Article III. continued right of United States to fish on Banks of New-foundland, in Gulf of St. Lawrence, &c., also to fish on such part of coast of Newfoundland as British fishermen shall use (but not to dry or cure fish on the island); also to fish on all the coasts, bays and creeks of the British dominions in America and to dry and cure fish in any of the unsettled bays, harbours and creeks of Nova Scotia, Magdalen Islands and Labrador, but not after settlement.

Article VIII. provided for the free navigation by British subjects of the Mississippi, from its source to the ocean. [1]

67. *1794. Jay's Treaty, London.*—Treaty of amity, commerce and navigation between Great Britain and United States. (Marten's, vol. 5, p. 644.)

Article III. runs as follows :—

"It is agreed that it shall at all times be free to His Majesty's subjects, and also to the Indians dwelling on either side of the said boundary line, freely to pass and repass by land or inland navigation, into the respective territories and countries of the two parties, on the continent of America (the country within the limits of the Hudson's Bay Company only accepted), and to navigate all the lakes, rivers and waters thereof, and freely to carry on trade and commerce with each other. But it is understood that this article does not extend to the admission of vessels of the United States in the seaports, harbours, bays or creeks of His Majesty's said territories ; nor into such parts of the rivers in His Majesty's said territories as are between the mouth thereof and the highest port of entry from the sea, except in small vessels trading *bona fide* between Montreal and Quebec, under such regulations as shall be established to prevent the possibility of any frauds in this respect. Nor to the admission of British vessels from the sea into the rivers of the United States beyond the highest ports of entry for foreign vessels from the sea. The River Mississippi [2] shall, however, according to the treaty of peace, be entirely open to both parties ; and it is further agreed, that all the ports and places on the eastern side, to whichsoever of the parties belonging, may freely be resorted to and used by both parties, in as ample a manner as any of the Atlantic ports or places of the United States, or any of the ports or places of His Majesty in Great Britain."

"All goods and merchandise whose importation into His Majesty's said territories in America shall not be entirely prohibited, may freely, for the

---

[1] A note (page 1237) to the "Treaties and Conventions" published by the United States Secretary of State says :

"After the conclusion of the Treaty of Ghent it was claimed by Great Britain that the rights which the Americans had enjoyed in the British fisheries before the war, under the Treaty of 1783, had been lost through the abrogation of the treaty in consequence of the war. John Quincy Adams, who was the United States Minister at London, at that time, contended that the Treaty of 1783 was not one of those which by the common understanding and usage of civilized nations is or can be considered as annulled by a subsequent war between the same parties." Lord Bathurst replied, " To a position of this novel nature Great Britain cannot accede. She knows of no exception to the rule that all treaties are put an end to by a subsequent war between the same parties." During the negotiations which followed Great Britain never abandoned that position, and the United States may be said to have acquiesced in it. By it they secured the exclusion of Great Britain from the Mississippi, the free and open navigation of which was granted to the subjects of Great Britain forever by the treaty which Lord Bathurst set aside. The political department of the Government of the United States assumed the same position during the Mexican war. President Polk, in his annual message to Congress in December, 1847, said : " A state of war abrogates treaties previously existing between belligerents, and a treaty of peace puts an end to all claims for indemnity."

[2] See note to Treaty of Paris, 1783.