

(Printed for the use of the Colonial Office.)

CONFIDENTIAL.

CANADA.

North American.

No. 128.

FURTHER CORRESPONDENCE

RESPECTING THE

TERMINATION OF THE FISHERY ARTICLES

OF THE

TREATY OF WASHINGTON.

(In continuation of North American No. 121.)

COLONIAL OFFICE,
April, 1888.

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CANADA.

FURTHER CORRESPONDENCE respecting the Fishery Question.

15,411.

No. 1.

Foreign Office to Colonial Office.

FOREIGN OFFICE,
August 3rd, 1887.

SIR,

With reference to your letter of the 17th June last,* I am directed by the Secretary of State for Foreign Affairs to transmit to you, to be laid before Sir Henry Holland, a copy of a despatch from Her Majesty's Minister at Washington, relative to the case of the fishing schooner, "Laura Sayward."

I am, &c.,
(Signed) J. PAUNCEFOTE.

The Under Secretary of State,
Colonial Office.

Enclosure in No. 1.

WASHINGTON,
July 20th, 1887.

Treaty, No. 68.

MY LORD,

I have the honour to acknowledge the receipt of your Lordship's despatch, No. 33 of this series, of the 30th ultimo, and to enclose herewith copy of a note which I addressed to the Secretary of State communicating to him, as instructed by your Lordship, copy of the despatch from the Governor-General of Canada enclosed therein on the subject of the alleged ill-treatment of the United States fishing vessel "Laura Sayward," and I now have the honour to enclose copy of the reply thereto, stating that investigation will be made into the matter.

I have, &c.,
(Signed) L. S. SACKVILLE WEST.

The Marquis of Salisbury, K.G.,
&c., &c., &c.

DEPARTMENT OF STATE, WASHINGTON,
July 19th, 1887.

SIR,

I have the honour to acknowledge your note dated yesterday and received to-day, enclosing a copy of the declaration of Captain Medio Rose, master of the schooner "Laura Sayward," of Gloucester, Mass., made on April 20th last, at Sandy Point before a Justice of the Peace, apparently in contradiction of the statement made by the same party under oath on October 13th last.

This document will be instantly made the subject of investigation, and the observations of this Government thereon, as suggested by your note, will be communicated to

* No. 192 in North American No. 121.

you as soon as information on the matter shall have been received from the Collector of Customs at Gloucester, through whom the original affidavits of Captain Rose were forwarded to this department.

I have, &c.,
(Signed) T. F. BAYARD.

Sir L. S. West,
&c., &c., &c.

WASHINGTON,
July 18th, 1887.

SIR,

In your note of the 11th of November last enclosing copies of the statements with affidavits from Captain Medio Rose, master of the schooner "Laura Sayward," of Gloucester, Mass, you state that these papers impressively describe the "inhospitable and inhuman conduct of the collector of the Port of Shelburne, N.S., in refusing to allow Captain Rose to buy sufficient food for himself and crew to take them home, besides unnecessarily retaining his papers and thus preventing him with a wholly inadequate supply of provisions from proceeding on his voyage." This note, I observe appears in the papers relating to the Foreign relations of the United States transmitted to Congress with the President's message (1886, No, 231, page 425).

I have now the honour to inform you that I am instructed by the Marquis of Salisbury to communicate to you the enclosed copy of a despatch from the Governor-General of Canada together with copy of an approved Minute of the Privy Council to which is appended a letter from the Collector of Customs at Shelburne, enclosing a declaration made by Captain Rose in which he states that the statements made by him in the affidavit alluded to in your above mentioned note, *are all untrue*.

In communicating these papers to you I am further instructed to ask whether the United States Government have any observations to make thereupon.

I have, &c.,
(Signed) L. WEST.

The Honourable T. F. Bayard,
&c., &c., &c.

15,542.

No. 2.

Admiralty to Colonial Office.

ADMIRALTY,
4th August, 1887.

SIR,

In reference to your letter of the 6th ultimo,* I am commanded by my Lords Commissioners of the Admiralty to enclose herewith for the information of Sir Henry Holland a copy of the instructions which have been sent for the information and guidance of the Commander-in-Chief on the North American Station, on the subject of the Canadian fisheries, in consequence of the determination of Articles XVIII to XXV and Articles XXX and XXXII of the Treaty of Washington, made in 1871, between Great Britain and the United States of America.

I am, &c.,
(Signed) EVAN MACGREGOR.

The Under Secretary of State,
Colonial Office.

Enclosure in No. 2.

Confidential.

ADMIRALTY,
30th July, 1887.

SIR,

With reference to Article VII, Sections 4, 5, and 6, of your instructions to the Senior Officer of Her Majesty's ships employed in the protection of the Fisheries, dated

* No. 201 in North American No. 121.

1st February, 1887, I am commanded by my Lords Commissioners of the Admiralty to transmit herewith for your information and guidance a copy of a letter (with its enclosures) from the Colonial Office, dated 6th instant, on the subject of the Canadian Fisheries.

2. You will observe from the Colonial Office letter that the determination of Articles XVIII to XXV and Articles XXX and XXXII of the Treaty of Washington made in 1871 between Great Britain and the United States, revives the first Article of the Convention of 20th October, 1818.

3. To ensure that the wishes of Her Majesty's Government are carried out in respect to the observance of that Article, so far as the force under your command will admit, my Lords desire that you will issue instructions to the Commanding Officers of Her Majesty's ships on the North American Station in accordance with the terms of the Colonial Office letters and of its enclosures, especially observing that the letter addressed to Captain Scott by the Minister of Marine, dated at Ottawa on 23rd March, 1886, is to be treated as strictly confidential.

I am, &c.,
(Signed) EVAN MACGREGOR.

To Commander-in-Chief,
North America and West Indies.

15,524.

No. 3.

Governor-General the Marquis of Lansdowne to Sir H. T. Holland.
(Received August 5th, 1887.)

Confidential.

CASCAPEDIA, NEW RICHMOND, P.Q.,
July 21st, 1887.

SIR,

I have the honour to acknowledge the receipt of your despatch, marked secret and confidential, of the 28th of June,* transmitting for my own personal information only a copy of a despatch from Her Majesty's Minister at Washington to the Foreign Office, in which a conversation which took place between Sir Lionel West and Senator Edmunds, respecting the North American Fisheries Question, is detailed.

I have, &c.,
(Signed) LANSDOWNE.

The Right Hon. Sir H. T. Holland, Bart., G.C.M.G., M.P.
&c., &c., &c.

15,411.

No. 4.

Sir H. T. Holland to Governor-General the Marquis of Lansdowne.

No. 265.

DOWNING STREET,
August 6th, 1887.

