

for the decision of the arbitrator is the interpretation of a Treaty, which interpretation is submitted for his decision by this same Treaty of Washington. And we learn from the protocols of the Joint High Commissioners that in the negotiations which resulted in the Arbitration at Berlin two points were made which have an important bearing on the present question.

1st. On the 15th of March, it appears that the American Commissioners said that, "in view of the position taken by the British Commissioners it appeared that the Treaty of June 15, 1846, might have been made under a mutual misunderstanding, and would not have been made had each party understood at that time the construction which the other party puts upon the language in dispute; they therefore proposed to abrogate the whole of that part of the Treaty." The British Commissioners replied that the proposal to abrogate a Treaty was one of a serious character, and that they had no instructions which would enable them to entertain it; and at the Conference on the 20th of March, the British Commissioners declined the proposal. It may therefore be assumed that the British Government does not think that the difference between the two Governments in a question similar to this should be met by an abrogation of that part of the Treaty which is in dispute.

2nd. It also appears that on the 19th of April the British High Commissioners stated that they were "convinced of the justice of their view of the Treaty of 1846, and that they could not abandon it except after a fair decision by an impartial arbitrator."