphe de s^t Laurent, demeureront a l'auenir a la france, avec l'entiere faculté au Roy tres Chrestien d'y fortifier une ou plusieurs Places.

¹ The above text has been transcribed from the original MS. of the Treaty, preserved in the Public Record Office, London (being the ratification by Louis XIV, whose signature it bears). A printed text of the same Article, with a translation, is to be found in *British and Foreign State Papers*, 1812-1814, vol. i, pt. i, pp. 420-421.

² The accents are mostly omitted in the original MS.

³ *usitées*.

ANNEX A 149

Article 3 of the Treaty of Paris, 3rd September 1783

*[Foreign Office Treaties, 93/8/2¹]*Article 3^a

It is agreed that the People of the United States shall continue to enjoy unmolested the Right to take Fish of every Kind on the Grand Bank, and on all the other Banks of Newfoundland, also in the Gulph of St Laurence and at all other Places in the Sea, where the Inhabitants of both Countries used at any time heretofore to fish. And also that the Inhabitants of the United States shall have Liberty to take Fish of every Kind on such Part of the Coast of Newfoundland as British Fishermen shall use, (but not to dry or cure the same on that Island) And also on the Coasts, Bays and Creeks of all other of his Britannic Majesty's Dominions in America, and that the American Fishermen shall have Liberty to dry and cure Fish in any of the unsettled Bays, Harbours and Creeks of Nova Scotia, Magdalen Islands and Labrador so long as the same shall remain unsettled, but so soon as the same or either of them shall be settled, it shall not be lawful for the said Fishermen to dry or cure Fish at such settlement, without a previous agreement for that Purpose with the Inhabitants Proprietors or Possessors of the Ground.

¹ The above text has been transcribed from the original MS. of the Treaty, preserved in the Public Record Office, London. A printed text of the same Article is to be found in *British and Foreign State Papers, 1812-1814*, vol. i, pt. i, pp. 781-782.

ANNEX A 150

Norwegian-Swedish Fishery Agreement, 20th December 1950

[*St. prp. nr. 15 (1951)*¹][*Norwegian Text*][*Swedish Text*]

**Overenskomst
angående fiskeriforholdene i visse
sjoområder tilhørende Norge og
Sverige.**

Hans Majestet Norges Konge og Hans Majestet Kongen av Sverige som ønsker å skape så gunstige vilkår som mulig for de av deres borgere som fisker i grensetraktene, har oppnevnt som sine befullmektigede:

Hans Majestet Norges Konge:
Sin Statsminister og fungerende Utenriksminister Einar Gerhardsen,

Hans Majestet Kongen av Sverige:

Sin overordentlige og befullmektigede Ambassadør hos Hans Majestet Norges Konge Hans Wison Ahlman[n],
som etter å ha utvekslet sine fullmakter som er funnet i god og rett form, er kommet overens om følgende:

Artikkel 1.

Svenske fiskere skal ha adgang til å fiske på norsk fiskeriområde ved ytre Oslofjord utenfor en linje som går fra skjæret ved sørpynten av Ertholmen i Rauer til Midtre Heiaflu (N. br. 58° 56,8' O. lgd. 10° 53,4'). Området begrenses i vest av en linje trukket fra et punkt 2 nautiske mil øst av skjæret ved sørpynten av Ertholmen i Rauer på

**Överenskommelse
angående fiskeriförhållandena i
vissa till Sverige och Norge
hörande vattenområden.**

Hans Majestät Konungen av Sverige och Hans Majestät Konungen av Norge, som önska skapa så gynnsamma villkor som möjligt för dem av deras undersåtar, som fiska i de till de två länderna gränsande farvattnen, hava för sådant ändamål till sina fullmäktige utsett:

Hans Majestät Konungen av Sverige:

Sin Utomordentlige och Befullmäktigade Ambassadör hos Hans Majestät Konungen av Norge Hans Wison Ahlmann,

Hans Majestät Konungen av Norge:

Sin Statsminister och tillförordnade Utrikesminister Einar Gerhardsen, vilka, efter att hava utväxlat sina i god och behörig form funna fullmakter, hava överenskommit om följande artiklar:

Artikel 1.

Svenska fiskare äro berättigade att idka fiske å norskt vattenområde vid yttre Oslofjorden utanför en linje, som går från skäret vid sydspetsen av Ertholmen i Rauer till Midtre Heiaflu (58° 56,8' N. 10° 53, 4' O.). Området begränsas i väst av en linje dragen från en punkt belägen 2 distansminuter ost om skäret vid sydspetsen av Ertholmen i Rauer på

¹ In accordance with the provisions of Article 9 of the Agreement, ratifications were exchanged in Stockholm on the 17 April 1951.

ANNEX A 150

Norwegian-Swedish Fishery Agreement, 20th December 1950

[Translation]

*Agreement Concerning the Fishery Conditions in Certain Waters
Belonging to Norway and Sweden*

His Majesty the King of Norway and His Majesty the King of Sweden, wishing to create conditions as favourable as possible for those of their subjects who fish in the frontier waters, have appointed as their plenipotentiaries :

His Majesty the King of Norway :

His Prime Minister and Acting Minister for Foreign Affairs,
Einar Gerhardsen,

His Majesty the King of Sweden :

His Ambassador Extraordinary and Plenipotentiary to His
Majesty the King of Norway, Hans W :son Ahlmann,

who, having exchanged their full powers and found them to be in good and true form, have agreed as follows :

Article 1

Swedish fishermen shall have permission to fish in Norwegian fishing waters in Outer Oslofjord seawards of a line running from the skerry at the south point of Ertholmen in Rauer to mid-Heiaflu ($58^{\circ} 56.8' N.$, $10^{\circ} 53.4' E.$). The area is bounded on the west by a line drawn from a point two nautical miles east, along the above-mentioned line, of the skerry at the south point of Ertholmen in Rauer to a point which lies four nautical miles due south from the southernmost skerry in Svennør, and on the east by a line running from a point which lies five and a half nautical miles west of mid-Heiaflu along a line between the latter and the skerry at the south point of Ertholmen in Rauer to a point lying to the northwest of the light and bell-buoy Grisebåene ($58^{\circ} 55' N.$, $10^{\circ} 46.7' E.$).

den før nevnte linje til et punkt som ligger 4 nautiske mil rettvisende syd fra det sydligste skjær i Svennør og i øst av en linje trukket fra et punkt som ligger $5\frac{1}{2}$ nautiske mil vest av Midtre Heiaflu på linjen mellom denne og skjæret ved sørpynten av Ertholmen i Rauer og til et punkt som ligger nordvest for lys- og klokkebøyen Grisebåene (N.br. $58^{\circ} 55,0'$ O. lgd. $10^{\circ} 46,7'$).

nyssnämnda linje till en punkt, som ligger 4 distansminuter rättvisande syd om det sydligaste skäret i Svennør, samt i øst av en linje dragen från en punkt, som ligger $5\frac{1}{2}$ distansminuter väst Midtre Heiaflu på linjen mellan denna och skäret vid sydspetsen av Ertholmen i Rauer och till en punkt, som ligger nordväst om lys- och klokkebojen Grisbådarna ($58^{\circ} 55,0'$ N. $10^{\circ} 46,7'$ O.).

Artikkel 2.

Norske fiskere skal ha adgang til å fiske på svensk fiskeriområde utenfor en linje som går fra et punkt som ligger nordvest for lys- og klokkebøyen Grisebåene (N.br. $58^{\circ} 55,0'$ O.lgd. $10^{\circ} 46,7'$) til nevnte klokkebøye (N.br. $58^{\circ} 53,0'$ O.lgd. $10^{\circ} 50,0'$) og derfra til et punkt som ligger 6 nautiske mil rettvisende vest fra nordre pynten av øya Morø (N.br. $58^{\circ} 40,0'$ O.lgd. $10^{\circ} 57,3'$). Området begrenses i syd av en linje trukket fra sistnevnte punkt rettvisende vest.

Artikel 2.

Norska fiskare äro berättigade att idka fiske å svenskt vattenområde utanför en linje, som går från en punkt, som ligger nordväst om lys- och klokkebojen Grisbådarna ($58^{\circ} 55,0'$ N. $10^{\circ} 46,7'$ O.) till nämnda lys- och klokkeboj ($58^{\circ} 53,0'$ N. $10^{\circ} 50'$ O.) och därifrån till en punkt, som ligger 6 distansminuter rättvisande väst om norra udden av ön Morø ($58^{\circ} 40,0'$ N. $10^{\circ} 57,3'$ O.). Området begränsas i söder av en linje dragen från sistnämnda punkt rättvisande västerut.

Artikkel 3.

Norske og svenske fiskere som fisker på svensk, respektive norsk fiskeriområde, skal rette seg etter alle de lover og bestemmelser som gjelder for landets egne fiskere som fisker på samme område.

Forøvrig skal de, uansett hvilke bestemmelser som gjelder for landets egne fiskere på de nevnte områder, ikke ha adgang til å fiske med faststående garn, ruser eller ruseliknende redskaper og heller ikke med krabbe- og hummerteiner på det annet lands område.

Artikel 3.

Svenska och norske fiskare, vilka bedriva fiske på norskt respektive svenskt vattenområde, skola rätta sig efter de lagar och bestämmelser, som gälla för landets egna fiskare i samma område.

Dock skola de, oavsett vilka föreskrifter, som må gälla för landets egna fiskare på nämnda områden, icke äga att på det andra landets område idka fiske med förankrade garn, ryssjor eller ryssjeliknande redskap och ej heller med krabb- och hummertinor.

Article 2

Norwegian fishermen shall have permission to fish in Swedish fishing waters seawards of a line running from a point lying to the northwest of the light and bell-buoy Grisebåene ($58^{\circ} 55' \text{ N.}$, $10^{\circ} 46. 7' \text{ E.}$), to that bell-buoy ($58^{\circ} 53' \text{ N.}$, $10^{\circ} 50' \text{ E.}$) and thence to a point lying six nautical miles due west of the northernmost point of the island of Morø ($58^{\circ} 40' \text{ N.}$, $10^{\circ} 57.3' \text{ E.}$). The area is bounded on the south by a line drawn due west from the last named point.

Article 3

Norwegian and Swedish fishermen who fish in Swedish and Norwegian fishing waters respectively shall conduct themselves in accordance with all the laws and regulations in force for the country's own fishermen fishing in the same area.

In addition, without regard to the regulations in force for the country's own fishermen in the areas named, they shall not be permitted to fish with mixed tackle, bownets or similar tackle nor with crab and lobster pots in the other country's territory.

Artikkel 4.

Nye regulerende bestemmelser vedrørende fisket i de områder som er nevnt i artiklene 1 og 2 skal bare kunne utferdiges og settes i verk etter forutgående drøftelser mellom de to regjeringer.

Artikkel 5.

Fiskere fra begge land skal fritt kunne ferdes og ankre overalt i de farvann som er nevnt i artiklene 1 og 2.

Dette skal dog ikke være til hinder for at fiskedfartøyer fra det ene land som fisker på det annet lands fiskeriområde, blir visitert av myndighetene i sistnevnte land for at disse kan kontrollere at de lover og bestemmelser som gjelder for fisket bli overholdt. Visitasjon kan også finne sted for å kontrollere at de ombordværende på fiskefartøyene ikke foretar noen handling som strider mot vedkommende lands øvrige lover og bestemmelser, som f. eks. bestemmelsene for vern av landets sikkerhet og bestemmelsene vedrørende smugling.

Visitasjonen skal dog foregå på en slik måte, at den forårsaker minst mulig avbrekk i fartøyenes fiske.

Artikkel 6.

De fartøyer som driver fiske i de farvann som er omhandlet i artiklene 1 og 2, skal være tydelig merket med nummer og distriktsmerke i samsvar med de gjeldende bestemmelser i deres hjemland.

Artikel 4.

Nya föreskrifter beträffande fisket i de i artiklarna 1 och 2 angivna vattenområdena kunna utfärdas och sättas i kraft allenast i samförstånd mellan de fördragsslutande parterna.

Artikel 5.

Det skal vara både ländernas fiskare tillåtet att fritt färdas och ankra allestädes i de vattenområden, som äro angivna i artiklarna 1 och 2.

Vad nu sagts, skall dock icke utgöra hinder mot att fiskefartyg från der ena landet, som fiskar inom det andra landets fiskeområde, visiteras av vederbörande myndighet i sistnämnda land för kontroll av efterlevnaden av gällande lagar och bestämmelser angående fiske. Visitation [*sic*] må jämväl äga rum för kontrollering av att på fiskefartygen ombordvarande personer icke företaga någon handling, som strider mot vederbörande lands övrige lagar och bestämmelser, såsom föreskrifter till skydd för landets säkerhet och angående smugling.

Nu nämnda visitationer skola dock företagas på sådant sätt, att de vålla minsta möjliga olägenhet i fartygens fiske.

Artikel 6.

De farkoster, som idka fiske i de vattenområden, som angivits i artiklarna 1 och 2, skola vara tydligt märkta med nummer och distriktsmärke i enlighet med de i deras hemland gällande bestämmelserna.

Article 4

Effective new regulations regarding fishing in the areas named in Articles 1 and 2 can be prepared and brought into force only as the result of discussions between the two governments.

Article 5

Fishermen from both countries may freely travel and anchor anywhere in the waters named in Articles 1 and 2.

There shall nevertheless be nothing to prevent fishing vessels from the one country which are fishing in the other country's waters from being visited by the authorities of the latter country, so that these can ensure that the laws and regulations in force for fishing are being observed. Such visits may also take place to ensure that those on board the fishing boats are taking no action contrary to other laws and regulations of the country concerned as, for example, the regulations for protection of the country's security and regulations concerning smuggling.

The visit shall nevertheless be made in such a way as to cause the least possible interference with the vessels' fishing.

Article 6

The vessels which fish in the waters described in Articles 1 and 2 shall be clearly marked with numbers and district markings in accordance with the regulations in force in their own country.

Artikkel 7.

Oppsynet med at bestemmelsene i denne overenskomst blir overholdt skal utøves av hvert av de to lands myndigheter innen deres eget område.

Hvis myndighetene i det ene land skulle treffe tiltak mot et fiskefartøy fra det annet land eller mot ombordværende på et slikt fiskefartøy som følge av at fartøyet eller de ombordværende har overtrådt gjeldende lover eller bestemmelser på det førstnevnte lands fiskeområde, skal de sørge for at vedkommende myndigheter i det annet land blir underrettet uten opphold.

Artikkel 8.

Begge parter forplikter seg til straks å treffe de tiltak som er nødvendige for å sikre gjennomføringen av denne overenskomst og å underrette hverandre herom.

Artikkel 9.

Denne overenskomst skal ratifiseres, og ratifikasjonsdokumentene skal snarest mulig utveksles i Stockholm.

Artikkel 10.

Denne overenskomst trer i kraft ved utvekslingen av ratifikasjonsdokumentene. Den gjelder inntil 1. januar 1956 og fornyes automatisk for 1 år om gangen med mindre den oppsies med minst seks måneders varsel av en av partene før utgangen av hver periode.

Til bekreftelse herav har de respektive befullmektigede undertegnet denne overenskomst og forsynet den med sine segl.

Artikel 7.

Tillsynen över efterlevnaden av bestämmelserna i denna överenskommelse utövas av vardera landets myndigheter inom deras område.

Därest myndigheterna i det ena landet finna anledning att ingripa mot ett fiskefartyg från det andra landet eller mot ombordvarande på sådant fartyg i följd av att fartyget eller därå ombordvarande överträtt lagar eller bestämmelser gällande inom förstnämnda lands vattenområde, åligger det nämnda myndigheter att utan dröjsmål låta därom underrätta vederbörande myndighet i det andra landet.

Artikel 8.

De fördragsslutande parterna förplikta sig att omedelbart vidtaga de åtgärder, som äro erforderliga för att säkerställa genomförandet av denna överenskommelse samt att ömsesidigt därom underrätta varandra.

Artikel 9.

Denna överenskommelse skall ratificeras och ratifikationsinstrumenten skola snarast möjligt utväxlas i Stockholm.

Artikel 10.

Överenskommelsen träder i kraft i och med det ratifikationsinstrumenten utväxlats. Den förblir gällande intill den 1 januari 1956 och förlänges automatisk 1 år åt gången med mindre den av endera parten uppsäges minst sex månader före varje periods utgång.

Till bekräftelse härav hava respektive fullmäktige undertecknat denna överenskommelse och fö[r]sett densamma med sina sigill.

Article 7

Supervision to ensure that the regulations in this agreement are being observed shall be undertaken by the authorities of each country within its own territory.

If the authorities of one country take measures against a fishing vessel of the other country or against the crew of such a fishing vessel as a result of the vessel or the crew having transgressed the laws and regulations in force on the first-named country's territory, they shall ensure that the appropriate authorities in the other country are informed without delay.

Article 8

Both parties pledge themselves to take immediately such measures as are necessary to ensure the implementation of this agreement and to inform each other of the fact.

Article 9

This agreement shall be ratified and the documents of ratification shall be exchanged as soon as possible in Stockholm.

Article 10

This agreement comes into force upon the exchange of the documents of ratification. It is valid until January 1st, 1956, and is automatically renewed for one year at a time unless it is denounced by one of the parties at least six months before the expiry of such period.

Utferdiget i Oslo 20. desember 1950, i fire eksemplarer, hvorav to på norsk og to på svensk.

(u) Einar Gerhardsen.

(u) Hans W:son Ahlmann.

Sluttprotokoll.

Ved underskrivingen av den overenskomst som i dag er inngått mellom Norge og Sverige angående fiskeriforholdene i visse sjøområder tilhørende Norge og Sverige, har undertegnede befullmektigede på vegne av sine regjeringer gitt følgende erklæring:

Det hersker enighet mellom de to parter om at:

Uten hensyn til artikkel 3, første ledd, i den nevnte overenskomst skal norske og svenske fiskere inntil videre ha adgang til på det annet lands område å bruke de fiskeredskaper som er tillatt brukt i deres eget land, dog slik at norske fiskere ikke skal ha adgang til å fiske med snurpenot og annen trål enn reketral på svensk område, og svenske fiskere ikke skal ha adgang til å fiske med annen trål enn reketral på norsk område. Begge parter er imidlertid enige om å arbeide for å få istandbrakt felles bestemmelser for såvidt det gjelder maskestørrelse og redskapenes størrelse og konstruksjon.

Utferdiget i Oslo 20. desember 1950, i fire eksemplarer, hvorav to på norsk og to på svensk.

(u) Einar Gerhardsen.

(u) Hans W:son Ahlmann.

Som skedde i Oslo i fyra exemplar, varav två på svenska och två på norska, den 20 december 1950.

(u) Hans W:son Ahlmann.

(u) Einar Gerhardsen.

Sluttprotokoll.

Vid undertecknadet av den överenskommelse, som i dag inngåtts mellan Sverige och Norge angående fiskeriförhållandena i vissa till Sverige och Norge hörande vattenområden hava undertecknade fullmak[t]ige å sina respektive regeringars vägnar avgivit följande förklaring.

Det råder enighet mellan de två parterna om följande.

Oavsett artikel 3, st. 1, i förenämnda överenskommelse äro svenska och norska fiskare tills vidare berättigade att å det andra landets område nyttja de fiskeredskap, som de äga bruka i sitt eget land, dock så att norska fiskare icke må fiska med snörpvad och annan trål än räktrål på svenskt område och svenska fiskare icke må fiska med annan trål än räktrål på norskt område. Båda parterna äro emellertid eniga om att arbeta för att få till stånd genensamma bestämmelser i vad avser maskdimension samt redskapens storlek och konstruktion.

Som skedde i Oslo i fyra exemplar, varav två på svenska och två på norska, den 20 december 1950.

(u) Hans W:son Ahlmann.

(u) Einar Gerhardsen.

In confirmation of which the respective plenipotentiaries have signed this agreement and sealed it with their seals.

Drawn up at Oslo, December 20th, 1950, in four copies of which two are in Norwegian and two in Swedish.

[Signed] EINAR GERHARDSSEN.
HANS W : SON AHLMANN.

PROTOCOL

At the signature of this agreement which has to-day been reached between Norway and Sweden regarding the fishing conditions in certain waters belonging to Norway and Sweden the undersigned plenipotentiaries have on behalf of their governments given the following explanation :

Agreement has been reached between the two parties that :

Without regard to Article 3, first sentence, in the agreement concerned, Norwegian and Swedish fishermen shall until further notice have permission to use in the territory of the other country the fishing tackle which is permitted in their own country except that Norwegian fishermen are not permitted to fish with purse-nets nor with any trawl other than prawn trawl in Swedish waters, and Swedish fishermen are not permitted to fish with any other trawl than prawn trawl in Norwegian waters. Both parties have meanwhile agreed to co-operate in the drawing up of joint regulations regarding the size of the meshes of fishing nets and size and construction of tackle.

Drawn up at Oslo, 20th December 1950, in four copies of which two are in Norwegian and two in Swedish.

[Signed] EINAR GERHARDSSEN.
HANS W : SON AHLMANN.

ANNEX A 151

Subsequent practice and Conduct of the Parties as a guide to the correct interpretation of a Treaty : Judicial Views expressed in Cases before the International Court of Justice

In the case concerning the *International Status of South-West Africa* (*I.C.J. Reports 1950*, p. 128) the Court expressed the following view (at pp. 135-6) :

“Interpretations placed upon legal instruments by the parties to them, though not conclusive as to their meaning, have considerable probative value when they contain recognition by a party of its own obligations under an instrument”.

In the case concerning the *Competence of the General Assembly for the Admission of a State to the United Nations* (*I.C.J. Reports 1950*, p. 4), the Court, having rejected recourse to the *travaux préparatoires* of the Charter, went on as follows (at p. 9) :

“The organs to which Article 4 entrusts the judgment of the Organization in matters of admission have consistently interpreted the text in the sense that the General Assembly can decide to admit only on the basis of a recommendation of the Security Council. In particular, the Rules of Procedure of the General Assembly provide for consideration of the merits of an application and of the decision to be made upon it only ‘if the Security Council recommends the applicant State for membership’ (Article 125). The Rules merely state that if the Security Council has not recommended the admission, the General Assembly may send back the application to the Security Council for further consideration (Article 126). This last step has been taken several times : it was taken in Resolution 296 (IV), the very one that embodies this Request for an Opinion”.

Similarly, in the *Corfu Channel* case (*Merits*) (*I.C.J. Reports 1949*, p. 4), the Court said (at p. 25) :

“The subsequent attitude of the Parties shows that it was not their intention, by entering into the Special Agreement, to preclude the Court from fixing the amount of the compensation”.

This last pronouncement was referred to by Judge Read in his dissenting judgement in the *Asylum* case (*I.C.J. Reports 1950*, p. 266), where he quoted it and said (at pp. 323-4) :

“The *third test* relates to the understanding of the parties to the treaty as to its meaning, reflected by their subsequent action. It may be observed that this Court [in the *Corfu Channel* case] relied upon an examination of the subsequent attitude of the Parties with a view to ascertaining their intention, when interpreting an international agreement”

Judge Read then reviewed the practice of the parties to the Havana Convention of 1928, and concluded (*op. cit.*, pp. 325-6) :

"It is impossible to escape the conclusion that the Parties to the Convention have acted over a period of twenty-two years upon the understanding that the use of the expression 'urgent cases' was not intended to be a bar to the grant of asylum to political offenders.... Accordingly, the Peruvian interpretation fails to meet the third test [*i.e.*, of subsequent practice]".

ANNEX A 152

Article 3 of the Truce of London, 16th February 1471

[*Exchequer (Treasury of Receipt), Diplomatic Documents, No. 540*¹]

[Article 3²] Item Et [p]e[n]dant lesd' ³ treues seur estat abstinen⁴ de guer[re] et entrecours de mar[ch]a[nd]ise et cinq [a]ns apres les [d]esdit et Reuocacion

Lesquelz ne pourront estre faiz ne Intimez Iucques apres le terme de dix [a]ns prouch⁵ ven⁶ finy passe et accomply Led' ⁷ tresxprien⁸ et nre⁹ souverain seignr Le Roy [de] fra[nce] ne f[era] o[u] souffrera faire par lui ne par ses subgez soit pour sa querelle ou pour la querelle dautru[y] aucune descente guerre hostillite aggression ou Inuasion [au dit Royaume] dangleterre seigneurie dirlande ville et marche de calais guysnes et hannes [Ysles] de g[re]nesey Iarzey et aunery¹⁰ [et] autres pais ysles terres et seigneuries qui sont ou seront tenues et possidees par led' ⁷ sr¹¹ Ro[y d]a[n]gle[te[r]re [ou pa]r ses subgez

¹ The original MS. is in a very poor condition. Missing words, and missing parts of words, are shewn in square brackets. In a few instances, these have been supplied by the text printed by Rymer, *Fœdera*, &c. (Original Ed.), xi.683-690 (p. 684, for the above Article), from the enrollment on the Treaty (French) Rolls, 49 Hen. VI, m. 4, which, apart from minor variations, is the same.

² The substance of this Article is repeated in Article 4, in appropriately varied language, regarding a reciprocal undertaking by Henry VI.

³ *lesdites*.

⁴ *abstinence*.

⁵ *prouchainement*.

⁶ *venant*.

⁷ *Ledit*.

⁸ *treschrestien*.

⁹ *nostre*.

¹⁰ The words "[Ysles] aunery" are interlined in the original MS.; also in Article 4 (for which, see n. 2 above).

¹¹ *seigneur*.

ANNEX A 152

Article 3 of The Truce of London, 16th February 1471

[*Exchequer (Treasury of Receipt), Diplomatic Documents, No. 540*]
[Translation]

[Article 3] Also, and during the said truces relating to a state of abstinence from war and to commercial intercourse, and for five years after the renunciations and Revocation thereof, Which cannot be made, and of which Notice cannot be given, Until the period of ten years, next ensuing, shall have expired, elapsed and been completed, the said most christian and our sovereign lord, The King of france, will not make, or suffer to be made, by him or by his subjects, either because of his own grievance or the grievance of others, any raid, war, hostile act, aggression or Invasion [against the said Kingdom] of england, lordship of ireland, the town and march of calais, guînes and hames, [the Islands] of guernsey, Jersey and alderney [and] other territories, islands, lands and lordships, which are, or will be, held and possessed by the said lord King of england or by his subjects.

ANNEX A 153

Affidavit of C. W. Duret Aubin, formerly Solicitor-General and Attorney-General for Jersey, 18th September 1952, regarding the Jurisdiction of the Royal Court of Jersey

I, Charles Walter Duret Aubin, Commander of the Order of the British Empire, of "Belfontaine", in the parish of Grouville in the Island of Jersey, make oath and say as follows :—

1. I am a Barrister-at-Law and an Advocate of the Royal Court of Jersey. I held the office of His Majesty's Solicitor General for Jersey from 1931 to 1936 and that of His Majesty's Attorney General for Jersey from 1936 until 1948, when I retired.

2. The Royal Court of Jersey has cognizance of all causes, civil, mixed and criminal arising within the Bailiwick of Jersey "exceptis casibus nimis arduis", that is to say, high treason and disputes arising between the Governor and the major part of the Jurats.

3. This jurisdiction was first conferred upon the Court by the "Constitutions of King John" and does not extend to causes arising outside the Bailiwick.

4. The Royal Court of Jersey has therefore no jurisdiction in the matter of a criminal offence committed outside the Bailiwick, even though that offence be committed by a British subject domiciled or ordinarily resident within the Bailiwick.

[Signed] C. W. DURET AUBIN.

SWORN by the within-named
Charles Walter Duret Aubin
at St. Helier, in the Island
of Jersey, this 18th day of
September, 1952, before me—

[Signed] HEDLEY G. LUCE

Notary Public,
Jersey.

ANNEX A 154

The Constitutions of King John (1199-1216), granted to the Islands of Jersey and Guernsey

[Philip Falle, *Cæsarea: Or, an Account of Jersey, The greatest of the Islands remaining to the Crown of England of the ancient Dutchy of Normandy* (2nd Ed.: London, 1734), pp. 329-332, Appendix, No. I]

NUMB. I.

The Constitutions of King John.*

Rot. Hen. 3 Inquisitio facta de Servitiis, Consuetudinibus, & Libertatibus Insul. de GERESE & Guernese, & Legibus constitutis in Insulis per Dominum Johannem Regem, per Sacramentum Roberti Blondel, Radulphi Burnel, &c. qui dicunt, &c.

CONSTITUTIONES & Provisiones constitute per Dominum Johannem Regem, postquam Normannia alienata fuit.

Imprimis, constituit *Duodecim Coronatores Juratos*, ad Placita & Jura ad Coronam spectantia custodienda.

II. Constituit etiam & concessit pro securitate Insularium¹, quod *Ballivus* de cetero per visum dictorum *Coronatorum* poterit placitare absque Brevi de Novâ Disseisinâ factâ infrâ annum, de Morte Antecessoris infrâ annum, de Dote similiter infrâ annum, de Feodo invadiato semper, de Incumbreio Maritagij &c.

III. Ii debent eligi de Indigenis Insularum, per Ministros Domini Regis, & Optimates Patrie; scilicet post Mortem unius eorum, alter fide dignus, vel alio casu legitimo, debet substitui †.

IV. Electi debent jurare sine conditione, ad manutenendum & salvandum jura Domini Regis & Patriotarum.

V. Ipsi *Duodecim* in qualibet Insulâ, in absentia *Justiciariorum*, & unâ cum *Justiciariis* cûm ad Partes illas venerint, debent judicare de omnibus casibus in dictâ Insulâ qualitercunque emergentibus, exceptis Casibus nimis arduis, & si* quis legitimè convictus fuerit a Fidelitate Domini Regis tanquam Proditor recessisse, vel manus injecisse violentas in Ministros Domini Regis modo debito Officium exercendo.

VI. Ipsi *Duodecim* debent Emendas sive Amerciamenta omnium premissorum taxare, predictis tamen arduis Casibus exceptis, aut aliis Casibus in quibus secundum Consuetudinem Insularum merè spectat redemptio pro voluntate Domini Regis & Curie sue.

VII. Si Dominus Rex velit certiorari de Recordo Placiti coram *Justiciariis* et ipsis *Duodecim* agitati, *Justicarii* cum ipsis *Duodecim* debent Recordum facere; & de Placitis agitatis coram *Ballivo* & ipsis *Juratis* in dictis Insulis, ipsi debent Recordum facere conjunctim.

* The Original of these Constitutions of King John is lost; but they are extant in an Inquest of his Son Henry III, which recites and confirms them.

† There is here a Transposition that perplexes the Sense. It ought to be, Scilicet post Mortem unius eorum, vel alio casu legitimo, alter fide dignus debet substitui.

[¹ Recte "Insularum".]

[² "ut si" (= as when) is probably intended.]

