

MR. THOMSON :—Yours.

MR. FOSTER :—Certainly.

MR. KELLOGG asked to what rule the British Counsel referred.

MR. FOSTER said the British Counsel put in their statistics, a mass of them, on the last day of their evidence.

MR. THOMSON read the 11th rule.

Hon. MR. KELLOGG said that a modification of the rule in regard to affidavits had been assented to. Aside from that, no question could arise except that of relevancy. If the agents or counsel on either side assured the Board that, in their view, that evidence was relevant to the hearing, he would be very slow himself to refuse its admission. It happened that it was late in the hearing, but all evidence had to come in some time or other.

MR. THOMSON read the affidavit of Mr. Blatchford, and said it was to the effect that he went and asked the gentlemen to give him those statements, and he swore that they were copies of the statements which they were pleased to furnish him.

MR. FOSTER said the British counsel put in a statement from George Murray, he being the Collector of Port Mulgrave, of United States mackerel fishing vessels for 1873 and 1874. Mr. Murray stated the number of United States vessels, the number of barrels, and in regard to where they were caught, stated:—"The most of those mackerel were caught about Prince Edward Island, small size mackerel; the best and largest were caught at Magdalen Island. This may not be a true number of barrels; only gathered this from the vessel men; they call them that quantity; it is not much out of the way either way." When he found those statements he called for similar statements for the two following years, 1875 and 1876, and he had kept reminding the counsel about them. One of the English counsel in cross-examining one of the United States witnesses, did so from a paper which they said was Mr. Murray's statement, of what American vessels had caught this year, whereupon he (Mr. Foster) called for it, and got it in as part of the cross-examination.

MR. WEATHERBE asked if the paper was not an official report made by Mr. Murray to the Department.

MR. FOSTER: No.

MR. WEATHERBE said if the paper was of the character of one prepared since the Treaty went into operation, and to be presented before the Commission, the rules should be conformed to, and it should be presented under oath.

MR. FOSTER said the paper was extracted from the cross-examination. It was called, "Account of American mackerel catches in North Bay, 1877."

SIR ALEX. GALT said he did not remember that the statement was put in as evidence.

MR. FOSTER said it was not put in as independent evidence, but after ascertaining what it was on which the witness was cross-examined, he had stated that he was entitled to have the paper put in.

SIR ALEX. GALT said the question was as to which side put in the paper.

MR. FOSTER said that by the 24th Article of the Treaty of Washington the Commissioners "shall be bound to receive such oral or written testimony as either Government may present." He had called upon an official of the Government of the United States to obtain statistics with regard to this matter, and in pursuance of that call he had done so. The statistics came certified from the office, and, on behalf of the Government of the United States, he (Mr. Foster) presented them as evidence *quantum valuit*.

MR. THOMSON said that hearsay evidence—though it was not usually admitted by judicial tribunals—was admitted of this description: evidence of information parties had obtained in the course of conversation, in regard to the particular matter in hand, at a time in nine instances out of ten when they had no reason to know of this particular tribunal or inquiry; and the persons, therefore, had no object to overreach. That was not the character of the evidence now offered. This consisted of hearsay evidence obtained from different firms in Gloucester, for the especial purpose of affecting this tribunal, and made by no person under oath. If the official had visited the different stores and asked the different persons to show him their books, and if he had sworn on examining those books the statements submitted were true copies, then it would be evidence. But here were people under no oath, but knowing well that an inquiry was going on in which their country was interested, who gave to the official just what they thought proper. True, he might state that he believed the statements true copies from the books, but unfortunately the Commission had no knowledge of the fact. That was the difference between the testimony which had been admitted and that now offered.

MR. FOSTER said he understood from the Secretary that the Port Mulgrave statement had been printed as part of the evidence. It appeared in the cross-examination, which was as follows:—

Q. Do you know anything about other vessels? Some have got as many as 270 barrels from that down? I will read from the returns:—

(Reading the names of Vessels and catches.)

These are gathered from the returns reported by them.

MR. FOSTER—Do you submit that to our inspection.

MR. DAVIES—Certainly. I would not have read it otherwise. (Explain in answer to Mr. Foster that these are returns of vessels that have been in the Bay and gone home, as they reported themselves at Canso.)

Q. Now have you heard of any of these vessels that made any of these returns? A. I have heard of some of these vessels writing home.

Q. Have the returns you have heard accorded with those I have read? A. I should think not.

Q. You don't know whether these returns are correct or not? A. I don't know that they are.

Q. If they were would you be inclined to modify your statement as to the catches in the Gulf? A. No, I would not.

Q. You still persist in the statement you made? A. I don't anything about it.

Q. But supposing it correct, if it turns out to be correct, from comparison with published returns in Gloucester papers?

A. Well, they might perhaps have the same information upon which that is based.

Q. You would consider the reports in Gloucester papers to be incorrect? A. I didn't say any such thing.

Q. Would you place reliance upon them? A. As a general thing I would.

Q. What did you mean by saying that the Gloucester papers might have the same information as that I have read? A. The crews sometimes report more than they actually catch.

Q. Then we cannot believe the reports we see in those papers? A. Well, there is a difference between sea barrels and packed barrels. Perhaps the mackerel would fall short.

Q. That is by the difference between sea barrels and packed barrels? A. Yes.

Q. But could not any person easily allow for that?

Hon. MR. KELLOGG asks if the returns just read are official.

MR. DAVIES explains that the returns are those which the vessels make as they pass through the Gut of Canso—that they are not official, but that the information is gathered by persons engaged by the Inspector to ascertain the catch from the captains."

If this had not gone in with the evidence, he proposed to put it in as a paper on which the witness was cross-examined.

MR. DAVIES said that when cross-examining a witness, with respect to the number of American vessels in the Bay, and the number of barrels they caught, he held up a paper in his hand and asked whether the vessel caught such a quantity. Mr. Foster asked him if it was a return, and he, (Mr. Davies), said it was a return, and explained