MY LORD,

With reference to your Lordship's despatch No. 166, of the 20th of May last,† I have the honour to transmit to you, for communication to your Government, a copy of a despatch‡ received through the Foreign Office from Her Majesty's Minister at Washington relating to the case of the United States fishing schooner "Laura Sayward."

I have, &c.,
(Signed) H. T. HOLLAND.

The Marquis of Lansdowne,
&c., &c., &c.

* No. 196 in North American No. 121.

† No. 189 in North American No. 121.

‡ Enclosure in No. 1.

16,019.

No. 5.

Foreign Office to Colonial Office.

Confidential.

FOREIGN OFFICE,
August 10th, 1887.

SIR,

I am directed by the Secretary of State for Foreign Affairs to transmit to you, to be laid before Secretary Sir Henry Holland, a copy of a despatch to Sir Lionel West on the 29th ultimo, recording a conversation which Lord Salisbury had with Mr. Phelps on the subject of the North American Fishery question.

I am, &c.,
(Signed) T. V. LISTER.The Under Secretary of State,
Colonial Office.

Enclosure in No. 5.

FOREIGN OFFICE,
July 29th, 1887.

SIR,

With reference to your despatch, No. 66, of the 12th instant, I have to acquaint you that the United States Minister called upon me to-day and proposed the appointment of a Commission to consider the North American Fisheries Question.

In reply, I stated that Her Majesty's Government were willing to take part in such a Commission, but I expressed a doubt whether one Plenipotentiary on each side would be enough.

Mr. Phelps did not express any dissent from that view.

I am, &c.,
(Signed) SALISBURY.The Hon. Sir Lionel S. Sackville-West, K.C.M.G.,
&c., &c., &c.

15,300.

No. 6.

Sir H. T. Holland to Governor-General the Marquis of Lansdowne.

TELEGRAPHIC.

August 11th. Following telegram has been sent in cypher to West by Secretary of State for Foreign Affairs:—29th July. Fisheries.—Mr. Phelps proposes Commission. I have expressed willingness of Her Majesty's Government, but doubt whether one Plenipotentiary each side would be enough—end. The above is for your Lordship's confidential information.

16,108.

No. 7.

Administrator Sir F. B. T. Carter (Newfoundland) to Sir H. T. Holland.
(Received August 12th, 1887.)

Confidential.

GOVERNMENT HOUSE, NEWFOUNDLAND,
1st August, 1887.

SIR,

I have the honour to acquaint you that immediately on receipt of your cypher message of the 26th July last,* respecting the letter of the Minister of the United States to Sir A. Shea, upon the subject of a separate fishery arrangement with the

* No. 213 in North American No. 121.

United States, I informed Mr. Winter, Attorney-General, Acting Premier, in the absence of Sir Robert Thorburn, as directed, for the guidance of the Executive.

Since then, I have been informed both by the Attorney-General and Sir Robert Thorburn, recently returned to the Colony, that no step will be taken in that direction without first apprizing Her Majesty's Government, and that such course had been previously determined upon.

I beg to forward a copy of Sir A. Shea's letter to the Colonial Secretary covering that of Mr. Phelps, of which I had not heard until after the receipt of your message.

I have, &c.,
(Signed) F. B. T. CARTER, Administrator.

The Right Honourable
Sir Henry Holland, Bart., G.C.M.G., M.P.
&c., &c., &c.

Enclosure in No. 7.

Sir A. Shea to the Colonial Secretary.

ST. JOHN'S,
July 15th, 1887.

SIR,

I beg to enclose letter† from the American Minister in London, and I have to inform you that if application be made, Her Majesty's Government will be ready to assent to the proposal for a separate Treaty between the United States and this Colony.

I have, &c.,
(Signed) A. SHEA.

Hon. M. Fenelon, Colonial Secretary.

16,047.

No. 8.

*Administrator Sir F. B. T. Carter (Newfoundland) to Sir H. T. Holland.
(Received August 12th, 1887.)*

No. 82.

GOVERNMENT HOUSE, NEWFOUNDLAND,
3rd August, 1887.

SIR,

With reference to the proposal for a separate fishery arrangement between the United States and this Colony, I have the honour to enclose a minute of the Executive Council just delivered to me for transmission.

I have not deemed it necessary to make any observations on this as the subject and circumstances are so well known to Her Majesty's Government.

I have, &c.,
(Signed) F. B. T. CARTER, Administrator.

The Right Honourable
Sir Henry Holland, Bart., G.C.M.G., M.P.,
&c., &c., &c.

Enclosure in No. 8.

Extract from Minutes of the Executive Council of the 3rd August, 1887.

A communication was read from Sir A. Shea, enclosing a letter to him from Mr. Phelps, United States Minister in London, on the subject of negotiations for an arrangement between the United States Government and this Colony in relation to fishery questions, and to the effect that the granting of permission during the present season to the United States fishermen to obtain supplies in the ports of this Colony, would be regarded with favour by the Government of the United States in connection with such negotiations.

• Enclosure in No. 199 in North American No. 121.

The Council are gratified at the expression on the part of the United States Government of a disposition on their part to enter upon negotiations in relation to this important question in a friendly spirit.

The Council are of opinion that it would be greatly to the advantage of the Colony to be in a position to negotiate for an independent ("separate") arrangement with the United States in relation to fishery and other cognate questions. And that it is desirable that authority should be obtained from Her Majesty's Government for the purpose of opening communication with the United States Government upon the subject as soon as opportunity may appear favourable. Subject to such conditions as Her Majesty's Government may consider it advisable to prescribe.

(Signed) M. FENELON, Colonial Secretary.

15,300.

No. 9.

Sir H. T. Holland, to Governor-General the Marquis of Lansdowne

DOWNING STREET,
12th August, 1887.

Confidential.

MY LORD,

I have the honour to transmit to your Lordship herewith for your confidential information a copy of a telegram* which has been addressed to Her Majesty's Minister at Washington by the Secretary of State for Foreign Affairs relative to the proposed appointment of a Commission to consider the Fisheries Question.

I have, &c.,
(Signed) H. T. HOLLAND.

The Marquis of Lansdowne.

15,542.

No. 10.

Sir H. T. Holland to Governor-General the Marquis of Lansdowne.

DOWNING STREET,
16th August, 1887.

Secret.

MY LORD,

With reference to my despatch secret of the 7th of July last,† I have the honour to transmit to you, for communication to your Ministers, a copy of a letter‡ from the Admiralty enclosing the instructions which have been sent to the Naval Commander-in-Chief on the North American Station on the subject of the Canadian Fisheries.

I have, &c.,
(Signed) H. T. HOLLAND.

The Marquis of Lansdowne.

15,542.

No. 11.

Colonial Office to Foreign Office.

DOWNING STREET,
August 16th, 1887.