ANNEX A 154

The Constitutions of King John (1199-1216), granted to the Islands of Jersey and Guernsey

[Philip Falle, *Cæsarea: Or, an Account of Jersey, The greatest of the Islands remaining to the Crown of England of the ancient Dutchy of Normandy* (2nd Ed.: London, 1734), pp. 329-332, Appendix, No. 1]

[Translation]

Inquisition made touching the Services, Customs, and Liberties of the Islands of Jersey and Guernsey, and the Laws established in the Islands by John the Lord the King, by the Oath of Robert Blondel, Ralph Burnel, etc., who say, etc. Roll of Henry III.

CONSTITUTIONS and Provisions established by John the Lord the King, after Normandy was alienated.

I. First, he constituted Twelve Sworn [*Juratos*] Coroners, to keep the Pleas and Rights pertaining to the Crown.

II. He also constituted and granted for the security of the Islands that the Bailiff thenceforth might, by view of the said Coroners, without a Writ, hear pleas of Novel Disseisin made within the year, of Mort d'Ancestor within the year, of Dower likewise within the year; of a mortgaged Fee, of Incumbrance of Marriage, etc., at any time.

III. They are to be elected from the Natives of the Islands, by the Ministers of the Lord the King, and the Magnates of the Land; to wit, after the Death of one of them, or in other lawful case, another worthy of trust is to be substituted.

IV. Those elected are to swear, without condition, to maintain and preserve the rights of the Lord the King and of the Inhabitants.

V. The same Twelve, in whatsoever Island, in the absence of the Justices, and together with the Justices when they shall come to those Parts, are to judge touching all cases in the said Island, howsoever arising, except Cases that are too difficult, as when any shall be lawfully convicted, as a Traitor, of having departed from his Loyalty to the Lord the King, or of having laid violent hands upon the Ministers of the Lord the King when exercising their Office in a lawful manner.

VI. The same Twelve are to fix the Fines or Amerciaments of all the premises, the aforesaid difficult Cases only excepted, or other Cases in which, according to the Custom of the Islands, redemption pertains solely to the will of the Lord the King and of his Court.

VII. If the Lord the King desire to be certified touching the Record of a Plea brought before the Justices and the same Twelve, the Justices with the same Twelve are to make a record; and, touching the Pleas brought before the Bailiff and the same Sworn persons [*Juratis*] in the said Islands, the same are conjointly to make a Record.

VIII. Quod nullum Placitum infra quamlibet dictarum Insularum coram quibuscunque *Justiciariis* inceptum, debet extra dictam Insulam adjornari, sed ibidem omninò terminari.

IX. Insuper constituit quod nullo de libero Tenemento suo, quod per annum & diem pacificè tenuerit, sinè Brevi Domini Regis de Cancellariâ, de Tenente & Tenemento faciente mentionem, respondere debeat vel teneatui*.

X. Quod nullus pro Feloniâ damnatus extra Insulas prædictas, Hereditates suas infra Insulas forisfacere potest, quin Heredes sui eas habeant.

XI. *Item*, si quis forisfecerit, & abjuraverit Insulam, & postea Dominus Rex pacem suam ei concesserit, & infra annum & diem abjuratonis revertatur ad Insulam, de Hereditate suâ plenariè debet restitui.

XII. *Item*, quod nullo debet imprisonari in *Castro* nisi in Casu criminali, vitam vel membrum tangente, & hoc per Judicium *Duodecim Coronatorum Juratorum*, sed in aliis liberis Prisonis ad hoc deputatis.

XIII. *Item*, quod Dominus Rex nullum *repositum* ibidem prohibere debeat nisi per electionem Patriotarum †.

XIV. *Item*, Constitutum est, quod Insulani non debeant coram *Justiciariis* ad Assisas capiendas assignatis, seu alia Placita tenenda, respondere, antequam transcripta Commissionum eorundem sub Sigillis suis eis liberentur.

XV. *Item*, quod *Justicarii* per Commissionem Domini Regis ad Assisas capiendas ibidem assignati, non debent tenere Placita in qualibet dictarum Insularum, ultra Spatium trium Septimanarum.

XVI. *Item*, quod ipsi Insulani coram dictis *Justiciariis* post tempus predictum venire non tenentur.

XVII. *Item*, quod ipsi non tenentur Domino Regi Homagium facere, donec ipse Dominus Rex ad Partes illas, seu infra Ducatum *Normannie* venerit, aut aliquem alium per Literas suas assignare voluerit in iisdem Partibus, ad predictum Homagium nomine suo ibidem recipiendum.

XVIII. *Item*, Statutum est pro tuitione & salvatione Insularum & Castrorum, & maximè quia Insule propè sunt, & juxtà potestatum Regis *Francie*, & aliorum inimicorum suorum, quod omnes Portus Insularum benè custodirentur; & Custodes Portuum Dominus Rex constituere precipit, ne damna sibi & suis eviniant*.

* This Article was inserted to restrain the Violence of the Governors, who having the whole Power Civil and Military in their hands, invaded Men's Estates, and possessed themselves of them by their sole Authority.

† I know not what to make of this Article; instead of prohibere it should undoubtedly be promovere. By *Præpositus* must be meant the Provost in Guernesey, who is the same Officer as the Viconte in JERSEY.

* When Henry III confirmed the Constitutions, Philip de Aubigny, Warden of the Islands, obtained a Supplement of some other Articles and Concessions about Trade, which being of no use at present are here omitted.

VIII. That no Plea begun within whichsoever of the said Islands before whomsoever of the Justices, is to be adjourned without the said Island, but there to be wholly determined.

IX. Moreover, he established that no one, touching his free Tenement, which he shall have held peaceably for a year and a day, without the Writ of the Lord the King from Chancery making mention of the Tenant and the Tenement, is to answer or be held.

X. That no one condemned for Felony without the Islands aforesaid, can forfeit his Inheritance within the Islands, so that his Heirs may not have it.

XI. Also, if any shall forfeit, and abjure the Island, and afterwards the Lord the King shall grant him his peace, and within a year and a day of his abjuration he shall return to the Island, he is to be fully restored as touching his Inheritance.

XII. Also, that no one is to be imprisoned in the Castle except in a criminal Case touching life and limb, and this by Judgement of the Twelve Sworn Coroners, but in other free Prisons appointed for this purpose.

XIII. Also, that the Lord the King is to have no Provost there unless by election of the Inhabitants.

XIV. Also, it was Established, that the Islanders are not to answer, in the presence of the Justice appointed to take Assizes, or to hold other Pleas, before the transcripts of the same Commissions shall be delivered to them under their Seals.

XV. Also, that the Justices appointed by the Commission of the Lord the King to take Assizes there, are not to hold Pleas in any of the said Islands, beyond the Space of three Weeks.

XVI. Also, that the said Islanders are not bound to come before the said Justices after the period aforesaid.

XVII. Also, that they are not bound to do Homage to the Lord the King, until the Lord the King himself come to those Parts, or come within the Duchy of Normandy, or desire, by his Letters, to appoint some other person in the same Parts, to receive the aforesaid Homage in his name.

XVIII. Also, it is Enacted for the protection and security of the Islands and Castles, and especially because the Islands are near, and hard by the power of the King of France, and of others of their enemies, that all the Harbours of the Islands should be well guarded; and the Lord the King commands them to appoint Custodians of the Harbours, lest hurt should come to himself and his.

ANNEX A 155

Affidavit of H. V. Benest, Sergent de Justice and Acting Viscount of the Island of Jersey, 12th September 1952, regarding the holding of Inquests on Corpses within the Bailiwick

I, the undersigned; Herbert Vyvian Benest, Sergent de Justice and Acting Viscount of the Island of Jersey, make oath and say as follows:—

1. That the law of Jersey has for centuries required the holding of an inquest on any corpse found within the territory of the Bailiwick where it was not clear that death was due to natural causes.

2. That Philippe Le Geyt, Lieutenant Bailiff of Jersey from 1676 to 1692, in an unpublished work on "les Privilèges, Lois et Coutumes de l'Isle de Jersey", known to Jersey lawyers as "Le Code le Geyt", wrote (Livre 5, Chapitre 4, Article 10):

"Les corps de gens pérís par quelque accident subit ou violent ne doivent être dépouillez enterrez ni transportez avant que la Justice les ait vus, sur telle peine ou amende qu'il y pourra échoir. A cet effet le Vicomte par mandement et commission du Bailli descend promptement sur les lieux. Il y produit une enquête de 12 Hommes qui font serment de visiter le cadavre et de rapporter s'ils croyent en leur conscience que la mort est arrivée fortuitement ou par aide d'autrui ou de soy même et le Procureur du Roy y doit estre présent ou l'Avocat en son absence." ;

and in his published work, "La Constitution, les Lois et les Usages de Jersey" in the Chapter entitled "De la Levée et Visitation des Cadavres" (Tome II, page 555), he wrote:

"A Jersey la levée et visitation se fait en présence des gens de la Reyne, par le ministère du Vicomte et d'une enquête de douze hommes".

3. That the present practice is exactly as stated by Le Geyt, except that there has of recent years been a departure from the rule that the inquest should be held at the place where the corpse was found: it is now customary to remove the body to the General Hospital, if the Bailiff so permits, and to hold the inquest there.

4. That the ordering of an inquest is in no way affected by the question whether or not the deceased was a British subject or resident in Jersey, the determining factor being, as is stated above, whether or not the corpse was found within the territory of the Bailiwick.

[Signed] H. V. BENEST
Acting Viscount.

Sworn by the within-named
Herbert Vyvian Benest,
at St Helier, Jersey, this
12th day of September
1952, before me:—

[Signed] HEDLEY G. LUCE
Notary Public
Jersey

ANNEX A 156

**Affidavit of P. E. Le Couteur, Judicial Greffier of the Island of Jersey,
20th August 1952, regarding the Registration of Deeds in the Island of
Jersey**

I the undersigned Philip Edgar Le Couteur, Judicial Greffier of the Island of Jersey, make oath and say as follows :—

1. That by virtue of my said office I am Registrar of Deeds of the said Island.
2. That, subject to the laws of the said Island relating to quadrage-narian possession, that is to say, peaceful and uninterrupted possession over a period of forty years, the title to all real property situate within the limits of the jurisdiction of the Royal Court of the said Island passes by matter of record.
3. That the Registry of Deeds of the said Island was established in pursuance of an Ordinance of the States of the said Island dated the 24th July, 1602, which provides that all deeds relating to real property, which shall be passed before the Bailiff, or his Lieutenant, and two or three of the Jurats of the Royal Court, shall be engrossed and registered.
4. That the said Ordinance is re-enacted in all essential particulars by the Code of Laws for the Island of Jersey approved of, ratified and confirmed by Order in Council of the 28th March, 1771.
5. That Article 8 of the "Loi (1891) sur l'admission des Ecrivains" provides that such deeds shall be presented to the Bailiff only by the Attorney General, the Solicitor General, or one of the Advocates or Solicitors of the Royal Court.
6. That the parties to such deeds must appear before the Bailiff, or his Lieutenant, and two or three of the Jurats of the Royal Court and swear that they will neither act nor cause anyone to act against the terms of the deed upon pain of perjury.
7. That such deeds, which are not signed by the parties, are then signed by the Bailiff and the Jurats before whom the parties have appeared.
8. That such deeds are then handed to the Registrar of Deeds for registration and, after having been registered and sealed with the seal of the Bailiwick, are delivered to the party entitled to the possession thereof.
9. That the said Ordinance and the said Code of Laws provide that all such deeds, if not registered, shall be null and void.

[Signed] P. E. LE COUTEUR
Judicial Greffier.

Sworn at St. Helier, Jersey,
this 20th day of August,
1952, before me.

[Signed] HEDLEY G. LUCE
Notary Public.

ANNEX A 157

Letter from Mr. R. S. B. Best, Agent for the Government of the United Kingdom, to Professor T. F. T. Plucknett, Professor of Legal History in the University of London, 24th July 1953, requesting an Opinion upon the Effect of a Gift in Frankalmoin, and upon the Nature of an Advowson and of *Quo Warranto* Proceedings, in Medieval Law

FOREIGN OFFICE,

London, S.W. 1.

July 24, 1953.

Dear Professor Plucknett,

I enclose herewith copies of the written pleadings which have so far been exchanged between the Government of the United Kingdom of Great Britain and Northern Ireland on the one hand and the Government of the French Republic on the other hand in the case of the Minquiers and the Ecréhous, which is at present before the International Court of Justice at The Hague. Oral hearings in the case are due to begin on September 17.

From a perusal of the pleadings so far exchanged, you will be able to see that the parties are at issue on certain questions of medieval law. These are principally as follows:

(1) *The effect under medieval law of a gift in frankalmoin.*

In Annex A 7 to the United Kingdom Memorial is given the text of a Charter in which one, Piers des Préaux, who had been given a grant of the Islands of Jersey, Guernsey and Alderney and certain other lands by King John of England (see Annexes A 8, A 9 and A 10 to the United Kingdom Memorial), granted in 1203 to the Abbey of Val-Richer, which was situated near Lisieux in Normandy, "the island of 'Escrehou'". It is stated in paragraph 126 of the United Kingdom Memorial that this grant was a "subinfeudation", which is there defined as a "sub-grant of property which he [*i.e.* Piers des Préaux] held as feudal tenant of an overlord."

On page 385¹ of the French Counter-Memorial, however, it is stated:

"For the decision of the present dispute it is important to note that this gift was made in free, pure and perpetual alms (*in liberam et puram et perpetuam elemosynam*). In the law of the period the term 'alms' covered any donation made to a church. The alms were said to be frank and free when they made the gift into a freehold, liberated from any feudal tenure: it only required a service of prayers. Cf. E. Blum: *Les origines du bref de lai et d'aumône in Travaux de la semaine d'histoire du droit normand*, 1923, p. 371 *et seq.*

"Piers de Préaux's gift was therefore not a sub-infeudation, as the British Memorial states in paragraph 126. The effect of the free alms was to sever the earlier feudal link. Henceforth, the island of

¹ The pagination of the Counter-Memorial given here (and subsequently) is that of the French text: the translation, however, is by the Registry of the Court.

Ecréhous had no other temporal lord than Notre Dame de Val Richer, which possessed it in full ownership, as a freehold. It was no longer part of the fief of the islands."

This contention of the French Counter-Memorial is dealt with at length in paragraphs 145 to 153 of the United Kingdom Reply, paragraph 153 summing up the United Kingdom Government's argument as follows:

"To sum up, a gift in 'frankalmoin' did not free the land so granted from the rights of the superior lord from whom the grantor held it; the gift could not have this effect even if those rights were so valueless that the superior lord would suffer no real loss. Only the superior lord himself could give his rights away. In the present case, Piers could not give away John's rights, and there is no evidence that John himself gave them away, either by concurrence in Piers' grant or by separate grant. Piers des Préaux's grant, therefore, cannot have had the effect for which the French Counter-Memorial contends."

On pages 697 and 668¹, however, of their Rejoinder, the Government of the French Republic re-affirm their contentions in regard to the effect of this gift. But you will see that, while maintaining that the grant in frankalmoin removed the Ecréhous from the fief of the Islands, the Rejoinder admits that the superior lord retained his rights because the grantor could not give greater rights than he himself had. But it is then suggested that although, for these reasons, the Ecréhous continued to depend on King John as Duke of Normandy, they did so through the intermediary of Val-Richer; and that when, with the conquest of Normandy by France, *the right to demand allegiance* from Val-Richer passed to the King of France, the Ecréhous did so too.

I think it would be of great assistance to the Court, which is here confronted with a difference of view between the parties as to the effect under medieval law of a certain type of grant, if you could set out shortly your understanding of the law operating in England, Normandy and the Channel Islands during this period in regard to tenures generally, and particularly in relation to a grant such as that made by Piers des Préaux to the Abbey of Val-Richer, and as to the merits of the French contention described above.

(2) *The nature of an advowson and of 'Quo Warranto' proceedings in medieval law.*

In Annex A 12 to the United Kingdom Memorial is given the text of an Assize Roll containing certain *Quo Warranto* proceedings relating to the Priory of the Ecréhous Islets, which took place in 1309. The significance to be attached to these proceedings is disputed between the parties (see United Kingdom Memorial, paragraphs 128 to 130; French Counter-Memorial, pages 388 to 391; United Kingdom Reply, paragraphs 154 to 159; French Rejoinder, pages 698 and 699). In the United Kingdom Memorial an advowson (*advocatio*) is defined as "a right of property entitling the owner to present to an ecclesiastical office" (paragraph 128), and it is stated (paragraph 129) that:

¹ The pagination of the Rejoinder given here (and subsequently) is that of the French text.

"The fact that the Abbot was required to answer for the advowson of the Priory establishes that the King of England and the Justices believed the Ecréhous to be part of the King's territory: had it been otherwise, the Justices would have had no jurisdiction. And it raises a probability that, in the opinion of the King's advisers, any right which the Abbot might have in the Ecréhous was held directly of the King: the King claimed the advowson as his right, thus asserting that, unless the Abbot could shew title to it, it belonged to the King. In the absence of evidence to the contrary, the advowson of a church belonged to the owner of the land on which the church stood; the King was therefore asserting, not merely that he was the lord of whom the Ecréhous were held, but further that, unless the Abbot could shew title, he (the King), was the immediate lord of the Islets. This assertion can only mean that the Ecréhous had always been part of the demesne of the Crown in the Channel Islands, and that, though they might be included in grants to Wardens like Piers, when such grants determined, the Islets reverted to the demesne of the Crown. What happened, in short, was that the King's advisers, finding a church on land which they believed to be part of the King's own demesne, claimed the advowson."

The point which it was sought to make in this passage was that, if the King owned the Ecréhous *in demesne* (i.e. as what we should now call the private law owner) as well as having sovereignty over them, then he would automatically own the advowson of any church situated on the Ecréhous unless someone else could shew a better right to it. But the fact that he did *not* own the land *in demesne* (if such should be the case) would not in any way mean he was not the political sovereign or suzerain of the Islets; and the *Quo Warranto* proceedings were in themselves the evidence of the latter, since they constituted *per se* an assertion and exercise of territorial jurisdiction.

These contentions are denied in the French Counter-Memorial, where, apart from a somewhat different meaning being given to the term *advocatio*¹, it is asserted on page 390 that "the King [i.e., of England] was not entitled to the advowson of the priory of Ecréhou" (*le roi n'a pas qualité pour se dire avoué du prieuré d'Ecréhou*), and that the proceedings of 1309 are a proof of that assertion. These arguments are reaffirmed on pages 698 and 699 of the Rejoinder, despite the answers to them given in paragraphs 154 to 158 of the United Kingdom Reply.

You will see from this that the parties are somewhat at cross-purposes, for it was never the United Kingdom contention that the question of *sovereignty* depended on whether the King himself held the *advowson*. The view put forward in the French pleadings really deals with a different point from that contended for in the United Kingdom pleadings, which was that, irrespective of the *outcome* of the *Quo Warranto* proceedings, they constituted in themselves an exercise of territorial jurisdiction over, or in respect of, the Ecréhous.

¹ *Advocatio* is translated as *avouerie*, and it is stated (page 390) that "L'avoué était un laïc qui était chargé de la défense d'un établissement ecclésiastique: il avait la garde de ces[sic] biens et percevait à ce titre diverses redevances. Parfois il avait un droit de patronage qui lui permettait de désigner le chef de l'établissement ou tout au moins d'approuver sa nomination."

The parties are, therefore, at issue as to (a) the meaning of the term *advocatio*, and (b) the character of the *Quo Warranto* proceedings of 1309. Accordingly, I feel it would be of assistance to the Court if you could explain the term *advocatio* as understood according to the law of the period, and also describe the nature of *Quo Warranto* proceedings generally, particularly in relation to the proceedings of 1309 and to the question whether those proceedings did or did not constitute an exercise of territorial jurisdiction over the territory on which the church which was the subject matter of the proceedings stood.

Yours sincerely,
R. BEST.

Professor T. F. T. Plucknett,
Professor of Legal History in the University of London,
The University of London,
W.C.1.

The University of London.
The Senate House.
London, W.C. 1
19 August, 1953.

Dear Mr. Best,

On 24 July last you sent me two questions of mediaeval law. I have studied them carefully, and have pleasure in enclosing a note of the results which I have reached.

Yours sincerely,
T. F. T. PLUCKNETT.

R. S. B. Best, Esq.,
The Foreign Office,
London, S.W. 1.

Question I

THE EFFECT UNDER MEDIAEVAL LAW OF A GIFT IN FRANKALMOIN

1 The answer to this question is not really difficult ; but for reasons which will appear, it is necessary to consider a passage in the French Contre-Mémoire as a preliminary to the discussion of the substance of the question. It occurs on page 385, and the following is the translation by the Registry save as to the word *alleu*. English common law has neither the word nor the thing, and historians make use of "alod" to express the French *alleu* and the Latin *alodium*.

"The alms were said to be frank and free when they made the gift an alod, liberated from any feudal tenure ; it only required a service of payers. Cf. E. Blum : *Les origines du bref de lai et d'aumône* in *Travaux de la semaine d'histoire du droit normand*, 1923, p. 371 et seq.

Piers de Préaux's gift was therefore not a sub-infeudation, as the British Memorial states in paragraph 126. The effect of the free alms was to sever the earlier feudal link. Henceforth, the island of

Écréhou had no other temporal lord than Notre Dame de Val Richer, which possessed it in full ownership, as an alod. It was no longer part of the fief of the islands."

The argument of the Contre-Mémoire is therefore this : free alms creates an alod ; an alod is outside the system of feudal tenures : therefore Écréhou ceased to be held feudally of king John. In order to understand alms (*aumône, elemosyna*), we are compelled by this line of argument to consider alod (*alleu, alodium*).

2 Feudalism is primarily the social and legal system which grew up between the Loire and the Rhine, which is its classical home. Thence it spread far and wide, but not everywhere. In parts of France, especially in the south, there was much land which never became feudal, but retained its ancient Roman character. Its owners still enjoyed the absolute property derived from the Roman *dominium*. In particular, they owed no homage, fealty, customs or services to any lord ; the devolution of their *alleux* was not governed by feudal custom (which was generally primogeniture) ; and their *alleux* were freely alienable without obtaining any licence or paying any feudal due.

This of course does not mean that every piece of alodial land was an independent sovereign state (even the Roman *dominium* was not as large as that), and the French crown immediately asserted its paramount rights of administering justice throughout the realm, whether a locality was fief or alod. The result is thus expressed by Olivier Martin, *Histoire de la coutume de Paris*, I. p. 221—

"....l'indépendance de l'alleu s'entend au point de vue du domaine, de la propriété, mais non au point de vue de la juridiction. L'alleu peut en effet relever d'une juridiction supérieure, être inclus dans un ressort, quoiqu'étant indépendant de tout fief.

Ainsi subordination en ce qui concerne la justice, franchise absolue en ce qui concerne la propriété, tels sont les deux traits qui caractérisent la condition juridique de l'alleu."

Even a well-authenticated alod, therefore, is not necessarily exempt from royal and seignorial jurisdiction.

3 We now come to the statement of principle contained in the passage from the Contre-Mémoire set out in paragraph 1 *supra*, namely, that a gift in frankalmoin converted the land into an alod and dissolved the feudal bond. The French case relies heavily on this principle, drawing from it serious consequences and applying them to the specific problem of Écréhou. It is unfortunate that the Contre-Mémoire cites no authority for this crucial dogma ; the reference to Edgar Blum's article which immediately follows is not helpful, for Blum says nothing at all about alod.

In fairness to the French argument it has therefore been necessary to ascertain the historical basis of the dogma that a gift in frankalmoin dissolved the feudal bond. The dogma seems to be old, although nowhere near so old as the critical date 1203, and a certain amount of authority (although not very good authority) can be adduced for it.

4 The story seems to begin with the *Somme Rurale* written about 1397 by Jean Boutillier. He does not state the principle, but he uses language which was used by later writers who based the completed

dogma upon it. The passage occurs in part 1 of his *Somme*, on folio 151 b of the edition of 1538, and is thus printed :

"Tenir par aumosne si est tenir ce qui est donne a lesglise par telle maniere que le donneur tout si franchement a donne que lesglise en est pure possesseuse sans moyen et ne le tient que de Dieu ; e ainsi nestoit que le don fust consenty et amorty de prince dont en souuerainete ce est tenu : car lors nen doit lesglise relief service ne redeuance suppose que ce soit fief en noble tenement." (To hold by alms is to hold that which is given to the church in such wise that the donor has given everything so freely that the church has pure possession of it without intermediary and holds it only of God ; and it would not be thus unless the gift were approved and amortised by the prince of whose sovereignty it is held, because thenceforward the church would owe for it no relief, service or due—supposing that it were a fief in a noble tenement).

5 Two centuries after Boutillier, this idea was taken up by an even more influential and popular writer, Antoine Loisel, who published his *Institutes coutumières* in 1607. This work is in the form of adages or maxims which the author calls "rules" (*règles*), drawn from a large variety of customary and Roman sources. *Règle* 84 (in the numbering of the last edition of 1846) is as follows :

"Tenir en mainmorte, franc-alieu, ou franc aumône, est tout un en effet."

(To hold in mortmain, free alod, or free alms, is all one in effect).

Here at last, then, four hundred years after the donation of Écréhou, is the explicit statement of the dogma that the effect of free alms and of free alod, is just the same. Even so, the corollary is not yet drawn that such a gift dissolves the feudal bonds—apparently a much more recent deduction from Loisel's rule.

6 The *Institutes* of Loisel have been commented upon by a number of eminent French lawyers at various dates, but they all concur in holding that *règle* 84 can only be accepted subject to serious qualifications, and it is significant that the editors of the last edition cite against Loisel's thesis the Custom of Normandy (this will be considered in due course). Modern historians likewise have reservations to make. For example, Paul Cauwès wrote thus in the article "*Aumône*" in the *Grande Encyclopédie* :

"Il n'y a entre l'alleu et la franche aumône qu'une ressemblance extérieure, à cause de l'exemption des devoirs féodaux. C'est en s'en tenant à cette ressemblance extérieure que Loisel a pu écrire de son côté : 'Tenir en mainmorte, franc-alieu, ou franc aumône, est tout un' (Loisel, *Règle* 84). Mais, sous la plume de Loisel, l'assimilation des franchises aumônes aux alleux était loin de signifier cette franchise absolue dont parle Boutillier. Pour lui, l'alleu, pas plus que la franche aumône ou le fief amorti, n'échappe à la seigneurie." (Between the alod and free alms there is only a superficial resemblance due to the exemption from feudal dues. It was in reliance upon that superficial resemblance that Loisel, on one hand, could write : "To hold in mortmain, free alod, or free alms is all one")

(Loisel, *Règle* 84). But under Loisel's pen, the assimilation of free alms and alods was far from meaning that absolute freedom of which Boutillier speaks. For him, the alod does not escape from lordship any more than free alms or the fief in mortmain).

There is no need to assemble further opinions here, for the French *Duplique*, page 697, has reached substantially the same conclusions as those indicated here, namely, that free alms was nevertheless a tenure, that the service of prayers was due from it, that the analogy with alod was only 'une comparaison approximative', that there was still a feudal lord of whom Écréhou was held, etc. The foregoing remarks are nevertheless necessary because they show how unsatisfactory is the approach to this question through Boutillier and Loisel, especially since much more solid grounds for a decision exist in Norman law itself. It must be remembered that Boutillier and Loisel, each in his generation, was writing a general law book at a time when there was in truth no general French law but only a number of different customs. The practical solution of any legal problem (such as the question of Écréhou) must be sought in the precise rules of its local law, and not in the debatable generalities of writers who were making brave attempts, many centuries later to Romanise or to unify French law.

The conclusion seems to be, therefore, that the rule about free alms being the same thing as free alod ought to be eliminated from this discussion, with all its corollaries, because (a) it is several centuries later than the facts concerned, (b) it has received constant and severe criticism, (c) even taken at its face value, it does not prove that Écréhou was not held feudally, and above all, because (d) it is to Norman law that we must look, and not to idealised statements of general law.

7 So we now reach the heart of the question: What was the effect of Piers' donation of Écréhou according to Norman law in the year 1203 when it was made? Norman law of that epoch is very richly documented and has been studied in detail by a succession of eminent historians. There is for example the very thorough work by H. Lagouëlle: *La conception féodale de la propriété en Normandie* (1902) who introduces his discussion of free alms thus:

"Il s'en faut de beaucoup cependant que l'aumône soit à l'époque¹ de la *Summa*, l'alleu justicier que l'on s'est trop facilement représenté. Nous sommes en présence d'une tenure, d'une dépendance [*sic*] réelle...."

(Alms at the time of the *Summa*, however, is far from being the alodial justice which has been too easily imagined. We are in the presence of a tenure, of a real dependence....)

It will be noticed that Lagouëlle repudiates the notion that there is any connection between alms and alod in Normandy. Indeed, how could there be, since from its first day Normandy had been a fief held by homage from the French crown? That alms is a tenure is stated with great clarity in the *Summa*, c. XXX:

"Per elemosynam autem tenere dicuntur illi qui tenent terras in elemosynam puram Deo et sibi servientibus collatas, in quibus

[¹ *epoche* in the typescript, in error.]

collatores nihil penitus sibi retinent aut heredibus suis, nisi solummodo dominium patronale, et tenent de illis per elemosinam tanquam de patronis."

(They are said to hold by alms who hold lands given in pure alms to God and his servants, wherein the donors retain nothing to themselves or their heirs save only the patronal domain; and they hold from them by alms only, as from patrons).

Norman law contemplated, therefore, that a tenure in alms would be created by way of subinfeudation. This brings us to the French *Contre-Mémoire* p. 385 (cited *supra*, paragraph 1) where the statement of this proposition in the British Memorial (paragraph 126) is contested on the ground that alms was equivalent to alod, and that alod was land without a lord. It has already been shown that that identification is late, and fallacious. From the passage now produced from the *Summa* it is clear that the rule of Loisel (whether or not it was valid elsewhere) is exactly the opposite of the Norman law which in fact governed the grant of Écréhou.

Indeed, the Norman conception of alms passed to England where it became a rule of law that a tenure in alms can only be created by subinfeudation (Littleton, *Tenures*, section 141; Coke, *First Institutes*, f. 99 a). Tenures in alms still exist in England, but they must all be older than the year 1290 because in that year the statute *Quia Emptores* (*Statutes of the Realm*, I. p. 106) forbade subinfeudation; this had the effect (noticed in Littleton, *Tenures*, section 140) of making future gifts in alms impossible, because alms can be created in no other way than by subinfeudation.

8 The *Summa de Legibus Normannie* explains the logical necessity which in Normandy as in England compelled the donor in alms to make his gift by subinfeudation, in the words immediately following those quoted in the preceding paragraph:

"Nullus autem elemosynare potest ex aliqua terra, nisi hoc solum quod suum est in eadem. Unde notandum est quod nec dux, nec barones, nec eciam aliquis, si homines sui aliquid¹ de terris quas tenent de eis elemosynaverint, propter hoc debent sustinere aliquod detrimentum, et nihilominus domini eorum in terris illis elemosynatis justicias suas exercebunt vel jura sua levabunt."

