and all that has been done in connection with these and many similar questions in our hundred years of constitutional life. The average citizen will find in the work some very surprising commentaries on the assumed certainty of our constitution at law.

WM. A. DUNNING.

The Fishery Question: its Origin, History and Present Situation. With map and bibliography. By CHARLES ISHAM. New York, G. P. Putnam's Sons, 1887. — 89 pp.

The Fisheries Dispute: A Suggestion for its Adjustment. By Hon. JOHN JAY, late Minister to Vienna. Second edition. New York, Dodd, Mead & Company, 1887. — 52 pp.

Mr. Isham's *Fishery Question* forms number 41 of Messrs. Putnams' *Questions of the Day* series; and according to the preface, the greater part of the work was done for the United States history seminar in the graduate department of Harvard university.

The author begins with the earliest historical mention of French, Portuguese, Spanish and English fishermen visiting the coasts of North America. Passing over the Spanish and Portuguese expeditions as unimportant, he relates in a rather confusing manner the explorations and settlements of the French and English and the hostilities of the rival colonists down to the treaty of Paris (1763), when France ceded her Canadian possessions to England.

The importance of the fisheries became evident at the end of the Revolutionary war in the negotiations for a definite treaty of peace between the United States and Great Britain. Although, according to Mr. Isham, the American commissioners did not make the concession of the ancient rights of American fishermen an *ultimatum*, yet they insisted so strenuously upon them that the English commissioners felt compelled to yield the point. (Article iii of the treaty of 1783.) After the war of 1812, the English government asserted that by that war the fisheries article of the treaty of 1783 was *ipso facto* abrogated. The dispute upon this point was terminated by the treaty of 1818, which definitely admitted our ancient fisheries in certain localities as before, while we renounced our rights to fish within three miles of the shore in other localities. A new dispute arose in 1843 over the right of our vessels to pass through the strait of Canso. After referring to this discussion and the seizure of the *Washington* the author passes to the treaty of reciprocity of 1854. By this treaty Canadian natural products were admitted into the United States free of duty, and fishing rights analogous to those of 1783 were granted to the citizens of the United

States. This treaty, which was far more advantageous to Canada than to the United States, terminated in 1866. The next year the provinces of Canada were united into the Dominion of Canada, and the fisheries were made a department of state under a cabinet minister. In 1868 and in 1870, under the guise of interpreting the treaty of 1818, the Dominion passed measures oppressive to our fishermen, and boarded over 400 vessels for alleged transgression of the three mile limit, 15 of which were condemned. The United States offered $1,000,000 for the inshore fisheries simply to get rid of these annoyances. Negotiations ensued, and, as Mr. Isham says, on page 61: "Finally it was decided to admit the United States to the fishery in consideration of the remission of the duty on Canadian fish and fish oil, and the appointment of arbitrators to assess the value, if any, of the British concession in excess of the American, which included a free fishery on the United States coasts, north of the thirty-ninth degree of north latitude." The commission fixed the award at $5,500,000, — a sum which was generally regarded as exorbitant. This award was paid by the United States, and the new treaty went into effect in 1873, to last ten years, and then to be terminable by either party on two years' notice. This treaty, like the one of 1854, was far more beneficial to Canada than to the United States, and it was promptly terminated on notice, July 1, 1885. This happened in the midst of the fishing season, and a temporary arrangement was made for the rest of the year. The season of 1886 opened with both governments resting on the treaty of 1818; and again the Dominion passed extremely oppressive regulations, under which several fishing vessels were seized. A few were fined, and one was condemned. In every case Secretary Bayard duly protested and the whole subject is still under diplomatic discussion.

After this *résumé* of the history of the question, Mr. Isham discusses the retaliatory measures of Congress, by which the President is empowered to deny to vessels of the British dominions of North America entrance into the waters of the United States. The author favors an international commission to adjust the whole matter.

In the so-called "bibliography" of the subject, at the end of the book, the author cites upwards of one hundred different authorities. It would be a mistake to suppose that any considerable number of these books bear directly on the subject. What is given is a tolerably full bibliography of Canadian history, and many of the books referred to are cited to substantiate indisputable and well-known facts; and as volume and page are usually omitted, the entire apparatus is almost useless. For example, on page 52, Mr. Isham cites an authority for the statement, "The strait of Canso separates Nova Scotia from Cape Breton." Should the reader desire to consult this authority (instead of examining a map),

he could not readily do so, as no page is given, but simply the citation, "Martin's *Nova Scotia and Cape Breton*."

