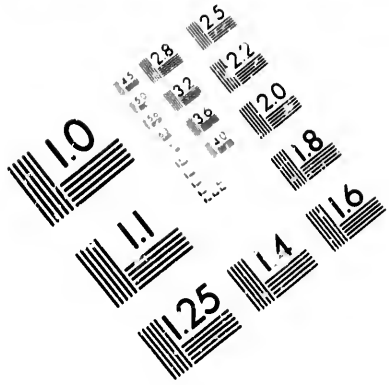

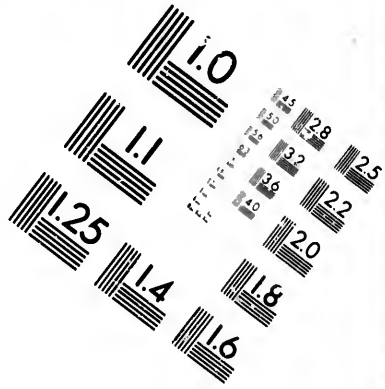

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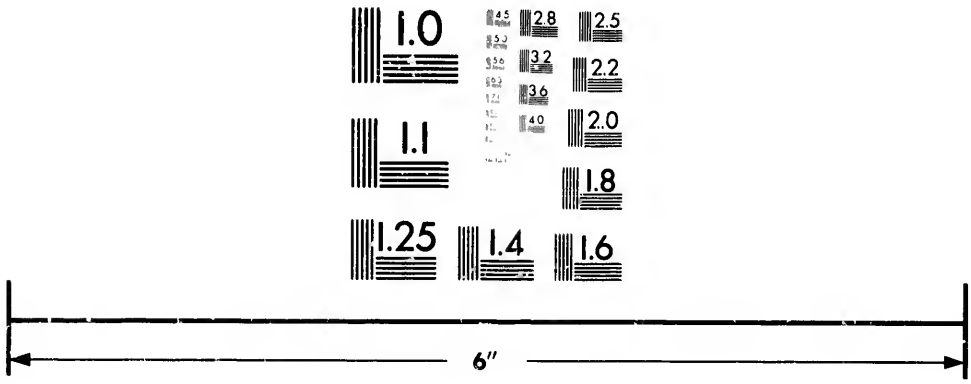

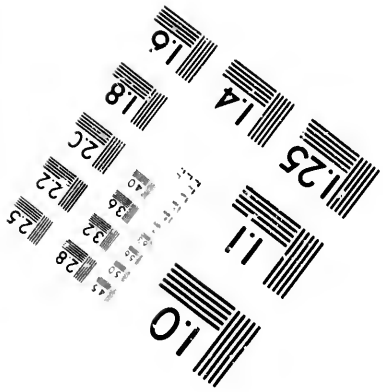

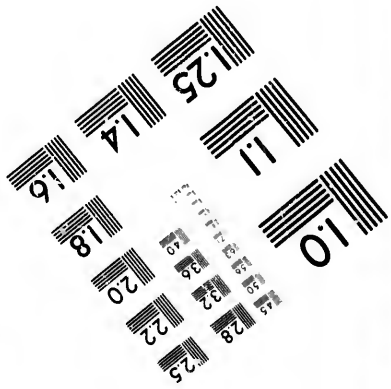

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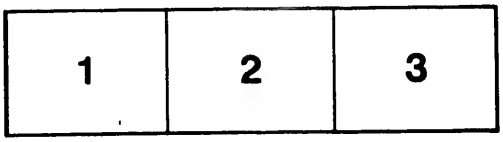

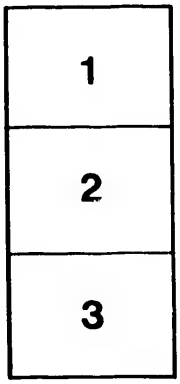

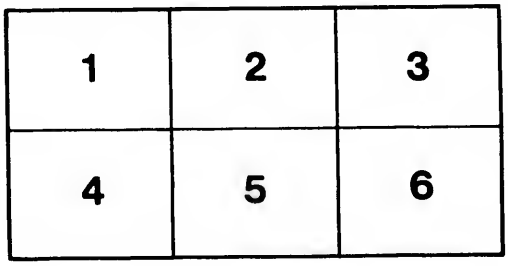

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THE

TREATY OF WASHINGTON.

AN EXAMINATION OF ITS PROVISIONS,

SHOWING THE ADVANTAGES THEREBY GAINED TO

ENGLAND OVER AMERICA.

LETTER BY BENJ. F. BUTLER,

TO

HON. A. AMES, U. S. SENATOR.

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LOWELL, May 17, 1871.

General A. Ames, U. S. Senate.

MY DEAR SIR:

I have examined with some diligence, and with an earnest desire to find reasons for assent to its several provisions, the treaty between Great Britain and the United States pending for ratification by the Senate, and will, with your leave, give such suggestions as have occurred to me as to its operation and the equities of the concessions and reparations therein each to the other of the two governments.

You will pardon me for considering first that which is of local and special interest to my state and constituents, as it appears by the protocol to have been considered as a wholly distinct and independent subject of negotiation—

THE FISHERIES.

The shores and bays now claimed by Great Britain were taken by the colonies of New England from France by the capture of Louisburg, a fortress raised at very great cost by the French king to protect what was deemed by him most valuable possessions. And if any right can be acquired by conquest, the fisheries were the exclusive property of the Massachusetts Bay colonies—the only purely English settlement—Great Britain now claiming on the Eastern coast what were then French colonies.