SIR,

With reference to your letter of the 29th of June§, I am directed by the Secretary of State for the Colonies to transmit to you for the information of the Marquis of

* Enclosure in No. 217 in North American No. 121.

† No. 202 in North American No. 121.

‡ No. 2.

§ No. 197 in North American No. 121.

Salisbury a copy of a letter* from the Admiralty enclosing the instructions which have been sent to the Naval Commander-in-Chief on the North American Station on the subject of the Canadian Fisheries.

I am, &c.,
(Signed) R. H. MEADE.

The Under Secretary of State,
Foreign Office.

17,133.

No. 12.

Foreign Office to Colonial Office.

FOREIGN OFFICE,
August 18th, 1887.

Confidential.

SIR,

I am directed by the Marquis of Salisbury to transmit to you a copy of a note from the United States Minister at this Court, containing observations in reply to those made in his Lordship's note of the 24th of March last to Mr. White, relative to a proposed *ad interim* arrangement concerning the North American Fisheries.

It is not clear whether the United States Government contemplate putting forward the "*ad interim*" arrangement in question as a matter for discussion by the proposed Commission, but, in the meanwhile, I am to request that if Sir Henry Holland sees no objection, Mr. Phelps' note and enclosure may be referred to the Canadian Government for their observations.

His Lordship would further suggest that a copy might perhaps with advantage be communicated to Sir Charles Tupper.

I am, &c.,
(Signed) T. V. LISTER.

The Under Secretary of State,
Colonial Office.

* No. 2.

Enclosure in No. 12.

Mr. Phelps to the Marquis of Salisbury. (Received August 6th.)

LONDON,
August 3rd, 1887.

MY LORD,

I have the honour to transmit herewith a communication from the Secretary of State of the United States, containing observations in reply to those of your Lordship on the proposal for an *ad interim* arrangement in respect to the Canadian fisheries.

I have, &c.,
(Signed) E. J. PHELPS.

Fisheries Arrangement proposed by United States, with "Observations" of British Government and Reply of Government of United States.

Ad interim Arrangement proposed by the United States Government.

Observations on Mr. Bayard's Memorandum.

Reply to "Observations" on Proposal.

ARTICLE I.

Whereas, in the 1st Article of the Convention between the United States and Great Britain, concluded and signed in London on the 20th October, 1818, it was agreed between the High Contracting Parties "that the inhabitants of the said United States shall have for ever, in common with the subjects of His Britannic Majesty, the liberty to take fish of every kind on that part of the southern coast of Newfoundland which extends from Cape Ray to the Rameau Islands, on the western and northern coast of Newfoundland, from the said Cape Ray to the Quirpon Islands, on the shores of the Magdalen Islands and also on the coasts, bays, harbours, and creeks, from Mount Joly, on the southern coast of Labrador, to and through the Straits of Belleisle, and thence northwardly indefinitely along the coast, without prejudice, however, to any of the exclusive rights of the Hudson's Bay Company; and that the American fishermen shall also have liberty for ever to dry and cure fish in any of the unsettled bays, harbours, and creeks of the southern part of the coast of Newfoundland, here above described, and of the coast of Labrador; but so soon as the same, or any portion thereof, shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such portions so settled without previous agreement for such purpose with the inhabitants, proprietors, or possessors of the ground;" and was declared

The most important departure in this Article from the Protocol of 1866 is the interpolation of the stipulation, "that the bays and harbours from which American vessels are in future to be excluded, save for the purposes for which entrance into bays and harbours is permitted by said Article, are hereby agreed to be taken to be such harbours as are 10, or less than 10, miles in width, and the distance of 3 marine miles from such bays and harbours shall be measured from a straight line drawn across the bay or harbour in the part nearest the entrance at the first point where the width does not exceed 10 miles."

This provision would involve a surrender of fishing rights which have always been regarded as the exclusive property of Canada, and would make common fishing grounds of the territorial waters which, by the law of nations, have been invariably regarded, both in Great Britain and the United States, as belonging to the adjacent country. In the case, for instance, of the Baie des Chaleurs, a peculiarly well-marked and almost land-locked indentation of the Canadian coast, the 10-mile line would be drawn from points in the heart of Canadian territory, and almost 70 miles distance from the natural entrance or mouth of the bay. This would be done in spite of the fact that, both by Imperial legislation and by judicial interpretation, this bay has been declared to form a part of the territory of Canada.

A prior agreement between the two Governments as to the proper definition of the "bays and harbours" from which American fishermen are hereafter to be excluded would not only facilitate the labours of the proposed Commission by materially assisting it in defining such bays and harbours, but would give to its action a finality that could not otherwise be expected. The width of 10 miles was proposed not only because it had been followed in Conventions between many other Powers, but also because it was deemed reasonable and just in the present case; this Government recognizing the fact that, while it might have claimed a width of 6 miles as a basis of settlement, fishing within bays and harbours only slightly wider would be confined to areas so narrow as to render it practically valueless, and almost necessarily expose the fishermen to constant danger of carrying their operations into forbidden waters. A width of more than 10 miles would give room for safe fishing more than three miles from either shore, and thus prevent the constant disputes which this Government's proposal, following the Conventions above noticed, was designed to avert.

It was not known to involve the surrender of rights "which had always been regarded as the exclusive property of Canada," or to "make common fishing ground of territorial waters, which, by the law of nations, have been invariably

Ad interim Arrangement proposed by the United States Government.

that "the United States hereby renounce for ever any liberty heretofore enjoyed or claimed by the inhabitants thereof to take, dry, or cure fish on or within 3 marine miles of any of the coasts, bays, creeks, or harbours of His Britannic Majesty's dominions in America not included within the above-mentioned limits; provided, however, that the American fishermen shall be admitted to enter such bays or harbours for the purpose of shelter, and of repairing damages therein, of purchasing wood, and obtaining water, and for no other purpose whatever. But they shall be under such restrictions as may be necessary to prevent their taking, drying, or curing fish therein, or in any other manner whatever abusing the privileges hereby reserved to them;" and whereas differences have arisen in regard to the extent of the above-mentioned renunciation, the Government of the United States and Her Majesty the Queen of Great Britain, being equally desirous of avoiding further misunderstanding, agree to appoint a Mixed Commission for the following purposes, namely:—

1. To agree upon and establish, by a series of lines, the limits which shall separate the exclusive from the common right of fishing on the coast and in the adjacent waters of the British North American Colonies, in conformity with the 1st Article of the Convention of 1818, except that the bays and harbours from which American fishermen are in the future to be excluded, save for the purposes for which entrance into the bays and harbours is permitted by said Article, are hereby agreed to be taken to be such bays and harbours as are 10, or less than 10, miles in width, and the distance of 3 marine miles from such bays and harbours shall be measured from a straight line drawn across the bay or harbour, in the part nearest the entrance, at the first point where the width does not exceed 10 miles, the said lines to be regularly numbered, duly described, and also clearly marked on Charts prepared in duplicate for the purpose.