(None can make alms out of any land, save only that which is his own therein. Wherefore note that neither the duke, nor barons, nor anyone, ought to sustain any detriment if their men make alms of the lands which they hold of them; and their lords shall exercise their justice and levy their rights in the lands so put in alms, notwithstanding).

These clear statements of the thirteenth-century custom of Normandy should lay at rest any doubts as to what happened to Écréhou. Piers des Préaux held the fief of the islands from his lord John. He wished to bestow part of that fief upon the abbey of Val Richer, and is at liberty to do so if he arranges not to prejudice his lord. He cannot withdraw himself from John's homage and substitute a stranger (the abbey), for

[¹ *aliquid* repeated in the typescript, in error.]

he is John's man for all the lands which he holds of him, and cannot compel his lord to accept a stranger in his place. His only course, in Norman as in English law, is to subinfeudate. In that way alone could the relationship of lord and tenant between John and Piers continue to subsist intact. So that is what Piers did. As a result, the abbey of Val Richer holds Écréhou of Piers in alms; Piers holds Écréhou and all the rest of his fief of the islands by knight service of John (as before). Now John has rights of justice, and other rights, over the whole fee which he had given to Piers. The Norman custumal expressly deals with that point too: "their lords shall exercise their justice and shall levy their rights in the lands so put in alms, notwithstanding". So Écréhou was still part of Piers' fief, and over it his lord John still exercised his justice and his rights, "notwithstanding".

Hence there is no question of Piers' fief being diminished in geographical area—and it was scarcely diminished in value either, for Piers got several centuries of prayers very cheap, a bargain in which his lord John also shared. No feudal ties were broken; but a new tie was created whereby the abbey of Val Richer became tenant in alms of its new lord and benefactor Piers, as far as Écréhou was concerned.

9 The hierarchy of lordships over Écréhou is therefore (a) the abbey of Val Richer which is tenant in demesne, holding the island of (b) Piers who is lord of the whole fief of the Isles, who in turn holds of (c) king John as duke of Normandy, who holds ultimately of (d) the king of France. It is necessary to insist on this, because the *Contre-Mémoire*, p. 386, first paragraph, and elsewhere, maintains that in 1203 while John was still duke, he was over-lord of Écréhou because he was (as duke) also over-lord of Val Richer:

".... l'île d'Écréhou dépendait de lui par l'intermédiaire de l'abbaye au lieu d'en relever par l'intermédiaire du fief des îles."

(.... The island of Écréhou was his dependency, through the Abbey, instead of being held through the fief of the islands).

This greatly confuses the argument because it completely misunderstands thirteenth-century feudalism. In that system, relationships were primarily "real," and only secondarily "personal." The relationship between the abbey and the duke was based strictly upon land-holding and must be ascertained from the state of the tenures. The abbey (like most land-owners) held different fiefs of different lords, but each tenure was carefully distinguished from the rest, both as to the rights of the tenant and as to the rights of the lords.¹ Val Richer presumably held estates in Normandy of the duke; but that gave the duke no rights over estates which Val Richer held of someone else—even although that someone else was in turn a ducal tenant. The duke's rights over Écréhou were those reserved to him expressly or by implication upon the subinfeudation which he made to Piers of the fief of the Islands (rights, as we have seen, which could not be defeated by Piers' further sub-infeudation of Écréhou to the abbey).

¹ Thus a decision of the Norman Exchequer explains that if a lord holds two fiefs, he cannot make the men of one fief plead in the other, nor can he enforce the judgements made in one fief in the other, because it would be a contempt of the king's justice: *Atirements et Jugiés d'Eschequiers* (ed. Génestal and Tardif), no. 40.

10 Events subsequent to the grant to Val Richer are clear enough. Piers presumably forfeited his fief of the Isles (part of which consisted in the lordship over Écréhou), and so Val Richer became John's immediate tenant. The so-called condemnation of John in the court of Philip Augustus is the one and only example in this story of a feudal tie being broken—in the only way in which it could be broken by feudal custom. Philip Augustus 'defied' John. As Petit-Dutaillis has shown (*Revue historique*, CXLVII, p. 178) the result of that defiance was that John ceased to be tenant of Normandy, and ceased to owe homage for it; Philip Augustus ceased to be John's lord, and owed him no further protection. The feudal nexus was at an end, leaving two independent powers to contest for the vacant prize. Philip Augustus got continental Normandy; John held on to the Isles. Both monarchs regarded their respective conquests as annexed to their several crowns.

Question II

THE NATURE OF AN ADVOWSON AND OF QUO WARRANTO PROCEEDINGS IN MEDIAEVAL LAW

11 The pleadings on both sides show some uncertainty as to the nature of the proceedings in 1309 printed as Annex 12 to the British Memorial. The assize roll itself is partly responsible for the obscurity, because the court dealt with two different proceedings simultaneously, and recorded both of them in one record. Moreover, the first line of the Latin text as printed is a running headline (customary in large rolls) which only roughly indicates the nature of the matter which follows it.

The abbot of Val Richer answered two different claims. The first was based upon what contemporary English lawyers would have called a writ of right, and the proceedings upon it occupy lines 2 to 5 of the print, comprising the words 'Abbas de vauricher vt Ius et cetera'. The second claim was upon a writ of *Quo warranto* and occupies the rest of the record, save the last four lines. The last four lines 'Et quia Prior.... placuerit' record the judgement in favour of the church. The same parties and the same (or similar) titles were involved in both cases, and so they could conveniently be heard together; but they were based upon different forms of action.

The second of these claims—the *quo warranto* proceedings—can be considered first, and eliminated, because they throw no light upon the situation of Écréhou. The defendant was merely called upon to show by what title he claimed a rent charged upon the royal revenues and receivable at the hands of the king's receiver in Jersey. Since it is not denied that Jersey was in the king's dominions, the use of his normal jurisdiction there calls for no further comment.

12 The first claim, however, is strictly relevant to the present purpose. The roll is in the form, common in the English courts, appropriate to proceedings upon a writ of right '*precipe quod reddat*'. This is a petitory action in which the demandant claims land or other 'real' property 'as his right and inheritance'. On the roll, that formula is often abbreviated (as here) to the words '*ut ius &c*'. The lacuna in the third line of the print can be confidently filled by the words '*placito quod reddat*'—and the printed translation has assumed that those are the missing words. The king claims as his right two things: a mill situated in Jersey (which,

like the rent payable in Jersey, does not elucidate the situation of Écréhou), and the advowson of the priory of Écréhou.

13 The word *advocatio* has been translated as *avouerie*; this would be correct for documents coming from certain parts of France where the institution of *avoueries* still survived; but there is no trace of such survivals in Normandy or England. There can be no doubt that on this roll *advocatio* bears the same sense as the words *jus patronatus*, which were the more familiar expression in Normandy for an advowson. This is the right of a patron to present a suitable person to the bishop, who thereupon ought to institute that person into the church (normally, but not invariably, a parish church) which is subject to the patron's right of presentation. In strict analysis, an advowson is a right, incorporeal and invisible. Such things in the middle ages were treated with much concreteness. One could be seised, and disseised, of an advowson; it could be taken into the king's hand on a variety of pretexts; it could be bought and sold; on occasion a jury might be sent to see it (*visum facere*)—although what the jurors actually saw, and what the sheriff took into the king's hand, was the church door.

Wherever possible, the normal rules of land law applied to it, and to this day advowsons (which still exist in England) are classified as 'real property'. In the middle ages English and Norman law treated them as 'lay fiefs', '*fiefs nobles*'. They were truly fiefs, held feudally, sometimes by military service, and closely assimilated to land. It was very general for the lord of a manor (*seigneurie*) to be patron of the village church, and a charter which mentioned a manor 'with its appurtenances' was held to include the advowson under the word *pertinenciis*. Abundant proof of this is to be found in F. Soudet, *Les seigneurs patrons des églises normandes au moyen âge*, in *Semaine d'histoire du droit normand tenue à Jersey*, 1923, pp. 313-326. The almost identical position in England is described in Pollock and Maitland, *History of English Law* (2nd edn.), II, pp. 136-9.

14 The very intimate connection between an advowson and the soil is expressed in *Summa* of Normandy, CX.5: "cum jus patronatus fundo inheret" (since the advowson is inherent to the soil); and Norman law, unlike English, would not tolerate the separation of the advowson from the soil:

"Item, il est jugié que nul ne puet vendre le droit de patronage, se il ne vent tout le menbre de hauberc."

(Item, it is adjudged that none can sell the right of patronage, unless he sells the whole fee).

—*Atiremens et Jugiés d'Eschequiers* (ed. Génestal and Tardif), no. 18.

It is clear therefore that in Norman law an advowson is itself a fief, and that it is inseparable from the soil of the fief to which it is appurtenant. The *Summa*, CX shows the procedure when litigation arises—the writ to the royal officer, the order to see the church, to summon the jury, etc., in exactly the same fashion as in litigation about land. The jurisdiction is manifestly territorial and not personal.

Now this case of 1309 shows a petitory action for the advowson of Écréhou held in the king's court. The jurisdiction of that court can have

no possible basis save that Écréhou, the advowson and the soil, are within the king's dominion. True, the abbot of Val Richer may very possibly have been a Frenchman, but his abbey held (or claimed to hold) the advowson and the island. The abbot admitted the jurisdiction by making an attorney to appear on his behalf. There was no reason whatever for the abbot appearing in an English court to answer for Écréhou or its advowson, save only that he held it of the English crown, as his predecessors had once held it of Piers des Préaux and then of John.

The record therefore attests to a solemn and public exercise of sovereignty over the island when the justices of Edward II held a petitory action for an advowson inherent in the soil of the island. The fact that the justices decided against the king merely adds further testimony to the regularity and good faith of the proceedings.

15 Since there has been some speculation in the pleadings on both sides as to the nature of Edward II's claim, a word may be added here, although it is not strictly material. The case arose in 1309, over a century after the foundation of the priory. That was time enough for memory of what had happened in 1203 to fade. The true facts could not have been accessible to the crown lawyers since the charter of des Préaux must have been preserved at Val Richer. It may have been thought that Piers was the founder and patron, and that the crown had succeeded to that position. Later, it would have come to light that Piers had not founded the priory, but had merely given a site so that Val Richer could found it.

Additional Annexes submitted by the Government of the United Kingdom of Great Britain and Northern Ireland

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Prefatory Note

1. The Annexes contained in the present volume are numbered in continuation of the system adopted in the previous United Kingdom pleadings.

2. With reference to Annex A 167, "Dispatch from the Foreign Office to the British Ambassador in Paris, 29th March, 1837, regarding the Appointment of an Anglo-French Commission", etc., the United Kingdom Government are submitting the text of the final copy of the letter, taken from Foreign Office Papers, 146/181, together with an enclosure (referred to in the Foreign Office Dispatch) from the Admiralty to the Foreign Office of the 14th February, 1837. When discussing this Dispatch in the United Kingdom Memorial, paragraph 78, and note 1, reference was made to, and a quotation given from, the draft which is to be found in Foreign Office Papers, 27/535. The United Kingdom Government have now discovered the final copy of this letter, and submit this text—together with the enclosure referred to above—as an Additional Annex for the sake of completing the documentary records of the case.

3. With reference to Annex A 174, which consists of three separate documents, namely,

- (a) An article in *La Gazette Géographique et l'Exploration* of the 4th February, 1886,
 - (b) Articles in *La Justice* of the 24th, 26th and 27th January, 1886,
 - (c) An article in *La Chronique de Jersey* of the 30th January, 1886,
- these were mentioned in Annex A 45 of the United Kingdom Memorial, but they were not reproduced in Annex A 46, which gave some of the documents referred to in Annex A 45. The above-mentioned documents, therefore, are now given in order also to complete the documentary records of the case.

(Signed) R. S. B. BEST,
*Agent for the Government
of the United Kingdom.*

11th September, 1953.

ANNEX A 158

The Administration of the Channel Islands, 1200-1373

[NOTE. The distinction between a "Lord of the Islands" (*Dominus Insularum*) and a "Warden of the Islands" (*Custos Insularum*) lay in the difference between a grant of the Islands in fee or for life, and a grant of their custody during royal pleasure or for a definite period. The first type of grant conferred a "benefice", the second an "office". Thus, when the King of England made a man "Lord of the Islands", he alienated a considerable part of his own dominion over them. A "Warden of the Islands", on the other hand, was simply the King's agent—his "bailiff"—in the Islands. See J. H. Le Patourel, *The Medieval Administration of the Channel Islands 1199-1399* (London, 1937), p. 37.]

1200-1204 ?	Piers des Préaux, Lord of the Islands (except Sark).
1204 ?-1207	Geoffrey de Lucy, Warden of Guernsey and Alderney.
1204 ?-1212	Hasculf de Suligny, Warden of Jersey.
1207-1219	Philip d'Aubigny (the elder), Warden of Guernsey and Alderney.
1212-1219	Philip d'Aubigny (the elder), Warden of Jersey.
1214-1219	Philip d'Aubigny (the elder), Warden of Sark.
1219-1224	Philip d'Aubigny (the younger), Warden of the Islands.
1224-1226	Geoffrey de Lucy, Warden of the Islands and their castles ¹ .
1226	Hugh de St. Philibert, Warden of Jersey and its castle.
1226-1227	Richard de Grey, Warden of the Islands and their castles.
1227-1229	William de St. Jean, Warden of the Islands and their castles.
1229-1230	Richard de Grey } Joint-Wardens of the Islands and John de Grey } their castles.
1230-1233	Henry de Trumbleville, Warden of the Islands.
1232-1234	Philip d'Aubigny (the younger), Warden of the Islands and their castles.
1234	Henry de Trumbleville, Warden of the Islands and their castles.
1234-1239	Henry de Trumbleville, Lord of the Islands.
1239-1240	William de Bueil, Warden of the Islands.
1240-1252	Drew de Barentin, Warden of the Islands ² .
1252-1254	Richard de Grey, Warden of the Islands and their castles.
1254-1275	Edward, Lord of Aquitaine (and subsequently King Edward I of England), Lord of the Islands ³ .

¹ Geoffrey de Lucy was also Joint-Keeper of the sea-coast between Pevensey and Bristol in England, sharing these duties with the Barons of the Cinque Ports. See Le Patourel, *op. cit.*, p. 39.

² He had been appointed Sub-Warden of the Islands (although styled "Warden of the Islands") in 1235. See *ibid.*, App., p. 123.

³ On the 6th June, 1262, Edward demised, *inter alia*, the Islands of Jersey and Guernsey, to King Henry III, his father, who then appointed Sir Gilbert Talbot and Thomas Boulton Joint-Keepers of these lands. See *ibid.*, App., *loc. cit.*

- 1275 Arnold son of John de Cotnis, "Bailiff [Warden] of the Islands"¹.
- 1275-1277 Otes de Grandison, Warden of the Islands.
- 1277-1294 Otes de Grandison, Lord of the Islands.
- 1294-1297 Henry of Cobham, Warden of the Islands and their castles.
- 1297-1298 Nicholas de Cheney, Warden of the Islands and their castles.
- 1298-1328 Otes de Grandison, Lord of the Islands².
- 1328-1330 John de Roches, Warden of the Islands and their castles³.
- 1330-1331 Piers son of Bernard de Pyn- } Joint-Wardens of the Is-
sole⁴, Laurence de Gaillars, } lands and their castles.
- 1331 William de Cheney, Warden of the Islands and their castles⁵.
- 1331-1333 Thomas Wake of Lydell, Warden of the Islands and their castles.
- 1333-1334 Henry, Lord Ferrers, Warden of the Islands and their castles.
- 1334-1337 Henry, Lord Ferrers, } Joint-Wardens of the Islands
William of Montacute, } and their castles.
- 1337-1341 Thomas Ferrers, Warden of the Islands and their castles.
- 1341-1343 Thomas of Hampton, Warden of the Islands and their castles.
- 1343⁶-1348 Thomas Ferrers, Warden of the Islands and their castles.
- 1348 Robert Wyvill, } Joint-Wardens of the Islands
Thomas de Clifford, } and their castles.
- 1348-1354 John Mautravers, Warden of the Islands and their castles⁷.

¹ He had served the office of Sub-Warden (when usually styled "Bailiff") from 1271 to 1275. See *ibid.*, App., *loc. cit.*

² His death was reported in 1318, and the Islands were then granted by King Edward II to his eldest son, Edward (afterwards King Edward III); but, since the report of Grandison's death proved to be false, the grant never became effective. See *ibid.*, App., p. 125.

³ He had served the office of Sub-Warden, jointly with Ralph Bassett, from 1326 to 1327, they being charged with the defence of the Islands in Grandison's absence; and again, jointly with Robert of Norton, from 1327 to 1328, for the same purpose. See *ibid.*, *loc. cit.*

⁴ He is, however, called "*Petrus Bernard' de Pynsol'*" (Piers Bernard' of "Pynsol'") in Assize Roll, 5 Edw. III, m. 19. See Annex A 14 to the United Kingdom Memorial.

⁵ He was also appointed Warden, jointly with Walter of Weston (Sub-Warden in 1331, c.1334-5 and 1338-40) in 1343; but the appointment apparently never became effective. See Le Patourel, *op. cit.*, App., p. 127; also *ibid.*, pp. 126-7 for Weston as Sub-Warden.

⁶ Cf. n. 5, above.

⁷ He was appointed in the first instance for one year, "with full judicial powers", his appointment being renewed in 1349 (twice), in 1351 and in 1352. See *ibid.*, App., *loc. cit.*

- 1354-1356 William Stury, Warden of the Islands and their castles ¹.
1356-1357 Thomas de Holand, Warden of the Islands and their
castles ².
1357-1358 Otes de Holand, Warden of the Islands and their
castles ³.
1358-1367 Edmund de Cheny, Warden of the Islands and their
castles ⁴.
1367-1373 Walter Huwet, Warden of the Islands and their
castles ⁵.
-

¹ With full judicial powers. See *ibid.*, App., p. 128.

² With full judicial powers. See *ibid.*, App., *loc. cit.*

³ With full judicial powers. He had been appointed Sub-Warden in 1356. See *ibid.*, App., *loc. cit.*

⁴ With full judicial powers. He was appointed in the first instance for three years, his appointment being renewed in 1360 for one year, and in 1362 for five years. See *ibid.*, App., *loc. cit.*; and *cf.* the United Kingdom Reply, p. 510, para. 131.

⁵ With full judicial powers. See Le Patourel, *op. cit.*, App., *loc. cit.*

ANNEX A 159

The Examination before the Lieutenant Bailiff of Jersey, 28th May, 1706, of Martin Desheulles, French National and Fugitive from French Justice, who Sheltered at the Ecreho [Ecréhous] Islets, where he was found by Jersey Fishermen, and taken to Jersey

[*State Papers*, 47/2]

A Jersey. Du 28^{me} May 1706. Monsieur le Lieutenant Gouverneur present ¹.

Par devant Jean Durell Escr Lieutenant de Monsieur le Bailly, assisté de Philippe le Geyt et Charles Dumaresq Juréts.

Martin Desheulles aagé de 30 a 32 ans se disant natif de la paroisse de Creance en Basse Normandie viron quatre Lieus loin de Coutance a dit que [s]on metier est de faire du sel blanc, et que dans le mois d'Aoust dernier de nuit étant en Compagnie de deux Marchands qui étoient venus pour acheter du sel, Un parent dud^t Desheulles et deux Domestiques, il survinst trois Commis qui les voulurent maltraiter disants qu'ils menoient un traffiq deffendu, et que sur cela s'étans mis en deffense les trois Commis furent tués, Ce qui ayant obligé ledit Desheulles a s'enfuir il auroit été du depuis Caché de lieu en lieu, et finalement auroit trouvé le moyen de passer dans un bateau de la Cote de Normandie sur les Rochers d'Ecreho, ou il fut mis bas Dimanche au soir dernier 26^e jour de ce mois, et coucha la la nuit le bateau qui l'avoit apporté s'en étant retourné si tost qu'il l'eut mis bas ; Que le Lendemain matin qui étoit hier il vinst un bateau de cette Isle ² a Ecreho y charger du Vraicq, et qu'a force de prier ceux qui étoient dedans de vouloir prendre ledit Desheulles dans leur bateau et l'apporter icy ils y consentirent et l'apportèrent accordamment, Et qu'étans arrivés icy hier laprés midy le Maistre du bateau l'amena a Monsieur le Gouverneur.

Ledit Martin Desheulles dit qu'il y a cinq ou six jours que les nouvelles vinrent en Normandie que L'armée qui assiegeoit Barcelone avoit été battue, Qu'ils avoient perdu quinze cents hommes de la Maison du Roy, et que viron quarante milles en tout avoient été desfaits. Ledit Desheulles dit aussy qu'il a ouy dire qu'aujourd'hui a la Lande du Bois Roger on devoit faire la reveüe d'un Regiment de Milice qui devoit ensuite être envoyé vers la Hougue ou se doit faire un Camp cet Eté.

Ainsy Signé. M. Desheulles.

[¹ No attempt has been made either to insert missing accents, or to correct wrong accents, in this Jersey French document.]

[² *I.e.*, Jersey.]

ANNEX A 159

The Examination before the Lieutenant Bailiff of Jersey, 28th May, 1706, of Martin Desheulles, French National and Fugitive from French Justice, who Sheltered at the Ecréhous [Ecreho] Islets, where he was found by Jersey Fishermen, and taken to Jersey

[*State Papers*, 47/2]

[Translation]

Jersey, the 28th May, 1706. In the presence of the Lieutenant Governor.

Before Jean Durell, Esq., Lieutenant Bailiff, assisted by Philippe Le Geyt and Charles Dumaresq, Jurats.

Martin Desheulles, 30 to 32 years old, describing himself as a native of the Parish of Cérences¹ in Lower Normandy, about four leagues distant from Coutances, said that he was a salt-refiner by trade; and that, in the month of August last², at night, being in the company of two merchants, who had come to buy salt, one of the said Desheulles' relatives, and two servants, they fell in with three excisemen, who offered them violence, alleging that they were carrying on an unlawful trade; and that they, having thereupon taken defensive action, the three excisemen were killed; the which having compelled the said Desheulles to flee, he had since been obliged to go into hiding from place to place, and at length found the means of crossing by boat from the coast of Normandy to the Ecréhous Rocks, where he was landed in the evening of Sunday, the 26th day of this month³, and slept there that night, the boat which had brought him having gone back so soon as she had landed him; that the next morning (which was yesterday⁴), a boat from this Island⁵, upon her way to collect *vraic*, arrived at the Ecréhous; and that, by dint of entreating the crew to agree to take the said Desheulles in their boat and bring him here, they gave way, and accordingly brought him; and that, upon their arrival here yesterday afternoon, the Master of the boat took him before the Governor.

The said Martin Desheulles said that, five or six days ago, the news reached Normandy that the army which was besieging Barcelona had been defeated; that it had lost fifteen hundred men of the King's Household [Cavalry]; and that, in all, some forty thousand men had been defeated. The said Desheulles also said that he had heard that a militia regiment was going to be reviewed to-day⁶ at "La Lande du Bois Roger", and afterwards sent to the neighbourhood of La Hougue, where a camp was to be established this summer.

Signed thus. M. Desheulles.

¹ Department of Manche.

² 1705.

³ August (1706).

⁴ 27th August.

⁵ *I.e.*, Jersey.

⁶ 28th August.

Du même jour.

Jean Picot Maistre de bateau a dit que luy et son Equipage partirent hier au Matin pour Ecreho pour y aller charger du Vraicq, et qu'étans arrivés la ils y trouverent un homme qui est le même qui se nomme Martin Desheulles, Et que les ayants instamment priés de l'aporter icy ils le firent, et y arriverent le même jour a viron les quatre ou cinq heures après midy et incontinent led^t Maistre mena led^t Desheulles a Monsieur le Gouverneur.

Ainsy merché

merche + de
Jean Picot

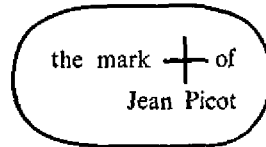
Vraye Copie. **Jean Dumaresq.**

Greff^r de la Cour Royale de l'Isle
de Jersey.

The same day.

Jean Picot, the Master of the boat, said that he and his crew left yesterday morning¹ for the Ecréhous, to collect vraic, and that, when they got there, they found a man who is the same as him who calls himself Martin Desheulles; and that he having at once begged them to bring him here, they did so, and arrived the same day, at about four or five o'clock in the afternoon, and the said Master forthwith brought the said Desheulles before the Governor.

Marked thus



True Copy. **Jean Dumaresq.** Greffier of the Royal Court of the Island of Jersey.

¹ 27th August.

ANNEX A 160

Act of the States of Jersey, 26th January, 1754, Prohibiting, in view of an Outbreak of Plague at Rouen, all Commercial Intercourse with France, and Further Prohibiting the Entry into any Jersey Harbour or the Islands and Rocks of Chauzé [Chausey], Marqués [Minquiers] and Icrehots [Ecréhous] of any French Ship

[Acte des Etats de l'Isle de Jersey, 26 Janvier, 1754]

Estats tenus.

1754
26^e Janvier

Mons^r le Lieuten^t Gouverneur present ¹.

L'An mille Sept cents cinquante quatre, le vingt-Six^{me} jour du mois de Janvier.

Par devant Charles Lempriere Ecst^r Seigneur de Rozel, Lieut^r du Très-Hon^{ble} Seigneur Jean Comte Granville, Vicomte Carteret, Lord Carteret, Baron de Hawnes, President du Très-Honorable Conseil Privé de sa Majesté, Chevalier du Très-Noble Ordre de la Jarretiere, Seigneur de St Ouën &c^a, Bailly de l'Isle de Jersey assisté de Michel Lempriere, Jean le Hardy Jean Poingdestre, James Pipon, Jean Dumaresq^{rs} fs : ² Elie, Jean Dumaresq^{rs} fs : ² Jean, François Maret^t & Charles Hilgrove Esc^{rs} Jurets, presents le Proc^t Général du Roi, & le Dep^{té} Viconte[sic], com^e aussi Mons^r le Doyen, & Mess^{rs} les Ministres de St Ouën la Trinité, Grouville, St Jean, St Pierre, St Brelade, St Laurens St Clement & St Sauveur, avec les Conn^{bles} de St Pierre, St Helier, St Sauveur, la Trinité, St^e Marie, St Brelade, St Ouën, St Laurens, Grouville, St Clement & St Martin.

Après le Serment de M^r Tho : Syvret, le Reverend Mons^r François le Couteur Recteur de la Paroisse de St Martin, est exoiné p^a maladie.

Après le Serment de M^q Jean Anley, M^q David Anley Conn^{ble} de la Paroisse de St Jean, est Exoiné par maladië[sic].

Mons^r le Lieuten^t Gouverneur ayant cejourd'hui produit une Lettre de Mons^r le Lieuten^t Gouverneur de l'Isle de Guernesey, datée du 24^e du courant, donnant avis qu'il a receu Information par Affidavits que la Ville de Rouen en France est presentement infectée de la Peste & qu'il y a des Directions données dans tous les Ports d'Angleterre au sujet du Commerce avec la France : Les Estats sur ce assemblés extraordinairement ayant pris le tout en consideration, ont trouve apropos d'Ordonner afin d'empêcher (sous le bon plaisir de Dieu) l'Infection de se communiquer parmi nous, d'interdire tout Commerce avec la France ⁴, & partant il est Ordonné comme ensuit.

Qu'aucun Vaisseau ou Bateau venant du Royaume de France ne sera souffert à entrer dans aucun Havre, ni mettre à Terre Aucun Passa-

[¹ No attempt has been made either to insert missing accents, or to correct wrong accents, in this Jersey French document.]

[² fils.]

[³ par.]

[⁴ d'interdire France underlined, and a cross set against these words in the margin, in pencil.]

gers ou Marchandises en aucun Endroit de cette Isle ¹, pareille Deffence étant faite à l'égard des Iles & Rochers de Chauzé, Marqués, & Icrehots, ou Rochers adjacents ².

Qu'aucun Vaisseau ou Bateau ne sera permis à sortir hors de cette Isle ¹ pour aller directement en France.

Que tous Vaisseaux ou Bateaux venants des Isles de Guernesey, Origny ³, ou Serck, ne seront admis dans aucun des Ports de cette Isle ¹, s'ils ne produisent une Lettre de Santé dûëment authentique.

Il est de plus Ordonné que les Maîtres ou Commandants des Vaisseaux ou Bateaux qui sortiront de cette Isle ¹ feront Affidavit de l'endroit où ils sont destinés, & que tant eux que ceux qui s'y enviendront ne s'approcheront d'aucuns autres Vaisseaux ou Bateaux qu'ils rencontreront en Mer, qu'en se mettant au Vent d'iceux, & s'ils apprennent qu'ils viennent de la Côte de France, ou qu'ils aient rencontré Aucun Vaisseau Infecté, ils s'eloigneront incessamment Sans garder plus outre Correspondance, sur peine de Mille Livres d'Amende vers le Capitaine ou autre Commandât, tiers au Roi, tiers aux Pauvres, & l'autre tiers au Delateur, ou de Puniton Corporelle, S'ils n'ont de quoi payer.

Et pour empêcher les atterrages qui pourroient se faire par Aucuns Vaisseaux ou Bateaux venants des Lieux Sus mentionnés, il est Ordonné qu'il y aura des Gardes de Jour & de Nuit tout au tour de cette Isle ¹ aux Environs des Havres ou Lieux d'Atterrage qui ne permettront à aucune Personne de venir à Terre avant d'avoir été Examinés ⁴ le Connétable ou Centeniers de la Paroisse Sur l'avertissement qui lui Sera donné de l'arrivée de tel Vaisseau ou Bateau, étant commandé à tout Personne de prêter son assistance aux Gens de la Garde au cas de Besoin, & sera notifié de nouveau à celui qui garda le Bateau de Santé qu'il ait à faire son Devoir & observer les Ordres déjà donnés avec toutes les Precautions possibles, toutes lesquelles Deffences & Ordonnances Subsisteront jusqu'à autre ordre Et Sur ce qu'il pourroit y avoir quelques uns de nos Bateaux presentement en Icrehot, il est entendu que tels Bateaux pourront etre Admis à retourner en cette Isle ¹ étants préalablement examinés par les Connétables ou Centeniers, comme devant est dit, Ce qui sera Publié tant au lieu Ordinaire qu'aux Paroisses.

[¹ *I.e.*, Jersey.]

[² *Rochers de Chauzé adjacents underlined in pencil.*]

[³ Alderney.]

[⁴ *par.*]

ANNEX A 161

Act of the States of Jersey, 6th September, 1762, ordering that Representations be made to the Earl of Egremont, one of His Majesty's Principal Secretaries of State, asking that, upon the Conclusion of Peace with France, the Chausey Islands should be Declared Part of His Majesty's Dominions, as formerly they were

[*Acte de l'Etat de l'Ile de Jersey, 6 Septembre, 1762*]

1762.
6^e Septbre

Estats tenus

Mon^sr le Commandant en Chef present ¹.

