

III.

At the Conference held on the 5th of September, 1877.

MR. FOSTER—I will read the motion that was presented on the 1st inst.:—"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, ice, supplies, &c., and from being allowed to trans-ship cargoes in British waters, do not constitute a foundation for award of compensation and shall be wholly excluded from the consideration of this tribunal."

The object, may it please the Commission, of this motion is to obtain if it be possible and place on record a decision declaring the limits of your jurisdiction, and thus to eliminate from the investigation matters which we believe to be immaterial and beyond the scope of the powers conferred upon you. The 22nd Article of the Treaty of Washington is the Charter under which we are acting, and this provides that

"Inasmuch as it is asserted by the Government of Her Britannic Majesty that the privileges accorded to the citizens of the United States under Article XVIII of this Treaty are of greater value than those accorded by Articles XIX and XXI of this Treaty to the subjects of her Britannic Majesty, and this assertion is not admitted by the Government of the United States, it is further agreed that Commissioners shall be appointed to determine, having regard to the privileges accorded by the United States to the subjects of her Britannic Majesty, as stated in Articles XIX and XXI of this Treaty, the amount of any compensation, which, in their opinion, ought to be paid by the Government of the United States to the Government of Her Britannic Majesty in return for the privileges accorded to the citizens of the United States under Article XVIII of this Treaty."

The subject of our investigation then is, the amount of any compensation which ought to be paid by the United States to Her Majesty in return for the privileges accorded to the citizens of the United States, under article 18 of the treaty, and that is all. The other articles referred to in this section, articles 19 and 21, are set-offs or equivalents, received by her Majesty's subjects for the concession made by Her Majesty's Government to United States citizens under article 18. When we turn to article 18 we find that the high contracting parties agreed as follows;—

"It is agreed by the High Contracting parties that, in addition to the liberty secured to the United States fishermen by the Convention between Great Britain and the United States, signed at London on the 20th day of October, 1818, of taking, curing and drying fish on certain coasts of the British North American Colonies therein defined, the inhabitants of the United States shall have, in common with the subjects of her Britannic Majesty, the liberty for the term of years mentioned in Article XXXIII, of this Treaty, to take fish of every kind, except shell-fish, on the sea-coasts and shores, and in the bays, harbors and creeks of the Provinces of Quebec, Nova Scotia and New Brunswick, and the colony of Prince Edward Island, and of the several Islands thereunto adjacent, without being restricted to any distance from the shore, with 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; provided that, in so doing, they do not interfere with the rights of private property, or with British fishermen, in the peaceable use of any part of the said coasts in their occupancy for the said purpose. It is understood that the above mentioned liberty applies solely to the sea fishery, and that the salmon and shad fisheries, and all other fisheries in rivers and the mouths of rivers are hereby reserved exclusively for British fishermen."

The concession made to the citizens of the United States is the right to fish inshore without being excluded three miles from the shore, as they were excluded by the renunciation contained in the Treaty of 1818. It gives the further right to land on the coasts and shores and Islands for the purpose of drying nets and curing fish, provided that in so doing they do not interfere with the rights of private property for British fishermen, having the peaceable use of any part of the said coasts in occupancy for the same purpose. The liberty of inshore fishing and that of landing on uninhabited and desert coasts, where no private rights or rights of private property will be interfered with, for the two purposes of drying their nets and curing their fish are all the concessions which article 18 contains. Now, as we understand it, the jurisdiction of this commission extends to appraise these two privileges and nothing more, but the British claim seeks compensation for various incidental advantages, and a variety of other considerations. The inhabitants of the United States traffic with the colonists. They buy ice of them; they buy of them fish for bait, and they buy of them other supplies. They have commercial intercourse with them, they sell to them small codfish better adapted for the British markets than those of the United States. They exchange flour, kerosene, and other necessities of life with the British fishermen, receiving in return bait and fish. For all these things compensation is demanded at your hands.

In addition to that, every description of damage that has been done or which may be done hereafter by our fishermen, is made the foundation of claims for compensation. The Treaty speaks of compensation to be awarded in return for privileges accorded to the citizens of the United States, while the case made and the evidence offered claims damages as well.

Have any of our fishing vessels lee-bowed—I believe that is the proper phrase—British fishing boats in former years, or are they likely to do it again? Are the fishing grounds hurt by gurry thrown into the water? Have families been alarmed by American fishermen on shore? Every description of injury and outrage, intentional or unintentional, great or small, going back to a period as far as human memory extends, is laid before you as ground for damages. The colonial governments have erected light-houses on their coasts at dangerous points, and the perils of navigation are thereby diminished; so they present an estimate of the cost and a list of the number of the light-houses, and gravely ask you to take these things into consideration in making up your award. Whatever has to do with fishing, or fishermen, or fishing vessels, directly or indirectly, nearly or remotely, is brought before you and made the foundation of a claim. The British case and its evidence seems to me to be a drag-net, more extensive than the purse seine of which we have heard so much, gathering in everything that can be thought of and laying it before you, if by any means; consciously or unconsciously, the amount of such award as you shall render may thereby be affected. Now it seems to us, under these circumstances, to be a plain duty to ascertain if we can, and to have recorded exactly the grounds of your jurisdiction as in your judgment they exist. We understand, as I have said, that you are simply to determine the value of the inshore fisheries, and the value of the right of landing to cure fish and dry nets where this can be done without interfering with private property or British fishermen drying nets. From the beginning we have protested against any more extensive claim being made—this protest will be found distinctly and unequivocally made on page 8th of the "Answer," where it is said:—

"Suffice it now to observe that the claim of Great Britain to be compensated for allowing United States fishermen to buy bait and other supplies of British subjects, has no semblance of foundation in the Treaty by which no near right of traffic is conceded."