In the formation of the treaty of peace in 1783, these fisheries were the subject of spirited and protracted negotiation; and the Elder Adams held the colonial rights in them of such moment that he declared that he would "rather continue the war of the Revolution than yield of them one iota." These rights were held not to be affected by the war of 1812, as they were not mentioned in the treaty, but remained in *statu quo ante bellum*, and were enjoyed by us until 1818, when by the treaty of the 20th of October, it was

agreed that the Americans should relinquish their rights of fishery within the three-mile line or the marine league of international law on the shores of the Provinces, in consideration of the right to fish on the shores of Newfoundland, the Magdalen Islands and Labrador, and to land thereon to cure fish. To this privilege the United States had no prior claim; and as at that time the only fisheries which were affected by the treaty were substantially the codfish, the contracting parties had in mind and negotiated about no other. The codfish were not taken to any extent within the three-mile line, and the capture of that fish being largely upon the banks of Newfoundland and the coast of Labrador, the right to land and cure the fish there was deemed of sufficient value to adjust the conflict of rights of fishery and jurisdiction of Great Britain and her former colonies within the three-mile line. Thus it will be seen that by the treaty of 1818 we ceded to England all that she now gives to us of the right to fish within the three mile line, in exchange for the simple privilege of landing and curing our codfish on the shores of Newfoundland, the Magdalen Islands and Labrador.

The mackerel had not then been taken for commercial purposes on the British shores, nor were they until 1825, nor to any extent till 1827, some nine years afterwards.

I have grouped together these facts, which indeed are very familiar to you, in order that the exact extent of the subject on which the two countries are now treating may be kept in mind. We have never claimed any right to take fish in the rivers, as the salmon, shad and herring, or shell-fish upon the shores of the Provinces, so that the only subject which is touched by the provisions of the treaty, or which is ceded by Great Britain, is the right to take mackerel within the three-mile line of the Provinces. Or, in other words, all that Great Britain yields to us is her right to the mackerel swimming in the sea within three miles of her shore—a matter which has accrued to her in fact since the ratification of any treaty save the reciprocity treaty of 1854, which has been abrogated. Therefore as the subject in dispute was not considered when the treaty of 1818 was made, if now Great Britain claims that it is affected by that treaty it would seem to be our right to declare that treaty abrogated so far at least as this unconsidered matter goes—

as not within its provisions. In so doing we should follow but well known diplomatic precedents, and specially the example of Russia, which has within a year declared she would not be bound by the treaty of 1856 in regard to her use of the Black Sea, because the circumstances affecting it had changed since the treaty, and England has acquiesced in that abrogation by Russia.

Great Britain now proposes to concede to us the right to fish within the three mile line, with further permission to land upon the shore for the purpose of drying nets and curing fish, *provided*, that in so doing we do not interfere with the rights of private property.

This privilege of using the shore is one of certainly not very considerable value, if for no other reason, because it would be difficult to find many portions of those shores which are not private property, and where exercising the privilege of hauling the seine or landing it and drying it, would not be an interference with the proprietary rights.

Now out of the four hundred thousand barrels of mackerel caught between Cape May, or the 39th parallel, and the Northern extent of their limit by our fishermen, only some thirty thousand barrels were last year taken east of the State of Maine, in all waters British or other. In frankness it should be stated that, owing to the annoyances which our fishermen suffered, and from other special causes, that catch was smaller than usual. But it may be safely put at an average not much exceeding thirty thousand barrels. During the reciprocity treaty and since its abrogation, when fishing under full British license, our fishermen took something less than one-fifth of their catch within the three mile line. So that the amount of concession by the present treaty to us is the right of Great Britain in five thousand barrels of mackerel when swimming in the sea within three miles of her shores.

Now, as fishing is only about a fifteen per cent. business, or, in other words, as eighty-five per cent. of the value of the fish taken consists in the use of capital employed, labor expended in taking, curing, packing and preparing for market, it will be seen how inconsiderable is the right actually attempted to be ceded to us by the present treaty. Its extent is, in fact, when reduced to a money value, from five thousand to seven thousand dollars annually only.

Its money value, even in the judgment of the Nova Scotians themselves, may be reached in another form. After the termination of the reciprocity treaty, the province of Nova Scotia granted full license to our fishermen to fish within the three mile line at the rate of fifty cents per ton. These licenses gave them in addition—what the present treaty omits to provide for—full rights of shelter, purchase of bait and provisions, in the bays and harbors of the Provinces. As there was about fourteen thousand tons employed in those fisheries, it will be seen that the money value set by the Provinces upon this right came to seven thousand dollars only. Subsequently, however, the Provinces determined to force a reciprocity treaty upon the United States, raised their licenses first to one dollar, then to two and a half, and subsequently to five dollars per ton; these latter sums being so high as to be prohibitory, our fishermen have declined to pay.

Reckoning, therefore, the money-value in both forms, it may safely be stated to be in the close vicinity of seven thousand dollars per year. I see it stated in what purports to be a protocol to the treaty, that the American Commissioners opened the negotiations with an offer to pay a million dollars in gold for this right, or sixty thousand dollars annually for all time for a right which Nova Scotia offered to sell and did sell for seven thousand dollars a year. Where our Commissioners got their extraordinary valuation it is difficult to conjecture. It is not wonderful that the English Commissioners thought they had something too valuable to dispose of when Yankees would offer a million dollars for the right to begin with. As the Englishmen had ulterior objects to be gained, they would put no money-value upon the fisheries, as they intended to force open our ports by their means.

In order to judge clearly of the pecuniary value in fact of the right thus claimed by Great Britain to herself and colonies, observe what it has cost her and the Dominion of Canada to guard the three mile line during the past year. By the reports made to the Canadian parliament, it would appear that it cost something over four hundred thousand dollars for the expenses of the revenue vessels employed in the guarding of this line and seizing our vessels.

The British government had an equal number of guns and men employed in the same service, it is fair to presume at about the same

cost; so that it cost eight hundred thousand dollars to guard the right of the value of seven thousand per annum, which amount will be saved by the ratification of the treaty to the imperial government and its adjunct.