Mr. Jay's pamphlet on the *The Fisheries Dispute* is written in the form of a letter to Senator Evarts. After emphasizing the importance of speedily settling the dispute, the author discusses retaliation as a remedy and pronounces it incomplete. He then points out that British misconstruction of the treaty of 1818 is at the bottom of the difficulty, and discusses negotiation, as a remedy proposed by Lord Roseberry, and arbitration, the proposition of the official organ of the Dominion of Canada. Mr. Jay thinks either would be preferable to retaliation; "but without an admitted basis of principle and right distinctly formulated, as were the three rules laid down for the Geneva arbitration, and to which Great Britain wisely gave her adhesion, it would seem idle to expect a satisfactory measure of justice either from negotiation or arbitration. Our recent negotiations have only served to make more clear the fact that the two governments look at the rights of our fishermen from different standpoints."

Mr. Jay's "suggestion" is that the United States abrogate the treaty of 1818. He considers that the conduct of the local Canadian authorities amounts to a violation of that treaty, and that its violation by the other party justifies us in abrogating it. He cites by way of precedent the act of Congress of July 1, 1798, annulling our treaties of 1778 with France on the ground that France had repeatedly violated the same. Having abrogated the convention of 1818, we shall rest, Mr. Jay holds, on the rights and privileges defined in the treaty of 1783.

To substantiate this position, he reviews the historical and diplomatic development of the whole question, touching on the French and English wars and on the treaties of Breda (1667), St. Germain (1683), London (1686), Ryswick (1697), Utrecht (1713), Aix-la-Chapelle (1748), and Paris (1763), when all Canada was formally ceded to Great Britain, France reserving only the right of fishing and drying on the coasts of Newfoundland. Referring to the interest of the United States in the fisheries after the Revolutionary war, Mr. Jay says, on page 24: "The historic and memorable part borne by the American colonists in securing for Great Britain the Newfoundland fisheries, added to their importance to the colonies themselves, naturally led to a just appreciation of their value." He then shows from the Secret Journal of Congress that the old Congress took steps to secure these common rights of the states to the fisheries in the treaty of peace of 1783; and he also shows from recent publications of confidential correspondence of the Count de Vergennes, and the life of Lord Shelburne, that Great Britain, France and Spain were in opposition to the American claims to the fisheries. He then gives a very lucid and interesting account of

the negotiations of the American and British commissioners, in which he plainly shows that the Americans practically made the fishery rights an *ultimatum* and that the Englishmen so understood it. Consequently the third article of the treaty of peace of 1783 acknowledges the ancient fishery rights of the American states. This acknowledgment, according to our author, was no mere grant of a franchise, but a division or partition of empire. If this be true, it cannot be maintained that the war of 1812 abrogated *ipso facto* our fishery rights, nor was this contention of the British government ever admitted by the United States. The question was laid at rest by the treaty of 1818, upon which our fishery rights now rest; but if we now annul the treaty of 1818, our position and our rights are the same as before its conclusion. If the treaty of 1783 was not abrogated by the war of 1812, — and Mr. Jay makes a strong case for the opposite theory, — then the abrogation of the treaty of 1818 will cause the treaty of 1783 to revive in precisely the same manner as the treaty of 1818 revived after the expiration of the Reciprocity treaty of 1854 in 1866, and of the treaty of 1871 in 1885.

The pamphlet is worthy of the author, and sustains his reputation as a diplomat and a publicist.

THOMAS D. RAMBAUT.

Elements of Right and of the Law. By GEORGE H. SMITH. Second Edition. Chicago, Callaghan and Co., 1887. — 12mo, 398 pp.

The Science of Law, according to the American Theory of Government. By E. L. CAMPBELL, counsellor-at-law. Trenton, 1886. — 8vo, 113 pp.

These two works — Mr. Smith's book and Mr. Campbell's pamphlet — claim notice, less because of their value as contributions to juristic science, than because of their character and tendency. It is encouraging to find that there are lawyers in the United States who think it worth while to examine the fundamental principles of legal philosophy; and it is an interesting fact that both authors represent an energetic reaction against the theories of the dominant English school, and a reassertion of the "natural right" doctrine.

Mr. Smith divides his treatise into three parts, or books. Book i treats of the "Elements of Right"; book ii, of the "Elements of Law"; and book iii is entitled "Historical and Critical Review of the several Theories of Jurisprudence," — but is, in fact, a review of certain theories only, which appear to the author of prime importance. The first and second of these divisions, as their titles imply, present the author's system of jurisprudence, or at least the outline of such a system. This portion of the book contains much good reasoning, and many keen