L'An Mille Sept cents Soixante-deux, le Sixième Jour du mois de Septembre.

Par devant Charles Lempriere Esc^r Seigneur de Rozel, de Dielament, de Saval, &c^a Lieutenant du Très-Hon^{ble} Seigneur Jean Comte Granville, Vicomte Carteret, Lord Carteret, Baron de Hawnes, President du Très-Hon^{ble} Conseil Privé de sa Majesté, Chevalier du Très-Noble Ordre de la Jarretiere, Seigneur de St Ouën, &c^a Bailly de l'Isle de Jersey, assisté de Jean le Hardy, Jean Poingdestre, James Pipon, Jean Dumaresq, Charles Hilgrove, Daniel Messervy, Jacques Lempriere, Tho : Pipon, & Edouard Ricard, Esc^{rs} Jurats, presents le Proc^t Gen^l du Roi, & le Dept^e Vict^e, comme aussi Mon^sr le Doyen, & Mess^{rs} les Ministres de St Martin, Grouville, St Jean, St Pierre, St Laurent & St Helier, et les Conn^{bles} de St Laurent, St Sauveur, St Helier, St^e Marie, St Brelade, St Ouën, St Pierre, St Clement, la Trinité, St Jean, St Martin, & Grouville :

[.]

Representa-
tion à
Monseign^r
le Comte
d'Egremont

Mon^sr le Lieutenant Bailly aiant Produit aux Estats, une Representat^{on} qu'il a preparée p^r presenter à Monseign^r le Comte d'Egremont, un des principaux Secretaires d'Etat de Sa Majesté, pour lui représenter aux noms desd^{ts} Estats, les Avantages que cette Isle, & les Isles voisines Recevroient, si à la Conclusion de la Paix, Les Isles de Chausey étoient comme d'ancienneté déclarées du Domaine de Sa Majesté ; Après Lecture de laq^{lle}, elle a été Approuvée, & Signée par les Membres des Estats, Et led^t St Lieutenant Bailly remercié pour les Peines qu'il a prises à ce sujet, lequel, est de plus requis de la Transmettre à James D'Auvergne Esc^r Dept^e des Estats en Angleterre, & le prier de la presenter aud^t Monseigneur le Comte de la Maniere qu'il croira la plus convenable.

[¹ No attempt has been made either to insert missing accents, or to correct wrong accents, in this Jersey French document.]

ANNEX A 162

Act of the Jersey Piers and Harbours Committee, 12th January, 1779,
Subsidizing Jean Richardson and his Crew to carry out Rescue Work at
the Minquais [Minquiers] Islets in behalf of the States of Jersey

[*Acte du Comité des Havres et Chaussées, 12 Janvier, 1779*]

[.]

1779.
12^e Janvier.

Le Comité est convenu d'Acheter un Bateau ouïvert de Grandeur convenable pour Servir de Bateau de Santé dans lequel un Maître avec deux Hommes Seront employés[sic] & Sont Mess^{rs} les Connêtables¹ de St Helier, & St Brelade Autorisés d'Acheter led^t Bateau au prix le plus raisonnable qu'il Sera possible, pour être païe[sic] par le Produit de l'Ancrage & de convenir avec un Maître & les Gens propres pour ce Service.— Le Comité est Convenu de proposer aux Etats de païer[sic] la Somme de Soix^{te} quatre Livres d'Ordre sur le produit de l'Ancrage à M^e Jean Richardson pour l'usage de Son Bateau & ses Peines & celles des Personnes avec lui qui ont été aux Minquais dans l'Intention de Secourir & Sauver les Personnes qu'il y avoit lieu de croire y avoient été Naufragées.—

ANNEX A 163

Letter from the Lieutenant Governor of Jersey to the Foreign Office, 1st December, 1801, enclosing a Memorial signed by the Principal Inhabitants of the Jersey Parishes of St. Martin and Trinity, briefly Relating the History of the Chaussè [Chausey] Islands, and Complaining that the French had Deprived them, some years previously, of the "free Liberty" of fishing in the Vicinity of those Islands, and of Cutting Vraic there

[*Foreign Office Papers, 27/65*]

Jersey 1st December 1801.

My Lord,

I have the honor to submit to the consideration of Your Lordship the accompanying Memorial, which has been handed to me by Charles Lempriere Esq^r, Seigneur of Rozel; a Gentleman of the most considerable landed property, and wealth in this Island.

I am not sufficiently master of the subject, to be able to state with accuracy to Your Lordship, whether a free communication and inter-

[¹ No attempt has been made either to insert missing accents, or to correct wrong accents, in this Jersey French document.]

course with the Islands of Chaussè might not hold out a degree of facility to carrying on an Illicit Trade, (to the injury of His Majesty's Revenue) with the Republic of France, to which it is so contiguous ; but I have no hesitation in declaring that permission being granted to the Inhabitants of this Island to cut and dry Vraic, or Sea Weed on that spot, would assuredly be attained with considerable advantage.—

There are not Settlers at present on the Island of Chaussè, nor have been for a considerable time before the War.—

I have the honor to be,

My Lord,

Your Lordship's,

Most Obedient
humble Servant

A GORDON
Lieut General

Right Honorable
Lord Hawkesbury
&c &c &c

[Enclosure]

To the Right Honourable the Lord Hawkesbury
His Majesty's Principal Secretary of State &c &c
His Majesty's Faithful Subjects The Principal
Inhabitants of the Parishes of St Martin, and of
Trinity, in the Island of Jersey, beg leave to Re-
present—

That the Island of Chausé was formerly deemed a Neutral Island, or rather reckoned in the number of the British Isles. That the said Island is included in the Pope's Bull, annexing to the Diocese of Winchester, the Islands of Jersey and Guernsey¹.

That in the year 1756 Commodor[e] Howe made a conquest of the said Island, and kept possession of it ; which, it does not appear to have been afterwards, or before, particularly, and formally ceded.

That the Inhabitants of this Island of Jersey have enjoyed the free liberty of fishing about the said Island of Chausé, and of cutting Vraic, or Sea Weed, on the Rocks of the said Island, and of drying it upon the land, as a Manure ; but were deprived of that liberty some years ago, by the French ; by which prohibition, large Tracts of Land could not be cultivated, to the great detriment of His Majesty's Revenues, in this Island ; and to the no small prejudice of the Inhabitants.

All which is humbly submitted to your Lordship's Judicious and Benevolent Consideration ; and hopes are entertained, from your known zeal to promote the King's Service, and the good of His Subjects, that by Means of Your Lordship's favourable interposition, the Inhabitants of this Island, may, in future, enjoy the full liberty of fishing at the said Island of Chausé, and of Cutting Vraic, or Sea weed, on the Rocks there, and drying it on the Land, as has been heretofore the case : And that,

[¹ Dated 20th January, 1500. See Annex A 6 to the United Kingdom Government Memorial.]

upon giving proper Security, if required, that No Tobacco, or other prohibited Goods, should be carried by them to the Island, nor smuggled, f[ro]m thence, by them into France.

Jersey 23^d November 1801.

Principal Inhabitants of the Parish of St Martin.

CHARLES LEMPRIERE, Seigneur of Rozel.	
GEO : BANDINEL	GEO : NÖEL[sic]. Procurator
CHARLES LE TOUZEL Rector.	JEAN GODFRAY
GEORGE BERTRAM Constable	JEAN FALLE
PHIL : GODFRAY	HELIER PAYN
ELIE DE QUETTEVILLE } Cent. ^s	CLEMENT BUESNEL
JEAN MALLET	THO ^s AUBIN
S[?] ROBICHON	DANIEL PAYN
PH : COLLAS	FRANCIS DE QUETTEVILLE
MICHEL BAUDAINS Surv ⁱⁿ	THOMAS SOHIER
DAVID GAUDIN	PHILIPPE AUBIN
CLEMENT LAFFOLLEY	JOSUÉ NÖEL[sic]
PHILIP RICHARDSON	FRANÇ ^s AHIER
GEO : GAUDIN	JEAN NICOLLE
THO ^s BEAUGIÉ	JOSUÉ[sic] AUBIN
PH : GODFRAY	CLEMENT HUBERT
	CLEMENT MESSERVY
	LAURENS DU FEU

the Principal Habitants of the Parish of Trinity

	J : LA CLOCHE Rect ^r of Trinity's—
PHLE LE GROS Connétable	
CH. MARETT	CHARLES POINGDESTRE attorney
DANIEL LE BRETON	of Phil : Carteret Esq ^r
DAN ^t PELLIER—pro.. du bien pube	Seigneur of la Trinity
CHARLES LARBALESTIER sen ^r	CHARLES POINGDESTRE attorney
CH ^s A COUTANCHE	to the Guardianship of
CH ^s LARBALESTIER ju ^r } C[e]n ^{ts}	Phil : Raoul Lempriere Esq ^r
JOHN PERCHARD	Seigneur of Dielament &c : .
FRANÇOIS GAILLARD	
JEAN DE LALANDE	
PHIL : RONDEL	
CH : ROMMERIL	
PHIL MATTINGLEY	
CH : DOREY	
ELIE STARCK	
JEAN CABOT	
JOSUÉ DOREY	
THOMAS LE[sic] RICHE	
JEAN LE BOUTILLIER	
FRANÇ ^s GRUCHY	
JEAN NORMAN	
CHARLES DOREY	
CHARLES ALEXANDRE	
PHILIP LE G[RO]S, Procf du Bien public	

CH^s VAUDIN
CH[A]RLES LE SUEUR
CHARLES GRUCHY

ANNEX A 164

**Judgement passed by the Royal Court of Jersey, 28th May, 1811, upon
the Salving by Jerseymen of a Vessel Wrecked at the Marquais
[Minquiers] Islets**

[Rôles de La Cour Royale de Jersey, 28 Mai, 1811]

1811.

Mai 28^e.

Sur l'action faite à Elie Durell Escf & M^r Jean Aubin par Jean Touzel Escf, M^r Edouard Le Rougetel, Nicolas De S^{te} Croix, Jean Le Vesconte, Charles Le Vesconte, Jean Filleul, Thomas Touzel Phil : Mourant, Hugh Mallet, Jean Mourant & Phil : Journeaux pour voir confirmation de l'ordre de Justice à eux signifié, exposant qu'au commencement du mois de Mars 1810, les dits Jean Touzel Edouard Le Rougetel & autres leurs parçonniers allèrent avec des bateaux aux rochers appelés Marquais dans l'intention d'y faire la pêche où ils découvrirent un Navire qui étoit coulé à fond sur les dits rochers & personne à bord. Que lesdits Touzel, Le Rougetel & leurs dits parçonniers s'employèrent tant par eux mêmes, qu'au moyen des personnes qu'ils engagèrent pour les assister, & parvinrent à sauver du naufrage une partie des Agrès dudit Navire & une partie de son chargement, tout quoi ils ont apporté en plusieurs voyages en cette ile¹, lesquels effets ont été réclamés d'un côté, par ledit M^r Jean Aubin, agissant pour les propriétaires dudit navire, & d'une partie de son chargement ; & de l'autre côté, par ledit sieur Durell agissant pour les propriétaires d'une autre partie dudit chargement ; & concluant à ce que lesdits sieurs Durell & Aubin ayent à leur payer pour leur droits de salvage la moitié du net produit des ventes des dits effets lesquels ont été vendus à l'enchère d'un commun accord, le tout selon que plus au long est contenu audit ordre sur les peines y contenues & ouïr dépôt de témoins suivant à l'acte de la Cour à ce sujet suivant les prémisses & droit & jugement suivant à l'envoi par devant le Corps de la Cour. — Item sur l'action faite auxdits M^r Jean Aubin & Elie Durell Escf par M^r Jean Le Cacheur, M^r Phil : Hamon M^r Charles Hamon, M^r Mathieu Le Touzé, M^r Jean Le Vesconte & M^r Thomas Filleul pour voir confirmation de l'ordre de Justice à eux signifié, exposant que dans le mois de Mars 1810, étant aussi à la pêche avec leurs bateaux auxdits rochers appelés Marquais, ils découvrirent ledit navire qui étant abandonné par son équipage, étoit coulé à fond sur les dits rochers. Que lesdits Remontrants furent de suite au bord dudit navire où ils virent qu'il y étoit déjà arrivé au bord plusieurs personnes, lesquelles empêchèrent pour lors lesdits Remontrants de rien entreprendre pour sauver ce qui étoit à bord ; mais finalement ledit navire ayant été abandonné par ceux qui l'avoient abordé les premiers, lesdits Remontrants réussirent à sauver tant des Agrès dudit navire qu'une partie de son chargement, qu'ils

[¹ No attempt has been made either to insert missing accents, or to correct wrong accents, nor to correct grammatical errors, in this Jersey French document.]

[² I.e., Jersey.]

apportèrent en cette île¹ par plusieurs voyages. Que ces effets, à leur arrivée furent réclamés d'un côté par lesdits sieurs Aubin & Durell, agissant comme dit est, & par eux vendus à l'enchère pour l'avantage commun de tous les intéressés & afin d'en éviter la perte & le déperissement. Que² les dits Remontrants conçoivent que d'après les peines qu'ils ont eues, l'empêchement qui leur a été offert, & les risques qu'ils ont encourus pour sauver ces differens articles, hors dudit bâtiment, ils doivent être reçus à partager conjointement avec les autres sauveurs sur le pied du tiers du produit de la vente de toutes les marchandises ainsi sauvées hors dudit navire ; & concluant à ce que lesdits M^r Jean Aubin & Elie Durell Esc^r agissant comme sus est dit ayent à leur payer pour leur droit de salvage sur le pied du tiers du net produit des ventes desdits effets comme plus au long est contenu audit ordre sur les peines y contenues suivant les prémisses & ouir droit & jugement suivant à l'envoi par devant le Corps de la Cour & dépôt de témoins suivant à l'acte de la Cour à ce sujet. — Et sur l'action qui est faite auxdits Elie Durell Esc^r & M^r Jean Aubin agents pour les propriétaires du navire Cleaveland par M^r Jean Bertram héritier de feu M^r George Bertram son frère, pour lui payer la somme de cent soixante six livres treize sous quatre deniers, argent suivant l'ordre du Roi, dont ils lui sont rédévables pour l'usage du Cutter qui appartenait audit defunt avec son équipage à sauver partie des debris dudit navire & de son chargement, & ouir dépôt de témoins suivant l'acte de la Cour à ce sujet, & ouir droit & jugement suivant à l'envoi aux causes remises par acte en date de l'an 1810, le 26^e jour de Nov^{re} Elie Durell Jun^r Gent^l, Edouard Nicolle Gent^l, M^r George Moss, M^r Jean Benest fils François, M^r Jean Dumaresq, M^r Clement Dolbel, M^r Charles Filleul Jun^r, M^r Elie Nicolle Jun^r, M^r François Poingdestre[sic], M^r Jean Le Geyt fils Phil^l, M^r George Averty, M^r Phil^l : Battams, Phil^l : Godfray Gent^l, M^r Josué Graut Sen^r, M^r Clement Touet, M^r Phil^l : Touet, M^r Thomas Le Clercq Jun^r & William Battam[s] à la cause à témoigner suivant les prémisses & ouir record d'officier. — Après que lecture a été faite de la deposition dudit [sic] Clement Touet prise par devant le Vicomte & que les autres témoins ont déposé par serment, toutes les parties ont été entendues en toutes leurs raisons & allégations par le moyen de leurs Avocats. Après quoi la Cour considerant toutes les circonstances a jugé que lesdits Jean Touzel Esc^r, Edouard Le Rougetel, Nicolas De S^{te} Croix Jean Le Vesconte, Charles Le Vesconte, Jean Filleul Thomas Touzel, Phil^l : Mourant, Hugh Mallet Jean Mourant, & Phil^l : Journeaux, ont droit à un tiers du net produit de tous les effets par eux sauvés hors dudit navire, & apportés à terre, deduction préalablement faite des fraix des vendues & des fraix de Magazin & de chariages des dits effets, & aussi des fraix Judiciaires de toutes les parties ; & à la charge de plus de payer audit Jean Le Cacheur tant pour lui & son bateau que pour les autres hommes dudit bateau, la somme de cent livres d'ordre ; audit Phil^l : Hamon, tant pour lui & son bateau que pour les autres hommes dudit bateau vingt quatre livres d'ordre, & audit Jean Bertram, héritier comme dit est, cent trente trois livres six sous huit deniers d'ordre.

[¹ I.e., Jersey.]

[² Q written over q.]

ANNEX A 165

Judgement passed by the Royal Court of Jersey, 3rd October, 1817,
upon the Salving by Jerseymen of a Vessel Wrecked at the Minquais
[Minquiers] Islets

[*Rôles de La Cour Royale de Jersey, 3 Octobre, 1817*]

[.]

Entre Edouard Nicolle Ec⁵ tant en son nom que comme attourné de Philippe Winter Ec⁵ et de Philippe Nicolle Jun⁵ d'une part, Et M^e François Laffoley tant en son nom que comme attourné de M^e Jean Selous et M^e Jean Jean Propriétaires du Cutter Rose d'autre part ; L'Actionnant de voir confirmation de l'Ordre de Justice à eux signifié, exposant que Lundi 14⁸ Avril 1817, ils sortirent de cette ile¹ avec deux Marins pour aller aux Minquais, couper du vrai, qu'en approchant des Rochers ils decouvrirent² un Navire qui leur parut dans un danger imminent de périr, qu'ils gouvernèrent immédiatement sur ledit Navire, afin de lui rendre toute l'assistance en leur pouvoir, que quand ils s'en approchèrent ils s'aperçurent que le grand mât et le mât d'artimon étoient coupés ou rompus et que l'équipage l'avoit abandonné considérant alors qu'il y avoit un vent frais de la partie du Nord, qu'il étoit marée montante, que le Navire étoit entraîné par ces causes vers la côte de France, à trois milles par heure ; Que de tems à autres il touchoit sur des ecueils et que par consequent il ne pouvoit manquer d'être totalement perdu avec sa cargaison, si quelques mesures n'étoient immédiatement prises pour l'arrêter, les Remontrans l'abordèrent et decouvrirent que c'étoit le Navire la Minerve appartenant de Jersey. — Qu'ils le conduisirent dans un endroit convenable entre les rochers et là avec la plus grande difficulté et au risque de perdre leur Bateau, ayant réussi à delier une des Ancres ils la jettèrent et mirent le Navire dans un état de sureté autant que leurs moyens le leur permettoient. — Qu'ayant débarassé le Navire des voiles et du cordage des mats coupés, ils en chargèrent leur Bateau et arrivèrent à Jersey le lendemain et donnèrent information de ces circonstances à Mess^{rs} Winter et Nicolle Propriétaires dudit Navire. — Qu'ils s'en retournèrent immédiatement au bord où ils trouvèrent un autre bateau avec trois hommes et ils continuèrent à charger le reste des voiles et une quantité de Marchandises qu'ils débarquèrent à la Tour de S^t Aubin et que depuis ils n'ont point cessé d'assister les propriétaires à sauver la cargaison jusqu'au moment de la perte totale du Navire. — Que les Remontrans ayant ainsi été les premiers à aborder ledit Navire Minerve après que son équipage l'avoit entièrement abandonné, l'ayant arrêté en jettant l'ancre au peril de leur vie, sans laquelle mesure il auroit été totalement perdu sur les rochers qui bordent la côte de France ou peut être auroit coulé dans le trajet, se considérant comme les seules causes qu'il y ait eu aucune partie de la cargaison sauvée se sont adressés auxdits Mess^{rs} Winter et Nicolle tant en leurs propres noms que comme agissans pour les assureurs et autres intéressés audit Navire

[¹ *I.e.*, Jersey.]

[² No attempt has been made either to insert missing accents, or to correct wrong accents, in this Jersey French document.]

1817.
Oct^{re} 3.

et à la Cargaison leur ont demandé une recompense égale au service qu'il leur ont rendu, aux dangers qu'ils ont encourus et à la peine qu'ils ont pris pour sauver partie de la cargaison, mais que lesdits Sieurs Winter & Nicolle ont refusé et sont encore refusans d'entrer dans aucun arrangement avec eux. — Et concluant à ce que lesdits Philippe Winter Ec^t, Philippe Nicolle Jun^r Ec^t & Edouard Nicolle Ec^t lesquels ont disposé en vente publique des Marchandises & debris provenant dudit Navire Minerve & cargaison aient immédiatement à payer auxdits M^e François Laffoley, M^e Jean Selous & M^e Jean Jean la sixième partie du produit desdites Ventes, en outre le Salvage qui leur revient sur la partie desdites Marchandises & desdits debris qu'ils ont sauvée eux mêmes ; le tout selon que plus au long est contenu audit ordre, sur les peines y contenues ; cause d'Amirauté ; suivant les premisses & ouir les dépositions des témoins prises & redigées par écrit & logées au Greffe, et droit & jugement par devant le corps de la Cour suivant à l'envoi par acte en date du 19^e jour d'Août 1817. — A l'évocation de la cause George Philippe Benest & Aaron De S^{te} Croix Ec^{ts} Jurés ont été dispensés d'en juger de ce qu'ils sont Oncles des défendeurs, & après que lecture a été faite des dépositions des témoins ci-devant redigées par écrit & logées au Greffe & que les parties ont été entendues en toutes leurs raisons & allégations par le moyen de leurs Avocats, La Cour a jugé que les Acteurs ont droit de prelever une dixième partie du net produit de la totalité des debris, marchandises & effets qui ont été sauvés dudit Navire & de sa cargaison & leur a ensuite accordé le tiers du net produit de la partie desdits debris, marchandises & effets qu'ils ont eux mêmes sauvée après ledit dixième prelevé, & sont les defendeurs condamnés aux frais & afin de régler la proportion qui revient aux acteurs selon la présente Sentence, les parties ont été envoyées examiner par devant le Greffier qui pourra donner Serment.---

1817.

Octre 3.

ANNEX A 166

Letter from the Lieutenant Bailiff of Jersey to the Lieutenant Governor of Jersey, 27th May, 1821, reporting upon the Oyster Fishery between the Channel Islands and the French Coast, and deploring the Limits proposed by the French Government, which would Deprive a Large Number of Jersey Men and Women of their Livelihood

[*Foreign Office Papers, 27/262*]

Copy.

Jersey 27th May 1821.

Sir/

The importance of the question now in agitation between the English and French Governments, respecting the Oyster Fishery, has induced me to trouble Your Excellency, with some observations which may perhaps throw some additional light on the Subject.

It is not possible to ascertain the period when the Inhabitants of the Island of Jersey first dredged for Oysters near the French Coast.—The Boats of Jersey, from time immemorial, have fished between the Coast of the Island and that of France, without any restriction, during times of peace.

There is no instance of their having met with any opposition until lately.—So long as the catching of Oysters was limited to the consumption of the Inhabitants of the Island, the quantity was very inconsiderable and the Boats employed were but few.—It was not till the Year 1810, that the Fishery was carried on to the present extent. At that time some of the English Oyster Companies sent their Agents to this Island, to purchase Oysters.—The Boats of Jersey were not sufficient to supply so large a demand, and a great number of English Smacks engaged in the business.—This excited the jealousy of the French Fishermen who had been in the habit of supplying Oysters for the English Market, from the Bay of Cancale.—

This extensive Bay, between St Malo and Granville, abounds with Oysters, and the Fishery has, I believe, always been carried on by the French exclusively within the two Headlands.

It is not with respect to that part of the Coast that the present difficulty has arisen.

The principal Oyster Banks in question lie between the Port of Granville and that of Carteret; most of them are within two leagues from the French Coast, and it is there that our Fishermen have been molested, and forcibly driven away.—From the best information that can be collected, it appears that there are a great number of Oyster Banks in those parts.

Some of these Banks have been known a long time, others have been recently discovered, by our Fishermen, and it is generally believed that more will be found in the progress of the Fishery.—It is therefore evident that there exists abundance of Oysters to supply the demands of the two Countries.

We are anxious to maintain the right of dredging in common with the French, whenever Oysters are to be found, at such distance nevertheless from the French land, as is at all times under water, and may therefore be justly denominated the open Sea. Should it be found however that the right of dredging within a defined distance from the land, does, or ought to belong exclusively to the subjects of each respective Country, it is hoped that such distance will not extend to the Limits claimed by the French, two leagues from low Water Mark.

Such a determination would annihilate our Fishery and oblige the English Companies to have recourse to the French for Oysters.

Looking on the Chart¹, Your Excellency will perceive that the Line of demarcation for which the French contend, particularly round the Island of Chansey², would confine our Fishermen within very narrow limits.—Such a regulation would also necessarily subject them to the search of the French Ships of War that would be stationed (as they now are) to prevent Vessels having tackle for dredging Oysters, from approaching their Coast.—I must not omit to add that such a Regulation would also have the effect of depriving our Fishermen of the opportunities of acquir-

[¹ Chart attached.] [*Not reproduced.*]

[² *Recle* Chausey.]

ing that accurate knowledge of the Tides and rocks along the French Coast, which could make them useful pilots for His Majesty's Ships, when required.—

Under every point of View the matter appears to me to be worthy of the most serious consideration.—The Island has expended a large Sum of Money to build a safe and commodious harbour for the reception of the numerous Vessels engaged in this Fishery.—More than a thousand Seamen have been annually employed, and many hundred Women & Children earn their daily Subsistence, during the Season, in selecting & lading the Oysters.—The whole of this lucrative business will disappear from the Island, and be transferred to the French, if our Fishermen are precluded from dredging within the Circle which the French propose to draw round their Coast.—If a certain Margin round the French land must be considered as their exclusive property, the Inhabitants of this Island confidently hope that His Majesty's Government will use its powerful influence to confine such a privilege within the narrowest bounds, and thereby maintain its loyal & faithful Subjects in the enjoyment of all the Advantages they have hitherto derived from this prosperous Fishery.

I have &c
Signed/
Thomas Le Breton
Lieut^t Bailly.

His Excellency
Maj^t Gen^l Gordon
&c &c &c

ANNEX A 167

Dispatch from the Foreign Office to the British Ambassador in Paris, 29th March, 1837, regarding the Appointment of an Anglo-French Commission to Settle the Limits of the Oyster Fishery between Jersey and the French Coast, and enclosing a Copy of a Letter from the Admiralty to the Foreign Office, 14th February, 1837, upon the Subject of the same Limits .

[*Foreign Office Papers*, 146/181 ¹]

N^o. 85.

Foreign Office
March 29th 1837.

My Lord,

I have had under my consideration Your Excellency's Despatch N^o 353, of last year, inclosing the further answer of the French Government to the propositions which Your Excellency had been instructed

¹ The draft of this Dispatch is to be found in Foreign Office Papers, 27/535.

to make to them for the appointment of a Mixed Commission, with a view to come to a new arrangement of the limits of the Oyster Fishery between the Island of Jersey and the neighbouring Coasts of France.

I am sorry to observe that the answer of the French Government to this proposition, as contained in the Notes inclosed in Your Excellency's Despatch abovementioned[sic], is far from meeting the views of His Majesty's Government, and is indeed altogether unsatisfactory. It is in substance the same as the answer previously given, and the objections to it are threefold :

1st The Functions of the Commission proposed by the French Government would be limited to laying down and marking out a pre-determined Boundary ; by which no concession of any value would be made to the British Fishermen ; —

2^{dly} Whilst the British Fishermen would thus gain nothing, the French would obtain a formal recognition of their pretension to the whole of the valuable Fishing ground, of which a great part extends to a distance of seven or eight miles from the shore ; and which they now hold only under the provisional arrangement of 1824 ; —

3^{dly} The coercive measures demanded by the French, in return for a concession which the British Fishermen consider to be utterly valueless to them, would add to the exasperation of the latter, and lead to more serious conflicts than those which have already occurred.

I have therefore to instruct Your Excellency again to press upon the French Government the expediency of appointing a Commission in the Spirit of the proposal originally suggested by His Majesty's Government. Your Excellency will observe to Count Molé, that if the French Government speak of exclusive rights on their part, which they say have existed from time immemorial, they must remember that those rights are denied by the British Government ; and that the uninterrupted exercise of such rights by the French can be disproved. That the existing arrangement is purely temporary and informal, and would be put an end to at any time, if either party should declare that it would no longer abide by it ; since that arrangement rests upon no formal convention or recorded agreement between the two Governments ; but was merely a temporary arrangement made between two Lieutenants of the respective Navies on the spot ; for the supposed convenience of the parties ; and until the two Governments should come to a final settlement of the matter.

I inclose for Your Excellency's information a Copy of a Letter lately received from Sir William Symonds upon this Subject.

I am with great truth and respect,

My Lord
Your Excellency's
most obedient
humble Servant
PALMERSTON

His Excellency
The Earl Granville
&c &c &c

[¹ would in another hand.]

[Enclosure]

Admiralty

Copy.

14th February 1837.

Sir,

I have the honour to acknowledge the receipt of your letter dated Jan^y 18th with the inclosures containing the correspondence between the Foreign Office and His Majesty's Ambassador at Paris, and between His Excellency and the French Government relative to a proposition which has been made to the latter for the appointment of a commission with a view to come to a new arrangement of the limits of the Oyster Fisheries between the Island of Jersey and the neighbouring Coast of France, and having perused the same and having also subsequently visited the Island of Jersey where I made it my business to enquire more fully into facts, I beg that you will be pleased to inform Lord Palmerston that it is still my firm opinion that no mixed commission nor any sort of negotiation will realise the just wishes and expectations of those concerned in the British oyster Fisheries, until the much to be lamented provisional arrangement of 1824 is superseded by an order to our Cruizers not to protect British Fishermen *within a league*¹ of the French Coast similar to that of 1822.—While that provisional arrangement exists the French Fishermen have all and even more than they desire, and it is their interest not to negotiate further as they are enjoying a space beyond all lawful limit.—

The oyster banks in question which the French very adroitly term *Huitieres*[sic]² and *Depots*[sic] d'huitres, pretending they were formed by their Fishermen, have been created by the natural causes of Tides, Currents, &c, and are amply sufficient to supply the Markets of both Countries, in proof of which the Merchants of Granville have offered to supply the English Market at 36 sols the thousand.—They are within sight of the habitations in Jersey, and so early as 1771 laws were enacted in Jersey and confirmed by the King in Council for the proper management of them.

My letter of the 2^d February last explained my views of this subject to which I have little to add.

The French Gov^t, I have no doubt, when informed that we claim our *rightful league*³ from their Coast, but are ready to wave those rights in particular spots to conciliate them, provided we have an equivalent elsewhere, will be anxious to negotiate by a mixed Commission or otherwise, mutual accommodation and reciprocal concession will follow/, and when the boundary is decided it will be the interest of the French to buoy off the limits, and a Steamer sent by this Gov^t might watch the Fishery and prevent aggression.