We are, first, by the provisions of the treaty in exchange to permit, for this seven thousand dollars, all British fishermen to fish in all our waters, for all kinds of fish (except shell-fish and river fish) and to land on our shores to cure their fish and dry their nets, from the 45th to the 39th parallel, or from Eastport to Delaware Bay. Now, mackerel first appear about Cape May in the spring. A thriving trade is done in catching them for the New York market, and other markets which we are to share with the British. The fish then follow up the coast during the summer to latitude about 50 in the British possessions; then returning, the fishing season ends some time in November, substantially in Massachusetts Bay. British fishermen are therefore to follow the fish, going and returning.

In the waters of the British provinces there are no menhaden, which are the best fish for mackerel bait. It takes about one barrel of bait for every eight barrels of mackerel caught, and menhaden furnishes the best bait. This the British fishermen have always had to purchase of the United States. Menhaden catching forms a valuable branch of our fishing as well for the oil as the bait. All this the English now buy of us — as they can get it no where else. Under the treaty, they can catch their bait on our shores for themselves. The privilege granted them of fishing in our waters is of itself alone worth more than all they concede to us.

Second in addition, the treaty opens our ports to British fish free of duty. Therefore the British fishermen may contend with ours by right in supplying our seaport cities with fresh fish. They may take the halibut in our waters, which is now a very large article of consumption, and bring it into our ports free of duty in competition with our fishermen. Indeed, the halibut fishery has become so important that vessels are now being fitted out in Massachusetts to pursue that fish on the coast of Greenland.

As the British give a bounty equal in its operation to one dollar a quintal and the French ten francs a quintal on codfish, and as all French fish will be at once brought into our ports in Canadian bot-

toms, our cod fishermen, who get no equivalent whatever by the treaty, are to struggle against this bounty-fed competition. Not only that, but our whale fishermen and seal-oil fishermen are to have British competition all over the world by the opening of our ports free to them.

It has been declared by some that this question of free importation of fish is a matter of small consequence. The amount yearly is much greater than any supposed money value in the Alabama claim, the highest estimate of loss from which has been set at fourteen millions, while the value of our fisheries is over seventeen millions annually. Can a more inequitable bargain be stated?

But it is said that this treaty leaves our fishermen in the same condition that they were under the reciprocity treaty, the provisions of which, by the by, were so onerous upon our people that we abrogated it. Not quite. Because our reciprocity treaty regarded Canada and Canadian fishermen alone. This treaty opens our fisheries to all British fishermen, the phrase being "and the fisheries shall be in common with the subjects of her Britannic Majesty."

But that is not all. By the 22d article of the treaty, we are to pay to Great Britain in addition such sum of money as three arbitrators shall find that the value of the British fishing right is greater than the value of ours conceded to them. But there is no provision that, if the value of what we cede to Great Britain is greater than the value she cedes to us, the United States shall be paid for it. Why not make the questions of paying the excess in the value of the rights ceded by each nation reciprocal? Certainly, in view of the statement I have made above, taken with accuracy from statistics, such a right to have the British pay what our concession exceeds theirs in amount would be a very valuable one.

But the Commissioners to which this is to be referred are to be one named by the President, one by the Queen, and the other, in case the President and the Queen cannot agree upon the umpire, by the Austrian Minister near the Court of London, who will certainly not be exposed to too much American influence in that selection.

In my judgment, reinforced by the opinions of the most judicious and prudent men engaged in the fisheries with whom I have conferred, the provisions of this treaty will be substantially ruinous to our fishing interests. But two answers, however, are made to

this statement which deserve consideration: First, that this is not a great matter because, if it is found injurious, the treaty may be terminated at the end of ten years, after two years' notice.

But if it is found, as I believe it will be, detrimental to our fisheries, twelve years will entirely destroy that business. In that time the men engaged in it will have turned their attention to other pursuits, and the school in which hardy seamen are trained up for the United States Navy, and which has had the fostering care of our government from the Revolution until now, will have been broken up. Because of the ravages of the Alabama and her kindred vessels, we have almost no commerce in which to train such seamen. All the mischief will have been done; and it will be substantially useless then to attempt, after the lapse of twelve years, to renew a business out of which, by the provisions of this treaty, enterprise and capital have been forced for that time.

The second answer is, that the treaty puts our fishermen substantially in no worse position than they occupied during the reciprocity treaty from 1854 to 1865—eleven years—and that our fishing interest maintained itself during that period. That is, to a certain extent, true. But he is a superficial observer who does not mark the difference in the two cases.

Under the reciprocity treaty our fisheries were injured, it is true, but we supposed that our manufactures exported into Canada free of duty and other advantages, obtained through that treaty to the lumbering and other interests which were pursued in the forests of Canada, were an offset to compensate that loss.

Now all is changed. There are no other matters of reciprocity to meet the wrong and loss done to the fishing interest. Besides, our tariff of duties during the pendency of the reciprocity treaty averaged twelve or fourteen per cent. only. Now the duties which the American fishermen have to pay upon every article, from the fish-hook to the anchor inclusive, are from thirty to forty per cent. When Canadian lumber came in free we could build our ships for about fifty-five to sixty dollars a ton, against forty to fifty dollars a ton, the cost of the Canadian vessel. Now our fishing vessels cost eighty dollars a ton against forty-five in Canada.

Again, the wage of the fishermen in Canada is thirty-three per cent. less than ours; so that the inevitable tendency will be to drive all American fishing vessels to be manned by Canadian crews, so that we shall be training up sailors for the British navy to be taken out of our vessels in the event of war either between us or a neutral power, under the British right of search which they have never abandoned, and about which we went to war in 1812.

