

Behring's Sea Seal Fisheries.

(London Times, August 22, 1890.)

A Blue-book (C. 6,131) of over 500 pages was issued on Friday last containing correspondence on the Behring's Sea fisheries. The first document is an intimation, dated September 1, 1886, from the Colonial Office to the Foreign respecting the alleged seizure of three British Columbian seal schooners by the United States cruiser *Corwin*. The correspondence arising out of this and similar incidents extends without intermission over the intervening period to the present month.

The Times gives extracts from some of the more important later despatches. The following from Mr. Blaine, relates to the action of the Revenue cutter *Rush*—

Department of State,
Washington, Jan. 22.

Sir,—Several weeks have elapsed since I had the honor to receive through the hands of Mr. Edwards copies of two despatches from Lord Salisbury, complaining of the course of the United States Revenue cutter *Rush* in intercepting Canadian vessels sailing under British flag and engaged in taking fur seals in the waters of the Behring's Sea.

Subjects which could not be postponed have engaged the attention of this department, and have rendered it impossible to give a formal answer to Lord Salisbury until the present time.

In the opinion of the President, the Canadian vessels, arrested and detained in the Behring's Sea, were engaged in a pursuit that is in itself *contra bonos mores*—a pursuit which of necessity involves a serious and permanent injury to the rights of the Government and people of the United States. To establish this ground it is not necessary to argue the question of the extent and nature of the sovereignty of this Government over the waters of the Behring Sea; it is not necessary to explain, certainly not define, the powers and privileges ceded by his Imperial Majesty the Emperor of Russia in the treaty by which the Alaskan territory was transferred to the United States. The weighty considerations growing out of the acquisition of that territory, with all the rights on land and sea inseparably connected therewith, may safely be left out of view while the grounds are set forth upon which this Government rests its justification for the action complained of by her Majesty's Government.

It cannot be unknown to Her Majesty's Government that one of the most valuable sources of revenue from the Alaskan possessions is the fur-seal fisheries of the Behring's Sea. These fisheries had been exclusively controlled by the Government of Russia, without interference and without question, from their original discovery until the cession of Alaska to the United States in 1867. From 1867 to 1886 the possession, in which Russia had been undisturbed, was enjoyed by this Government also. There was no interruption and no intrusion from any source. Vessels from other nations passing from time to time through Behring Sea to the Arctic Ocean in pursuit of whales had always abstained from taking part in the capture of seals.

This uniform avoidance of all attempts to take fur seal in those waters had been a constant recognition of the right held and exercised first by Russia, and subsequently by this Government. It has also been the recognition of a fact now held beyond denial or doubt that the taking of seals in the open sea rapidly leads to their extinction.

This is not only the well-known opinion of experts, both British and American, based upon prolonged observation and investigation, but the fact had also been demonstrated in a wide sense by the well-nigh total destruction of all seal fisheries except the one in the Behring's Sea which the Government of the United States is now striving to preserve, not altogether for the use of the American people, but for the use of the world at large.

After explaining the manner in which the United States Government had endeavored to improve the seal fisheries, Mr. Blaine continues:

This, in brief, was the condition of the Alaska fur-seal fisheries down to the year 1886. The precedents, customs, and rights had been established and enjoyed either by Russia or the United States for nearly a century. The two nations were the only powers that owned a foot of land on the continents that bordered, or on the islands included within, the Behring's waters where the seals resort to breed. Into this peaceful and secluded field of labour, whose benefits were so equitably shared by the native Aleuts of the Pribiloff Islands, by the United States, and by

England, certain Canadian vessels in 1886 asserted their right to enter and, by their ruthless course, to destroy also the resulting industries which are so valuable. The Government of the United States at once proceeded to check this movement, which, unchecked, was sure to do great and irreparable harm.

It was cause of unfeigned surprise to the United States that Her Majesty's Government should immediately interfere to defend and encourage (surely to encourage by defending) the course of the Canadians in disturbing an industry which had been carefully developed for more than 99 years under the flags of Russia and the United States, developed in such a manner as not to interfere with the public rights or the private industries of any other people or any other person.

Whence did the ships of Canada derive the right to do in 1886 that which they had refrained from doing for more than 90 years? Upon what grounds did Her Majesty's Government defend in the year 1886 a course of conduct in the Behring's Sea which she had carefully avoided ever since the discovery of that sea? By what reasoning did Her Majesty's Government conclude that an act may be committed with impunity against the rights of the United States which had never been attempted against the same rights when held by the Russian Empire?