In conclusion with respect to the meditated concession to the Northward of the Tour d'Agon referred to in the document of the Minister of Marine, dated the 31st October last, a reference to the Chart will prove how valueless such an extension of limit would be to the ⁴ British Fishery,

[¹ *within a league* underlined.][² *Huitieres* underlined.][³ *rightful league* underlined.][⁴ *the* interlined, but erroneously after *be*.]

as the Principal Oyster beds are all within a league of the shore in the Bay of St Germain.

I have returned herewith all the documents which you transmitted to me, & I am &c

/signed/

W. Symonds—

John Backhouse Esq^r

&c &c &c

ANNEX A 168

Inquest, 5th October, 1850, upon I. H. Gosset, a Passenger in the Steamer *Superb*, which was Wrecked at the Minquiers Islets on the 24th September, 1850

[Rôles de La Cour Royale de Jersey, 5 Octobre, 1850]

Levée de
Corps.

Messieurs Pierre Hemery, Jean Godfray, George Phillipe Benest, Jean Philippe Aubin, Charles Sullivan, Pierre Bichard, Nicolas Robilliard, Philippe Rive, François Le Maistre, Philippe Jeune, Philippe Arthur, & Thomas Gray, actionnés par le Procureur Général de la Reine, pour faire leur rapport à la Justice, comment ils croient en leurs consciences que la mort est arrivée à Isaac Hilgrove Gosset Ec^s, trouvé mort près des "*Minquiers*"¹ ; Et ouïr sur ce le rapport du Député Vicomte ; Ont fait leur rapport à la Justice, d'opinion uniforme, comme ils avaient fait par devant ledit Sieur Député Vicomte, qu'ils croient en leurs consciences que ledit Isaac Hilgrove Gosset Ec^s, âgé de 47 ans ou environ, a été noyé lors du naufrage du bâtiment à Vapeur "*Superb*"¹, dans la matinée du Mardi, 24^e Septembre 1850 ; que ce naufrage est la conséquence de la coupable imprudence de M^r Jean Priaulx, Maître au bord dudit bâtiment, en conduisant ledit bâtiment "*Superb*"¹, dans un endroit dangereux, sans le connaître & hors de la course ordinaire, en venant de "*S^t Malo*"¹ à Jersey ; & la majorité desdits hommes a été d'opinion que M^r John Fleming, lequel était Contre-Maitre au bord dudit bâtiment, est coupable d'une grande imprudence en ayant essayé de conduire ledit bâtiment par cet endroit là.

[¹ Underlined.]

ANNEX A 169

Inquest, 5th October, 1850, upon W. Crany, a Passenger in the Steamer *Superb*, which was Wrecked at the Minquiers Islets on the 24th September, 1850

[Rôles de la Cour Royale de Jersey, 5 Octobre, 1850]

Messieurs Pierre Hemery, Jean Godfray, George Philippe Benest, Jean Philippe Aubin, Charles Sullivan, Pierre Bichard, Nicolas Robilliard, Philippe Rive, François Le Maistre, Philippe Jeune, Philippe Arthur, & Thomas Gray, actionnés par le Procureur Général de la Reine, pour faire leur rapport à la Justice comment ils croient en leurs consciences que la mort est arrivée à William Crany, trouvé mort en mer près des "*Minquiers*"¹; Et ouïr sur ce le rapport du Député Vicomte; Ont fait leur rapport à la Justice, d'opinion uniforme, comme ils avaient fait par devant ledit Sieur Député Vicomte, qu'ils croient en leurs consciences que ledit William Crany, lequel était âgé de 14 ans, ou environ, et natif de "*Dublin*"¹, en "*Irlande*"¹, a été noyé, lors du naufrage du bâtiment à Vapeur "*Superb*"¹, dans la matinée du Mardi 24^{er} Septembre 1850; que ce naufrage est la conséquence de la coupable imprudence de M^r Jean Priaulx, Maître au bord dudit Bâtiment, en conduisant ledit bâtiment "*Superb*"¹, dans un endroit dangereux, sans le connaître, et hors de la course ordinaire, en venant de "*St Malo*"¹, à Jersey, & la majorité desdits hommes a été d'opinion que M^r John Fleming, lequel était Contre-Maître au bord dudit bâtiment, est coupable d'une grande imprudence, en ayant essayé de conduire ledit bâtiment par cet endroit là.

Levée de
Corps.

ANNEX A 170

Inquest, 12th October, 1850, upon H. V. Belot, a member of the Crew of the Steamer *Superb*, which was Wrecked at the Minquiers Islets on the 24th September, 1850

[Rôles de La Cour Royale de Jersey, 12 Octobre, 1850]

Messieurs Philippe Pellier, William Vesconte Le Quesne, Philippe Duheume, fils Philippe², Jean Syvret, Thomas Aubin, Héliér Le Mottée, William Robinson Matthews, Jean Simonet, Henry Bailhache, Jean François Le Feuvre, Jean Héliér De S^{te} Croix, & George Mallet, actionnés par le Procureur Général de la Reine, pour faire leur rapport à la Justice comment ils croient en leurs consciences que la mort est arrivée à Henry Vine Belot, trouvé mort près des "*Minquiers*"³; Et ouïr sur ce le rapport du Député Vicomte; Ont fait leur rapport à la Justice, d'opinion uniforme, comme ils avaient fait par devant ledit

Levée de
Corps.

[¹ Underlined.]

[² fils Philippe repeated in error.]

[³ Underlined.]

Sieur Député Vicomte, qu'ils croient en leurs consciences que c'est le cadavre de M. Henry Vine Belot, âgé de 21 ans ou environ, lequel formait partie de l'équipage du bateau à Vapeur "*Superb*"¹, et qu'il a été noyé lors du naufrage dudit bâtiment dans la matinée du 24^e Septembre 1850.

ANNEX A 171

Inquest, 28th May, 1859, upon an Unknown Seaman, believed to be a French National, who was found Drowned near the Ecréhos [Ecréhous] Islets, and brought Ashore in the Parish of Trinity, Jersey, on the 17th May, 1859

[Rôles de la Cour Royale de Jersey, 28 Mai, 1859]

Messieurs François Edouard Duchemin, Philippe Bausaint, Joseph Beaugié, George Guille, Philippe Gruchy, George Starck, François Lucas, John Le Hucquet, Philippe Amy, Joseph Ferret, Elias De Gruchy et John Cabot, actionnés par le Procureur Général de la Reine, pour faire leur rapport devant Justice, comment ils croient en leurs consciences que la mort est arrivée à un inconnu, trouvé mort en la paroisse de la Trinité. Et ouir sur ce rapport du Vicomte. Ont fait leur rapport à la Justice d'opinion uniforme comme ils avaient fait par devant le Vicomte (à l'exception dudit Mr John Hucquet qui a été exoiné par maladie et lesdits Sieurs Amy et Cabot qui n'ont point répondu à l'appel de leurs noms, qui étaient de la même opinion) Que le cadavre était celui d'un **Inconnu** supposé être un marin français, qu'il fut trouvé flottant en mer près des rochers dits "les Ecréhos" dans la matinée du Mardi 17 Mai 1859, dans un état de décomposition qui le rendait tout à fait méconnaissable.—

Levée de
Corps.

ANNEX A 172

Minutes of the Anglo-French Commission, 28th December, 1866 to 16th January, 1867, for the Revision of the Fishery Convention of the 2nd August, 1839, and the Fishery Regulations of the 24th May, 1843

[Foreign Office Papers, 97/447]

[NOTE. Notwithstanding the statement upon the final page of these Minutes, to the effect that the Commission stood adjourned until the 19th January, 1867, no trace has been found of the record of that Meeting, nor of a subsequent Meeting or Meetings, if any there were. The words immediately below are the original title of the Minutes.]

[¹ Underlined.]

Minutes
of the
International Commission
for the revision
of the
Convention of 1839 and the Regulation of 1843
on the fisheries

Paris

January 1867.

The first meeting of the International Fisheries Commission took place at the Ministry of Marine on Friday the 28th December 1866.—The English Commissioners present being—

The Right Honorable Stephen Cave M.P.

Vice President of the Board of Trade

Frederick Goulburn Esq^r.

Deputy Chairman of the Board of Customs

George Shaw Lefevre Esq^r M.P.

and

Captain Hore R.N.

Naval attaché to the Embassy in Paris—

The proceedings were opened by the Marquis de Chasseloup Laubat Minister of Marine in person who, after briefly alluding to the objects for which the Commission was appointed, suggested that the Regulations prepared in pursuance of the Provisions of the Convention concluded at Paris on the 2nd August 1839 should be considered seriatim—

The Minister of Marine introduced M^r Manceaux, Conseiller d'Etat, as President of the Commission—

The other French Commissioners present were

M^r Herbet—Conseiller d'Etat—Director of Consulates
at the Office of Foreign Affairs—

„ Ozenne—Conseiller d'Etat—

Director of Foreign Commerce

„ Amé—Administration of Commerce and
indirect taxes

„ Palase de Champeaux—Captain in the Navy
Chief of the Office of Fisheries—

M^r W. W. Emerson Tennent of the Board of Trade Private Secretary to M^r Cave and M^r A. Richmond of the Customs Private Secretary to M^r Goulburn were also present—

M^r Cave handed to the President a Memorandum of which the following is a Copy—which the English Commissioners suggested should form the basis of the discussion as constituting the principal points for consideration—

1st The abrogation of all regulations respecting times and the modes of fishing in the seas beyond the three mile limit—

2nd The framing of a short and simple code of police regulations in order to preserve the peace of the Sea; to prevent collisions between

the fishermen of the two Countries and to bring offenders to justice with all possible despatch—

3rd The more precise definition of the Geographical limits over which the regulations shall extend—

4th The permission to the fishermen of both Countries to sell fish on terms of reciprocity in the Ports of either Country, subject only to such regulations as may be necessary for the protection of the Revenue—

The Memorandum was received by the President and directions were given for its translation into French before the next meeting of the Commission—

A conversation of some length took place as to the mode of proceeding and eventually the President stated that very few of the French Commissioners had studied the question minutely and that it was impossible to discuss it in so large a meeting—He suggested therefore that in order to save time a Sub-Committee should be appointed to consider matters of detail and to report to the Commission—

It was stated in reply by the English Commissioners that they had no power to delegate their duties to any one or more of their body and finally the proposition of the President was acceded to on the understanding that the report of the Sub-Committee was not in any to bind the Commission—

The President suggested that the first clause in the Memorandum presented by the English Commissioners should be referred to a Sub-Committee which was agreed to and Captain de Champeaux was nominated as the French and M^r Shaw Lefevre and Captain Hore as the English Members of the Sub-Committee.

It was also agreed that a Gentleman practically acquainted with the questions under discussion, though not a Member of the Commission, might attend the Committee to assist Captain de Champeaux.

The Commission then adjourned until Friday the 4th January 1867 at 11.30 a.m.—

S. C. Jan. 4. 167

Friday 4th January 1867.

M^r de Manceaux in the Chair—

M ^r Cave	M ^r Herbet
„ Goulburn	„ Ozenne
„ Shaw Lefevre	„ Amé
Captain Hore	„ de Champeaux
	„ Carron—

M^r Richmond and M^r de Joinville the Secretaries were also present—

The Minutes of the preceding meeting were read and adopted—

M^r de Champeaux gave an Account of the proceedings of the Sub-Committee nominated at the preceding meeting to consider the 1st and 2nd paragraphs of the Memorandum presented by the English Commissioners—

In the first place the Sub-Committee considered it expedient to embody in one document the Convention of 1839 and the Regulations of 1843¹

[¹ 1843 altered from 1842.]

founded thereon in order to avoid all unnecessary repetitions— The Sub-Committee were also of opinion that it was desirable to abolish all regulations which have [become]¹ obsolete or useless— To this end the Sub-Committee had prepared a series of Articles containing the regulations which it considers desirable to retain.

M^r de Champeaux suggested that the Commission should examine, at any rate in a superficial manner, the articles on which there was a complete understanding between the members of the Sub-Committee—

M^r Cave did not see any objection to the course proposed but observed that, though the Commissioners might be agreed upon any Articles, they could not be adopted separately but must depend upon the Commissioners coming to an agreement upon the Convention as a whole—

M^r de Champeaux replied that the document in his hands was only a proposed draft prepared with a view of obtaining the opinion of the Commission which was not in any way bound thereby.

Turning to the first paragraph of the Memorandum presented by the English Commissioners M^r de Champeaux informed the Commission that he had received from M^r Shaw Lefevre in the name of the English Sub-Committee a Memorandum on the subject— There is no difference of opinion as regards the regulations respecting times and modes of fishing except as far as Oysters are concerned— On this point the memorandum contains some arguments to which he had not yet had time to reply having only received the document the previous day—but he proposed to do so before the next meeting—

Taking as a basis the Memorandum above referred to the Sub-Committee proposed a new Article N° 1, founded on the Articles Nos 9 and 10 of the Convention of 1839 subject to certain amendments.

M^r Cave suggested that a Clause should be inserted to include the Channel Islands in the terms "Iles Britanniques"—

M^r de Champeaux resumed the reading of the proposed Article—N° 2 of the new set to be identical with Article 1. of the Convention settling the fishing limits in the Bay of Granville—

The original Chart signed in 1839 was produced and the Commissioners decided that it was not expedient to make any alteration in the boundaries—

Article 2 of the Convention is no longer required being embodied in the New Article N° 1.

Article 3 for the same reason may be suppressed being treated of more fully in Article 16 of the regulations—

Article 4 should be done away with in consequence of the impossibility of carrying it out.

Article 5 is treated of in Article 6 of the Regulations, the word *marked*² being inserted therein—

Article 6 will be embodied in the above mentioned Article—

Article 7 may be abolished as useless—

Article 8 may be dispensed with for the present the question being treated of when Article 85 of the regulations is under consideration.

Articles 9 and 10 have already been embodied in the new Article 1.

Articles 11 and 12 are no longer required.

[¹ *become* omitted in error.]

[² *marked* underlined.]

Mr de Champeaux then proceeded to consider the Articles of the regulations of 1843 Articles 1. 2. 3. 4 and 5 being merely a repetition of the Articles of the Convention may disappear—

Article 6 should be retained amended as above stated and should also embody Articles 7, 8. 14 and 15 all of which relate to the marking and numbering of boats—

N° 9 relating to the marking of boats belonging to the Channel Islands should be considered at some future time—

Articles 10, 11, 12 and 13 should be retained at any rate in substance—

Article 16 is reserved for future consideration— The Sub-Committee however expressed an opinion that, setting aside the question of Oysters, there should be no restriction on the times and modes of fishing in the seas beyond the three mile limit—except so far as police regulations are desirable and under these circumstances Nos 17, 18, 19, 20, 21, 22 and 23 might be dispensed with—

M^r Herbet asked whether there might not be reason to fear that fishermen in the Mediterranean or elsewhere would make use in the seas within the three mile limit of implements &c only allowed outside.

M^r de Champeaux replied that this was not a question for an International Commission but one for the legislation of each Country and it would therefore be for the French Government to make such regulations as it might consider desirable.

An Article will be substituted for Nos 24, 25 and 26 and discussed hereafter—

The following Articles as far as N° 45 may be done away with, with the exception of Nos 29, 30, 31, 32 and 33 the consideration of which was adjourned—

On the motion of M^r Ozenne the propositions of the Sub-Committee were ordered to be printed and distributed amongst the Members in order that each may be in a position to form his own opinion as far as the matter has progressed—

M^r Cave requested that a Sub-Committee might be named to consider in the interval before the next meeting of the Commission the subject of the sale of fish—

This was agreed to and—

M^r Cave

„ Goulburn

M^r de Champeaux

„ Amé and

„ Carron

were named as Members of the Sub-Committee—

The meeting was adjourned at a quarter to two until Friday the 11th January at the same hour—

S.C. Jan. 11th 1866 ¹.

Report of the Sub-Committee

La sous Commission[sic] nommée à la dernière sceance[sic] de la Commission chargée de la revision de la Convention de 1839 et du règlement de 1843, concernant les pêcheries dans les mers situées entre les

[¹ Recte 1867.]

Côtes de France et celles de la Grande Bretagne, a pensé qu'il convenait de renfermer dans un seul acte, celles des dispositions de cette Convention et du Reglement[*sic*] intervenu pour son execution[*sic*] qu'il paraissait utile de maintenir—

En agissant ainsi la sous-Commission ne s'est occupée que des 1^{ere} et 2^e proposition— See 1st and 2nd propositions in Minutes of 28th December 1866.

En ce qui touche la première de ces propositions, laquelle est relative à l'abrogation de toutes les règles ayant pour objet la conservation des espèces, la sous-Commission a été d'un avis unanime, sauf en ce qui touche la pêche des huitres—

A l'égard[*sic*] de toutes les autres pêches et principalement de celles qui se font avec des filets dérivants pour la capture du hareng, ou avec le chalut pour les autres espèces, la sous-Commission a pensé qu'il était désirable d'abroger toutes les restrictions quant à la dimension des filets ou des mailles ainsi qu'au poids des engins et de laisser les pêcheurs exercer leur industrie dans les mers communes aux deux pays, avec tels engins ou procédés[*sic*] qu'ils jugeront utiles, sans détermination d'époque, sous la seule réserve[*sic*] qu'ils ne créeront pas de difficultés entr'eux et qu'ils n'apporteront pas d'obstacles aux pratiques des autres pêcheurs—

Il appartiendra d'ailleurs au Gouvernement de chacun des deux pays de reglementer[*sic*] ainsi qu'il le jugera utile la pêche dans les mers situées à moins de trois milles des côtes, ou dans les baies et embouchures de rivières.

La sous-Commission a pensé que s'il pouvait paraître nécessaire[*sic*] d'adopter certaines restrictions en ce qui concerne la dimension des filets ou les époques de la pêche dans les eaux peu profondes, dans les baies ou aux embouchures des rivières où l'on dit que le jeune poisson se rassemble, on ne pouvait alléguer de parçils motifs quant aux eaux profondes situées au delà de la limite de trois milles— Elle a également exprimé¹ l'avis que la plupart des règles de cette nature contenues dans la Convention de 1839, ne sont plus rendues obligatoires pour les pêcheurs, qu'on ne les observe plus, et que si l'on en poursuivait l'application elles deviendraient nuisibles aux intérêts des pêcheurs.

Friday 11th January 1867

Mr. Manceaux in the Chair

Mr. Cave

„ Goulburn

„ Shaw Lefevre

Cap.ⁿ Hore

Mr. Herbet

„ Ozenne

„ Amé

„ de Champeaux

„ Carron—

Mr. Richmond and Mr. de Joinville the Secretaries were present—

The Minutes of the preceding meeting were read and adopted—

The President requested Mr. de Champeaux to read the Articles which it was proposed to substitute for the Convention of 1839 and the

[¹ *exprimé* altered from *exprimée*.]

Regulations of 1843 modified by the Sub-Committee in the manner suggested at the last meeting. Each Article was considered separately—

Article 1. (9th and 10th Articles of the Convention combined). M^r. Amé criticized the wording of the 2nd paragraph of this Article but stated that it was not important as there could be no doubt as to the meaning—

Article 1. was then agreed to—

Article 2 (1st Article of the Convention) was agreed to without any discussion—

The Sub-Committee had thought it desirable in order to avoid difficulties which have been often occasioned by several subjects being embraced in one Article, to divide that relating to the marking and numbering of boats into five bearing the numbers from three to eight inclusive—

N^o 3 (6th Article of the Regulations) N^o 4 (7th Article of the Regulations) N^o 5 (8th 14th and 15th Articles of the Regulations) N^o 6 (10th Article of the Regulations) N^o 7 (11th Article of the Regulations) were agreed to.

N^o 8 (12th Article of the Regulations) having been read the President enquired whether the names of the Owner and of the Master being inserted on the Muster Rolls or Licences was sufficient identification in the case of the Master not being on board and the Mate in charge; or would it not be better that the name of the latter should be also inserted?

M^r. Carron was quite of this opinion and asked how proceedings could be taken in England in the event of the Mate giving a false name when charged with some offence—

M^r. de Champeaux replied that the name of the Owner alone afforded a considerable guarantee as he would no doubt give up the name of the person in charge of his boat, besides which the Master in the event of proceeding being taken against him, would, in order to save himself, only be too ready to state who was acting for him— M^r. de Champeaux considered therefore that the Article as it stood was quite sufficient on the understanding that every English fishing-boat should be provided with a proper Licence—

M^r. Goulburn undertook that this should be strictly attended to—

Article 8 was then agreed to.

9 (N^o 13 of the Regulations) was agreed to without any discussion—

Article 10 (N^o 16 of the Regulations) This Article involves a new principle viz[*sic*] the abolition of all regulations for fishing of all kinds with the exception of that for Oysters and after several observations from different Members of the Commission on points of detail the Article was finally agreed to in the following terms—

"Fishing of all kinds, with the exception of that for Oysters, by 'whatever means and at all seasons may be carried on in the seas lying beyond¹ the Fishery limits which have been fixed for the two Countries'".

Bearing in mind the terms of the above Article the Commission decided that the Articles 17. 18. 19. 20. 21. 22. 23. 27. 28. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43 and 44 of the Regulations of 1843 should be abolished—

Articles 24. 25. 26. 29. 30. 31. 32 and 33 have been embodied by the Sub-Committee in Articles which will be considered further on and Articles 45. 46. 47. 48 and 49 which relate to the Oyster Fishery will form the subject of future deliberation.

M^r. de Champeaux proposed the abolition of Articles 50 and 51 of the Regulations on the ground of their being practically useless but the

[¹ *beyond* underlined.]

President remarked that the Commission ought to be careful not to abolish police regulations which might in certain cases be found useful—

M^r de Champeaux replied that the Sub-Committee had not lost sight of this fact in recommending the abolition of Articles 50 and 51 which relate to the different coloured Vanes to be carried by fishing boats. In reality if the boats were a long way off it was impossible to distinguish the colour of the Vanes and if near there was no difficulty in deciding how they were employed without referring to the Vanes. In every sense therefore it was desirable that Articles 50 and 51 should be abolished—

The Commission decided on the suppression of these two Articles—

The Commission decided to retain Article 52 of the Regulations, which at first sight would appear to be embraced in the Article determining the distance fishing boats should keep apart, M^r Shaw Lefevre having pointed out that this rule was not only good in itself but referred to *all*¹ boats and not fishing boats only.

The Commission directed this Article to be inserted as N^o 11 of the new Series—

The consideration of Article 12 of the new Series (N^{os} 53 and 54 of the Regulations) then took place—

M^r Shaw Lefevre remarked that the word fishermen in the last paragraph must be understood to mean fishermen *with drift nets*² as all trawlers are obliged to carry a light, and that it would be better in order to avoid doubt that the words should be inserted—

The proposition of M^r Shaw Lefevre was adopted and the Article agreed to—

Article 13 (N^{os} 24, 25 and 26 of the regulations) was then discussed—

M^r de Champeaux remarked that the provisions of the last paragraph of this Article were too severe having, in his opinion, been framed in consequence of the great importance attached by the English to the Herring fishery— So much so indeed that M^r Shaw Lefevre still thought that all the Articles governing the distances which should separate the boats might be embodied in one throwing in every case the onus of any damage on the Trawler—

After some further remarks the Commission decided to adopt the proposed Article reserving the question as to the distance, that of three miles appearing excessive, and M^r Shaw Lefevre expecting some further information from England on this subject.

Article 14 (N^{os} 29 & 30 of the Regulations) was agreed to subject to the same question as the preceding Article.

Article 15 (N^{os} 31 & 32 of the Regulations) was agreed to on the like condition—

Article 16 (N^o 33 of the regulations) was then read.

M^r Shaw Lefevre requested that the consideration of this Article might be deferred as its adoption appeared to him materially to depend on the decision which might be come respecting the distance to be maintained.

M^r Champeaux was of opinion that the conditions of this Article were more favourable to the French than to the English fishermen and that it was desirable to retain it, the terms however being more clearly expressed—

[¹ *all* underlined.]

[² *with drift nets* underlined.]

The Article was referred back to the Sub-Committee to decide on the wording the principle being maintained.

Article 17 (N° 58 of the regulations) was agreed to without any discussion—

Article 18 (N° 59 of the regulations) The Commission decided to retain the text of the old article omitting only the four last words "under any pretence whatsoever" as it was thought possible that a boat might be obliged in order to clear herself to lift the nets belonging to another boat.

Articles 19 (N° 60 of the regulations) and 20 N^{os} 1 61 and 62 of the regulations) were agreed to—

Article 21 (N° 63 of the regulations) On the consideration of this Article M^r de Champeaux remarked that the adoption of the principle of the freedom of fishing would render certain alterations necessary in the wording— All restrictions as to the description of nets, the size of the meshes &c having been abolished no superintendence on this head would be required from the Cruisers, but it was still very desirable that the regulations which it had been considered desirable to retain, such as the marking and numbering of the boats, the Licenses &c. should be strictly attended to.

M^r Shaw Lefevre was of the opinion that a breach of the regulations regarding Licenses should only render a boat liable to be stopped from fishing—

M^r de Champeaux considered that an English boat without a licence should be treated as if found within the French territorial limits.

After some further observations Article 21 was agreed to in the following terms—

"The execution of the regulations concerning the Licences, the marking and numbering of boats and implements of fishing, the lights and signals is placed "with respect &c &c " to the end of Article 63 of the regulations—

The question of the insertion of the words "dans la mer Commune" was reserved for future consideration—

Article 22 (N° 64 of the regulations) was agreed to, the text of the old article being retained subject to the necessary alterations and reserving the question of the Oyster Fishery—

The Commission adjourned at 2.30 until Wednesday the 16th January at 11-30 a.m.

approved

S.C.

Wednesday 16th January 1867

M^r Manceaux in the Chair.

M^r Cave

„ Goulburn

„ Shaw Lefevre

Captain Hore

M^r Herbet

„ Ozenne

„ Amé

„ de Champeaux

„ Carron—

M^r Richmond and M^r de Joinville the Secretaries were present

[¹ N written over 6.]

The Minutes of the preceding meeting were read and adopted—

The President suggested that the Commission should, at the present meeting, consider the question of the Oyster fishery which was agreed to and M^r de Champeaux was called upon for the report of the Committee on this subject.

M^r de Champeaux again repeated, what he had stated at a previous meeting, that there was a difference of opinion as regards the Oyster fishery and that the English and French Members had not been able to come to an understanding on the matter— The arguments on both sides, the English wishing to do away with the close season and the French to maintain it, are fully expressed in a report which was read to the Commission by this Gentleman and a Copy of which is annexed to this Minute—

M^r de Champeaux then informed the Commission that he had since received a further Memorandum from M^r Shaw Lefevre in which that Gentleman again referred to the arguments of the English Commissioner in favour of the perfect freedom of fishing and drew particular attention to the fact that the French Government had by their Law of the 10 May 1862, regulating the Fisheries within the three mile limit, introduced certain regulations which were contrary to those of the Convention : for instance the Convention directed that all small oysters should be thrown back into the Sea but the Law of 1862 allowed them to be retained Hence the English Government had, according to M^r Lefevre, only followed that of France in introducing rules within the three miles contrary to the provisions of the Convention—

To this it was easy to answer that ¹ the regulations it might at any time have been thought desirable to make for the fisheries within the three mile limit, had never been in opposition to the provisions of the Convention of 1839 and that the close time had been strictly enforced in all the rules made for the government of the Oyster fishery. The Law of 1862 allowed the small oysters to be retained instead of being thrown back into the Sea as directed by ² the Article of the Convention of 1839 in consequence of its having been discovered that their destruction was ensured by a compliance with the provision of the Article referred to besides which this was quite a subsidiary question and did not really affect the principles of the Convention of 1839. This convention recognized the necessity for a close season = the English Commissioners wish this restriction to be removed—the French on the other hand cannot agree with them and there is even reason to doubt whether the feeling on this head is unanimous in England—a certain number of people on the Coast of Ireland for example wishing it to be retained—

M^r Shaw Lefevre feared M^r de Champeaux had not quite understood his observations relative to the steps taken by the French Government in its own waters in opposition to the provisions of the Convention— He only wished to reply to the arguments made use of by the French Commission under the head of N^o 4 in the annexed statement. The Convention was only binding on the two Nations in the open sea beyond the three mile limit leaving it to each to make such regulations as might be considered desirable within its own waters— The English and French Governments were therefore quite justified in making regulations within

[¹ that followed by *whatever*, which is struck through.]

[² as directed by interlined, in *contravention* of struck through.]

the three mile limit which were in opposition to the provisions of the Convention of 1839— Moreover there was no difference of opinion as regards the small Oysters— But the question then ¹ under consideration ² was the ³ sea common to both— The English Commissioners thought that the privilege of dredging all the year round, which is now granted within the three mile limit, should be extended to the common sea—the more so as their fishermen were far more interested than the French in the questions their numbers preponderating very largely perhaps even as much as ten to one—

The President then stated that in his opinion the question ⁴ under discussion might be considered under two heads—^{1st} as a general question and ^{2ndly} in the relation it bore to the practice within the three mile limit— In the first place as regards the general question were not both nations interested in preventing the destruction of one of the gifts of nature which was open to both of them?— This question appears in England to be looked at from two points of view. ^{1st} as a commercial speculation which should be carried on to the greatest extent possible and only in the ^{2nd} place in the light of one of nature's gift[sic] which should be made the most of. It was in this light that the English legislature looked upon the question of the Salmon fisheries when it made the strict regulations which now exist—and France when it also subjected the Salmon fishery to certain restrictions only followed in the steps of the English Parliament. For oysters on the other hand the commercial question seems entirely to have the upper hand— The question nevertheless is worthy of the most careful consideration The English Commissioners are of opinion that dredging all the year round would not in any way diminish the supply— It is difficult to believe this and as there is reason to think that many of the beds within the limits are replenished from those without, one can only suppose that the extinction of the latter would lead to the impoverishment if not the ruin of the former— From all sides complaints are made that oysters are getting scarce— Is not this occasioned by over-dredging? The English maintain that for dredging the summer months are preferable to the winter—the beds are then in a more favorable state and the constant use of the dredge prevents the accumulation of any matter hurtful to the Oyster—and which might destroy the young—and lastly that were dredging allowed all the year round no fears need be entertained of a sufficient quantity not being left to replenish the beds, as it has been estimated that ten per cent at least remain— These arguments do not appear by any means conclusive and it seems to stand to reason that the use of the dredge just at the time of spawning must cause a great commotion and thereby injure the young, besides which there does not appear to be any basis for the statement put forward ⁵ by the English that at least ten per cent are left. We are then of opinion that to allow unlimited dredging in the common sea would be a most dangerous measure and this conviction is further strengthened when we call to mind what took place on our own coasts between 1786 and 1815— In the former year the beds of Cancale and

[¹ then interlined.]

[² consideration followed by *to-day*, which is struck through.]

[³ the followed by *ques(tion)*, which is struck through.]

[⁴ question followed by *then*, which is struck through.]

[⁵ forward altered from *forth*.]