2. To agree upon and establish such regulations as may be necessary and proper to

Observations on Mr. Bayard's Memorandum.

(See Imperial Statute 14 & 15 Vict., cap. 63; and *Mouat v. McPhee*, 5 Superior Court of Canada Reports, p. 66.)

The Convention with France in 1839, and similar Conventions with other European Powers, form no precedents for the adoption of a 10-mile limit. Those Conventions were, doubtless, passed with a view to the geographical peculiarities of the coast to which they related. They had for their object the definition of the boundary lines which, owing to the configuration of the coast, perhaps, could not readily be settled by reference to the law of nations, and involve other conditions which are inapplicable to the territorial waters of Canada.

This is shown by the fact that in the French Convention the whole of the oyster-beds in Granville Bay, otherwise called the Bay of Cancale, the entrance of which exceeds 10 miles in width, were regarded as French, and the enjoyment of them is reserved to the local fishermen.

A reference to the action of the United States' Government, and to the admission made by their statesmen in regard to bays on the American coasts, strengthens this view; and the case of the English ship "Grange" shows that the Government of the United States in 1793 claimed Delaware Bay as being within territorial waters.

Mr. Bayard contends that the rule which he asks to have set up was adopted by the Umpire of the Commission appointed under the Convention of 1853 in the case of the United States fishing schooner "Washington," that it was by him applied to the Bay of Fundy, and that it is for this reason applicable to other Canadian bays.

It is submitted, however, that as one of the headlands of the bay of Fundy is in the territory of the United States, any rules of international law applicable to that bay are not therefore equally applicable to other bays the headlands of which are both within the territory of the same Power.

The second paragraph of the 1st Article does not incorporate the exact language of the Convention of 1818. For instance, the words "and for no other purpose whatever" should be

Reply to "Observations" on Proposal.

regarded, both in Great Britain and the United States as belonging to the adjacent country."

The case of the Baie des Chaleurs, the only case cited in this relation, does not appear to sustain the "observation" above quoted. From 1854 until 1866 American fishermen were permitted free access to all territorial waters of the provinces under Treaty stipulations. From 1866 until 1870 they enjoyed similar access under special licences issued by the Canadian Government. In 1870 the license system was discontinued, and under date of the 14th May of that year a draft of Special Instructions to officers in command of the marine police, to protect the inshore fisheries, was submitted by Mr. P. Mitchell, Minister of Marine and Fisheries of the Dominion, to the Privy Council, and on the same day was approved. In that draft the width of 10 miles, as now proposed by this Government, was laid down as the definition of the bays and harbours from which American fishermen were to be excluded; and in respect to the Baie des Chaleurs, it was directed that the officers mentioned should not admit American fishermen "inside of a line drawn across at that part of such bay where its width does not exceed 10 miles." (See Sess. Pap., 1870; see also Appendix A to this Memorandum.) It is true that it was stated that these limits were "for the present to be exceptional." But they are irreconcilable with the supposition that the present proposal of this Government "would involve a surrender of fishing rights which have always been regarded as the exclusive property of Canada."

It is, however, to be observed that the instructions above referred to were not enforced, but were, at the request of Her Majesty's Government, amended, by confining the exercise of police jurisdiction to a distance of 3 miles from the coasts or from bays less than 6 miles in width. And in respect to the Baie des Chaleurs, it was ordered that American fishermen should not be interfered with unless they were found within 3 miles of the shore. (Sess. Pap., vol. iv, No 4, 1871; see also Appendix B.)

*Ad interim Arrangement proposed
by the United States Government.*

secure to the fishermen of the United States the privilege of entering bays and harbours for the purpose of shelter and repairing damages therein, of purchasing wood, and of obtaining water, and to agree upon and establish such restrictions as may be necessary to prevent the abuse of the privilege reserved by said Convention to the fishermen of the United States.

3. To agree upon and recommend the penalties to be adjudged, and such proceedings and jurisdiction as may be necessary to secure a speedy trial and Judgment, with as little expense as possible, for the violators of rights and the transgressors of the limits and restrictions which may be hereby adopted.

Provided, however, that the limits, restrictions, and regulations which may be agreed upon by the said Commission shall not be final, nor have any effect, until so jointly confirmed and declared by the United States and Her Majesty the Queen of Great Britain, either by Treaty or by laws mutually acknowledged.

*Observations on Mr. Bayard's
Memorandum.*

inserted after the mention of the purposes for which vessels may enter Canadian waters, and after the words "as may be necessary to prevent" should be inserted, "their taking, drying, or curing fish therein, or in any other manner abusing the privileges reserved," &c.

To make the language conform correctly to the Convention of 1818, several other verbal alterations, which need not be enumerated here, would be necessary.

*Reply to "Observations", on
Proposal.*

The final instructions of 1870 being thus approved and adopted, were reiterated by their reissue in 1871. Such was the condition of things from the discontinuance of the Canadian licence system in 1870, until, by the Treaty of Washington, American fishermen again had access to the inshore fisheries.

As to the Statute cited (14 and 15 Vic., cap. 63, 7th August, 1851), it is only necessary to say that it can have no relevance to the present discussion, because it related exclusively to the settlement of disputed boundaries between the two British provinces of Canada and New Brunswick, and had no international aspect whatever; and the same may be said of the case cited, which was wholly domestic in its nature.

Excepting the Baie des Chaleurs, no case is adduced to show why the limit adopted in the Conventions regulating the fisheries in the British Channel and in the North Sea would not be equally applicable to the provinces. The coasts bordering on those waters contain numerous "bays" more than 10 miles wide; and no other condition has been suggested to make the limit established by Great Britain and other Powers as to those coasts "inapplicable" to the coasts of Canada.

The exception referred to (of the oyster beds in Granville Bay) from the 10-mile rule in the Conventions of 1839 and 1843, between Great Britain and France, is found, upon examination of the latter Convention, to be "established upon special principles;" and it is believed that the area of waters so excepted is scarcely 12 by 19 miles. In this relation it may be instructive to note the terms of the Memorandum proposed for the Foreign Office in 1870 with reference to a Commission to settle the fishing limits on the coast of British North America. (Sess. Pap., 1871; see also Appendix C.)

The Baie des Chaleurs is 16½ miles wide at the mouth, measured from Birch Point to Point Macquereau; contains within its limits several other well-defined bays, distinguished by their respective names, and, according to the "observations," a distance of almost 70 miles

*Ad interim arrangement proposed
by the United States Government.*

*Observations on Mr. Bayard's
Memorandum.*

*Reply to "Observations" on
Proposal.*

inward may be traversed before reaching the 10-mile line.