So great has been the injury to the fisheries, at the irregular and destructive slaughter of seals in the open waters of the Behring's Sea by Canadian vessels, that whereas the Government has allowed 100,000 to be taken annually for a series of years, it is now compelled to reduce the number to 60,000. If four years of this violation of natural law and neighbour's rights has reduced the annual slaughter of seal by 40 per cent., it is easy to see how short a period will be required to work the total destruction of the fisheries.

The ground upon which Her Majesty's Government justifies, or at least defends, the course of the Canadian vessels rests upon the fact that they are committing their acts of destruction on the high seas—viz., more than three marine miles from the shore line.

After endeavouring to establish a parallel in the hypothetical case of interference with the fisheries in Ceylon or Newfoundland, Mr. Blaine continues:

Why are not the two cases parallel? The Canadian vessels are engaged in the taking of fur-seal in a manner that destroys the power of reproduction and insures the extermination of the species. In exterminating the species an article useful to mankind is totally destroyed, in order that temporary and immoral gain may be acquired by a few persons. By the employment of dynamite on the banks it is not probable that the total destruction of fish could be accomplished, but a serious diminution of a valuable food for man might assuredly result. Does Her Majesty's Government seriously maintain that the law of nations is powerless to prevent such violation of the common rights of man? Are the supporters of justice in all nations to be declared incompetent to prevent wrongs so odious and so destructive?

In conclusion Mr. Blaine remarks: In this contention the Government of the United States has no occasion and no desire to withdraw or modify the positions which it has at any time maintained against the claims of the Imperial Government of Russia. The United States will not withhold from any nation the privileges which it demanded for itself when Alaska was part of the Russian Empire. Nor is the Government of the United States disposed to exercise in those possessions any less power or authority than it was willing to concede to the Imperial Government of Russia when its sovereignty extended over them. The President is persuaded that all friendly nations will concede to the United States the same rights and privileges on the lands and in the waters of Alaska which the same friendly nations always conceded to the Empire of Russia.

Lord Salisbury's reply to the foregoing is dated May 22. After a recital of the leading facts of the case and of the arguments presented, he says:

With regard to the first of these arguments—namely, that the seizure of the Canadian vessels in the Behring's Sea was justified by the fact that they were "engaged in a pursuit that is in itself *contra bonos mores*—a pursuit which of necessity involves a serious and permanent injury to the rights of the Government and the people of the United States," it is obvious that two questions are involved—first, whether the pursuit and killing of fur-seals in certain parts of the open sea is, from the point of view of international morality, an offence *contra bonos mores*;

and, secondly, whether, if such be the case, this fact justifies the seizure on the high seas and subsequent confiscation in time of peace of the private vessels of a friendly nation.

It is an axiom of international maritime law that such action is only admissible in the case of piracy or in pursuance of special international agreement. This principle has been universally admitted by jurists, and was very distinctly laid down by President Tyler in his Special Message to Congress, dated the 27th February, 1843, when, after acknowledging the right to detain and search a vessel on suspicion of piracy, he goes on to say, "With this single exception no nation has, in time of peace, any authority to detain the ships of another upon the high seas, on any pretext whatever, outside the territorial jurisdiction."

Now, the pursuit of seals in the open sea, under whatever circumstances, has never hitherto been considered as piracy by any civilized State. Nor, even if the United States had gone so far as to make the killing of fur-seals piracy by their municipal law, would this have justified them in punishing offences against such law committed by any persons other than their own citizens outside the territorial jurisdiction of the United States.

Lord Salisbury then refers to the question of the Russian monopoly:

First, as to the alleged exclusive monopoly of Russia. After Russia, at the instance of the Russian American Fur Company, claimed in 1821 the pursuits of commerce, whaling, and fishing from Behring's Straits to the 51st degree of north latitude, and not only prohibited all foreign vessels from landing on the coasts and islands of the above waters, but also prevented them from approaching within 100 miles thereof, Mr. Quincy Adams wrote as follows to the United States Minister in Russia:

"The United States can admit no part of these claims; their right of navigation and fishing is perfect, and has been in constant exercise from the earliest times throughout the whole extent of the Southern Ocean, subject only to the ordinary exceptions and exclusions of the territorial jurisdictions."