The animus of the British Commissioners is easily seen from their proposition "that the most satisfactory arrangement for the use of the fisheries would be a reciprocal tariff arrangement and reciprocity in the coasting trade." To this the American Commissioners would not assent, but they said that inasmuch as one branch of Congress had expressed itself in favor of the abolition of duties on coal and salt, they would propose that coal, salt and fish be reciprocally admitted free, together with lumber, after 1874. But even this concession the British Commissioners said was not within their power, although the letter of appointment, containing their powers as interchanged, seemed to give the most ample and abundant. But after consulting with the British government, the proposition was made that free trade in fish should be established, a business which every commercial country has always protected by bounties and stimulated by special privileges, and no country more than this because of its extra hazardous character and its national importance as a school for seamen. But our Commissioners, if their work is ratified by the Senate, are, at the instigation of Great Britain, to inaugurate a free trade policy for this country, beginning it by the destruction of our fishing fleet, the source from which we drew the brave tars who whipped the British navy in every equal naval contest in the war of 1812. The town of Gloucester in the last year lost in the fishing business, by the perils of the sea, twenty vessels and sixty-four men, so hazardous is the business and such bravery and such risks do the fishermen show and endure. And this interest is to be the subject of the first experiment of free trade. I may say, I trust, without offence, that this treatment will not tend to make the fishermen very ardent tariff men or protectionists. They will be unable to see why their business, which comes directly in competition with the bounty-fed fisheries of England and France,

should be the one selected for the free trade experiment, and, too, the one first to be yielded up to English greed.

The treaty is as remarkable for what it leaves unsaid as we have found it to be in what it includes. In the face of the fact that half a dozen of our vessels have been seized and brought before the Canadian courts for confiscation during the past year, for making harbor and shelter, and buying bait and provisions in the bays and ports of the Provinces, there is no provision in the treaty assuring us immunity from such seizures hereafter, or making any provision for reparation for injuries inflicted in the past. Upon this point the treaty is absolutely silent. True it is that under the law of nations, as a part of the commercial marine of a friendly power, our fishing vessels ought not to be seized, although they may remain more than twenty-four hours in port, although they may purchase bait and provisions on shore. But we know they have been seized, we know that they have been tried, and in one or more cases condemned, from the unfriendly spirit which animates the Provinces; and yet neither indemnity for the past, nor security for the future is acquired for them by the treaty, against these wrongs.

Again, the question of the "rights which belong to the citizens of the United States and her Majesty's subjects respectively in reference to the fisheries on the coast of her Majesty's possessions, near North America," being especially submitted to the Joint High Commission by both governments, is it not remarkable, that the protocol shows and the treaty finds that no thought has been taken of the fisheries upon our Northwest coast? They now are becoming exceedingly valuable; and while the Commissioners seem to have spent days, if not weeks, over the possession of a comparatively insignificant island there, yet they have bestowed not an hour's consideration upon the great question of our rights as to the fisheries near the British possessions on the Northwest coast. Oregon is rapidly filling up; California is fitting out vessels for the seal and other fisheries in the Northern waters, and in a very few years, if her Majesty maintains her possessions upon this Continent, questions of far more magnitude, far more irritating, and of more tendency to provoke collision, will arise as to the Northwest fisheries, about which there have been no negotiations whatever, than have arisen in regard to the fisheries on the Eastern coast.

I grieve, therefore, that so complete an abandonment of American fishing interests should have been made by our Commissioners, and I trust the Senate will not ratify this portion of the treaty, unless there shall be found in other portions sufficient countervailing advantages, so that we can afford this great loss. It is expressly stated in the protocol however, that the fishery questions were considered by themselves.

This forces me to consider—what I had much rather not do—the claimed advantages accruing to the United States from the other portions of the treaty. I say that I should prefer not to examine these other matters, because I have been accused of desiring war between Great Britain and the United States, and it may be inferred that my views of the advantages of the treaty are tinged with that desire. No true patriot can ever desire war for his country; and I am certain that, with a knowledge of its expenses and horrors, nothing has ever been further from my thought than a wish for a conflict of arms. I have never dreamed that war between this country and England is now possible while we are demanding only what is right with a determination to submit to nothing that is wrong.

When I had occasion to address the country upon the subject of the differences between this country and England at Music Hall, in the Autumn, so far from speaking in the interest of a war I endeavored to show its impossibility by showing how disastrous it must be to Great Britain. I never have had fears of such a war. A government which has demonstrated itself powerless to lay a tax of half a million dollars upon friction matches without raising such *emeute* among its people as to cause the proposition to be abandoned, is not one likely to go to war in which thousands of millions will be expended. A government which has reduced its laboring population, from which the material to sustain a war must be drawn, so that every twelfth man is either in a jail, almshouse or insane hospital, will not be easily drawn into a contest of arms with a powerful nation which has and can put millions of men into the field when nothing but right and justice are demanded by the latter power. Until England can afford more than two ounces of meat a day each to her people as now, and her other food largely drawn from this country besides, war with her is only imminent to the fears of the timid.

If England would not interpose to save her ally and only protection on the continent of Europe from being dismembered and crushed out by Prussia, she is not likely to go to war with America, the first six months of which would overturn her government.

Therefore you see that I lay aside all ideas of supposed advantages gained in the interest of peace between the two nations, believing a war between England and America a moral and physical impossibility.