The Delaware Bay is 11½ miles wide at the mouth, 32 miles from which it narrows into the river of that name, and has always been held to be territorial waters, before and since the case of the "Grange" (an international case) in 1793, down to the present time.

In delivering Judgment in the case of the "Washington," the Umpire considered the headland theory, and pronounced it "new doctrine." He noted, among other facts that one of the headlands of the Bay of Fundy was in the United States, but did not place his decision on that ground. And immediately in the next case, that of the "Argus," heard by him and decided on the same day he wholly discarded the headland theory and made an award in favour of the owners. The "Argus" was seized, not in the Bay of Fundy, but because (although more than 3 miles from land) she was found fishing within a line drawn from headland to headland, from Cow Bay to Cape North, on the north-east side of Cape Breton Island.

The language of the Convention of 1818 was not fully incorporated in the second paragraph of the 1st Article of the proposal, because that paragraph relates to Regulations for the secure enjoyment of certain privileges expressly reserved. The words, "and for no other purpose whatever," would, in this relation, be surplusage. The restrictions to prevent the abuse of the privileges referred to would necessarily be such as to prevent the "taking, drying, and curing" of fish. For these reasons the words referred to were not inserted, nor is the usefulness of their insertion apparent.

ARTICLE II.

Pending a definitive arrangement on the subject, Her Britannic Majesty's Government agree to instruct the proper Colonial and other British officers to abstain from seizing or molesting fishing vessels of the United States unless they are found within 3 marine miles of any of the coasts, bays, creeks, and harbours of Her Britannic Majesty's

(962)

This Article would suspend the operation of the Statutes of Great Britain and of Canada, and of the provinces now constituting Canada, not only as to the various offences connected with fishing, but as to Customs, harbours, and shipping, and would give to the fishing-vessels of the United States privileges in Canadian

ARTICLE II.

The objections to this Article will, it is believed, be removed by a reference to Article VI, in which "the United States agrees to admonish its fishermen to comply" with Canadian Customs Regulations, and to co-operate in securing their enforcement. Obedience by American fishing-vessels to Canadian laws was believed,

C 2

*Ad interim Arrangement proposed by the United States Government.**Observations on Mr. Bayard's Memorandum.**Reply to "Observations" on Proposal.*

dominions in America, there fishing, or to have been fishing or preparing to fish within those limits, not included within the limits within which, under the Treaty of 1818, the fishermen of the United States continue to retain a common right of fishery with Her Britannic Majesty's subjects.

ports which are not enjoyed by vessels of any other class, or of any other nation. Such vessels would, for example, be free from the duty of reporting at the Customs on entering a Canadian harbour, and no safeguard could be adopted to prevent infraction of the Customs Laws by any vessel asserting the character of a fishing-vessel of the United States.

Instead of allowing to such vessels merely the restricted privileges reserved by the Convention of 1818, it would give them greater privileges than are enjoyed at the present time by any vessels in any part of the world.

and certainly was intended to be secured by this Article. By the consolidation, however, of Articles II and VI, the criticism would be fully met.

ARTICLE III.

For the purpose of executing Article I of the Convention of 1818, the Government of the United States and the Government of Her Britannic Majesty hereby agree to send each to the Gulf of St. Lawrence a national vessel, and also one each to cruise during the fishing season on the southern coasts of Nova Scotia. Whenever a fishing vessel of the United States shall be seized for violating the provisions of the aforesaid Convention by fishing, or preparing to fish, within 3 marine miles of any of the coasts, bays, creeks, and harbours of Her Britannic Majesty's dominions included within the limits within which fishing is, by the terms of the said Convention, renounced, such vessel shall forthwith be reported to the officer in command of one of the said national vessels, who, in conjunction with the officer in command of another of said vessels of different nationality, shall hear and examine into the facts of the case. Should the said Commanding Officers be of opinion that the charge is not sustained, the vessel shall be released. But if they should be of opinion that the vessel should be subjected to a judicial examination, she shall forthwith be sent for trial before the Vice-Admiralty Court at Halifax. If, however, the said Commanding Officers should differ in opinion, they shall name some third person to act as Umpire between them; and should they be unable to agree upon

This Article would deprive the Courts in Canada of their jurisdiction, and would vest that jurisdiction in a tribunal not bound by legal principles, but clothed with supreme authority to decide on most important rights of the Canadian people.

It would submit such rights to the adjudication of two naval officers, one of them belonging to a foreign country, who, if they should disagree and be unable to choose an Umpire, must refer the final decision of the great interests which might be at stake to some person chosen by lot.

If a vessel charged with infraction of Canadian fishing rights should be thought worthy of being subjected to a "judicial examination," she would be sent to the Vice-Admiralty Court at Halifax; but there would be no redress, no appeal, and no reference to any tribunal if the naval officers should think proper to release her.

It should, however, be observed that the limitation in the second sentence of this Article of the violations of the Convention which are to render a vessel liable to seizure could not be accepted by Her Majesty's Government.

For these reasons, the Article in the form proposed is inadmissible; but Her Majesty's Government are not indisposed to agree to the principle of a joint enquiry by the naval officers of the two countries in the first instance, the vessel to

ARTICLE III.

As the chief object of this Article is not unacceptable to Her Majesty's Government—i.e., the establishment of a joint system of enquiry by naval officers of the two countries in the first instance—it is believed that the objections suggested may be removed by an enlargement of the list of enumerated offences so as to include infractions of the Regulations which may be established by the Commission. And the treatment to be awarded to such infractions should also be considered by the same body.

*Ad interim Arrangement proposed by the United States Government.**Observations on Mr. Bayard's Memorandum.**Reply to "Observations" on Proposal.*

the name of such third person, they shall each name a person, and it shall be determined by lot which of the two persons so named shall be the Umpire.

be sent for trial at Halifax if the naval officers do not agree that she should be released.

They fear, however, that there would be serious practical difficulties in giving effect to this arrangement, owing to the great length of coast, and the delays, which must in consequence be frequent, in securing the presence at the same time and place of the naval officers of both powers.

ARTICLE IV.

The fishing-vessels of the United States shall have in the established ports of entry of Her Britannic Majesty's dominions in America the same commercial privileges as other vessels of the United States, including the purchase of bait and other supplies; and such privileges shall be exercised subject to the same Rules and Regulations and payment of the same port charges as are prescribed for other vessels of the United States.

