

Mr. THOMSON—I would like to know whether anything more is to be said on the subject by our learned friends opposite.

Mr. FOSTER—We understand that, as is the case in connection with every other motion, the party moving has the right, in this instance, to open and close the argument.

Mr. THOMSON—I make this observation simply because in the course of the American Agent's remarks, he said that Mr. Trescott had given particular attention to the treaties, and hence, I assumed that he was about to be followed by Mr. Trescott. It would be obviously unjust to the counsel acting on behalf of Her Majesty's Government if they should now be called upon to answer the argument that has been made without hearing all that is really to be said on the other side. I understand that the other side have an undoubted right to reply to anything which we may say, but if Mr. Trescott is afterwards to start a new argument, as I rather infer from Mr. Foster's remarks he will do, this might put another phase on the matter.

Mr. TRESCOTT:—As I understand the position taken by Mr. Foster, it is very plain, and stated with all the fullness and precision necessary. He takes the ground that the commercial relations between Great Britain and the United States stand either on ordinary international comity or upon Treaty regulations. If upon the latter, then they rest upon the Treaty of 1794, the third permanent article of which did determine the commercial relations which were to exist between the United States and the British North American Colonies; because in 1815 the Commercial Convention, then adopted and extended in 1815 and 1827, renewed that article, even if it should be contended, as I think it never has been before by the British Government, that the permanent articles of the Treaty of 1794 were abrogated by the war of 1812. The negotiators of the Convention of 1815 took the third article of the Treaty of 1794 as a basis, but not being able to agree as to certain modifications, decided to omit the article and to declare that—"The intercourse between the United States and His Britannic Majesty's possessions in the West Indies and on the Continent of North America shall not be affected by any of the provisions of this Article [*i. e.*, the Article of the Convention of 1815 in reference to the commercial relations between the United States and the possessions of His Britannic Majesty in Europe], *but each party shall remain in the complete possession of its rights with respect to such intercourse*," those rights being, as we contend, the old rights established by the Treaty of 1815. But the question has not a very important bearing upon our present contention, and has been suggested simply in reply to what we understand is to be one of the positions on the other side, *viz.*, that if we deny that commercial privileges were granted by the Treaty of 1871, and are not therefore proper subjects of compensation in this award, then we have no right whatever to these commercial privileges; and I can say in reply to the very proper inquiry of my friend Mr. Thomson, that in any remarks I may make, that is the extent of the position which will be taken, but I do not expect to refer to the point at all.

Mr. THOMSON:—In reference to the time at which this motion should be heard, in view of the arguments which the learned agent of the United States has used, I shall not on behalf of Her Majesty's Government call upon this Commission to say this is an improper time for that purpose. We have no objection that this application on the part of the counsel of the United States Government should be heard at length, and so they may be enabled to understand at all times, on all reasonable occasions, the exact ground upon which we stand. There is nothing unreasonable in the view which has been put forward by them in this respect. They are entitled to know whether the Commission is going to take the matter, named in their notice of motion, into consideration or not. We therefore have no objection that your Excellency and your Honors should determine this point at once, and we do not complain of the time at which the motion is made. I shall now come to the substance of the motion. The agent of the United States has travelled out of the record and has referred to light houses and other matters not contained in this motion. He also alluded to the injuries which were committed on our coasts by the American fishermen and he says that we have put them all forward in our case as subjects for compensation. I am not here now to consider the question whether we have done so or not. I at present only intend to discuss whether the matters included in this motion are matters coming within the jurisdiction of this Court or not. I read the motion, it states:—

"The counsel and agent of the United States ask the Honorable Commissioners to rule declaring that it is not competent for this Commission to award any compensation for commercial intercourse between the two countries, and that the advantages resulting from the practice of purchasing bait, *i. e.*, supplies, etc., and from being allowed to trans-ship cargoes in British waters do not constitute any foundation for an award of compensation, and shall be wholly excluded from the consideration of this Tribunal."

The tribunal will see that these are the words inviting discussion; and these I am here to answer, and nothing else. Satisfactory answers could be given to the other matters to which Mr. Foster has called attention, if this were the proper time to give them. As to the lighthouses, for instance, it is quite obvious that these make the value of the fisheries themselves very much greater to the Americans than they would be otherwise; but I say again, that I am not going to discuss that question now. If it should arise hereafter, I shall do so. We shall undoubtedly be obliged to discuss it eventually at the end of the case, but the question now is, whether it falls within the jurisdiction of this tribunal to award to Great Britain any pecuniary compensation for the rights which the Americans have undoubtedly exercised since the Washington Treaty was negotiated, of coming into our waters and instead of taking bait with their own lines and nets as by the terms of that Treaty they have a right to do, purchasing it from our citizens, of buying ice here as well, and of getting supplies and trans-shipping their cargoes. It is said in the Reply of Her Majesty, page 8th, I think, that these privileges are clearly incidental; that looking at the whole scope and meaning of the Treaty, it is clear that these are incidental privileges for which the American Government can afford to pay. The words of our Reply read by Mr. Foster are these:—

"By the terms of Article 18 of the Treaty of Washington, United States fishermen were granted permission to land upon the said coasts and shores and islands, and also upon the Magdalen Islands for the purpose of drying their nets and curing their fish. The words for *no other purpose whatever* are studiously omitted by the framers of the last-named Treaty, and the privilege *in common* with the subjects of Her Britannic Majesty to take fish and to land for fishing purposes, clearly includes the liberty to purchase bait and supplies, trans-ship cargoes, &c., for which Her Majesty's Government contend it has a right to claim compensation.

"It is clear that these privileges were not enjoyed under the Convention of 1818, and it is equally evident that they are enjoyed under the Treaty of Washington."

Well, that is the argument which was put forward by Her Majesty's Government, but whether that argument commends itself to the judgment of this Tribunal or not, is not for me to say, though to my mind it is a very strong and very forcible one. Referring to the wording of the Treaty itself, and to the convention of 1818, the first section of the latter states:—

Whereas differences have arisen respecting the liberty claimed by the United States, for the inhabitants thereof, to take, dry and cure fish, on certain coasts, bays, harbors and creeks, of His Britannic Majesty's dominions in America, it is agreed between the high contracting parties, that the inhabitants of the said United States shall have for ever, in common with the subjects of His Britannic Majesty, the liberty to take fish of every kind on that part of the southern coast of Newfoundland