Putting away our fears, what, then, do we get from this treaty? First, "An expression of regret, in a friendly spirit, for the *escape* of the Alabama and other vessels from British ports, under whatever circumstances, and the depredations committed by those vessels." This apology, then, is to be the salve for the wounds of our national honor, and full reparation for the just indignation of our people for all the unfriendliness done to us by England during the war of the rebellion, whose support of the confederacy cost us millions of treasure and thousands of lives. "Escape" is a word of limited signification. It means evasion from pursuit, leaving under difficulties, or impediments, and the "escape and depredations" are all that England regrets. Regret in a friendly spirit now, acts in a hostile spirit then. I find no regret expressed for the reception of the Alabama in a British port, her being supplied with coal and provisions there, her officers toasted and feasted, and a British governor appointed under the crown, accompanying her out of the harbor when she removed on her piratical expedition; nor the like reception of other vessels. I find no word in protocol or treaty of censure of British officials for such acts of assistance, aid and comfort to a piratical enemy of the United States. Not a word of apology for the delay of the law officers of the crown. Not a word of apology for the misconstruction of evidence by her law officers, which aided that "escape." Leaving a British port under these circumstances seems to me not well defined and atoned for by the word "escape." But then I am not versed in diplomatic language, and may mistake what is due to my country for hostile acts. I find in neither protocol nor treaty any explanation or apology even asked by our Commissioners of England for her demand of Mason and Slidell, the rebel emissaries, on a technical point of International Law, that

the brave Wilkes did not bring in the English vessel as well as the rebel ambassadors, accompanied with a threat of war if the men were not delivered up and an "apology" made. We get neither apology nor restitution, only regrets. But, as a plain, common-sense man, I think the eyes of the people of this country will hardly be blinded by the dust of the word "escape."

We find in the treaty no admission on the part of Great Britain that this or any other conduct of her's in regard to the Alabama was wrong, or that she is liable for what she has done; but that that question is to be determined, not where the present Joint High Commission sits—in America—but in Geneva in Switzerland, by a "tribunal of arbitration" composed of five arbitrators, one to be named by the President, one by the Queen, one by the King of Italy, one by the President of the Swiss Confederation, and one by his majesty the Emperor of Brazil. The felicity of the selection of the persons to appoint this arbitration is pretty easily seen.

I will say nothing as to the King of Italy and the President of the Swiss Confederation; but I cannot forget that the gallant Commodore Collins captured the rebel pirate Florida in the port of Bahia where she had taken shelter under the protection of the Emperor of Brazil, where she had received the same comfort and aid that were given the Alabama in British ports; and I cannot forget that the Emperor of Brazil, in precisely like case, will hardly be tempted to appoint a commissioner who will decide that Great Britain was wrong in harboring the Alabama while his majesty the Emperor may be called upon to pay for the damages inflicted by the Florida in like case offending. I do not forget that the Emperor of Brazil required of us to return the Florida to the port of Bahia in the same condition that we found her, so that she might pursue her piratical course because her capture was in conflict with that neutrality which he chose to afford to us. The return of which piratical craft to prey afresh upon our commerce was only prevented by the accident of her sinking from being run into by an army transport when under my jurisdiction in the James River, just before she was to start back. And I cannot forget, also, that very cogent differences of opinion arose between the representatives of this country and his majesty the Emperor of Brazil in regard to his war

against Paraguay, which led to some not the most friendly relations. I cannot forget that Brazil has the bad eminence now of being in the world the only nation retaining slavery, and the chosen home and refuge of the recalcitrant rebels who fled for safety from, as they supposed, the impending halter after the surrender of Lee.

Perhaps these facts make the Emperor of Brazil a perfectly fit umpire, as he has the appointment of that umpire, of the Alabama claims. But I should prefer an umpire chosen by a different power, and would have suggested his majesty the Emperor of Russia, who emancipated his slaves just before we did ours, thereby setting us a good example.

It is to be observed that this "tribunal of arbitration," so chosen, may award a sum in gross, which shall be a full and final settlement of all our Alabama claims, and for convenience of representation of those claims, of producing the witnesses and testimony, and of showing all our losses, that tribunal is to sit at Geneva, in the mountains of Switzerland.

But it must be by no means forgotten that to guide this arbitration, three rules are laid down in article 6th, as also for the future government of neutral nations in time of war with the express reservation that her Majesty's government cannot assent to the rules as a statement of principles of international law, which were in force at the time when the claim mentioned in article first arose; but that in order to make satisfactory provision for the future, in order to evince its desire to strengthen the relations between the two governments, it is agreed that they shall be taken as rules by the arbitrators, if not inconsistent with other principles of international law.

First, then, that a neutral government is bound to use due diligence to prevent fitting out or equipping any vessel which it has reasonable ground to believe is intended to cause or carry on war against a power with which it is at peace, and also due diligence to prevent the departure of a vessel intended to carry on war as above, such vessel having been especially adapted in whole or in part within such jurisdiction to warlike uses. Secondly, not to permit or suffer either of the belligerents to make use of its ports or waters as a base of naval operation against the other, for the purpose of

military supplies or arms, or the recruitment of men. Thirdly, to exercise due diligence in its own ports as to all persons within the jurisdiction to prevent any violation of the foregoing obligations and duties.

While it might be desirable that the rules should govern the arbitration, it is difficult to see upon what theory they can be deemed of advantage to this country in the future. By the non-observance of them England has driven our commerce from the seas. In any coming war we are to lose all advantage of building and selling ships to belligerents. England has fully enjoyed her opportunity to cripple a commercial rival. We are to give up ours —we have no need of them hereafter, they will hardly serve us in the past.

As bearing upon the Alabama claims, it will be observed that those rules are to be applicable to Great Britain in case only the Alabama is found by this tribunal of arbitration to be "especially adapted in whole or in part within Great Britain to warlike uses." Now the British have always claimed to escape the penalty of liability for the Alabama, on the ground that when she left Liverpool she was *not* "especially adapted to warlike uses," her armament being taken on elsewhere. Secondly, that she did not use any British port for military supplies, only coal and provisions, which are not necessarily military supplies. It will also be remembered that a British jury in a like case brought to trial under the instructions of a British judge expressly found no breach of neutral obligations was done by a British subject. And the third article does not enlarge the simplest provisions of the British neutrality act.