This Article is also open to grave objection. It proposes to give the United States' fishing-vessels the same commercial privileges as those to which other vessels of the United States are entitled, although such privileges are expressly renounced by the Convention of 1818 on behalf of fishing-vessels, which were thereafter to be denied the right of access to Canadian waters for any purpose whatever, except those of shelter, repairs, and the purchase of wood and water. It has frequently been pointed out that an attempt was made, during the negotiations which preceded the Convention of 1818, to obtain for the fishermen of the United States the right of obtaining bait in Canadian waters, and that this attempt was successfully resisted. In spite of this fact, it is proposed, under this Article, to declare that the Convention of 1818 gave that privilege, as well as the privilege of purchasing other supplies in the harbours of the Dominion.

ARTICLE IV.

The Treaty of 1818 related solely to fisheries. It was not a Commercial Convention, and no commercial privileges were renounced by it. It contains no reference to "ports," of which, it is believed, the only ones then existing were Halifax, in Nova Scotia, and possibly one or two more in the other provinces; and these ports were not until long afterwards opened by reciprocal commercial regulations to vessels of the United States engaged in trading.

The right to "obtain" (*i.e.*, take, or fish for) bait was not insisted upon by the American negotiators, and was doubtless omitted from the Treaty because, as it would have permitted fishing for that purpose, it was a partial reassertion of the right to fish within the limits as to which the right to take fish had already been expressly renounced.

The purchase of bait and other supplies by the American fishermen in the established ports of entry of Canada, as proposed in Article IV, is not regarded as inconsistent with any of the provisions of the Treaty of 1818; and in this relation it is pertinent to note the declaration of the Earl of Kimberley, in his letter of the 16th February, 1871, to Lord Lisgar, that "the exclusion of American fishermen from resorting to Canadian ports, except for the purpose of shelter, and of repairing damages therein, purchasing wood, and obtaining water, might be warranted by the letter of the Treaty of 1818, and by the terms of the Imperial Act. 59 Geo. III, chap. 38: but Her Majesty's Government feel bound to state that it seems to them an extreme measure inconsistent with the general policy of the Empire,

Ad interim Arrangement proposed by the United States Government.

Observations on Mr. Bayard's Memorandum.

Reply to "Observations" on Proposal.

and that they were disposed to concede this point to the United States' Government under such restrictions as may be necessary to prevent smuggling, and to guard against any substantial invasion of the exclusive rights of fishing which may be reserved to British subjects."

It is not contended that the right to purchase bait and supplies, or any other privilege of trade, was given by the Treaty of 1818. Neither was any such right or privilege stipulated for or given by the Treaty of 1854, nor by the Treaty of Washington; and the Halifax Commission decided, in 1877, that it was not "competent" for that Tribunal "to award compensation for commercial intercourse between the two countries, nor for purchasing bait, ice, supplies, &c., nor for permission to transship cargoes in British waters." And yet this Government is not aware that, during the existence of the Treaty of 1854, or the Treaty of Washington, question was ever made of the right of American fishermen to purchase bait and other supplies in Canadian ports, or that such privileges were ever denied them.

ARTICLE V.

The Government of Her Britannic Majesty agree to release all United States' fishing-vessels now under seizure for failing to report at custom-houses when seeking shelter, repairs, or supplies, and to refund all fines exacted for such failure to report. And the High Contracting Parties agree to appoint a Joint Commission to ascertain the amount of damage caused to American fishermen during the year 1886 by seizure and detention in violation of the Treaty of 1818, said Commission to make awards therefor to the parties injured.

ARTICLE VI.

The Government of the United States and the Government of Her Britannic Majesty agree to give concurrent notification and warning of Canadian Customs Regulations, and the United States agrees to admonish its fishermen to comply with them and cooperate in securing their enforcement.

By this Article, it is proposed to give retrospective effect to the unjustified interpretation sought to be placed on the Convention by the last preceding Article.

It is assumed, without discussion, that all United States' fishing-vessels which have been seized since the expiration of the Treaty of Washington have been illegally seized, leaving, as the only question still open for consideration, the amount of the damages for which the Canadian authorities are liable.

Such a proposal appears to Her Majesty's Government quite inadmissible.

ARTICLE V.

This Government is not disposed to insist on the precise form of this Article, but is ready to substitute therefor a submission to arbitration in more general terms.

This Article calls for no remark.

APPENDIX (A).

"In such capacity, your jurisdiction must be strictly confined within the limit of 'three marine miles of any of the coasts, bays, creeks, or harbours,' of Canada with respect to any action you may take against American fishing-vessels and United States citizens engaged in fishing. Where any of the bays, creeks, or harbours shall not exceed 10 geographical miles in width, you will consider that the line of demarcation extends from headland to headland, either at the entrance to such bay, creek, or harbour, or from and between given points on both sides thereof, at any place nearest the mouth where the shores are less than 10 miles apart; and may exclude foreign fishermen and fishing-vessels therefrom, or seize if found within 3 marine miles of the coast.

"*Jurisdiction.*—The limits within which you will, if necessary, exercise the power to exclude United States fishermen, or to detain American fishing-vessels or boats, are for the present to be exceptional. Difficulties have arisen in former times with respect to the question whether the exclusive limits should be measured on lines drawn parallel everywhere to the coast, and describing its sinuosities, or on lines produced from headland to headland across the entrances of bays, creeks, or harbours. Her Majesty's Government are clearly of opinion that by the Convention of 1818 the United States have renounced the right of fishing not only within 3 miles of the colonial shores, but within 3 miles of a line drawn across the mouth of any British bay or creek. It is, however, the wish of Her Majesty's Government neither to concede, nor for the present to enforce, any rights in this respect which are in their nature open to any serious question. Until further instructed, therefore, you will not interfere with any American fishermen unless found within 3 miles of the shore, or within 3 miles of a line drawn across the mouth of a bay or creek which is less than 10 geographical miles in width. In the case of any other bay, as the Baie des Chaleurs, for example, you will not admit any United States fishing-vessel or boat, or any American fishermen, inside of a line drawn across at that part of such bay where its width does not exceed 10 miles."—(Session Papers, vol. iii, No. 6, 1870.)

APPENDIX (B).

"In such capacity, your jurisdiction must be strictly confined within the limit of 'three marine miles of any of the coasts, bays, creeks, or harbours' of Canada with respect to any action you may take against American fishing-vessels and United States' citizens engaged in fishing. Where any of the bays, creeks, or harbours shall not exceed 6 geographical miles in width, you will consider that the line of demarcation extends from headland to headland either at the entrance to such bay, creek, or harbour, or from and between given points on both sides thereof, at any place nearest the mouth where the shores are less than 6 miles apart, and may exclude foreign fishermen and fishing vessels therefrom, or seize if found within 3 marine miles of the coast.