Granville were exhausted; the oyster fishery was thence from political causes abandoned for many years and in 1815, when it was resumed, the supply on the beds was so large that it was considered inexhaustible—Is it not a fair inference that the large supply was owing to the rest the beds had enjoyed ever since 1786?

M^r Cave replied that we did not, as M^r Manceaux seemed to think, take care of our own property inside the limits and in our rivers and attack that which was the common property of the two nations—for the beds outside were the common property of the whole world—and we had moreover proved our sincerity by abandoning the close time within our own limits. It was only at first sight that the Salmon and Oyster fisheries appeared to be similar—Parliament before legislating on the subject was quite certain that unfair fishing was the cause of the decrease in the quantity of Salmon but there is no such certainty as regards Oysters—On the contrary there is every reason to believe that the decrease should be attributed to natural causes such as the weather &c. M^r Cave did not agree in the opinion entertained in France that the beds within the three mile limit were replenished from those without, nor could he admit that the use of the dredge all the year round was hurtful to the young Oysters which were exposed to many more destructive enemies, some of which were removed by dredging. M^r Ozenne remarked that this fact however [*sic*] remained and it was impossible to deny it as it was supported by evidence—In 1786 the Oyster beds of Cancale and Granville were exhausted—in 1815 the supply was so abundant that the fishermen, believing them to be inexhaustible, have dredged to ¹ such an extent that the beds are daily becoming poorer—This would seem to lead to the inference that the period of repose was essentially favorable to the reproduction of the Oysters and that the continual dredging is to a like extent hurtful—Can the English furnish us with as striking an instance on the other side? Can it be proved that the use of the dredge all the year round is favorable to the replenishment of the beds—Until this can shewn to [be] ² the case—the abolition of the close time cannot be looked upon without apprehension—

M^r Lefevre did not pretend to deny that if an oyster bed was left alone for 20 years at the end of that period it would be found replenished but the point under consideration was how to obtain the largest *annual* ³ supply—In the opinion of the English Commissioners the best way was to dredge all the year round—Moreover there was no scarcity of oysters in the open sea they abounded in all parts of the Channel and as he had already stated the English were much more interested in this question than the French for the large deep-sea ⁴ Oyster was almost unknown in France certainly quite so in Paris—

M^r de Champaux[*sic*] could not agree with the statements of M^r Lefevre, the french[*sic*] fishermen were to be found in the open sea as well as the English and had therefore similar interests at stake besides which Oysters were not as plentiful in the Channel as had been stated none being to be found at greater depths than 50 or 60 fathoms—M^r de Champeaux would feel extremely obliged if the English Commission-

[¹ to followed by *the(m)*, which is struck through.]

[² *be* omitted in error.]

[³ *annual* underlined.]

[⁴ *deep-sea* interlined.]

ers would answer the following question? Was the quantity of oysters on the English beds within the three mile limit ever as small as at present—?

Mr Lefevre replied that the cause of the Oysters having diminished was a want of spat. A period of 15 years had once elapsed without there being any spat on the beds at the mouth of the Thames—and for the last six years there had been a great want almost everywhere. Notwithstanding this Oysters still continued to be exported from England to France.

Mr de Champeaux— Has the number of dredging boats ever been as large as at present?

Mr Lefevre— No decidedly not.

Mr de Champeaux— Might not some deduction be drawn from the fact that at the time the ¹ boats employed in dredging have increased in number the Oysters on the English beds are continually diminishing more especially when we bear in mind that whilst Oysters in the Channel are daily becoming scarcer on the West Coast of France where dredging is not carried on to the same extent they still abound—

Mr Lefevre repeated that in his opinion the scarceness of oysters was owing to the want of spat for several years in the Channel and that for the sake of the beds themselves it would be far better to dredge in the summer than in the winter—

Mr de Champeaux— What is the practice amongst the proprietors of private oyster beds on the Coasts of England?

Mr Lefevre replied that private firms did not dredge for about three weeks or a month— For about four months Oysters were not sold by the firms but they continued to dredge for the good of the beds only leaving off when they saw signs of the spat—

Mr de Champeaux— They admit then the necessity of leaving off for a certain time?

Mr Lefevre remarked that the case was quite different in the open sea—

Mr de Champeaux. What is the price of oysters in England? has it increased latterly?

Mr Lefevre answered in the affirmative observing that the decrease in number occasioned by the want of spat on the beds has naturally increased the price— “Natives” are now five times as dear as they were but the price of the large sea Oyster has remained the same—

The President— It remains now for us to consider the question in a particular point of view that is in connection with the territorial sea— This is the difficulty which we should find— If the English fishermen are allowed to dredge all the year round in the common sea ² how can we refuse the same privilege to our fishermen—and if this is sanctioned how prevent them from dredging within the limits during the close time— Is there not reason to fear that they would soon destroy these beds which it is so much our interest to preserve— The case is different in England for there the beds within the three mile limit belong for the most part to private individuals whose interest it is to protect their own property whilst in France the beds are public property—

Mr Cave replied that it was perfectly true that the system in the two countries was quite different— In England it was thought much better that the oysters should come from private beds where they were care-

[¹ the followed by *number of*, which is struck through.]

[² *in the common sea* interlined.]

fully protected from much more dangerous enemies than the dredge—the quality of the oysters being thereby improved and the number largely increased— As it has already been said it has been found quite impossible to prevent dredging in the open sea as the Convention was not considered to extend beyond a certain line from the North Foreland to Dunkirk— The fishermen from beyond this line continually came within the limits and the fishermen on the South Coast complained bitterly that they were not allowed the same privilege— The English Cruisers did their best to prevent infractions of the regulations but the matter was full of difficulties and it was therefore very desirable that some arrangement should be come to.

The President— As it is evident that the Commission cannot agree on the principle would it not be possible to come to some understanding by means of mutual concessions and therefore we should like to be favored with your proposition—

M^r Cave replied that the English proposition had already been made which was that the close time should be abandoned—therefore it would be better that the French Commissioners should submit a counter proposition—

M^r de Champeaux remarked that a way out of the difficulty had occurred to him— Would it not be possible to fix on a zone of six miles from the Coast of France within which dredging should be forbidden during a certain season : the oyster fishery being perfectly unfettered everywhere else— There was however reason to fear that this plan would give rise to almost unsurmountable difficulties.

The President considered that an alteration in the close time might perhaps be better— For instance to allow dredging in May and not to reopen the season till the middle of September—

M^r Cave was quite of opinion that it was useless to discuss the general question any more as the English and French Commissioners had totally opposite views on the matter—but as the President had very fairly remarked when a Commission differs on the principle some attempt should be made to come to a compromise the interests of both sides being respected— Two suggestions had just been made—the one to fix upon a certain zone within which dredging should be forbidden during the close season—the other to shorten the duration of the same— The first plan is open to serious objections— How was the English Government to prevent their fishermen from encroaching on the prohibited zone ? It would be for the French Government to do that— As matters now stand fishermen from beyond the limits of the Convention are constantly encroaching and breaking the regulations M^r Herbet remarked that it would be the business of the French cruisers to prevent these violations of the Convention—

M^r Cave was inclined to think that some understanding might be come to on the second proposition¹ and that the matter was well worthy of consideration. Would it not then be better to adjourn the question and for the French Commissioners to make some proposal based upon these suggestions or any other which they might consider desirable—

The President was of opinion that it would be better to refer the matter back to the Sub-committee which had already considered the subject

[¹ on the second proposition interlined.]

—it being clearly understood that the Commission was not to be in any way bound by their report—

M^r Cave does not see any objection to this plan and only requests that his name may be added to the Committee—

The President quite concurs—

M^r Cave reminded the Commission that there were two other important points under consideration—the question of the sale of fish and that of the tribunals. Had the President received some information he expected on the latter subject?

The President replied that he had received the information and that he would communicate the same to the Commission when the question was under discussion—besides which the difficulties which had been pointed out by the English Commissioners were not likely to occur again—The law of the 30 May 1863 “*Sur les flagrants delis[sic]*” having removed many of the obstacles—As regards the sale of fish the French Commission was at that time engaged in making enquiries on the subject and it was impossible for them to come to any decision until the termination of these enquiries—

The Commission adjourned at a quarter to two until Saturday the 19th January 1867 at 11.30 a.m.

S. C.

Jan. 19th.

ANNEX A 173

Prosecution of Philippe Pinel, 23rd July, 1881, for an Assault upon H. C. Bertram, Customs Official of Jersey, when Discharging his duties at Blancq [Blanc] Ile, one of the Ecréhos [Ecréhous] Islets, belonging to the Parish of St. Martin, Jersey

[*Rôles de La Cour Royale de Jersey, 23 Juillet, 1881*]

1881

Juillet 23

[.]
Philippe Pinel saisi de fait par le Centenier Le Brun de la paroisse de St Martin et présenté en Justice par le Connétable de ladite paroisse ; sous la prévention d'avoir le 23^e jour de Juin 1881 ou vers ce temps-là grossièrement insulté, sans la moindre provocation, Henry Charles Bertram Ec^z sous Agent des Impôts ², celui-ci étant sur les devoirs de sa charge au Blancq Ile, un des Ilots des Ecréhos appartenant et dépendant de la paroisse de St Martin. Après que le Centenier Le Brun, H. C. Bertram Ec^z et Joseph Cartwright, témoins, ont été entendus par serment, la Cour a condamné le prévenu à une amende d'une livre Sterling et à défaut de paiement à un emprisonnement de quatre jours—

[¹ *The written over M^r.*]

[² No attempt has been made either to insert missing accents, or to correct wrong accents, in this Jersey French document.]

ANNEXE A 174

I

Article in *La Gazette Géographique et l'Exploration* of the 4th February, 1886, pp. 93-4, dealing with the Question of Sovereignty over the Ecrehous Islets, and an alleged proposal to erect a Fort thereon by the United Kingdom

[*Foreign Office Papers*, 27/3653]

NOUVELLES GÉOGRAPHIQUES

ILES ECREHOUS. — La question des Ecrehous continue à occuper la presse ; un point est désormais hors de cause : il n'y a pas de forts aux Ecrehous. Reste la question de propriété de ces îlots rocheux et de délimitation de la zone des eaux neutres dans le passage de la *Déroute*.

Les députés de la Manche, qui ont suivi cette affaire depuis le début, ont eu la semaine dernière deux conférences avec M. le président du conseil, ministre des affaires étrangères.

Des négociations vont être engagées avec l'Angleterre ; une commission de jurisconsultes va être saisie. C'est pour ne pas troubler ces importantes négociations et faciliter l'œuvre de réparation et de revendication qu'il s'agit d'entreprendre, que, sur le désir exprimé par M. de Freycinet et par une préoccupation toute patriotique, les députés de la Manche n'ont pas déjà porté le débat à la tribune.

Un rédacteur de la *Justice*¹, qui est allé visiter les îles, arrive, après s'être livré sur les lieux à une enquête sur l'importance éventuelle que ces rochers pourraient avoir et sur la question de la propriété aux conclusions suivantes² :

"1° La question des Ecrehous³ est plus importante qu'on le croit ; il y a longtemps déjà qu'elle est agitée, les circulaires le prouvent, comme elles prouvent aussi que l'Angleterre a émis des prétentions sur ces îlots et les a revendiqués ;⁴ que nos pêcheurs ont été avertis plusieurs fois de n'avoir point à s'y rendre, afin d'éviter tout conflit avec les Anglais.

"Ces maladroites circulaires sont presque une reconnaissance formelle du gouvernement français des prétendus droits de l'Angleterre sur les Ecrehous.

[¹ M. Sutter Laumann. See the extracts from *La Justice* of the 24th, 26th and 27th January, 1886, below.]

[² With the exception of the paragraph beginning *Parmi* (where the inverted commas are misleading), the rest of the above article is a quotation from M. Sutter Laumann's article in *La Justice* of the 27th January, 1886. The quotation is, however, seriously defective. Thus, two whole paragraphs between those beginning *D'abord* and *Enfin* are omitted ; while the paragraph beginning *D'abord* is itself incomplete.]

[³ *La Justice* has *Ecrehous* within inverted commas.]

[⁴ *La Justice* has a comma.]

"2° L'importance de ces rochers est réelle ; avant de les avoir vus, je crois avoir dit qu'il me semblait difficile qu'un fort pût y être établi. Les ayant vus, mon avis a changé.

"Un fort anglais sur la Maîtresse-Ile ¹ des Ecrehous ² nous fermerait en temps de guerre le passage de la Déroute ³, passage seulement indiqué sur les cartes entre Jersey et Guernesey, mais qui s'étend le long de note[sic] ⁴ côte très avant dans le sud. Le fort nous fermerait d'autant mieux la Déroute ³ que c'est une passe difficile, semée d'écueils, de bancs de sable où de gros navires ne peuvent passer qu'avec des pilotes du littoral et par des marées exceptionnelles. On peut arguer que, dans ce cas, l'inconvénient n'est pas très grand, puisqu'il y a peu de navigation dans ces parages. Mais il y a d'autres inconvénients de premier ordre.

"D'abord, en cas de guerre, avec une flottille de petits bateaux réquisitionnés à Jersey, les Anglais, appuyés par un fort aux Ecrehous ², pourraient tenter et réussir un débarquement soit à Port-Bail, soit à Carteret, surtout dans la première de ces localités qui va devenir très importante, à cause des travaux qu'on va entreprendre pour améliorer et agrandir le port, et du chemin de fer qui doit être livré à la circulation d'ici deux ans et qui reliera Port-Bail et Carteret à la ligne de Cherbourg-Coutances.

"Enfin, la possession des Ecrehous ² assurerait aux Anglais un prolongement de la limite de leurs eaux ; il n'y aurait plus pour ainsi dire de zone neutre entre les eaux anglaises et françaises, par conséquent plus de pêche possible, non seulement sur les Ecrehous ², mais presque dans toute la Déroute ³. Déjà les Anglais ravagent cette zone neutre. Ayant de meilleurs bateaux que les nôtres, ils sortent presque par tous les temps et font de formidables rafles de poissons et d'huîtres dont il y a plusieurs bancs.

"Parmi les documents que la *Justice* publie à la suite de la correspondance de son rédacteur, nous relevons la dépêche ministérielle suivante :

Paris, le 28 mars ⁵ 1884.

Monsieur le vice-amiral, j'ai l'honneur de vous remettre, ci-joint, copie d'une lettre que M. le président du conseil, ministre des affaires étrangères, m'a adressée le 26 de ce mois, relativement à l'exercice de la pêche autour des Ecrehous.

M. le président du conseil pense que la convention du 2 août 1839 ⁶ autorise nos nationaux à pratiquer la pêche des huîtres près des Ecrehous, mais que la revendication de propriété de ces rochers ⁷, formée par l'Angleterre, ne permet pas à nos marins d'y exercer d'autre genre de pêche, à moins qu'ils ne se tiennent à la distance de trois milles desdits rochers.

¹ I.e., Maître Ile. La *Justice* has *Maîtresse-ile*, which it prints in italics.]

² La *Justice* has *Ecrehous* within inverted commas.]

³ La *Justice* has *Déroute* in italics.]

⁴ *notre*.]

⁵ The text reprinted from *La Justice* of the 27th January, 1886, as the second document in Annex A 46 to the United Kingdom Memorial, has 26 mars ; but the first paragraph of this document suggests the 28th March as being the more likely date.]

⁶ See Annex A 27 to the United Kingdom Memorial.]

⁷ The text in Annex A 46 to the United Kingdom Memorial has *roches*.]

Il convient, par suite, conformément au désir exprimé par le ministre des affaires étrangères, de prévenir nos nationaux des risques auxquels ils s'exposent en pêchant du poisson ou des crustacés près des Ecrehous. Recevez, etc.

Le misnistr[e] de la Marine.

PEYRON.

II

Two Articles of the 23rd-25th January, 1886, by M. Sutter Laumann, Special Correspondent of the French Newspaper, *La Justice* (which appeared in the Issues of the 24th, 26th and 27th January, 1886), Describing a Visit to the Ecrehous Islets, to inquire into the Question of Sovereignty over the Islets, and an alleged proposal to erect a Fort thereon by the United Kingdom

[*Foreign Office Papers*, 27/3653]

I. Article of the 23rd January, 1886.

LA QUESTION DES ÉCREHOUS

(*Correspondance spéciale de la JUSTICE*)

Port-Bail¹, 23 janvier.

Je n'ai pas encore le plaisir de connaître les "Ecrehous" autrement que par l'intermédiaire d'une jumelle. Hier, il neigeait dans la matinée ; l'après-midi, le vent venait du sud-ouest ; ce matin, la mer était encore très mauvaise, et pour aller à la découverte de ces îlots qui ont tant préoccupé Paris pendant quelques jours, il faut un temps clair et une jolie brise ; il faut encore profiter du jasant. Bref, quand toutes ces conditions ne sont pas réunies, on ne trouverait que bien difficilement sur la côte des marins décidés à tenter l'aventure, d'autant que l'intérêt ne consiste pas — pour moi du moins — à longer les Ecrehous à distance respectueuse, mais à y débarquer. Or, c'est toute une affaire. Aussi est-ce la raison qui a déterminé les confrères qui m'ont précédé ici à regarder le royaume de Philippe Pinel du haut du cap de Carteret.

Mais depuis que j'ai mis le pied à Port-Bail, je n'entends parler que des "Ecrehous." Chose curieuse, c'est nous, les Parisiens de Paris, qui avons mis cette question à la mode, car sur tout le littoral on s'en souciait autant que d'une chêtaine de mer. A Cherbourg, où j'étais hier, ayant

[¹ *Portbail* would appear to be the official form ; but *Port-Bail* and *Portbail* are indiscriminately used throughout these articles.]

demandé à deux ou trois personnes ce qu'on pensait de cette affaire qui devait si fort intéresser votre grand port militaire, on me répondit :

Les "Ecrehous" qu'est-ce que c'est qu'ça !

Les journaux locaux ne faisaient que traduire les journaux de la capitale. Pas un ne s'était[sic] avisé d'aller faire enquête sur place. Du reste, le préfet maritime de Cherbourg, qui télégraphiait au ministre de la marine qu'on ne voyait pas traces de fortifications sur les îlots, mais qu'en revanche on y voyait à l'œil nu circuler les habitants, n'était guère mieux renseigné : de Carteret aux "Ecrehous" il y a trois lieues. Quel œil de lynx a donc celui qui, à cette distance, a vu circuler *les habitants de ces rochers* inhabités si ce n'est par le solitaire Jersiais, dont l'humble existence fut révélée à la littérature, il y a deux ans, par le poète Charles Frémine ¹ !

C'était pourtant bien simple : A Carteret et à Port-Bail, il y a les *pataches* de la douane qui vont une fois par semaine aux "Ecrehous" — Il n'y avait qu'à interroger les douaniers et, du coup, on savait à quoi s'en tenir.

Non, il n'y a pas de fort aux "Ecrehous". Le second correspondant du *Figaro* est dans le vrai ; mais le premier, celui qui a lancé cet étonnant ballon, est un fumiste ou un visionnaire qui prend des vessies pour des lanternes, à moins ... à moins que seul il soit dans le vrai, à moins que l'officier chargé par l'amiral du Petit-Thouars d'aller à Carteret pour contempler les "Ecrehous" n'ait rien vu du tout, que les péniches de la douane ne soient pas allées dans ces parages depuis un temps immémorial, à moins que le second correspondant du *Figaro* n'ait pas eu la perspicacité du premier.

Mais ce serait bien extraordinaire.

Quant aux prétendues défenses faites aux pêcheurs français d'aller jeter le filet autour des Ecrehous, c'est encore une autre fable, à moins que la prohibition ne soit tout à fait récente. Cet été encore, les riverains un peu aisés du pays allaient aux Ecrehous en partie de plaisir et y pêchaient à volonté. Au fond, on n'y trouve que des homards, et bien peu.

Demain je vous communiquerai des renseignements précis, car ce soir je verrai M. le maire de Port-Bail, le conseil municipal[sic], le capitaine des douanes, et demain j'aurai vu les "Ecrehous".

Quoiqu'il en soit, la question est à étudier. Les Anglais n'ont pas de forts sur ces rochers, mais ils pourraient bien avoir l'intention d'en créer un, et à Jersey on parle quelque peu de cela à mots couverts, paraît-il.

Je ferme cette lettre écrite à la hâte, car le courrier va partir, et il n'y en a qu'un par jour.

Demain, donc, si je reviens de bonne heure des Ecrehous, vous recevrez une longue lettre.

Sutter Laumann.

[¹ *Le Roi des Ecrehou* (Paris, 1886), an account of a visit to Philippe Pinel, the "solitaire Jersiais" mentioned above.]

2. Article of the 24th January, 1886.

LA QUESTION DES ÉCREHOUS

(Correspondance spéciale de la JUSTICE)

Port-Bail, 24 janvier.

Ne vous étonnez point si, étant parti mercredi soir de Paris, vous n'avez encore reçu de moi qu'une seule lettre peu concluante dans sa brièveté, alors que la question des "Ecrehous" étant pour ainsi dire à l'ordre du jour, il était important d'être renseigné à bref délai.

Mais je vous assure que j'ai fait diligence et que j'ai eu encore beaucoup de chance. Ce n'est pas une petite affaire d'aller aux "Ecrehous" en cette saison, par un temps pareil à celui qui règne dans ces parages depuis une quinzaine de jours. L'été, c'est souvent difficile ; l'hiver, c'est souvent impossible et toujours périlleux. J'ai eu, comme on dit ici, *bien de la misère* pour y arriver.

Donc, si cette lettre vous semble un peu en retard et s'il n'est plus question à Paris des "Ecrehous", ne m'attribuez pas ce retard et croyez bien que ces rochers valent encore la peine qu'on s'en préoccupe quelque peu. J'en reviens, et certes il n'y a pas plus de fortifications que sur ma main ; mais il est certain aussi que les Anglais auraient grand intérêt à s'emparer de ces îlots, d'où ils commanderaient absolument le *passage de la Déroute* et d'où leurs batteries pourraient cribler de boulets tous les points de la côte et protéger un débarquement sur une flottille de petits bateaux calant peu ; redoutable danger en cas de guerre. En temps de paix, l'installation définitive de nos voisins sur ces rochers ne nous serait pas moins préjudiciable, car elle réduirait à rien la zone des eaux neutres, d'où plus de pêche pour les marins de la côte, depuis Granville jusqu'à la Hogue. Enfin, il est non moins certain que si les Anglais n'ont pas affirmé très hautement leurs prétentions sur les "Ecrehous", ils cherchent à s'en emparer sournoisement, sans bruit. Des Jersiais y ont édifié cinq ou six maisonnettes très habitables ; il y a de la place pour d'autres et, un beau jour, ils pourraient dire : Ceci est terre anglaise et nous appartient en vertu du droit de premier occupant ¹. Je reviendrai sur ce sujet tout à l'heure et vous raconterai en détail la très curieuse et peu connue histoire de toute cette affaire, quand je vous aurai décrit les "Ecrehous" et présenté à Philippe Pinel, le roi des mers, comme on l'appelle ici.

Je vous ai dit, dans ma précédente lettre, qu'à Cherbourg on s'était fort peu passionné pour les "Ecrehous". La raison en est bien simple, c'est qu'on ne les connaît guère que de réputation — et elle n'est pas bonne — et qu'à Cherbourg vous ne trouveriez pas un marin capable de vous piloter dans ces écueils. Ce n'est qu'à Jersey, à Carteret et à Port-bail qu'on peut rencontrer des pêcheurs qui puissent vous conduire aux

[¹ According to the law of Jersey, given the "peaceful and uninterrupted possession over a period of forty years, the title to all real property situate within the limits of the jurisdiction of the Royal Court of the said Island [Jersey] passes by matter of record". See Annex A 156 to the United Kingdom Reply.]

"Ecrehous". Aucun caboteur ne se fierait à les ranger, et les bateaux qui vont de Portbail à Jersey s'en tiennent à la distance de près de deux milles, distance qui ne peut permettre, bien qu'un de mes confrères ait prétendu le contraire, voir le père Pinel aller et venir sur la grève étroite qui constitue le royaume dont il pourrait bien être dépossédé quelque jour.

Mais à Carteret et Port-Bail principalement, on parle un peu plus des "Ecrehous". Le maire de cette dernière localité, M. Vardon, s'est beaucoup occupé de la question, et les habitants, qui ont conservé la haine vivace de l'Anglais — souvenirs des grandes guerres d'autrefois — veraient avec colère les "Ecrehous" devenir possession anglaise, d'autant que pour eux le préjudice serait grand, puisqu'ils sont presque tous pêcheurs.

Donc, si ridicule qu'ait été tout le tapage fait en ces temps derniers, à propos des "Ecrehous", ce tapage n'a pas été complètement inutile, puisqu'il a donné l'éveil, et que dorénavant, on n'aura plus nulle désagréable surprise à craindre.

J'étais allé tout d'abord à Cherbourg, la ville morose par excellence, supposant que j'aurais là des renseignements de première main, et j'avais en cela imité nos confrères. Mais voyant que là je ne serais pas plus avancé que si j'étais resté au faubourg Montmartre, je partais quelques heures après pour Portbail où j'arrivai vendredi ¹ matin. Par malheur, toutes les autorités, à vingt lieues à la ronde, étaient parties pour assister aux obsèques du sénateur Foubert, véritable événement pour la contrée, et je dus me contenter des racontars des marins et des gabelous, racontars contradictoires, car les uns affirmaient qu'à Jersey il avait été question d'occuper les "Ecrehous" et d'y apporter, pièce à pièce, de tourelles d'acier pour le fort à construire, et les autres disaient qu'il n'en était rien. D'autres encore disaient qu'on ne pouvait plus aller pêcher aux "Ecrehous" qu'à ses risques et périls ; d'autres disaient qu'on y pouvait aller en toute sécurité. Et comme la plupart n'y étaient pas allés depuis la fin de l'été, ils finissaient par croire "qu'il pourrait bien y avoir quelque[sic] ² chose."

A Carteret, on n'en savait pas davantage. Mais là, où je m'étais rendu à pied, en suivant la côte, malgré une bourrasque de neige qui me coupait la figure, j'eus enfin le plaisir de voir, non pas à l'œil nu, mais avec une bonne lorgnette, les fameux "Ecrehous". Seulement, j'avais beau frotter les verres de la lorgnette, écarquiller les yeux, je n'apercevais à l'horizon, très loin, qu'une mince bande de rochers que la brume masquait à tout instant, et qui me paraissaient tout à[sic] fait insignifiants.

Une voiture me ramena à Port-Bail, car je ne me souciais pas de refaire la même route sur cette grève désolée, et ce n'est que le soir que j'eus l'avantage d'être reçu par le maire du pays, un notaire comme il en est peu, homme intelligent, plein d'affabilité, qui me mit au courant de toute la question et qui s'offrit pour venir le lendemain avec moi aux "Ecrehous" dans la péniche de la douane, mise fort obligeamment à ma disposition par M. l'inspecteur des douanes résident à Valognes et de passage à Port-Bail, ainsi que par le capitaine de la douane.

Hier matin, à la pointe du jour, nous étions tous, M. Vardon, M. Lemonnier, ex-commissaire de surveillance du port, et moi, au rendez-

[¹ 22nd January (1886).]

[² *quelque*.]

vous pris la veille. Nous allions sur la digue, attendant l'heure de la marée, inspecter le ciel pour voir si nous pourrions embarquer. Il aurait venté en tempête que je serais parti. Mais mes compagnons et les marins de la douane, n'ayant pas les mêmes raisons et bien au courant des difficultés de l'entreprise n'étaient pas de cet avis. J'avais très peur que ce fût encore un espoir trompé, car autour de moi je voyais tout le monde faire la grimace. La vérité est que le temps n'était pas rassurant. A tout instant il y avait de brusques sautes de vent, des rafales de neige tourbillonnaient, la mer était houleuse, le ciel noir, et vers le nord-est on apercevait un arc-en-ciel presque fermé, signe de très mauvais temps.

— V'la un "cul-de-chien" qui pourrait bien nous donner d'la misère, dit le patron du bateau. Enfin, tant pis, si nous ne pouvons accoster les "Ecrehous" nous filerons jusqu'à Jersey. Embarquons.

La péniche l'*Immortelle* est un petit bateau non ponté, calant un pied et demi, portant un grand mât, une misaine et un tape-cul, bordé, au besoin, de six avirons et monté par sept hommes d'équipage. Elle est mouillée à l'extrémité de la digue, dans la petite baie de Portbail, baie très sûre, entourée qu'elle est de hautes dunes de sable où ne poussent que quelques ajoncs rachitiques.

On embarque d'abord les provisions de bouche, car aux "Ecrehous" on ne trouve rien à manger, si ce n'est des coquillages, et on ne sait ce qui peut arriver : des bateaux ont été forcés d'y relâcher trois ou quatre jours. Il faut donc avoir des vivres. Nous en emportons en conséquence, pain, cidre, vin, viande, café et eau-de-vie. Puis, les passagers étant embarqués à leur tour, tout étant paré, on largue l'ancre, et en route !

Dès que nous avons franchi la baie sablonneuse de Portbail, nous commençons à danser effroyablement. Le vent souffle du nord-est, et c'est un bon vent. Le patron nous affirme que s'il ne survient rien de nouveau, nous toucherons aux "Ecrehous" avant deux heures. Sur cette promesse, nous bourrons nos pipes, tout en regardant la mer houleuse, qui a par places de vastes étendues blanchâtres, scintillantes comme de l'argent, bien que le soleil, apparu un moment sur l'horizon, et brillant d'un éclat rouge très vif, ait complètement disparu derrière un rideau de brouillards. Tout en échangeant nos observations sur les menus incidents de route, M. Vardon, aidé par l'ex-commissaire et le patron de l'*Immortelle*, me narre l'histoire de l'affaire des "Ecrehous". Elle a commencé d'une façon très singulière et drôle.

La voici :

D'abord, depuis longtemps, selon le récit très véridique de notre ami Charles Frémine, les Jersiais prétendent que les "Ecrehous" leur appartiennent et qu'ils relèvent de la commune de Saint-Martin ; mais ce n'était encore qu'une revendication toute platonique, lorsque survint l'affaire du fraudeur Binet.

Un jour, ce Binet, un marin extraordinaire qui sort par tous les temps et qui se rit de la tempête la plus furieuse, une espèce de Gilliat, peut-être plus entreprenant encore que le héros de Victor Hugo, embarque pour Jersey plusieurs tonneaux d'alcool. Son chargement est en règle et visé par la douane de Port-Bail, le voilà parti. Qu'arriva-t-il quelques heures après ? Nul ne le sait que lui ; mais ce qui est certain, c'est que son côtre[sic] relâche aux "Ecrehous". Une barque douanière anglaise qui le guettait et qui avait été peut-être prévenue en sous-main par Binet lui-même, arrive aux "Ecrehous" en même temps, met l'embargo sur le côtre[sic] et le conduit à Jersey. Binet proteste ; on n'a pas le droit,

dit-il, de le saisir aux "Ecrehous", terrain neutre ; mais il se garde bien d'exhiber sa patente d'embarquement. On arrive à Gorey ; les tonneaux d'eau-de-vie sont débarqués ; deux ou trois jours après on les met en perce, et ... les douaniers jersiais ne trouvent dedans que de l'eau pure.