That the right of fishing thus asserted included the right of killing fur-bearing animals is shown by the case of the United States brig *Loriot*. That vessel proceeded to the waters over which Russia claimed exclusive jurisdiction for the purpose of hunting the sea-otter, the killing of which is now prohibited by the United States statutes applicable to the fur-seal, and was forced to abandon her voyage and leave the waters in question by an armed vessel of the Russian navy. Mr. Forsyth, writing on the case to the American Minister at St. Petersburg on the 4th of May, 1837, said:

"It is a violation of the rights of the citizens of the United States, immemorably exercised and secured to them as well by the law of nations as by the stipulations of the first article of the Convention of 1824, to fish in those seas, and to resort to the coast for the prosecution of their lawful commerce upon points not already occupied."

From the speech of Mr. Sumner, when introducing the question of the purchase of Alaska to Congress, it is equally clear that the United States Government did not regard themselves as purchasing a monopoly. Having dealt with fur-bearing animals, he went on to treat of fisheries, and, after alluding to the presence of different species of whales in the vicinity of the Aleutians, said:—"No sea is now *mare clausum*; all of these may be pursued by a ship under any flag, except directly on the coast or within its territorial limit."

I now come to the statement that from 1867 to 1886 the possession was enjoyed by the United States, with no interruption and no intrusion from any source. Her Majesty's Government cannot but think that Mr. Blaine has been misinformed as to the history of the operations in Behring's Sea during that period.

The instances recorded in Enclosure 1 in this despatch are sufficient to prove, from official United States sources, that from 1867 to 1886 British vessels were engaged at intervals in the fur-seal fisheries, with the cognizance of the United States Government.

In 1872 Collector Phelps reported the fitting out of expeditions in Australia and Victoria for the purpose of taking seals in Behring's Sea, while passing to and from their rookeries on St. Paul and St. George Islands, and recommended that a steam cutter should be sent to the region of Unimak Pass and the Islands of St. Paul and St. George.

Mr. Secretary Boutwell informed him, in reply, that he did not consider it expedient to send a cutter to interfere

with the operations of foreigners, and stated:—"In addition, I do not see that the United States would have the jurisdiction or power to drive off parties going up there for that purpose, unless they made such attempt within a marine league of the shore."

Lord Salisbury concludes as follows:

The negotiations now being carried on at Washington prove the readiness of Her Majesty's Government to consider whether any special international agreement is necessary for the protection of the fur-sealing industry. In its absence they are unable to admit that the case put forward on behalf of the United States affords any sufficient justification for the forcible action already taken by them against peaceable subjects of Her Majesty engaged in lawful operations on the high seas.

"The President," says Mr. Blaine, "is persuaded that all friendly nations will concede to the United States the same rights and privileges on the lands and in the waters of Alaska which the same friendly nations always conceded to the Empire of Russia."

Her Majesty's Government have no difficulty in making such a concession. In strict accord with the views which, previous to the present controversy, were constantly and successfully maintained by the United States, they have, whenever occasion arose, opposed all claims to exclusive privileges in the non-territorial waters of Behring's Sea. The rights they have demanded have been those of free navigation and fishing in waters which, previous to their own acquisition of Alaska, the United States declared to be free and open to all foreign vessels.

That is to the extent of their present contention, and they trust that, on consideration of the arguments now presented to them, the United States will recognize its justice and moderation.

In reply to Lord Salisbury's despatch, Mr. Blaine sends a despatch covering nine folio pages of print. We give some of the more important passages. With reference to the quotation of Mr. Quincy Adams, Mr. Blaine remarks:

The quotation which Lord Salisbury makes is unfortunately a most defective one. The conclusion is separated from the premise, a comma is turned into a period, and important qualification as to time is entirely erased, without even a suggestion that it had ever formed part of the text, and out of 84 words, logically and inseparably connected, 35 are dropped from Mr. Adams's paragraph in Lord Salisbury's quotation. No edition of Mr. Adams's work gives authority for his lordship's quotation; while the archives of this Department plainly disclose its many errors. I produce Mr. Adams's full text as he wrote it:

"The United States can admit no part of these claims; their right of navigation and of fishing is perfect, and has been in constant exercise from the earliest times, after the peace of 1783, throughout the whole extent of the Southern Ocean, subject only to the ordinary exceptions and exclusions of the territorial jurisdictions, which, so far as Russian rights are concerned, are confined to certain islands north of the 55th degree of latitude, and have no existence on the Continent of America."

The words in italics are those which are left out of Mr. Adams's paragraph in the despatch of Lord Salisbury. They are precisely the words upon which the Government of the United States founds its argument in this case. Conclusions or inferences resting upon the paragraph, with the material parts of Mr. Adams's text omitted, are of course valueless.