"*Jurisdiction.*—The limits within which you will, if necessary, exercise the power to exclude United States fishermen, or to detain American fishing-vessels or boats, are for the present to be exceptional. Difficulties have arisen in former times with respect to the question whether the exclusive limits should be measured on lines drawn parallel everywhere to the coast and describing its sinuosities, or on lines produced from headland to headland across the entrance of bays, creeks, or harbours. Her Majesty's Government are clearly of opinion that, by the Convention of 1818, the United States have renounced the right of fishing not only within 3 miles of the colonial shores, but within 3 miles of a line drawn across the mouth of any British bay or creek. It is, however, the wish of Her Majesty's Government neither to concede, nor for the present to enforce, any rights in this respect which are in their nature open to any serious question. Until further instructed, therefore, you will not interfere with any American fishermen unless found within 3 miles of the shore, or within 3 miles of a line drawn across the mouth of a bay or a creek which, though in parts more than 6 miles wide, is less than 6 geographical miles in width at its mouth. *In the case of any other bay, as Baie des Chaleurs, for example, you will not interfere with any United States' fishing vessel or boat, or any American fishermen, unless they are found within 3 miles of the shore.*

"*Action.*—You will accost every United States vessel or boat actually within 3 marine miles of the shore, along any other part of the coast except Labrador and around the Magdalen Islands, or within 3 marine miles of the entrance of any bay, harbour, or creek, which is less than 6 geographical miles in width, or inside of a line drawn across any part of such bay, harbour, or creek, at points nearest to the mouth thereof, not wider apart than 6 geographical miles, and if either fishing, preparing to fish, or having obviously fished, within the exclusive limits, you will, in accordance with the above recited Acts, seize at once any vessel detected in violating the law, and send or take her into port for condemnation; but you are not to do so unless it is evident and can be clearly proved that the offence of fishing has been committed, and that the vessel is captured within the prohibited limits." (Session Papers, vol. iv, No. 4, 1871.)

APPENDIX (C).

The Secretary of State for the Colonies to the Governor-General.

DOWNING STREET,

October 10, 1870.

SIR,

I enclose a copy of a Memorandum, which I have requested Lord Granville to transmit to Sir E. Thornton, with instructions to communicate with you before addressing himself to the Government of the United States on the subject to which the Memorandum relates.

The object of Her Majesty's Government is, as you will observe, to give effect to the wishes of your Government, by appointing a Joint Commission, on which Great Britain, the United States, and Canada are to be represented, with the object of inquiring what ought to be the geographical limits of the exclusive fisheries of the British North American Colonies. In accordance with the understood desire of your advisers, it is proposed that the inquiry should be held in America.

The proposal contained in the last paragraph is made with a view to avoid diplomatic difficulties, which might otherwise attend the negotiation.

I have, &c.,
(Signed) KIMBERLEY.

Governor-General the Right Hon. Sir John Young, G.C.B., G.C.M.G.

Memorandum for Foreign Office respecting a Commission to settle Limits of the right of exclusive Fishery on the Coast of British North America.

A Convention made between Great Britain and the United States on the 20th October, 1818, after securing to American fishermen certain rights to be exercised on part of the coasts of Newfoundland and Labrador, proceeded as follows.—

“And the United States hereby renounce for ever any liberty heretofore enjoyed or claimed by the inhabitants thereof, to take, dry, or cure fish on or within 3 miles of any of the coasts bays, creeks, or harbours of His Britannic Majesty's dominions in America, not included within the above limits.”

The right of Great Britain to exclude American fishermen from waters within three miles of the coast is unambiguous, and, it is believed, uncontested. But there appears to be some doubt what are the waters described as within 3 miles of bays, creeks, and harbours. When a bay is less than 6 miles broad, its waters are within 3 miles limit, and therefore clearly within the meaning of the Treaty; but when it is more than that breadth, the question arises whether it is a bay of Her Britannic Majesty's dominions.

This is a question which has to be considered in each particular case with regard to international law and usage. When such a bay, &c., is not a bay of Her Majesty's dominions, the American fishermen will be entitled to fish in it, except within 3 miles of the “coast;” “when it is a bay of Her Majesty's dominions,” they will not be permitted to fish within 3 miles of it; that is to say (it is presumed), within 3 miles of a line drawn from headland to headland.

It is desirable that the British and American Government should come to a clear understanding in the case of each bay, creek, or harbour, what are the precise limits of the exclusive rights of Great Britain, and should define those limits in such a way as to be incapable of dispute, either by reference to the bearings of certain headlands, or other objects on shore, or by laying the lines down in a map or chart.

With this object it is proposed that a Commission should be appointed, to be composed of Representatives of Great Britain, the United States, and Canada, to hold its sittings in America, and to report to the British and American Governments their opinion either as to the exact geographical limits to which the renunciation above quoted applies, or, if this is found impracticable, to suggest some line of delineation along the whole coast, which, though not in exact conformity with the words of the Convention, may appear to them consistent in substance with the just rights of the two nations, and calculated to remove occasion for further controversy.

It is not intended that the results of the Commission should necessarily be embodied in a new Convention between the two countries, but if an agreement can be arrived at, it may be sufficient that it should be in the form of an understanding between the two Governments as to the practical interpretation which shall be given to the Convention of 1818. (Session Papers, 1871.)

16,826.

No. 13.

Admiralty to Colonial Office.

ADMIRALTY,

20th August, 1887.

SIR,

I am commanded by the Lords Commissioners of the Admiralty to transmit, for the perusal of the Secretary of State for the Colonies, an extract from a letter which has been received from the Commander-in-Chief on the North American Station, dated 3rd instant, No. 256, respecting the instructions issued to the commanders of the United States cruisers, employed in Canadian waters for the protection of fisheries, &c.

2. A similar letter has been sent to the Foreign Office.

I am, &c.,
(Signed) R. D. AWDRY.

The Under Secretary of State,
Colonial Office.

Enclosure in No. 13.

Extract from General Letter from the Commander-in-Chief, North America.

Rear-Admiral Luce, commanding the United States North Atlantic Squadron, arrived at Halifax in his flagship "Richmond," on the 24th ultimo. He was preceded by the corvettes "Galena" and "Yantic," and followed on the 28th by the "Ossipee."

These vessels form the squadron despatched by the Government of the United States for the protection of American citizens fishing in Canadian waters. I am assured by the Rear-Admiral that the instructions issued to the commanders of the cruisers are of a nature studied to meet the wishes of the Imperial and Canadian Governments. And this is confirmed by Commander Gordon, commanding the Dominion steam cruiser "Acadia," returned last week from the Gulf of St. Lawrence, who informs me that the American officers are acting in the most conciliatory manner in cautioning their countrymen against improper fishing or violation of the customs regulations.

16,827.

No. 14.

Admiralty to Colonial Office.

ADMIRALTY,
20th August, 1887.

