

Mr. FOSTER said:—

As the motion just made involves a departure from the course of procedure adopted by the Commission, to which I assented, it is proper that I should say a few words in reference to it. At the time the rules were adopted, the Commission certainly cannot forget the position in which I found myself placed. Contrary to my own expectations and to the expectations of my Government, the Commissioners decided to allow the active participation in the conduct of the case of five Counsel, on behalf of the five Maritime Provinces. I came here expecting to meet only the Agent of the British Government, and suddenly found I was also to meet five leaders of the bar, from the five Provinces. I felt it important not to have five closing arguments against me. Now that there are counsel here to represent the United States as well as the British Government, it seems to me reasonable that such a modification of the rules should be made as will permit the services of the counsel who have been brought here in consequence of the decision of the Commission, to be made available to the greatest extent. While I should have been quite content to have discussed this matter in writing, with the British Agent, finding that I had to meet five counsel, my Government has been obliged to send counsel here, and it seems desirable that we should be able to use them in the most efficient way.

Then again, the evidence has assumed a very wide range, and is manifestly going to be conflicting to the last degree, upon some of the points, notably as to what proportion of the mackerel taken by the American fishermen in British waters is taken within three miles of the shore. On that subject there is going to be a very great conflict of evidence. I don't believe that such a question can be satisfactorily discussed, either in advance of the reception of the testimony or in writing after it is all in. It involves so much detail that the writing, if laid before you, would swell to a bulk that would be altogether unreasonable. I therefore very strongly concur in the application that has been made.

Mr. Doutre suggested that the British Counsel should have time to consider the matter before replying.

Mr. Foster concurred, and said that was the reason the application and the grounds of it had been put in writing.

At the Conference held on Wednesday, Aug. 28, 1877.

MR. THOMSON:—

An application was yesterday made to the Commission. I was not present at the time, but I have seen the written proposition, and I understand that it was an application made to your Excellency and your Honors for the purpose of altering the rules. On behalf of Her Majesty's Government—I am also now speaking the mind of the Minister of Marine—I may say that these rules have been solemnly entered into. We have acted upon them from the commencement to the end so far as we have gone, but still we have no desire that our friends on the other side should be deprived of any right which they think they ought fairly to have in order to bring their case before this Tribunal. We, however, certainly deprecate any alteration of the rules, and we feel that we are just in this position:—during all this time that we have been examining our witnesses, we did so under the idea that the rules would remain as they were engrossed. It is important we think in such an enquiry as this that these rules should be rigidly adhered to, unless there be some very important reason why they should be deviated from. I confess, speaking for myself, that I hardly see the force of the reasons advanced in favor of the proposed change on behalf of the United States Government. They say that their arguments if placed on paper, would be so bulky as to fill a large volume. Possibly that may be so; but still that is rather more complimentary to their powers of discursiveness than anything else, and they accompany this expression of opinion with the statement that they wish to be heard orally at great length. I presume that this will all be reported by the short-hand writers, and in the shape of a lengthy volume it will meet the eyes of the Commissioners—so I do not see how this bulky volume is in any way to be escaped. Nevertheless as I said before, we are not desirous to object to our friends on the other side taking this course in order to fairly bring the merits of their case before the Tribunal if they so think fit. We therefore are willing that they shall, if they please, be heard orally at the close of the evidence on both sides but we submit—and we trust that in this respect there can be no difference of opinion—that your Excellency and your Honors will not make any deviation from the rule which requires our friends on the opposite side at the close of their case to file their written argument if they intend at all so to do. We contend that it would be entirely at variance with the whole spirit with which this enquiry has been conducted, that they should, after making their speech, to call upon us if we please to make a speech in answer—to make it, and that they then should file their written arguments. Such a course would wholly displace the position which we occupy before this tribunal. Great Britain stands here as the plaintiff, and the ordinary rule in courts of Common Law is this: that the plaintiff, after a short opening of his case, calls witnesses, as we have, and at the close of the plaintiff's case, the defendant, after a short opening of his case, also calls witnesses; the respective counsel for the defendant and the plaintiff then make their closing arguments; after which the case is submitted to the jury by the judge. This is the course followed; and therefore while we are willing, if it is really thought necessary by my learned friends so to proceed, that they should have the right to close their case by arguments in writing, or verbally and in writing; yet if they close verbally and then wish to put in a written argument, that must be done at once; and we, if we so please, will then answer them verbally or in writing, as we like, or in both ways. I confess, speaking from the stand-point of counsel, that so far as I have a voice in the matter, I rather reluctantly agreed to this, because I think that these rules were formally framed; and in reality the proposition that the case should be conducted by written agreement came from the learned agent of the United States, if I understand rightly—and we acceded to it, and entirely on that basis we have conducted the whole of our case. Still, I say again, that we will meet our friends half way.

MR. TRESCOT:—I suggest that my friends proposition is an attempt at meeting by proceeding half-way in different directions; the trouble is that our half-ways do not meet at all. I am not sure that I understood my