But suppose I am wrong in this as applied to the Alabama claims, and that these rules are meant to be an admission by Great Britain that she is amenable for the conduct of her agents at Liverpool and Nassau in relation to the Alabama, and that her fitting out was a breach of neutrality within the meaning of the third rule. Then, before she will consent to pay for what the Alabama did, she proposes to bind the United States by these rules forever to prevent all fitting out and sale of vessels adapted to war purposes, and the treaty expressly provides that these rules are to be binding upon other nations as well as binding upon Great Britain. Therefore

hereafter, in any war, the United States are to be responsible for all damages inflicted by any vessel which shall escape from our ports, and with the enterprise of our people such vessels certainly will escape. So that hereafter our hands are to be tied when British emergency may be our opportunity.

To illustrate: whenever Great Britain gets into a war, and in one of our many ports a vessel is fitted out which injures her commerce, we in all after time are to be held for all damages she does, consequential or otherwise. By these rules no duty is imposed upon the British Government, as there was a duty which we undertook during the rebellion, to bring to the notice of our government any such fitting out or escape. We are obliged by the treaty to attend to all that ourselves solely, employ our own agents, and no duty or obligation is put upon the British or other belligerent government to give us any information whatever, of how much soever she may be possessed. She would not listen to the representations of our minister, Mr. Adams, that the Alabama was being fitted out. She requires us, by the new rules, to act without giving us any information whatever.

If this treaty is ratified, and the rules of international law are thus established, binding us more stringently than do our own neutrality laws, which can be repealed at pleasure, then indeed is a great vantage ground of the United States to regain our commerce, lost by British depredations in any future war, gone forever, and the commercial superiority of Great Britain on the seas is indeed assured.

It seems, therefore, that the question of national honor, of insult to our flag; of attempt to break up our government as a commercial rival, is to be submitted to five gentlemen who may decide that all shall be paid for in a gross sum of money. It has already been submitted to ten, called a Joint High Commission; and if the five new gentlemen to be hereafter indifferently selected do not take a different view of our case than those of our own appointment, I see not much hope even of pecuniary gain as a partial reparation of all we have lost. Certain it is, that the treasury of the United States is in no event to gain anything, because this gross sum, so far as one can see, will not be greater than what will be necessary to be

divided among the private claimants in satisfaction of their losses. I observe that the private claimants under the Alabama, some through the newspapers, are pressing very urgently the ratification of the treaty. Let them not be too fast. If a gross sum is paid into the treasury of the United States, it may not be easily got out; and as an illustration I point them to the French spoliation claims, the money for which was due some time in 1836 from the treasury of the United States, but of which, so far as I am informed, the private claimants have, thus far in the year of our Lord 1871, realized nothing.

It is fair to say, however, that the treaty provides that this arbitration may only determine grounds of England's liability, and a board of assessors are then to be named who shall settle "the amount to be paid by Great Britain to the United States on account of the liability thus arising from such failure as to each vessel according to the extent of such liability to be decided by the first named arbitrators." In practice, however, it will amount to this: we all know that arbitrations always split the difference between contending parties. The extent of liability is to be determined by the first board, and they will compromise that, and of course shrink, as much as possible for them to do, from the responsibility of determining amounts. Then there is a second board of arbitration which will again split the difference as to amounts claimed, as is the manner of arbiters. So that our claims are in danger, according to the well known practice in such cases, of being first halved by the tribunal of arbiters, and then halved again by the board of assessors.

This, of course, is very convenient to the party who has to pay, Great Britain, but not to the United States, who make the claim, and are to run the risk of the double danger of submitting their claims to a cutting down process by two boards of arbitration.

Having thus provided laws for the apparent diminution of our claims both in extent of liability and importance of amount, the treaty provides, as an offset to any possible recovery that we might get, that "all claims from citizens of the United States against the government of Great Britain arising out of acts against their persons and property during the war, not known as the Alabama claims,

and all claims of the subjects of her Britannic Majesty arising out of acts committed against their persons or property during the war which have been or may be presented" to a board of commissioners, shall be determined by them and paid in accordance with their adjudication. The provision as to the claims of our citizens for British aggressions during the war can apply only to the St. Albans raid or one or two like matters of small import; because we suffered no other than our injuries at sea. I am not awa of any substantial claim by the citizens of the United States against the British government during the war except the St. Albans raid. This provision apparently is put in as a sort of sop to the State of Vermont to insure the vote of her two Senators for the treaty in derogation of the other New England interests sacrificed by it.

But the claims already submitted, and which will be submitted, of British subjects supposed to be injured during the war by the United States are of vast amount. Every blockade runner caught and imprisoned, every man in the South whose property was taken, who can by possibility claim ever to have been a British subject, or who by bill of sale or otherwise can get title to property taken or injured by the United States forces during the war, into the hands of a British subject, will appear as a claimant before this commission. And these claims will run up to a very much larger sum than any possible claims that we can have on account of the Alabama. And the balance provided for by adjudication under the treaty to be drawn from the treasury of the United States will be very great.

While we remember the immense emigration from England, Ireland, Scotland and Wales, not to say Canada, we can easily conceive how many British subjects may have been injured in person or property during the war. There has been, it is estimated, something over four million emigrants within the last twenty years into the United States of subjects of Great Britain. A very small sum for injuries done in the war to a very small portion of them would amount to a very large aggregate indeed. Under the doctrines of local allegiance leaving losses by the war to fall upon foreigners domiciled here to be borne as are those of our own citizens, we are not now, and shall not be, unless we agree to the laws of this treaty, responsible to foreigners for injuries suffered in war in any other

manner than to our own citizens. In the present condition of things the tree must lie where it falls, and the loss must remain with those where it happens, as other losses during the war. But if we agree to this all the losses of foreign neutrals must be paid.

