

FURTHER CORRESPONDENCE respecting the Occurrences at Fortune Bay, Newfoundland, in January 1878.

[In continuation of "United States No. 1 (1880)."]

Presented to both Houses of Parliament by Command of Her Majesty. 1881.

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No. 1.

Earl Granville to Mr. Lowell.

Sir,

Foreign Office, October 27, 1880.

HER Majesty's Government have carefully considered the correspondence which has taken place between their predecessors and the Government of the United States respecting the disturbance which occurred at Fortune Bay on the 6th January, 1878, and they have approached this subject with the most earnest desire to arrive at an amicable solution of the differences which have unfortunately arisen between the two Governments on the construction of the provisions of the Treaties which regulate the rights of United States' fishermen on the coast of Newfoundland.

In the first place, I desire that there should be no possibility of misconception as to the views entertained by Her Majesty's Government respecting the conduct of the Newfoundland fishermen in violently interfering with the United States' fishermen, and destroying or damaging some of their nets. Her Majesty's Government have no hesitation in admitting that this proceeding was quite indefensible, and is much to be regretted. No sense of injury to their rights, however well founded, could, under the circumstances, justify the British fishermen in taking the law into their own hands, and committing acts of violence; but I will revert by and by to this feature in the case, and will now proceed to the important question raised in this controversy, whether, under the Treaty of Washington, the United States' fishermen are bound to observe the Fishery Regulations of Newfoundland in common with British subjects.

Without entering into any lengthy discussion on this point, I feel bound to state that, in the opinion of Her Majesty's Government, the clause in the Treaty of Washington which provides that the citizens of the United States shall be entitled, "in common with British subjects," to fish in Newfoundland waters within the limits of British sovereignty, means that the American and the British fishermen shall fish in these waters upon terms of equality, and not that there shall be an exemption of American fishermen from any reasonable regulations to which British fishermen are subject.

Her Majesty's Government entirely concur in Mr. Marcy's Circular of the 28th March, 1856. The principle therein laid down appears to them perfectly sound, and as applicable to the fishery provisions of the Treaty of Washington as to those of the Treaty which Mr. Marcy had in view; they cannot, therefore, admit the accuracy of the opinion expressed in Mr. Evarts' letter to Mr. Welsh of the 28th September, 1878, "that the fishery rights of the United States conceded by the Treaty of Washington are to be exercised wholly free from the restraints and regulations of the Statutes of Newfoundland," if by that opinion anything inconsistent with Mr. Marcy's principle is really intended. Her Majesty's Government, however, fully admit that, if any such local Statutes could be shown to be inconsistent with the express stipulations, or even with the spirit of the Treaty, they would not be within the category of those reasonable regulations by which American (in common with British) fishermen ought to be bound; and they observe, on the other hand, with much satisfaction, that Mr. Evarts, at the close of his letter to Mr. Welsh of the 1st August, 1879, after expressing regret at "the conflict of interests which the exercise of the Treaty privileges enjoyed by the United States appears to have developed," expressed himself as follows:—

"There is no intention on the part of this [the United States'] Government that these privileges should be abused, and no desire that their full and free enjoyment should harm the colonial fishermen.

“While the differing interests and methods of the shore fishery and the vessel fishery make it impossible that the regulation of the one should be entirely given to the other, yet if the mutual obligations of the Treaty of 1871 are to be maintained, the United States’ Government would gladly co-operate with the Government of Her Britannic Majesty in any effort to make those regulations a matter of reciprocal convenience and right, a means of preserving the fisheries at their highest point of production, and of conciliating a community of interest by a just proportion of advantages and profits.”

Her Majesty’s Government do not interpret these expressions in any sense derogatory to the sovereign authority of Great Britain in the territorial waters of Newfoundland, by which only regulations having the force of law within those waters can be made. So regarding the proposal, they are pleased not only to recognize in it an indication that the design of Her Majesty’s Government to arrive at a friendly and speedy settlement of this question is fully reciprocated by the Government of the United States, but also to discern in it the basis of a practical settlement of the difficulty; and I have the honour to request that you will inform Mr. Evarts that Her Majesty’s Government, with a view to avoiding further discussion and future misunderstandings, are quite willing to confer with the Government of the United States respecting the establishment of regulations under which the subjects of both parties to the Treaty of Washington shall have the full and equal enjoyment of any fishery which under the Treaty is to be used in common. The duty of enacting and enforcing such regulations, when agreed upon, would, of course, rest with the Power having the sovereignty of the shore and waters in each case.

As regards the claim of the United States’ fishermen to compensation for the injuries and losses which they are alleged to have sustained in consequence of the violent obstruction which they encountered from British fishermen in Fortune Bay on the occasion referred to, I have to state that Her Majesty’s Government are quite willing that they should be indemnified for any injuries and losses which upon a joint inquiry may be found to have been sustained by them, and in respect of which they are reasonably entitled to compensation; but on this point I have to observe that a claim is put forward by them for the loss of fish which had been caught, or which, but for the interference of the British fishermen, might have been caught by means of strand fishing, a mode of fishing to which, under the Treaty of Washington, they were not entitled to resort.

The prosecution by them of the strand fishery being clearly in excess of their Treaty privileges, Her Majesty’s Government cannot doubt that, on further consideration, the United States’ Government will not be disposed to support a claim in respect of the loss of the fish which they had caught, or might have caught, by that process.

I am, &c.
(Signed) GRANVILLE.

No. 2.

Mr. Lowell to Earl Granville.—(Received October 29.)

My Lord,

Legation of the United States, London, October 28, 1880.

I HAVE the honour to acknowledge the receipt of your Lordship’s letter of yesterday in relation to the disturbance which occurred at Fortune Bay on the 6th January, 1878, and to acquaint you that I shall forward a copy of the same to Mr. Evarts by the earliest opportunity.

I have, &c.
(Signed) J. R. LOWELL.