Binet, tout en riant sous cape, continue à protester ; ses barils contenaient bel et bien de l'eau-de-vie, et la preuve en est dans la patente qu'il exhibe alors. Vous n'aviez pas le droit de me saisir, dit-il, parce que j'étais sur terre neutre d'abord, ensuite parce que j'étais en règle, vous prétendez que vous n'avez saisi que de l'eau pure, ce n'est pas vrai, vous m'avez volé, je veux mon eau-de-vie !

On plaide, et le procès n'est pas encore terminé¹. On a offert à Binet de lui rendre son côté[sic] avec quelques dommages-intérêts, mais Binet tient bon : il réclame son eau-de-vie et une grosse indemnité. Le curieux, c'est que le rusé Normand est dans son droit. On sait bien qu'il est parti avec de l'eau-de-vie et l'on suppose que, une fois au large, il aura transbordé sa cargaison sur le bateau d'un confrère qui lui aura donné en place des barils d'eau.

Mais comment le lui prouver ! C'est si difficile que les Jersiais furieux cassent aux gages leur directeur des douanes, un nommé[sic] Bertrain², qui occupait cet emploi depuis trente ans. C'est ce Bertrain[sic] qui avait mis en avant la question des "Ecrehous" dont il voulait être nommé connétable, c'est-à-dire maire.

C'est de cette époque, il n'y a plus à en en douter, que datent les revendications de l'Angleterre sur les "Ecrehous". Car il y a eu bel et bien des revendications tenues secrètes, il est vrai, mais qui n'en ont pas moins existé. Des circulaires émanant des préfets maritimes et du ministre de l'intérieur, relativement à cette affaire existent, et demain, je ferai mon possible pour me les procurer. Le *Figaro* en a reproduit une, mais non pas textuellement et le texte même est bien plus significatif, dit-on. Ces circulaires, basées sur des considérants, informaient les autorités de la côte d'avoir à prévenir les pêcheurs qu'ils n'aillent plus aux rochers contestés.

Mes compagnons en étaient là de leur narration, quand tout à coup un grain violent nous tombe dessus par tribord ; des paquets de mer sautent dans la barque et sans nos *suroits* nous serions déjà trempés jusqu'aux os.

— Prends un ris à la misaine dit le patron.

Le bateau se redresse un peu, mais il faut prendre jusqu'à trois ris, tant la brise est forte. On ne voit pas à une encablure, c'est-à-dire à deux cents mètres. C'est inquiétant. Le patron parle de mettre le cap sur Gorey. Soudain, le vent passe dans une autre direction, il faut orienter la voilure d'une autre façon. Nous marchions tout à l'heure "au plus près" et nous pouvions compter être bientôt aux "Ecrehous". Mais à présent il faudra presque "doubler" les "Ecrehous".

Nous ne rions plus, le froid pince dur, on est tant soit peu mouillé et nous sautons comme des marrons dans une poêle[sic]. Je suis parti malade et je crains bien de "donner à manger aux poissons". Pourtant, je n'ai jamais eu le mal de mer.

[¹ *terminé* misprinted in the original with the *n* inverted.]

[² *Recte* Bertram. This was Henry Charles Bertram, who once owned a house at Marmotière, one of the Ecrehous Islets, which he bought in 1881, but which he sold to the Jersey Customs Authority in 1884. See Annexes A 92 and A 86 to the United Kingdom Memorial.]

Et toutes les dix minutes il faut changer d'amures, larguer les ris pour les reprendre ensuite, mettre tout dehors ou conserver le moins de toile possible. Il y a près de deux heures que nous sommes partis et il n'y a que les hommes d'équipage qui ont une vue étonnamment perçante, qui puissent distinguer de temps à autre, dans une éclaircie, les îlots que nous cherchons.

Mais la mer est aussi capricieuse qu'une jolie femme ; en un clin d'œil, la brume disparaît, le vent se maintient au nord-est, et nous voyons enfin émerger les "Ecrehous".

Je ne les vois que bien imparfaitement pour ma part.

— Tenez là ! par tribord, me dit un vieux matelot tout tanné par le hâle, là, par le travers du hauban.

Le ciel est devenu plus clair et je vois très nettement les "Ecrehous", à environ deux mille[sic] de nous.

Je ferme ici ma lettre, remettant la suite au courrier de demain, car c'est l'heure de la poste, et je dois partir sur le champ, afin de me procurer, je ne vous dirai pas où, je l'ai promis, les circulaires dont je vous ai parlé et qui prouvent d'une façon péremptoire que la question des "Ecrehous" n'est pas née d'hier et que le ministère en avait certainement connaissance.

Bien à vous,

Sutter Laumann.

3. Conclusion of the Article of the 24th January, 1886, and Postscript of the 25th January, 1886.

LA QUESTION DES ÉCREHOUS

(Correspondance spéciale de la JUSTICE)

Port-Bail, dimanche 24 janvier.

J'ai dû interrompre hier brusquement, ma lettre, le courrier partant de suite et n'ayant pas une minute à perdre, puisqu'il a quatre lieues à faire pour gagner la station de Saint-Sauveur-le-vicomte[sic] ; de mon côté, j'avais à partir immédiatement pour arriver avant la grande nuit dans une localité fort éloignée d'ici où je pouvais me procurer les circulaires authentiques concernant les "Ecrehous". Vous trouverez copie *in extenso* de ces circulaires à la fin de ma lettre. Elles sont très explicites, comme vous le verrez.

Il ne me reste qu'à vous achever le récit de ma visite aux "Ecrehous" et à vous donner mon impression générale sur l'affaire.

Quand on est bien en vue des "Ecrehous", on éprouve une véritable surprise. De très loin ce qui n'apparaissait que comme une mince ligne de brisants, devient un archipel d'îlots couvrant une grande étendue de mer. On les voit, couronnés d'écume, entourés d'une verte ceinture de goémons[sic], qui émergent de quelques mètres au-dessus de l'eau, affect-

tant les formes les plus bizarres, cônes droits, cônes tronqués, unis, lisses ou bien rongés, creusés, fouillés par la lame. On dirait quelque ville fantastique, une ville de rêve avec des tours, des dômes, des clochetons, de vieux remparts crénelés, et la buée dont ils sont enveloppés, estompant les contours, confondant les lignes, surajoute encore à leur aspect étrange et tourmenté. A la mer haute, on voit bien une centaine de ces rocs arides toujours en lutte contre les vents et les flots ; à la mer basse on en voit plus de cinq ou six cents qui tous ont un nom. C'est la *Bigorne*¹, qui affecte la forme d'une énorme dent de chat ; c'est le grand et le petit *Crevichon*, la *Pierre-aux-Femmes*, les *Ecrevrières*, banc de sable couvert à chaque marée, le *Gros Galeux*, les *Basses de Taillepie*, le *Banc jété*, le *Pain-de-sucre* et vers le nord-ouest, très loin, le groupe des *Dirouilles*.

Au centre se dressent les îlots principaux : la *Maître-Ile*, la *Marmotière*² et *Blanc-Ile*³, le tout forme une vaste circonférence de plusieurs lieues.

De très près, et avec le temps que nous avions, c'était réellement effrayant. Je me demandais comment nous allions pouvoir pénétrer dans ce labyrinthe de rochers. Une fois dedans, je me demandais comment et par où en sortir. Ce fut avec les plus grandes précautions que nous entrâmes dans l'étroit chenal qui commence à la *Bigorne* et conduit au groupe principal. Après avoir couru encore quelques bordées, toute la voilure fut serrée et l'équipage se mit aux avirons. A tout instant on mouillait à pic et on hâlait dessus, c'est-à-dire on jetait l'ancre droit et on tirait sur la chaîne, car les remous nous rejetaient tout de suite à quelques brasses en arrière. Mais sitôt qu'on fut entré dans une espèce de petit havre, à l'est de la *maître-île*[sic] le calme fut subit. L'eau était là aussi tranquille — la mer commençait à baisser et nombre de gros rochers découverts nous protégeaient contre le ressac — aussi tranquille que dans le bassin des Tuileries. La péniche contourne doucement la *maître-île*[sic], où le débarquement est très difficile, la roche étant à pic, et nous accostons au bout de dix minutes la *Marmotière*², dont nous pouvions depuis longtemps déjà compter les maisonnettes, frileusement adossées les unes contre les autres, sur le point culminant du rocher.

Il était une heure de l'après-midi, nous avions mis trois heures et demie pour faire ce court voyage.

Nous sautons à terre pour grimper sur le sommet de l'îlot ; mais ce n'est pas sans peine que nous atteignons la crête[sic] du galet ; les bas rochers sont couverts de varech encore tout humide, de là des glissades et des chutes. Nous voilà enfin sur le terrain sec, battant la semelle pour nous réchauffer. En trois enjambées, nous sommes en plein cœur du hameau des "Ecrehous", composé de six maisonnettes, très solidement bâties, à toiture de tuiles ou d'ardoises, les murs blanchis à la chaux. Groupées comme elles sont, elles forment une petite place intérieure, grande comme une arrière-cour, où se trouve un réservoir d'eau de pluie où on lit : *Pro publico bono*. Toutes ces maisonnettes appartiennent à des Jersiais et portent une inscription relatant la date de la construction avec le nom du propriétaire ; au dos de l'une d'elles, on remarque encore, mais imparfaitement, l'inscription relevée par Frémine⁴:

[¹ See the United Kingdom Memorial, p. 23, paragraph 7(c).]

[² I.e., Marmotière.]

[³ I.e., Blanc Ile.]

[⁴ Frémine, *op. cit.*, p. 14.]

Au nom de
Dieu et la Religion
Amen
L'an mil huit 81
.
Bailli et
Lieutenant-général Lothian-Vich¹

Le reste est effacé.

Un peu en contre-bas, sur une petite plate-forme défendue par un parapet naturel de rochers, deux mâts de pavillon sont dressés. Ici une anecdote qui démontre bien que les Jersiais considèrent les "Ecrehous" comme leur propriété. Un jour, M. F. vient sur l'îlot en partie de promenade avec quelques amis — pendant l'été, s'entend. Ils veulent hisser nos couleurs. Quelques Jersiais qui se trouvaient là protestent, disant que les Français n'ont pas le droit d'arborer leur pavillon et qu'il faut "l'amener."

— Eh bien ! venez-y, "amenez-le" vous-même ! répondent nos compatriotes, qui ne connaissaient peut-être pas la circulaire de M. Ferry.

Les Jersiais se le tinrent pour dit et laissèrent flotter notre drapeau à côté du leur.

En face de nous, à l'autre extrémité de l'île, et à environ deux portées de pistolet, est situé le palais de Philippe Pinel, le roi des "Ecrehous"². Nous nous y rendons en suivant une chaussée faite par la mer, qui y apporte, de l'est comme de l'ouest, de lourds galets — le reste étant couvert d'eau à marée haute.

Nous entrons dans la cabane où Pinel couche, où il mange, où il cuit son pain. Deux personnes y seraient mal à l'aise, et nous nous y tenons tous les dix, serrés les uns contre les autres.

— Bonjour meschieurs !

— Bonjour, père Pinel, répondent nos matelots au singulier type qui est là, devant nous, regardant tous ces visiteurs avec des yeux bruns, brillant d'un éclat métallique, surplombés de sourcils en broussailles, et très rapprochés d'un nez à la courbure accentuée, aux larges narines. La moustache est coupée ras, au ciseau ; les joues sont garnies d'une barbe touffue encore très noire. De longues mèches de cheveux mal peignés se tordent sous les bords déformés d'un petit chapeau d'étoffe, comme en portent les Anglais en voyage. Le visage n'a rien de l'anglo-saxon ; l'on dirait plutôt qu'il appartient à un pâtre du versant italien des Alpes. Impossible de lui donner un âge. De quarante à soixante ans, c'est l'évaluation très vague qu'on peut faire. Malgré les rides, la chevelure et la barbe semées de fils d'argent, la tête de ce bonhomme n'est pas celle d'un vieillard. Le teint est si bruni si hâlé par le vent, que c'est comme une espèce de fard qui masque les années, et le regard est si perçant, si jeune, qu'on demeure interdit. Le père Pinel est de petite

[¹ According to Frémine, *loc. cit.*, this line read "Lieutenant-général Lothian-Nicholson". Lothian Nicholson, at that time (1881), was Lieutenant Governor of Jersey. See the United Kingdom Memorial, p. 80, paragraph 138(a).]

[² Philippe Pinel's house was on Blanc Ile which, at low water, is joined to Marmotière by a shingle bank—the "chaussée" mentioned in the next sentence, above. The house, which is now in ruins, bears the date 1820. See Annexes C 6 and C 11 to the United Kingdom Memorial.]

taille, mais d'apparence vigoureuse, l'allure est leste, décidée. Il s'exprime en français très couramment, mais avec un fort accent mélangé de normand et d'anglais. Mais il parle mieux anglais et s'exprime très bien en espagnol, me dit un marin, car Pinel a navigué[sic] ¹ quinze ans au long cours, avant de venir définitivement se fixer dans cette solitude où il mourra.

La conversation s'engage.

— Quel âge avez-vous, monsieur Pinel ?

— Quel âge me donnez-vous ?

— Dame ! quarante-cinq à cinquante ans.

— Oh ! fait-il en riant, je voudrais bien avoir en "souverains" ce que vous me donnez en moins !

— Vous allez déjeuner avec nous ?

— Mais oui, mossieu, mais oui.

Et comme la faim se fait très vivement sentir, les marins retournent à la péniche pour y chercher les provisions.

Jusque-là je n'ai pas eu le loisir de remarquer le mobilier, tout entier que j'étais à l'homme. Une petite table posée contre la fenêtre ; un recoin où, sur des rayons sont disposés divers ustensiles : assiettes, bols, plats, verres ; un grand coffre où est enfermée la bibliothèque du "roi", coffre servant de siège ; une sorte d'alcôve en bois, juste de la profondeur d'un lit ordinaire, où l'on voit un matelas de varech et deux ou trois vieilles couvertures, voilà la couche ; en face, une cheminée dont le foyer est surélevé de deux pieds et demi, environ ; à côté, une caisse en tôle qui sert de four pour cuire le pain. Sur le manteau de la cheminée, une petite pendule, seul luxe de l'habitation ; accroché au mur, un miroir grand comme la main, et c'est tout. Au-dessus du coffre en bois, une lucarne donnant jour au nord-est, lucarne presque aussi superflue que la fenêtre, la porte du logis restant presque toujours ouverte.

Un matelot revient avec les liquides, cidre, vin et eau-de-vie. A la vue du cognac, les yeux du père Pinel étincellent, ses lèvres font une moue gourmande, il tend la main vers la bouteille...

— Vous permettez que je fasse comme chez moi ? dit-il.

— Ne vous gênez pas.

Et il se verse une vraie rasade, plein une tasse à café. Pour être roi et anachorète, on a ses petites faiblesses, tout de même, et la goutte est une des chères[sic] faiblesses du père Pinel. Il ne peut rester à cause de cela à Jersey ; la bouteille le met à mal, et lui que les plus terribles vents de mer ne font pas osciller, est alors forcé de se tenir aux murailles.

— A vous le premier, mossieu, fait-il poliment.

Sur mon refus, il avale d'un trait.

Je poursuis mon examen de la cahute. Point de plancher, la terre battue ; pour plafond, les solives du toit ; les murs badigeonnés grossièrement à la chaux. Je remarque encore deux fusils.

— Tiens, vous chassez ?

— Mais oui, monsieur ; il y a des lapins sur la *Maître-Ile*, puis je tue des canards et des houvettes.

Sans trop savoir pourquoi, je commence à être incommodé.

— C'est la fumée, me dit Pinel.

En effet, une odeur âcre, saline, empuante le réduit. Le seul chauffage sur les "Ecrehous", c'est le varech. Ça flambe, ça pétille, ça donne de

[¹ Recte navigué.]

la chaleur, et c'est gai à l'œil, mais ça froisse fort l'odorat. Le père Pinel brûle du varech pour en revendre les cendres comme engrais ; c'est, avec la pêche, son second moyen d'existence. Je suis contraint de sortir pour respirer un peu. A quelques pas, je vois M. le maire de Port-Bail en train de prendre un croquis de la baraque. J'essaie de l'imiter. De chaque côté de la mesure principale, il y en a une autre de même dimension ; l'une sert pour remiser le varech, afin de le faire sécher ; l'autre abrite quelques vieux barils et des poules.

A droite, contre le mur de soutien de la mesure, un vieux bateau goudronné ¹. Un peu plus loin la tourelle édifiée par le roi des mers, avec de si grosses pierres qu'on se demande comment un homme a pu non seulement les soulever, mais les monter si haut, avec la seule force de ses bras. La tourelle est en partie écroulée. Devant la mesure quelques choux assez beaux étalent leurs vertes rondeurs auprès de maigres mauves, c'est avec le varech la seule végétation de ce rocher. A 200 mètres au sud, séparée par un étroit mais profond canal, le[sic] *Maître-Ile* sur laquelle on aperçoit les débris d'une vieille construction, ancien fortin, me dit-on, depuis longtemps tombé en ruine. C'est là que les Anglais pourraient établir un fort. L'espace est suffisant, quoiqu'on ait dit, puisqu'il y a environ 18 à 20 ares ² de rocs toujours à découvert même aux grandes marées d'équinoxe. Avec quelques travaux, murs de quai, amoncellement de rochers comme brise-lame, on gagnerait encore du terrain.

— A table !

C'est le patron de la péniche, maître David, un fier marin, qui revient avec ses hommes rapportant les dernières provisions.

Nous rentrons dans la cabane. On essaye de se caser comme on peut et, à force de se tasser, on y parvient.

Deux verres, deux tasses et un bol pour onze personnes, point d'assiettes ni de fourchettes — sur le pouce. Mais quel appétit ! Le roi des "Ecrehous" donne l'exemple, il mange fort, mais il boit encore mieux, si bien qu'il est fort gai. Il nous exprime son grand désir, le seul qu'il ait : avant de mourir, il voudrait voir Paris. Quelle brusque transition, quel contraste pour ce solitaire, si, en quelques heures, il passait de son îlot désert en plein boulevard Montmartre ! Il est ravi d'avoir autant de société, il parle lentement, sur un ton traînard mais continu. Nous sommes aussi gais que lui et l'on plaisante.

— Venez à Paris, sire, et vous verrez ! on vous présentera au président de la République ; n'êtes-vous pas aussi chef d'Etat ? lui dit quelqu'un.

— C'est là que vous verrez de jolies filles, père Pinel, vous n'aurez que l'embarras du choix pour remplacer votre femme qui est repartie à Jersey.

Et le père Pinel, de plus en plus joyeux, m'offre un cigare et une pincée de tabac anglais ; il me donne comme souvenir un barème de poche, pour compter la monnaie britannique ; il promet de m'envoyer, au printemps, deux homards, très abondants sur les îlots, un mâle et une femelle.

Une fois fait à l'odeur de la fumée de varech, on se trouve très à l'aise dans cette cassine, d'autant mieux qu'on a eu mauvais temps pour

[¹ Philippe Pinel's fishing-boat, *John*, of Rozel, Jersey, was first registered in the Port of Jersey on the 23rd April, 1872 ; but the licence was cancelled on the 27th February, 1882, as the boat was no longer "used for Fishing". See Annex A 87 to the United Kingdom Memorial.]

[² About half an acre.]

venir et qu'on ne s'attend pas à quelque chose de meilleur pour le retour. On boit du café avec la rincette et la surincette, à la mode normande, en toastant :

— Au roi des "Ecrehous" !

M. Vardon fait le portrait de face du père Pinel ; je le croque, pas trop mal, de profil. Puis chacun "s'égaye" à sa fantaisie dans les excavations des roches, pour y chercher des crabes et des coquillages.

Cinq heures. — La mer monte. Le moment du départ est arrivé. Nous regagnons l'embarcation, après avoir serré mainte fois la main au père Pinel. La nuit vient, de gros nuages sombres courent sur tout l'horizon ; les écueils diminuent peu à peu de hauteur, disparaissant sous les vagues qui leur livrent un éternel assaut et qui s'y éparpillent en gerbes tumultueuses ; chaque poussée de lame fait roufler[sic]¹ les galets, bruit rauque incessant, sinistre. Une grande tristesse tombe, et c'est presque avec un serrement² de cœur que je vois une dernière fois, déjà dans la pénombre, la silhouette du père Pinel qui se détache sur le mur blanc de la cabane. Il est resté là sur le seuil, et nous envoie de la main³ un signe d'adieu.

Nous embarquons. On relève l'ancre ; on largue les voiles, dès que nous sommes sortis de la passe principale, et "l'Immortelle" ayant vent arrière a bientôt perdu de vue les "Ecrehous". Tout autour de nous, la mer frise. La barque glisse sur des brisants ; nous rangeons la *Pierre-aux-Femmes*, nous passons sur le banc de sable l'*Ecrevière*[sic].

— Maintenant, dit le patron, vente comme il voudra ! c'est pas bé gênant ; nous n'avons plus rien à craindre et, avant deux heures, nous serons à Port-Bail, s'il y a de l'eau : sans ça[sic], faudrait mouiller en attendant. Voici le feu de Carteret au vent, nous sommes bons.

Et, pour passer le temps, on fume pipes sur pipes et on raconte des histoires de fraudeurs. Pendant une bonne heure, nous sommes tranquilles ; mais ça[sic] ne pouvait pas durer. De fortes vagues s'escaladent les unes les autres. Nous roulons bord sur bord, et des paquets d'eau nous cinglent le visage ; j'en reçois dans le dos, sur la poitrine ; j'en ai partout, sur les genoux, dans le cou, jusque dans mes poches. Tabac et allumettes sont à détrempe. De temps à autre, le patron commande :

— Un ris à la misaine, garçons !

Puis ce sont des discussions sur le plus ou moins de proximité de la côte. On voit les feux de position de Port-Bail. Le patron met le cap dessus, en les prenant "l'un par l'autre", et, à présent, la route est belle, dit-il.

Pas si belle que ça ! Il fait bigrement froid et le vent est si vif qu'on est gelé jusqu'aux moelles. Puis le vent saute. Il faut tirer des bordées, ce qui rallongera de beaucoup le chemin. Les passagers ne rient plus.

Enfin, vers neuf heures du soir, nous entrons dans la baie de Port-Bail ; la péniche était amarrée à la "Caillourie" rocher situé à la pointe de la digue. C'est avec un grand plaisir que nous nous retrouvons sur la terre ferme, avec les jambes et les mains gourdes, un peu mouillés, mais satisfaits tout de même d'avoir tenté l'aventure.

On trinque une fois encore, avant de se séparer, dans un petit débit de boissons sis au pied du sémaphore, avec ces marins, rudes et bons

[¹ *roufler*.]

[² Misprinted *serrment* in the original.]

[³ *main* misprinted in the original with the *n* inverted.]

compagnons avec lesquels on irait confiant jusqu'au bout du monde, et l'on regagne le bourg, distant d'un kilomètre.

A neuf heures et demie, je suis à l'hôtel des Voyageurs, tenu par Mme veuve Robert, une maman pour ses clients. Je n'ai plus qu'à dîner et à me coucher ensuite : Ce n'est pas ce soir que j'écrirai ma relation de voyage aux "Ecrehous"

S. L.

Lundi, 25 janvier.

Me voici de retour d'un petit village de la côte où un brave habitant m'a remis les circulaires relatives aux "Ecrehous", circulaires qu'il avait conservées. Vous les trouverez plus loin¹. Je ne puis vous dire le nom de cet homme ni le nom du village, car j'ai juré d'être discret. On redoute ici de se mettre mal avec les autorités grandes ou petites, car ce pourrait être une suite de tracasseries sans fin. Ce n'est pas en province, et surtout à la campagne, que les gens ont leur franc-parler.

Eh bien ! pour conclure, après m'être livré à une véritable[sic] enquête, ayant questionné à droite et à gauche des pêcheurs, des douaniers, les autorités municipales du pays, et même des Jersiais de passage, ayant consulté les documents ci-joints et vu les "Ecrehous" je puis affirmer ceci :

1° La question des "Ecrehous" est plus importante qu'on le croit ; il y a longtemps déjà qu'elle est agitée, les circulaires le prouvent, comme elles prouvent aussi que l'Angleterre a émis des prétentions sur ces îlots et les a revendiqués, que nos pêcheurs ont été avertis plusieurs fois de n'avoir point à s'y rendre afin d'éviter tout conflit avec les Anglais.

Ces maladroites circulaires sont presque une reconnaissance formelle du gouvernement français des prétendus droits de l'Angleterre sur les "Ecrehous".

2° L'importance de ces rochers est réelle, avant de les avoir vus, je crois vous avoir dit qu'il me semblait difficile qu'un fort pût y être établi. Les ayant vus, mon avis a changé.

Un fort anglais sur la *Maitresse-île* des "Ecrehous" nous fermerait en temps de guerre le passage de la *Déroute*, passage seulement indiqué sur les cartes entre Jersey et Guernesey, mais qui s'étend le long de notre côte très avant dans le sud. Le fort nous fermerait d'autant mieux la *Déroute*, que c'est une passe difficile, semée d'écueils, de bancs de sable où de gros navires ne peuvent passer qu'avec des pilotes du littoral et par des marées exceptionnelles. On peut arguer que, dans ce cas, l'inconvénient n'est pas très grand, puisqu'il y a peu de navigation dans ces parages. Mais il y a d'autres inconvénients de premier ordre.

D'abord, en cas de guerre, avec une flottille de petits bateaux réquisitionnés à Jersey, les Anglais, appuyés par un fort aux "Ecrehous", pourraient tenter et réussir un débarquement[sic] soit à Port-Bail, soit à Carteret, surtout dans la première de ces localités qui va devenir très importante, à cause des travaux qu'on va entreprendre pour améliorer et agrandir le port, et du chemin de fer qui doit être livré à la circulation d'ici deux ans et qui reliera Port-Bail et Carteret à la ligne de Cherbourg-Coutances. Bien sûr que les Anglais trouveraient à qui parler,

[¹ They are printed as Annex A46 to the United Kingdom Memorial.]

et rien que les paysans leur donneraient une jolie tablature. Mais tout dépend des circonstances. Supposez que nous soyons engagés dans une grande guerre européenne, et que les Anglais soient contre nous—c'est peu probable, mais il faut tout prévoir—guerre malheureuse, comme celle de 1870, où toutes nos ressources soient engagées. N'y aurait-il pas alors un véritable danger ?

Remarquez que la côte n'est nullement protégée. On a parlé de batteries. Elles sont bien indiquées sur les cartes, mais ce sont les vieilles batteries dressées sur la côte par ordre de Napoléon I^{er} et qui devaient être servies par les vétérans. Depuis 1828 elles sont abandonnées, quelques-unes ont servi de corps-de-garde aux douaniers, la plupart tombent en ruine et, en admettant qu'on les répare, elles ne seraient que d'un pauvre secours, avec l'artillerie actuelle.

Un fort aux "Ecrehous" exigerait [u]n fort à Carteret, et peut-être à Port-Bail, pour le contre-battre. Tôt ou tard il faudra en venir là pour défendre ce point de la côte ; mais pour l'instant on peut attendre encore. Puis rien ne dit que ce fort de Carteret pourrait, comme on l'affirme, détruire en quelques coups de canons le fort des "Ecrehous", qui ne peut être qu'un fort blindé, à tourelles. Carteret le dominerait de très haut, mais ce n'est point toujours l'élévation d'un fort qui fait sa puissance et des boulets peuvent bien atteindre sans peine une altitude d'une soixantaine de mètres.

Enfin, la possession des "Ecrehous" assurerait aux Anglais un prolongement de la limite de leurs eaux ; il n'y aurait plus pour ainsi dire de zone neutre entre les eaux anglaises et françaises, par conséquent, plus de pêche possible, non seulement sur les "Ecrehous", mais presque dans toute la *Déroute*. Déjà les Anglais ravagent cette zone[sic] neutre. Ayant de meilleurs bateaux que les nôtres, ils sortent presque par tous les temps et font de formidable rafles de poissons et d'huîtres dont il y a plusieurs bancs.

A tous les points de vue, il est donc indispensable que les "Ecrehous" restent ce qu'ils sont encore, c'est à dire[sic] neutres, et non pas terre jersiaise. Si l'Angleterre renouvelait ses prétentions, il faudrait lui répondre par un obstiné refus. Et elle pourrait très bien les renouveler le jour où, comme je le disais dans ma lettre précédente ¹, les Jersiais ayant encore établi sur ces îlots quelques maisonnettes, l'Angleterre pourrait dire :

Il y a là des sujets anglais, des propriétés anglaises, régis par nos lois ², ceci nous appartient. C'est ainsi qu'ils pratiquent sur tous les points du globe où leur orgueilleux pavillon flotte souvent sur d'arides rochers qui n'ont aucune importance commerciale mais qui ont une grande importance stratégique. Voilà la vérité.

Sutter Laumann.

[¹ 24th January (1886). See p. 663, above.]

[² See the real property contracts relative to the Ecréhous Islets, which have been registered before the Royal Court of Jersey, in Annexes A 91 (1863), A 92 (1881), A 86 (1884), A 89 (1923), A 93 (August, 1947) and A 90 (November, 1947) to the United Kingdom Memorial; also the rating schedules of 1889 and 1950 in Annexes A 82 and A 83 to the same Memorial.]

III

Article by M. Pierre Giffard, a French Journalist, in *La Chronique de Jersey* of the 30th January, 1886, recording a visit to the Ecréhous Islets, to inquire into an alleged proposal of the United Kingdom to erect a Fort thereon

[Original in the Public Library of Jersey]

L'AFFAIRE DES ECREHOUS.

CARTERET, 18 Janvier.

Je viens de relever (—en touriste, bien entendu, et sans aucun compas —) la position géographique, la faune(?) et la flore(!) de cette chaîne d'îlots qu'on dénomme l'archipel des Ecréhous. En vérité, je vous le jure, devant Dieu et devant les hommes, bien qu'il m'en coûte de contredire un correspondant zélé du *Figaro*, il n'y a pas l'ombre d'un être humain dans tout cet archipel microscopique, hormis le père Pinel¹, vieux pêcheur jersiais, établi là depuis plus de quinze années², et possesseur d'un jardin qu'il a planté sur une tour de trois mètres, construite en pierre par ses mains, tour sémiramidesque ou babylonienne, si vous aimez mieux, qu'un voyageur timoré aura prise pour la tourelle menaçante d'un fort blindé. Les myopes sont terribles!