If it be said that many of these British subjects are naturalized citizens, to that it is answered that the case was very frequent during the war where men claimed in the south British protection and concealed the fact of their naturalization, which would be only known to themselves, and there are many in the category of British claimants who have acted as American citizens for years and who claim now their British protection. Indeed, the adoption by the government of this class of claims, and the paying of the same, will open the door to take untold millions from the treasury; for it is very difficult for congress to say, if the government pay British subjects for their losses suffered during the war, why we should not pay all loyal men north as well as south for all their losses during the war. Are we to treat British subjects better than our own loyal citizens? and are we not by this treaty opening a door through which untold millions upon millions will pass out of the treasury of the United States?

There are two classes of claims, however, provided for in this treaty that a loyal American citizen can never consent to; and they may be put in as many treaties as Commissioners may choose to negotiate or the Senate to ratify; but I, as a Representative of the people, will never vote a dollar appropriation for them. And those claims are these: First, compensation for slaves owned by British subjects taken during the war. I, myself, enlisted such slaves, and took them from the possession of their British owners to fight the battles of America; and am I now to be called upon to pay for them? Yet they were property under the Constitution of the United States, so far as British subjects were concerned, and the proclamation of emancipation of President Lincoln, which took this class of property from British subjects, was an act of war; and under this article of the treaty I see no answer before a Commission to a claim for slaves when made in due form before them. I see by the protocol that the Commissioners there say that a British penal statute inflicts a penalty of fifty pounds upon a British subject for holding slaves,

therefore no British subject can claim property in slaves under this treaty. That is simply a municipal statute affecting a British subject while in England. It cannot affect him here any more than any other municipal law of England can affect his action here. He cannot be tried here under that statute; he can be liable to no penalty here under that statute. He has a right while owing local allegiance to us to own all property that is legally to be owned by our laws, and he is to be protected by our laws in those rights. And this treaty is the supreme law of our land when we agree to it. There is a penalty of fifty pounds for any British subject o ning a pack of cards which shall not be stamped in a specific way; but does any one presume that that penalty applies to a British subject while domiciled here? And why should not it apply as well to a penalty against owning slaves?

And again, if we are to pay British subjects for property in slaves, why not pay our own loyal citizens for the same class of property? And will not the claim for slaves be pressed upon us with unanswerable force? It appears, however, in the protocol that the British Commissioners said that no claim for slave property will be presented by the British government. But suppose the administration is changed, who shall answer for what a new British ministry may or may not do when there is no treaty to the contrary? Why not say so in the treaty itself? Nobody is bound by a protocol that is the offer of a bargain, not the bargain itself. Why not say, claims for all acts committed against British subjects except for slaves, and thus save all possible precedent and all possible dispute upon this topic? And I pray our Senators, as republican and anti-slavery men, to move that amendment in the Senate of the United States, and let the country see who will vote against it, even in secret session.

Again, we have by constitutional amendment, and in every way that a government can, pledged the nation against payment of any part of the Confederate loan in Europe; and it may be said, and said truly, that this loan is not included by the term, acts arising out of the war committed against the persons or property of British subjects. But we must remember that that Confederate loan was secured by pledge of vast amounts of cotton in the South

owned by the Confederacy, as collateral security for that loan, which became thereby the property of British subjects holding the loan for which it was pledged. This cotton was destroyed or captured to the amount of many, many millions, and certainly comes directly within the provisions of this article of the treaty. And although we may not pay the Confederate loan, yet by the treaty we are obliged to pay for property by which the Confederate loan was secured, and the English Confederate bondholders will receive so far the amount loaned by them to carry on the war. The English Confederate bondholders understand this very well, and their papers are exulting over the fact that by this treaty the English can hold us to restore all the pledged property her subjects held for the Confederate loan.

If it be said that this property will not come within the description of this article of the treaty, I reply again it does come within the words if not within the very purview of the article, and why not say so, and settle all question upon this subject? And ought not this amendment to be made in the Senate if this treaty or any of its parts is to be ratified?

Again, if we are to pay for these losses of British subjects arising out of the war, why are we not in like manner bound to pay the losses of the French, the Germans, the Italians, the Austrians, the Spaniards, the Brazilians? Do they not all stand on an equal footing in the claims for losses suffered in the war? How can we evade such payment?

Observe how completely our joint commissioners have been outgeneraled, because in all the boards of arbitration, either the King of Spain or his representative, the Emperor of Austria or his representative, the King of Italy or his representative, the Emperor of Prussia or his representative, the King of Sweden, are to appoint one or more arbitrators, yet their subjects have like claims and like demands with British subjects upon this government.

I should feel more alarmed upon this topic than I do did I not know that at least there is one safeguard which the United States have against the provisions of the treaty — which need no word of characterization — and that is that the House of Representatives of the people will never appropriate money to carry some of them into effect. It will be said that when a treaty is once passed by the

executive branch of the government, and ratified by the Senate, the House must pass the necessary legislation to carry it into effect. To that I answer that the Parliament of Great Britain in the commercial treaty made with Holland many years ago expressly refused to pass the necessary laws to carry into effect its provisions, and it remains unexecuted even to this day. And the House of Representatives, from the time of Washington, have given notice, and the present House have renewed that notice, as well to the Senate as to the world, that the rights of the United States are not to be bartered away by the treaty-making power without the assent of the House.

I have tasked your patience so much in the consideration of these two principal matters of the treaty that I hardly dare ask your attention to any other criticisms upon it.

True, we get the navigation of the St. Lawrence and the Welland Canal, by paying for them. That we have now. I never have heard of any United States vessel being prevented from navigating either of these waters or going through the canals by paying the tolls. There may be such a case of grievance, but it is not to such an extent as to attract national attention. But for that we give, free of cost and license to British subjects, the navigation and trade on the American lakes and canals, and open to them the coasting on the great lakes, providing they can show that they are carrying goods that have ever been land-borne on Canadian soil.