With regard to the Treaties of 1825 and 1871 Mr. Blaine argues:

These treaties were therefore a practical renunciation, both on the part of England and the United States, of any rights in the waters of Behring's Sea, and all its coasts and islands, precisely as the Ukase of Alexander in 1821 left them—that is, with the prohibition against any vessel approaching nearer to the coast than 100 Italian miles under danger of confiscation. The original Ukase of Alexander of 1821 claimed as far south as the 51st degree of north latitude with the inhibition of 100 miles from the coast applying to the whole.

The result of the protest of Mr. Adams, followed by the co-operation of Great Britain, was to force Russia back to 54deg. 40 min. as the southern boundary. But there was no renunciation whatever on the part of Russia as to the Behring's Sea, to which the Ukase especially and primarily applied. As a piece of legislation this Ukase was as authoritative in the dominions of Russia as an Act of Parliament is in the dominions of Great Britain or any Act of Congress in the territory of the United States.

Mr. Blaine concludes thus:

It only remains to say that whatever duty Great Britain owed to Alaska as a Russian province, whatever she agreed to do or refrained from doing, touching Alaska and the Behring's Sea, was not changed by the mere fact of the transfer of sovereignty to the United States. It was explicitly declared in the sixth article of the treaty by which the territory was ceded by Russia that "the cession hereby made conveys all the rights, franchises, and privileges now belonging to Russia in the said territory or dominions and appurtenances thereto." Neither by the treaty with Russia of 1825, nor by its renewal in 1843, nor by its second renewal in 1866, did Great Britain gain any right to take seals in Behring's Sea. In fact, those treaties were a prohibition upon her which she steadily respected so long as Alaska was a Russian province. It is for Great Britain now to show by what law she gained rights in that sea after the transfer of its sovereignty to the United States.

During all the time elapsing between the treaty of 1825 and the cession of Alaska to the United States in 1867 Great Britain never affirmed the right of her subjects to capture fur-seal in the Behring's Sea; and, as a matter of fact, her subjects did not during that long period attempt to catch seals in the Behring's Sea. Lord Salisbury, in replying to my assertion that these lawless intrusions upon the fur-seal fisheries began in 1886, declares that they had occurred before. He points out one attempt in 1870, in which 47 skins were found on board an intruding vessel; in 1872 there was a rumour that expeditions were about to fit out in Australia and Victoria for the purpose of taking seal in the Behring's Sea; in 1874 some reports were heard that vessels had entered the sea for that purpose; one case was reported in 1875, two cases in 1884, two also in 1885.

These cases, I may say, without intending disrespect to his lordship, prove the truth of the statement which he endeavours to controvert; because they form just a sufficient number of exceptions to establish the fact that the destructive intrusion began in 1886. But I refer to them now for the purpose of showing that his lordship does not attempt to cite the intrusion of a single British sealer into the Behring's Sea until after Alaska had been transferred to the United States. I am justified, therefore, in repeating the questions I addressed to Her Majesty's Government on the 22nd of last January, and which still remain unanswered, viz.:

"Whence did the ships of Canada derive the right to do in 1886 that which they had refrained from doing for nearly 90 years?"

"Upon what grounds did Her Majesty's Government defend in the year 1886 a course of conduct in the Behring's Sea which had been carefully avoided ever since the discovery of that sea?"

"By what reasoning did Her Majesty's Government conclude that an act may be committed with impunity against the rights of the United States which had never been attempted against the same rights when held by the Russian Empire?"

On the 14th of June, Sir Julius Pauncefoot, having failed to obtain the assurance that pending negotiations British sealing vessels would not be interfered with, and having heard that the United States revenue cruisers *Rush* and *Corwin* were about to be despatched to Behring's Sea, delivered the following formal protest:—

The undersigned, Her Britannic Majesty's Envoy Extraordinary and Minister Plenipotentiary to the United States of America, has the honour, by instructions of his Government, to make to the Honourable J. G. Blaine, Secretary of State of the United States, the following communication:

Her Britannic Majesty's Government have learnt with great concern, from notices which have appeared in the Press, and the general accuracy of which has been confirmed by Mr. Blaine's statements to the undersigned, that the Government of the United States have issued instructions to their revenue cruisers about to be despatched to Behring's Sea, under which the vessels of British subjects will again be exposed, in the prosecution of their legitimate industry on the high seas, to unlawful interference at the hands of American officers.

Her Britannic Majesty's Government are anxious to co-operate to the fullest extent of their power with the Government of the United States in such measures as may be found to be expedient for the protection of the seal fisheries. They are at the present moment engaged in examining, in concert with the Government of the United States, the best method of arriving at an agreement upon this point. But they cannot admit the right of the United

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