Tout ce que je vous raconterai des Ecréhous vous fera rire, j'en suis sûr, sauf la fin de mon petit compte-rendu. Cette fin est triste. La faute en est encore à l'éminent M. Ferry, qui se tient coi, mais dont la responsabilité est engagée là aussi, comme dans maints autres endroits. Rions d'abord, si vous le voulez bien, nous objurguons ensuite.

Pour se rendre compte de ce qui se passe aux Ecréhous, il y a trois moyens à employer : le premier consiste à mettre l'œil derrière la longue vue du guetteur, au sémaphore du cap Carteret. C'est le moyen dont s'est servi l'autre jour l'amiral Bergasse Dupetit-Thouars, préfet maritime de Cherbourg, pour répondre à l'amiral Aube que les Ecréhous étaient tranquilles, qu'on n'y voyait que quelques pêcheurs et que nul maçon anglais n'y édifiait aucune batterie menaçante.

Muni de cette déclaration, l'amiral Aube a répondu à son tour aux députés de la Manche, qui l'avaient questionné, que l'archipel dormait dans un profond sommeil et que rien de militaire ne s'y produisait depuis de longues années.

Ce premier moyen pourrait, à la rigueur, suffire à éclairer la religion du peuple français sur la question des fortifications imaginaires des Ecréhous, car de la tour du sémaphore de Carteret, on voit les Ecréhous tout comme si on était dessus. Ils émergent à trois milles dans l'ouest comme autant de rochers dangereux, bas sur la haute mer, noirs, inhabitables. Au fond du tableau, à une distance double, se détache majestueusement la grande et belle île de Jersey. C'est un crève-cœur de la regarder,

[¹ See II, pp. 661, 669-671, above.]

[² See the United Kingdom Memorial, p. 87, paragraph 150, where, however, it is stated that Pinel first went to live at the Ecréhous Islets in May, 1850.]

même à l'œil nu, du cap Carteret. Elle est à huit milles de la pointe française ; elle se profile sur le ciel, avec son étendue énorme ; on sait qu'elle tenait à notre sol, à ce village même de Carteret, par des forêts et des plaines qu'une catastrophe épouvantable a submergés et enfouis sous la mer. Et on regrette de ne pas l'avoir, à présent, ou de n'avoir pu la conserver à la France. Les Ecrehous vus à l'œil nu, du haut du cap qui compte au moins 75 mètres d'altitude, ont l'air de vieux petits rocs noircis par les lames, ce qu'ils sont bien en réalité.

Le deuxième moyen consiste à s'embarquer dans un côtre[sic] quelconque, à Carteret, pour aller à Jersey en rangeant les îles principales de l'archipel ; il faut, pour l'employer avoir beau temps, bon vent et des pratiques de la Déroute sous la main, c'est-à-dire des marins jersiais ou français, bien au courant du passage de la Déroute et des tourbillons qui s'engouffrent entre les rochers des Ecrehous. Toutes ces conditions sont difficiles à réunir en cette saison, où la navigation est incertaine, les vents contraires, la pluie et la neige fréquentes, le débarquement périlleux.

Le troisième moyen est le plus simple à employer : il consiste à s'embarquer à Portbail¹, près de Carteret, pour Gorey, et à revenir de Gorey à Portbail par le même chemin. Le fait seul d'opérer ce trajet entre la France et le petit port jersiais en apprend plus sur les Ecrehous que cent cinquante articles de journaux. On fait route à l'O. N.-O. en passant à quelques portées de fusil des deux îles principales de l'archipel ; on découvre les rocs, les plantes, les varechs, les pierres, tous les moindres détails de ces deux solitudes, et le père Pinel qui circule sur la grève, attachant ses lignes et prenant des homards en quantité, pour les revendre aux rares pêcheurs qui viennent se reposer dans sa robinsonnerie.

* * *

Que vous preniez ces trois moyens successivement, ou que vous vous contentiez d'en employer deux sur trois, ce que j'ai fait par acquit de conscience, vous acquerez bien vite une conviction féroce, c'est l'histoire des fortifications des Ecrehous, lancée il y a quelques dix-huit mois, non par le *Figaro*, mais par plusieurs de nos confrères, est sortie de la cervelle d'un fumiste ou d'un touriste qui avait bien diné à St. Hélier.

Voici ce que je viens de voir aux Ecrehous :

1° Un second rocher, le plus au sud, dénommé[sic] l'*Ecrevière*, couvert entièrement par les grandes mers ;

2° Un second rocher, le plus important du lot, dénommé la *Maître-Ile*. Aucun être vivant, aucune habitation². Du roc et des pierres ; du varech ou goémon[sic], comme on voudra ; des herbes sauvages et une sorte de plante en forme de chou assez bizarre presque décorative, inodore, non comestible, et désignée à Carteret sous le nom de "mauve d'Ecrehou". C'est la Maître-Ile qui devait receler les mystérieux constructeurs de forteresses. Elle est assez large aux basses-eaux mais le plein de équinoxes n'en laisse pas émerger[sic] plus d'une vergée, soit

[¹ This would appear to be the official form ; but both Portbail and Port-Bail are indiscriminately used throughout this article.]

[² A house was subsequently built upon Maître Ile, and still stands to-day. It is now the property of Lord Trent of Nottingham. See Annexes A 89, A 90 and C 1 to the United Kingdom Memorial.]

20 ares environ ¹, qui échappent aux grandes marées de Mars et de Septembre. Inutile de vous dire que je n'y vois âme qui vive, ni bête à quatre pattes ni bêtes à deux pattes, ni chantier, ni hutte, ni cambuse, ni rien, enfin rien que du sable, des pierres, du roc, et des mauves. Les gens du pays me rient au nez et ils ont ma foi raison, car pour un peu l'on publierait le plan teinté et à l'échelle de ces bastions imaginaires. Que dis je[sic] ? Un de nos confrères du soir (je l'ai vu plus consciencieux dans les enquêtes de ce genre, et il manque à sa tradi[tion] ² d'organe archi sérieux[sic]), a vu quelque part les plaques d'acier destinées à cuirasser ces châteaux en Espagne, et il les évalue, ce qui est plus raide[.] Il en estime le prix à cinquante mille francs l'une dans l'autre. Ous ³ qu'est mon blindage ?

3° Troisième rocher: la *Marmotière* ⁴. Autre mouchoir de poche étendu sur les hautes mers. Celui-là n'a pas dix ares ⁵ au-dessus de l'eau du plein de mars. Mais il a sept maisons. Et quelles maisons ! De vraies cabanes, groupées en haut, le plus haut possible, dans la crainte d'une marée monstre qui dépasse toutes les prévisions du Bureau des longitudes. Sur ces sept maisons, six sont fermées. Ce sont des pêcheurs de homards, Jersiais tous, qui en ont les clefs. Suivant la saison, ils viennent pêcher là et s'installent pour deux ou trois jours en relâche dans le petit havre, — un trou dangereux — qui sert de port à cet îlot désolé. Ils apportent avec eux leur fricot et le font cuire dans leur maisonnette. L'été, ils exploitent à l'occasion le touriste, qui se fait amener de Carteret ou de Port-Bail par un beau temps, et qui déjeune avec eux, heureux comme un Parisien seul peut l'être, d'avoir déjeuné[sic] dans une île déserte. La seule maison ouverte est celle du père Pinel ⁶, déjà nommé ⁷. Ce vieux vivait là, jusqu'à l'an dernier, avec sa femme ⁸, en véritable anachorète. Mais c'était un anachorète marié. La femme est tombée malade, on l'a emmenée à l'hôpital de Jersey, et le vieux pêcheur est plus que jamais l'ermite de l'archipel. On l'aperçoit sur son île ; la vue de sa silhouette cocasse sur ce rocher m'a rappelé le solitaire du cap Matapon[sic] ⁹, qu'on montre aux voyageurs quand ils passent entre la Grèce continentale et Cythère.

4° C'est tout. Le n° 4 du dénombrement comprendra des petits rochers sans nom que toutes les marées recouvrent, à grand renfort d'écume et de tourbillons, redoutables aux pilotes.

5° Les *Dirouilles*, très au nord, comprennent plusieurs îlots dont une seule tête sort de l'eau à la pleine mer.

[¹ About half an acre.]

[² In the original, *tradition* is divided by a hyphen ; but the printer forgot to print the suffix *-tion* in the succeeding line.]

[³ *Recte* Ous, meaning "Où est-ce".]

[⁴ I.e., *Marmotière*.]

[⁵ About a quarter of an acre.]

[⁶ Pinel's house was, however, on *Blanc Ile* which, at low water, is joined to *Marmotière* by a shingle bank. See Annexes C 6 and C 11 to the United Kingdom Memorial.]

[⁷ The original, in error, has a comma after *nommé*.]

[⁸ See the United Kingdom Memorial, p. 45, paragraph 150, where, however, it is stated that Pinel's wife left the *Ecréhous* Islets "in or about 1882".]

[⁹ *Recte* Matapan.]

6° Les *Pater Noster* ¹, groupe de roches dans le nord de Jersey, dont encore partie des écueils dangereux connus sous le nom d'Ecrehou.

D'où vient ce nom d'Ecrehou ? De la côte française, naturellement, qui allait autrefois jusqu'à Jersey. On connaît la légende des marins de ces parages, celle de la ville d'Is ², la cité engloutie dont les cloches sonnent au fond de la mer. C'est une légende basée sur un fait géologique indiscuté ; l'engloutissement de la forêt de Coutances.

Au pied du cap de Carteret, j'ai visité la vieille église de la ville ; autrefois elle était le centre du pays. Aujourd'hui, elle borde la mer, et les habitations modernes se sont retirées bien plus loin. Elle est d'ailleurs en ruines, délabrée au dernier point ; chaque touriste qui vient la voir en emporte un morceau ³. Singulier aspect que celui de cette côte de la Manche, du Mont Saint-Michel à Flamanville, où la mer entasse sables sur sables, dunes sur dunes, après avoir violemment séparé les îles actuelles de la côte, il y a mille ans ! On dirait que la Manche va reconstituer un continent là où elle a jadis créé un bras de mer, et refaire, d'ici quelques siècles, ce qu'elle a défait aux siècles précédents.

Au surplus, le nom d'Ecrehou appartient toujours en propre à une partie de Carteret, côté nord-est. On dit d'un homme qu'il demeure à Carteret dans Ecrehou, c'est-à-dire dans une section de Carteret qui formait autrefois le village d'Ecrehou. C'est ce qui explique une autre affirmation fantastique de notre confrère archi-sérieux déjà cité. Il a donné *trois cents habitants* à la Marmottière ⁴, où l'homme, "primate bimane," est représenté par le père Pinel tout seul. Notre confrère a confondu l'îlot Ecrehou avec le village d'Ecrehou sur Carteret. Ajouterai-je encore un trait qui achèvera sous les coups rectificatoires notre confrère archi-sérieux ? Je l'achèverai, car il faut rire encore. Il a parlé dans une étude puissamment longue, de la batterie de Carteret qui surplombe la mer immense. Ous qu'est mon canon Krupp ? répéterai-je. Il n'y a au cap Carteret qu'un pierrier d'alarme pour faire *pan*, dans les cas exceptionnels, orages, tempêtes, sinistres au large, passages des vaisseaux de guerre, etc.

Certes,—et ce sera la conclusion de ma première partie,—il se dégage de cette affaire des forts blindés aux Ecrehous, à part la formule *beaucoup de bruit pour rien*, une démonstration péremptoire de notre faiblesse réelle quant à la défense de nos côtes. Ainsi, le cap Carteret est une belle position. Il a, je l'ai dit, 75 mètres d'altitude, au moins. Il domine les Ecrehous comme le pont le plus élevé de Dinard domine Cézembre, où l'îlot du Jardin. C'est-à-dire que même en supposant qu'on fasse un fort aux Ecrehous, qui sont très bas, il serait en contrebas de 60 mètres par rapport au fort de Carteret, qu'on élèverait incontinent pour lui répondre, et qui l'éteindrait avec une certitude mathématique.

Ce fort l'amiral Dupetit-Thouars l'a demandé paraît-il, en Octobre dernier ⁵. Le construira-t-on ? Il faut qu'on l'édifie sans retard car il y a là un trou fâcheux. On a dit que les Ecrehous commandent le passage

[¹ Also *Paternosters*, or *Pierres des Lecq*.]

[² *Recte* Ys.]

[³ The original, in error, has a comma after *morceau*.]

[⁴ I.e., *Marmottière*.]

[⁵ I.e., 1885.]

de la Déroute. C'est une erreur. La Déroute est commandée par le cap de Carteret, et plus loin par celui de Flamanville. De ces deux hauteurs, l'artillerie française peut balayer toute la mer, et l'édification d'une batterie aux Ecrehous, sur 20 ares de superficie, serait un acte d'insenséisme. Les Anglais ne le commettront pas, ils sont trop malins pour s'y laisser entraîner.

Mais, à présent que la question iroquoise de ces forts fantastiques est vidée, occupons-nous d'une autre face du problème qui, pour être moins brillante, n'en a pas moins une grande importance. C'est même la seule qui soit à considérer.

* * *

De tout temps les Ecrehous ont été *neutres*, et leurs eaux étaient des eaux neutres. En vertu d'une convention internationale signée par diverses puissances, la France et l'Angleterre, entre autres, le 2 Août 1839¹, la grande pêche est interdite, pour restreindre autant que possible la dépopulation des rivages, européens, dans un périmètre de 3 milles marins, à compter de la laisse des basses-mers. C'est-à-dire que le jour où la Manche est la plus basse, — à l'équinoxe du printemps, par exemple, — on compte trois milles de plaine liquide vers le large, et que c'est seulement au bout de ces trois milles que les pêcheurs de chalut, entre autres, ont le droit de jeter leurs énormes filets dans la mer. Cette disposition, que les gardes-côtes et les gardes-pêches de l'État font observer le long de la côte française, est surveillée dans son exécution réciproque par les gardes-pêches et les gardes-côtes anglais.

Or, entre Jersey et Carteret, Port-Bail, et autres points de la côte française, la distance est de huit milles environ. En réservant trois milles sur Jersey, côte anglaise, et trois milles sur la côte française, on trouve dans la passe de la Déroute une sorte de chenal neutre, large de deux milles environ, dans lequel tout pêcheur a le droit de tendre ses filets. Les Ecrehous sont juste au bord de ce chenal, par rapport à la France, mais enfin ils sont dedans, et de tout temps ils ont été considérés comme des îlots *neutres*, situés entre des eaux *neutres*, dans les criques desquels et autour desquels il a toujours été pêché des quantités de poisson par les marins des deux nationalités, Jersiaise et Française.

Quel ne fut pas l'étonnement de la population de Carteret et de Portbail, lorsqu'il y a deux ans vers Pâques, on leur signifia, par ordre du gouvernement français, de ne plus pêcher aux Ecrehous². Les bonnes gens se plainquirent, mais on les envoya promener. Quelques uns[*sic*] essayèrent d'enfreindre la défense inexplicable qui leur était faite. L'avis de l'État français leur notifia d'avoir à se tenir tranquilles !

Et depuis deux ans, les pêcheurs de Carteret et de Port-Bail se demandent si le gouvernement français a vendu, ou cédé, d'une façon quelconque son droit de pêche et par suite tous ses droits sur les Ecrehous à la perfide Albion. J'ai découvert le pot aux roses. Inutile de dire comment,

[¹ Only the United Kingdom and France were parties to the 1839 Fishery Convention. See Annex A 27 to the United Kingdom Memorial.]

[² See extracts from the official correspondence relating to this subject (March and April, 1884) in I and III, pp. 660, above, and 680, below. Other extracts, including that in I, above, are printed as Annex A 46 to the United Kingdom Memorial.]

mais je puis vous dire *où*. C'est à Jersey chez un Français qui a des papiers bien intéressants[*sic*].

* * *

Qu'est-ce que M. J. Ferry, ministres des affaires étrangères d'alors, pouvait bien avoir à faire avec l'Angleterre? Je n'en sais rien. Quelle nécessité éprouvait-il de faire une platitude aux Anglais? Mystère. Ce qu'il y a de certain, c'est que le 29 Mars 1884, il écrivit au ministre de la marine (l'amiral Peyron) une circulaire dont voici le sens général, sinon les termes exacts ¹. (Je n'ai pas eu le temps de copier le document).

J'ai l'honneur de vous informer, qu'en présence des représentations récentes de l'Angleterre et de ses prétentions déjà anciennes sur ce groupe d'îles, j'ai décidé, pour éviter tout conflit, d'interdire à nos marins l'exercice de leur industrie autour de ces îles. Veuillez, je vous prie, informer de cette décision les officiers placés sous vos ordres et les prier de faire comprendre aux pêcheurs qui enfreindraient cette demande, à quels risques ils s'exposeraient.

Veuillez agréer, etc.,

Signé, pour le ministre des affaires étrangères empêché :

Billot,

Directeur des Affaires politiques.

Le ministre de la marine, docile comme un mouton, s'inclinait immédiatement, et au lieu d'expliquer à l'avocat de Saint Dié ² que cette lettre était l'aveu d'une cession pure et simple des Ecrehous aux Anglais, ce faux loup de mer prenait sa bonne plume et adressait aux autorités maritimes de Cherbourg, Carteret, Portbail, Diélette, etc., une bonne circulaire reproduisant la lettre ci-dessus, et faisant elle aussi défense d'aller désormais pêcher aux Ecrehous, sous peine des risques susénoncés.

* * *

Personne ne soupçonnait l'existence de ces deux lettres ; mais on voit que tout se découvre. Si la pêche est interdite aux Français dans les eaux des Ecrehous, jusqu'ici réputées *neutres*, c'est que les Ecrehous sont abandonnés à l'Angleterre, *en fait*.

Or, comme ce *fait* est la négation du *droit*, nous demandons qu'on veuille bien mettre de côté la question devenue oiseuse des fortifications imaginaires, et nous répondre sur les points suivants :

1° La lettre de M. Jules Ferry est-elle oui ou non conforme à ce qui est imprimé plus haut ?

2° La circulaire de M. l'amiral Peyron est-elle conforme à l'esprit de cette lettre, et en recommande-t-elle énergiquement l'observation ?

3° Ces mesures d'interdictions, avilissantes pour la France, ont-elles été rapportées depuis 1884 ?

4° Sous quel régime sont placés en ce moment les Ecrehous ? Ces îlots sont-ils toujours dans les eaux neutres, ou, en vertu d'une concession

[¹ This document is not among those printed as Annex A 46 to the United Kingdom Memorial, where, however, there is to be found a letter signed by M. Billot, dated the 26th March, 1884.]

[² *I.e.*, M. Jules Ferry, who was born at Saint-Dié.]

faite par M. Ferry, appartiennent-ils *ipso facto*, à l'Angleterre, fermant ainsi à l'industrie de notre pêche un champ exploité depuis des siècles en toute sécurité ?

5° Les pêcheurs de Carteret et de Portbail, qui retournent parfois aux Ecrehous, y retournent-ils en vertu de leur *droit*, ou par une simple tolérance de l'autorité anglaise ?

On, à qui nous adressons ces cinq questions, c'est M. le ministre actuel des affaires étrangères. Et nous serions heureux, au *Figaro*, qu'il ne fût pas embarrassé pour répondre. Nous attendrons curieusement les éclaircissements qu'il voudra bien communiquer aux journaux officieux.

PIERRE GIFFARD.

ANNEX A 175

Prosecution by the Jersey Authorities in the Royal Court of Jersey, 3rd March, 1913, of a Jerseyman, F. Billot, for having Broken and Entered the House of R. R. Lemprière on Blanc Ile, one of the Ecréhos [Ecréhous] Islets, Dependencies of the Jersey Parish of St. Martin, and Stolen Provisions and other Articles

[*Rôles de La Cour Royale de Jersey, 3 Mars, 1913*]

Assise Criminelle

L'An mil neuf cent treize, le troisième jour de Mars.

Mars 3.

Par devant Messire William Henry Venables Vernon Chevalier, Bailli de Jersey, assisté d'Edouard Charles Malet de Carteret, Charles François Dorey, Thomas Payn, Thomas Blampied, Philippe Aubin, Charles Jean Benest, Henry Nicolle Godfray et Herbert Ernest Pinel, Ecuers, Jurés.

Frank Billot sous accusation d'avoir pendant le mois de Janvier 1913 ou vers ce temps-là, pénétré avec effractions dans la maison occupée par Reginald Raoul Lemprière Ec^r située sur le Blanc Ile, un des Ilots des Ecréhos, dépendances de la paroisse de St Martin, et d'y avoir volé les effets suivants, savoir : Une bouteille de vinaigre, deux bouteilles d'huile, un pot contenant du lait "Ideal Milk", deux pots de confitures, un pot de moutarde, une boîte de viande conservée, une boîte de sardines, cinq boîtes de conserves deux morceaux de savon, deux couvertures en laine avec bordure en couleur, deux draps de lit, deux taies d'oreiller, cinq serviettes, des serviettes en papier, quatre ballots de ficelle, quatre lignes de pêche, et trois brosses, le tout appartenant audit Reginald Raoul Lemprière Ec^r et ce au préjudice de ce dernier.

Ou d'avoir ledit Frank Billot aidé, assisté ou participé audit vol, ou d'avoir reçu caché ou recélé lesdits effets volés sachant qu'ils provenaient de vol ¹.

[¹ *provenaient de vol* interlined.]

convenu à l'instance du Procureur Général du Roi ; pour ouïr dépôt de Témoin sur ladite accusation et ensuite le rapport des Hommes de l'Enquête suivant l'Acte de la Cour du 22 Février 1913 et ce en conformité de la Loi sur la Procédure Criminelle— Mons^r Charles Perchard, Reginald Raoul Lemprière Ec^t et Madame la Baronne Clementine Justine Fanny Von Gütligen sa femme, Mess^{rs} Archelaus Trout Sprinate, Charles Alexandre Robins & Charles Maingay Robin Ec^t à la cause à témoigner. Et ouïr record d'Officier.

1913
Mars 3.

Mess^{rs} Edward Martin Payn

Adolphus Frederick Neel

Charles Thomas Pallot

John Guillaume Laurens

Francis John Le Brun

Ph. Bichard

Charles Ph. Syvret

John Le Couteur Arthur

Wilfred Jeune Pallot

Carlyle Le Gallais

Edward George Le Boutillier

Raymond Ernest Drelaud

Thomas James Renouf

Ph. Clarence L' Amy

Ph. Benest.

Frederick George Roy

Thomas Ph. Maret

John George Coutanche

Charles Edgar W^m Ahier

Henry John Mauger Berry

Emile Benest

George Augustus Messervy

Reginald Holt

Thomas George Baudains

appelés à passer comme hommes d'Enquête à la charge ou décharge dudit Frank Billot sur ladite accusation ont pris le serment requis et Monsieur le Bailli a désigné pour leur Chef ledit Mons^r Edward Martin Payn.

L'Acte d'accusation a été lu et l'accusé a énoncé derechef son plaid savoir : Qu'il n'est pas coupable.

Lesdits témoins ont déposé par serment. L'Avocat Général du Roi, a été ouï et l'accusé a été entendu en sa défense par le moyen de son Avocat.

Lesdits hommes se sont retirés pour considérer leur verdict et étant de retour et à un accord ils ont fait leur rapport à la Justice par le moyen de leur dit Chef savoir : Qu'ils croient en leurs consciences que ledit Frank Billot est coupable du crime dont il a été accusé. Partant il en demeure dûment atteint et convaincu.

Ensuite de quoi, après que ledit Frank Billot a été entendu en mitigation par le moyen de son Avocat, la Cour d'opinion uniforme, conformément aux conclusions dudit Sieur Avocat Général, l'a condamné pour punition de son crime à un emprisonnement avec travail forcé de six mois. Et il est ordonné que les effets séquestrés seront rendus à leur propriétaire.

ANNEX A 176

Prosecution by the Jersey Authorities in the Royal Court of Jersey, 8th October, 1921, of two Jerseymen, G. F. Levée, *alias* G. Huelin, and C. H. Miller, for having Stolen a Boat, and for having Broken and Entered a Building belonging to the Jersey Customs Authority at the Ecréhos [Ecréhous] Islets, and Stolen Provisions

[*Rôles de La Cour Royale de Jersey, 8 Octobre, 1921*]

L'An mil neuf cent vingt-et-un, le huitième jour d'Octobre.

Octobre 8.

Par devant Messire William Henry Venables Vernon Chevalier K.B.E., Bailli de l'Ile de Jersey, assisté [de] ¹ Thomas Payn Ecr[sic] O.B.E[sic] et John Edward Le Boutillier Ecuier Jurés.

George Francis Levée *alias* George Huelin et Charles Henry Miller saisi de fait par le Centenier Gallichan de la paroisse de la Trinité et présentés en Justice par le Connétable de ladite paroisse, ont été accusés par l'Avocat Général du Roi, stipulant l'Office de Procureur Général du Roi, d'avoir de concert dans la nuit de Jeudi, le 8 à Vendredi le 9 Septembre 1921 ou vers ce temps-là volé, en coupant[sic] la corde d'attache, le bateau "Dainty" portant le numéro 341, lequel bateau appartenant à M^r Francis Philip Ferey était amarré dans la Baie de Boulay en ladite paroisse, ledit vol fait au préjudice dudit Sieur Ferey. Item, d'avoir de concert lesdits George Francis Levée[sic] *alias* George Huelin et Charles Henry Miller, pendant la nuit de Vendredi le 9 à Samedi le 10 Septembre 1921 ou vers ce temps-là pénétré avec effraction dans certaine maison appartenant à l'Administration des Impôts de cette Ile ², et située aux Ecréhos, et d'y avoir volé une certaine quantité de provisions qui s'y trouvaient appartenant à ladite Administration et ce au préjudice de ladite Administration ³. Ou d'avoir, lesdits George Francis Levée[sic] *alias* George Huelin et Charles Henry Miller, aidé, assisté ou participé auxdits actes criminels.

Les accusés ayant plaidé coupable à ladite accusation, la Cour conformément aux conclusions de l'Avocat Général du Roi, stipulant l'Office de Procureur Général du Roi, a condamné ledit George Francis Levée, *alias* George Huelin, à un emprisonnement avec travail forcé de neuf mois, et ledit Charles Henry Miller, à un emprisonnement avec travail forcé de cinq mois.

[¹ *de* omitted in error.]

[² *I.e.*, Jersey.]

[³ *Administration* followed by *et ce au préjudice de ladite Administration*, repeated in error.]

ANNEX A 177

Affidavit of A. E. Mourant, M.A., D. Phil., D.M., F.G.S., 17th August, 1953, testifying that Stone from the Ecréhous Islets was used in 17th and 18th Century Buildings in the Parishes of St. Martin and Trinity, Jersey

I, Arthur Ernest Mourant, M.A., D.Phil., D.M., F.G.S., of the Lister Institute, Chelsea Bridge Road, London, S.W. 1, and of Maison de Haut, Longueville, in the Parish of St. Saviour, Jersey, make oath and say as follows :—

1. I hold the degree of Doctor of Philosophy of the University of Oxford. This degree was awarded for a Thesis on "The Geology of the Channel Islands". I was for two years engaged as a geologist on the Geological Survey of Great Britain. I have examined personally and in considerable detail the rocks of all the main islands and of many of the smaller islands and reefs of the Channel Islands. I have also studied the rocks of the coasts of the Cotentin Peninsula and northern Brittany. I am thus familiar with the appearance of most of the types of granite and gneiss found in these three areas and as a result of my knowledge and experience I am able to identify the source of nearly all of the building materials used in Jersey.

2. The Ecréhous reef consists of pale coloured granite-gneiss containing white mica (a mineral very rare in Jersey rocks). It is similar to the rock forming the Paternosters and the Dirouilles. I have not myself examined the Dirouilles, but I base my observations regarding this reef on the report of Ch. Noury, S.J., on the "Roches des Ecréhous, des Dirouilles et des Pierres de Lecq ou Pater Noster", published in the 17th Bulletin (1892) of the Société Jersiaise.

To the best of my knowledge, there are no rocks in the Cotentin, in the northern coast of Brittany or in any other part of the Channel Islands which cannot be distinguished from those of the Ecréhous, the Paternosters and the Dirouilles.

3. Stones consisting of material indistinguishable from that of the Ecréhous are found in numerous buildings in the parishes of St. Martin and Trinity, Jersey, but I have not found any such material in any buildings in other parts of Jersey.

Three houses in the district of La Palloterie in the Parish of St. Martin, for example, contain stones of this Ecréhous type of gneiss. One of these three houses has a gate post dated 1623, and contains large blocks of the material in question.

The second is a very fine farm building with the date stone 1731 and, in this building, most of the smaller stones forming the main part of the South wall (the wall with the date stone) are of Ecréhous type gneiss.

Attached to the south-west of this house is an outbuilding of similar composition.

The southern wall of the third house, which bears the date 1715, also contains much Ecréhous type gneiss.

Stones of this Ecréhous type of gneiss are also found in the pier of Rozel Harbour, in the Parish of St. Martin, and in most of the buildings with exposed stonework surrounding the Harbour, including Whipple Cottage, which is said to be the oldest building in Rozel.

4. In my opinion, most and probably all of the stones of Ecréhous type gneiss in Jersey buildings came from the Ecréhous reef itself. The Patternosters gneiss is slightly different in being more greyish and less foliated. The gneiss of the Dirouilles (described by Noury, but which I have not examined) may well be indistinguishable from that of the Ecréhous, but it is unlikely that any large amount of stone was quarried from these relatively small rock heads, whereas on the Ecréhous the quantities of stone available above high tide level are great and above low tide level almost unlimited.

The attached photograph, marked "A"¹, taken by myself, shews a typical quarryman's cut about two feet long and two inches deep, which is to be found near the summit of the high rock about 50 yards south of the southern end of Maître Ile, Ecréhous.

5. My personal findings in this matter accord with the following paragraph taken from the report of Ch. Noury to which I have referred above :—

"A Rozel beaucoup de murs des maisons ou des clôtures contiennent avec le conglomerat local, le gneiss granulitique. Sa couleur plus claire et ses petites stries parallèles, dues à la disparition du mica, le font aisément distinguer. On en a porté jusque sur la hauteur près de l'ancien moulin de Rozel, comme on peut le constater dans la muraille bâtie à l'extrémité de la vallée. Il n'y a pas que des blocs amenés par les courants, et il est évident que les bateaux en ont apporté du large à une époque où, les chemins de Jersey étant moins praticables qu'aujourd'hui, on ne se procurait pas aussi aisément, dans toute l'Ile, les pierres des belles carrières de la Moye, de la Perruque et surtout du Mont-Mado. La tradition du reste sur cette provenance du gneiss se conserve parmi les habitants de Rozel".

All of which I declare to be true to the best of my knowledge, information and belief.

[Signed] A. E. MOURANT.

Sworn by the above-named Arthur Ernest Mourant, in the Island of Jersey, this 17th day of August, One thousand nine hundred and fifty-three, before me :

[Signed] HEDLEY G. LUCE
Notary Public
Jersey

[¹ Not reproduced.]