Besides, we are to open all our ports to the import of British goods in bond to be carried in transit across our country to any part of the British possessions. And we are to permit any goods from the British possessions to be carried through our country from the Provinces, also in bond.

Now, with the example before us that it was found impossible under our internal revenue laws by the severest penalties and exactions of fines and imprisonments to prevent frauds upon the revenue in the transportation of whiskey in bond, to such a degree that the privilege had to be abolished, we can judge what a frightful source of smuggling and fraud upon the revenue is opened by the transit of British goods both ways, in bond, over a vast extent of country, with six thousand miles of custom houses, with every possible ramification of railroads through all portions of a country more or less uninhabited.

But I need not stop to elucidate this further. In fact this practice of carrying bonded goods through our territory to be finally disposed of in another jurisdiction will be found very disastrous to our revenue.

The only other thing that we receive is a submission to arbitration of the question of title to the island of San Juan. With the example before us of what has always been done when we have submitted to arbitration British claims, especially in the case of our title to a portion of the State of Maine to the King of the Netherlands, I have not much hope from this arbitration. Nor does our situation in this regard seem to be improved by the fact that the treaty provides that our title to this island is submitted to the sole decision of the Emperor of Prussia whether present or to come. There was not a lawyer on the Commission who would not have refused to sit as judge in a case where his son's wife might be interested. Why then provide such a judge for his country? Specially when there was a disinterested Emperor of Russia who might have been selected save that he has been thought to be friendly to America. We shall lose San Juan, I doubt not, but it is not of very much consequence. Because, with reasonable firmness of administration on our part, San Juan and all the rest of British America will come to us before long. And that is the only saving reflection I have to this treaty, and will relieve in part my objections to it more or less, excepting always the rules as to neutral nations, which holds us and our posterity forever bound to the superiority of British commerce.

It is to be noticed that this part of the treaty, as that in regard to the fisheries, is quite as remarkable for what it leaves unprovided for as for what it provides. It is well known to both governments that there are claims in large amounts for damages, and of still larger consequence in the principle they involve, against Great Britain for the confinement of American citizens in British prisons without right and without any apparent justice. With the example of England before us of going to war with the barbarous King of Abyssinia because five English subjects were held in custody only, by that savage prince—which every civilized nation justified—how can our government be excused from not insisting,

as part of the settlement of the questions between Great Britain and this country, that the claims of our citizens, whether native born or naturalized, for injuries wrongfully suffered by them at the hands of the British government should be now and here adjusted, settled and paid? The reason for the refusal of our Commissioners to have this class of claims considered was that the British Commissioners put forward claims by Canada against the United States on account of the Fenian raids. That seems to be an excuse, not a reason; for if there is any just cause of complaint against this government for not using due diligence and care in preventing its citizens as soldiers going to Canada, then we ought to pay the full amount of damage and loss occasioned by our neglect of duty. It does not answer the claim that our government should make a demand upon the British government for all just losses and injuries of our citizens to say that if we do we shall be called upon to make good like injuries and wrongs that we have done or suffered to be done. If there are any just claims against us let them be paid, so that our citizens suffering in foreign prisons may get some remuneration.

Again, the great cause of grievance by Great Britain, which must ever be a source of trouble and ill-blood, has not been touched in this treaty, and that is the respect due to our naturalization laws, and to our citizens who were once her subjects, and who have become so according to the process known to our constitution. It has been the practice of Great Britain since 1812, whenever convenient, to ignore and set at naught all claims of her former subjects to be American citizens by virtue of their certificates of naturalization; and we as a nation have been the subject of almost daily insult in having the rights of our citizens entirely disregarded. What excuse have the American Commissioners or the government to offer why this prolific source of ill-blood, ill-feeling, and almost of necessity wrong-doing by England to the citizens of the United States within their borders be done away with by effective rules binding the future conduct of that power and indemnifying our citizens for the past?

Calling your attention to one other matter to which this treaty covertly, but very effectually commits us, I will relieve you from further discussion of these topics. It will be observed that the United States are making a treaty with Great Britain—two independent

powers; and yet Great Britain requires us in every part of the treaty, step by step, to acknowledge the Dominion of Canada as a quasi independent power. This treaty is to be in force between the two governments if a portion of the people of one government will agree to it. We shall have this or that, done or not done, as we can get the consent of Canada. Well, what is Canada, but a British province? Why shall we be put in the dishonoring position of being a suitor to the Dominion of Canada, for what we shall do or what we shall not do—what we shall receive and what we shall not receive? True, a sop is thrown us by a provision that the United States shall ask the States to open their canals as fast as they are built to British commerce.

Again, I confess my ignorance. I never have heard any objection made by any corporation having any canal, to any boat, British or other, going through it, who would pay tolls. Canal boats do not generally carry the flag of their country, so that it would not be an offensive object flaunting the British ensign in our faces. And I have yet to hear of any occasion for any such stipulation. And, so far as I am advised, it is a new species of diplomacy—a recognition of State rights, not even laid down in the resolutions of '98—that the treaty-making power of the United States with foreign nations is to be subject to ratification by the States, legislatively or otherwise. I had supposed, up to this present moment, that I had known of every possible assertion of State rights; but, in defiance of what Solomon says, that there is nothing new under the sun, here is a new assertion of State rights—an implication that the legislatures of the States may overrule the treaty-making power of the United States.

Trusting that the Senate will exercise its sound judgment upon this treaty, cause the fullest discussion, take time, and wait to hear the response of the country after the treaty has been read and commented upon, not by hired newspapers in the interests of parties seeking payment of money under the treaty, but by an independent press and the intelligence of the country, and trusting it will not be made a party measure on the one side, or the other, as it is not, but that it shall be viewed in a spirit of intelligent patriotism, anxious only for the safety, honor, welfare and best interests of the country, believe me, Yours very truly,

BENJ. F. BUTLER.

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