

comity, require of the parties to the arbitration? If the contention of this Government is sustained by the arbitrators, then any killing of seals by the Canadian sealers during this season in these waters is an injury to this Government in its jurisdiction and property. The injury is not measured by the skins taken, but affects the permanent value of our property. Was it ever heard before that one party to such a controversy, whether a nation or an individual, could appropriate the whole or any part of the income and profits, much less the body of the contested property, pending the litigation without accountability? Usually a court of chancery would place a receiver or trustee in charge and hold the income of the property for the benefit of the prevailing party.

You say that Lord Salisbury, rejecting the illustration used by Mr. Blaine, "suggests that the case is more like one of arbitration respecting title to a meadow. While the arbitration is going on we cut the grass; and quite rightly, for the grass will be reproduced next year and so will the seals." He can hardly mean by this illustration that being in contention with a neighbor regarding the title to a meadow, he could by any precedent in the equity courts or by any standard of common honesty be justified in pocketing the whole or any part of the gains of a harvest without accountability to the adverse claimant whose exclusive title was afterwards established. It is no answer for the trespasser to say that the true owner will have an undiminished harvest next year. Last year's harvest was his also. If by the use of the plural pronoun his lordship means that the harvest of the contested meadow is to be divided between the litigants I beg to remind him that the title of the United States to the Pribilof Islands has not yet been contested, and that our flag does not float over any sealing vessel. The illustration is inapt in the further particular that the seals not taken this year may be taken next, while the grass must be harvested or lost.

This Government has already been advised in the course of this correspondence that Great Britain repudiates all obligations to indemnify the United States for any invasion of its jurisdiction or any injury done to its sealing property by the Canadian sealers. The attempt to make a damage clause one of the articles of the arbitration agreement failed, because Her Majesty's Government would not consent that the question of its liability to indemnify the United States for the injuries done by the Canadian sealers should be submitted. Two extracts from the correspondence will sufficiently recall the attitude of the respective governments:

In my note of July 23, I said:

The President believes that Her Majesty's Government may justly be held responsible, under the attendant circumstances, for injuries done to the jurisdictional or property rights of the United States by the sealing vessels flying the British flag, at least since the date when the right of these vessels to invade the Bering Sea and to pursue therein the business of pelagic sealing was made the subject of diplomatic intervention by Lord Salisbury. In his opinion justice requires that Her Majesty's Government should respond for the injuries done by those vessels, if their acts are found to have been wrongful, as fully as if each had borne a commission from the Government to do the act complained of. The presence of the master, or even of a third person, under circumstances calculated and intended to give encouragement, creates a liability for trespass at the common law, and much more if his presence is accompanied with declarations of right, protests against the defense which the owner is endeavoring to make, and a declared purpose to aid the trespassers if they are resisted. The justice of this rule is so apparent that it is not seen how in the less technical tribunal of an international arbitration it could be held to be inapplicable.

The United States might well insist that Her Majesty's Government should admit responsibility for the acts of the Canadian sealers, which it has so directly encouraged and promoted, precisely as in the proposal the United States admits responsibility for the acts of its revenue vessels. But, with a view to remove what seems to be