

I now come to the practical part of Mr. Phelps's note.

He declines negotiations on the basis of "mutual concessions."

He proposes an *ad interim* construction of the existing Treaty, without prejudice, and terminable at will; to be carried out informally by instructions on either side, so as to prevent further disputes, "until a more permanent understanding can be had."

At first sight, this proposal does not seem calculated to advance matters, for it amounts in point of fact to an invitation to us to consider to what extent we will make concessions (without prejudice) to the United States' Government pending some future understanding.

Looking, however, between the lines, it may mean that the United States' Government cannot at the present time make concessions on their side, owing to the state of public feeling in America created by the continuous seizures of their fishing-vessels, and the general attitude of the Canadian authorities, but that if we will do what was suggested by Mr. Bayard in his note of the 20th May (Print, Part I, p. 140), that is to say, agree to restore the *status quo* as it existed in 1870, when the questions in dispute were suspended by the Treaty of Washington, the United States' Government on their side will endeavour to come to a permanent understanding with us, "such as would consist with the dignity and interests and the friendly relations of the two countries." It is important, therefore, to examine the Correspondence of 1870 which, as before stated, is contained in the volume for that year of the "Foreign Relations of the United States," pp. 407-434.

The *status quo* at that period was regulated by the instructions of Her Majesty's Government to the British Admiral on the Canadian Station, and those instructions were officially communicated to the United States' Government at the time, and were discussed with them in a friendly spirit. Indeed, Mr. Fish, in a note to Sir E. Thornton of the 30th June, 1870 (p. 421), says:—"The President is pleased to recognise in the tenour of the despatches and instructions which have been addressed by Her Majesty's Government to the Canadian authorities and to Admiral Wellesley a generous spirit of amity, which is reciprocated by the United States."

The fact is that those instructions were not based on the exaction of our strict rights under the Treaty, but only on securing the substantial rights of the colonial fishermen.

Accordingly, the instructions laid down that "the transshipment of fish and the obtaining of supplies by American fishing-vessels cannot be regarded as a substantial invasion of British rights, and those vessels, therefore, are not to be prevented from entering British bays for such purposes" (Colonial Office Confidential Print, 1871, p. 128. Mr. Oakes' Memorandum, Foreign Office Print, Part I., p. 152).

As regards "preparing to fish" or other proceedings in British waters, the instructions were, not to seize any American fishing-vessels "unless it were evident, and could be clearly proved, that the offence of fishing had been committed and the vessel itself captured within three miles" (Correspondence, "United States' Foreign Relations, 1870," p. 416. Mr. Bayard's note of the 20th May, Foreign Office Print, Part I, p. 142).

As regards the "headlands" question, the instructions were, not to interfere with American vessels unless found "within three miles of the shore, or within three miles of a line drawn across the mouth of a bay or creek which is less than 10 geographical miles in width, in conformity with the arrangements made with France in 1839. (Hertslet, Vol. V, p. 89, Convention of the 2nd August, 1839, Articles IX and X.)

Those instructions also stated that Her Majesty's Government did not desire to insist generally on the prohibition to enter British bays, except there were reason to apprehend some substantial invasion of British rights, and in particular they did not desire to exclude American vessels from the Strait of Canso (although they might insist on doing so as a matter of right) unless "the permission should be used to the injury of colonial fishermen or other improper objects." ("United States' Foreign Relations, 1870," p. 419.)

What has angered the Americans is that, instead of reverting to the state of things established by the instructions of 1870, the Canadian authorities, on the abrogation of the Fishery Articles of the Treaty of Washington, insisted on exacting the British Treaty rights of 1818 to their fullest extent, and the Dominion Government is charged with adopting this unfriendly course with the object of forcing a Reciprocity Treaty on the United States. This charge was also brought during the previous disputes (see Consul-General Dart to Mr. Fish, 3rd November, 1870; "United States' Foreign Relations," p. 433).