SIR,

With reference to your letter of the 6th July,* requesting that instructions should be issued to the Naval Officers employed in the protection of fisheries on the North American Station, to give support to the officers of the Dominion Government in respect to the Canadian fisheries, I am commanded by my Lords Commissioners of the Admiralty to transmit, for the perusal of the Secretary of State for the Colonies, copy of a telegram from the Commander-in-Chief on the North American and West Indian Station on this subject.

I am, &c.,
(Signed) R. D. AWDRY.

The Under Secretary of State,
Colonial Office.

Enclosure in No. 14.

Telegram from Vice-Admiral Lyons, dated at Halifax, N.S., the 18th August.

"Your letter, 202, of 30th July. Season far advanced. Expediency of postponing support by Imperial officers to Canadian authorities. Proposed action might possible cause change of policy on the part of the United States of America.† See my letter, 256, of the 3rd instant."

16,047.

No. 15.

Colonial Office to Foreign Office.

DOWNING STREET,
22nd August, 1887.

SIR,

With reference to your letter of the 22nd of July,‡ I am directed by Secretary Sir H. Holland, to transmit to you for the information of the Marquis of Salisbury, copies of two despatches§ from the Officer Administering the Government of Newfoundland, respecting the proposed separate arrangement between that Colony and the United States on the Fisheries Question.

* No. 201 in North American No. 121.

† Extracts sent to C. O. in letter dated 20th August.

‡ No. 212 in North American No. 121.

§ Nos. 7 and 8.

Sir H. Holland proposes with Lord Salisbury's concurrence to reply to these despatches that Her Majesty's Government will not fail to consider whether, without prejudice to other British interests, effect can be given to the wishes of Newfoundland to make a separate arrangement with the United States on this matter, but that it is a question requiring careful consideration.

I am, &c.,
(Signed) ROBERT G. W. HERBERT.

The Under Secretary of State,
Foreign Office.

16,047.

No. 16.

Colonial Office to the High Commissioner for Canada.

DOWNING STREET,
22nd August, 1887.

SIR,

I am directed by Secretary Sir H. Holland, to transmit to you for your information a copy of a despatch* from the Officer Administering the Government of Newfoundland, forwarding a copy of a Minute of the Executive Council of that Colony with regard to the proposed separate arrangement with the United States on the Fisheries Question.

I am to add that the Government of Newfoundland has stated that no steps towards a separate arrangement will be taken by them without the knowledge of Her Majesty's Government.

I am, &c.,
(Signed) ROBERT G. W. HERBERT.

Sir C Tupper.

16,047.

No. 17.

Sir H. T. Holland to Governor-General the Marquis of Lansdowne.

Secret.

DOWNING STREET,
22nd August, 1887.

MY LORD,

With reference to my despatch secret of the 28th of July,† I have the honour to transmit to you, for communication to your Ministers, a copy of a despatch‡ from the Officer Administering the Government of Newfoundland, forwarding a copy of a minute of the Executive Council of that Colony with regard to the proposed separate arrangement with the United States on the Fisheries Question.

I may add that the Government of Newfoundland has stated that no steps towards a separate arrangement will be taken by them without the knowledge of Her Majesty's Government.

I have, &c.,
(Signed) H. T. HOLLAND.

The Marquis of Lansdowne,
&c., &c., &c.

17,133.

No. 18.

Colonial Office to the High Commissioner for Canada.

Secret.

DOWNING STREET,
25th August, 1887.

SIR,

I am directed by Secretary Sir Henry Holland to transmit to you for any observations which you may have to offer a copy of a letter§ from the Foreign Office

* No. 8.

† No. 214 in North American No. 121.

‡ No. 8.

§ No. 12.

enclosing a note from the American Ambassador at this Court replying to the criticisms of Her Majesty's Government on the *ad interim* arrangement with regard to the Fisheries Question proposed by Mr. Bayard.

A copy of this letter and its enclosures has been sent to the Governor-General for communication to his Ministers.

I am, &c.,
(Signed) JOHN BRAMSTON.

The High Commissioner for Canada.

17,133.

No. 19.

Sir H. T. Holland, to Governor-General the Marquis of Lansdowne,

DOWNING STREET,
25th August, 1887.

Secret.

MY LORD,

With reference to my despatch No. 78 of the 14th of April last,* I have the honour to transmit to you, for communication to your Ministers, a copy of a letter from the Foreign Office† enclosing a note from the American Ambassador at this Court, replying to the criticisms of Her Majesty's Government on the *ad interim* arrangement with regard to the Fisheries Question proposed by Mr. Bayard.

I shall be glad to be furnished with the observations of your Government on this communication.

I have, &c.,
(Signed) H. T. HOLLAND.

The Marquis of Lansdowne.

17,377.

No. 20.

Foreign Office to Colonial Office.

FOREIGN OFFICE,
August 27th, 1887.

SIR,

I am directed by the Marquis of Salisbury to acknowledge the receipt of your letter of the 22nd instant,‡ relative to the proposal for a separate arrangement between the United States and Newfoundland upon the Fisheries Question, and I am to express to you his Lordship's concurrence in the reply which Sir Henry Holland proposes to make to the despatch which he has received from the Administrator on this subject.

His Lordship, however, desires me to add that he is not aware that any intimation has been made to Sir Ambrose Shea in the sense stated in his letter to the Colonial Secretary of the 15th of July, to the effect "that if application be made, Her Majesty's Government will be ready to assent to the proposal for a separate Treaty between the United States and Newfoundland."

I am, &c.,
(Signed) T. V. LISTER.

The Under Secretary of State,
Colonial Office.

17,566.

No. 21.

Foreign Office to Colonial Office.

FOREIGN OFFICE,
August 29th, 1887.

SIR,

With reference to the letter from this Department of the 10th instant,§ I am directed by the Marquis of Salisbury to transmit to you, to be laid before Sir Henry

* No. 154 in North American No. 121.
(962)

† No. 12

‡ No. 15.

§ No. 5.
D 2

Holland, a copy of a despatch which his Lordship has addressed to Her Majesty's Minister at Washington relative to the appointment of a Mixed Commission to consider the Fisheries Question.

I am &c.,
(Signed) T. V. LISTER.

The Under Secretary of State,
Colonial Office.

Enclosure in No. 21.

The Marquis of Salisbury to Sir L. S. West.

Treaty No. 58.

FOREIGN OFFICE,
August 26th, 1887.

SIR,

With reference to my despatch Treaty No. 55 of the 29th ultimo, I have to acquaint you that the United States Minister at this Court called upon me to-day and stated that his Government agreed to the appointment of a Mixed Commission, to consist of three English and three American Commissioners to meet at Washington some time in October next, to consider the North American Fisheries Question.

I am, &c.,
(Signed) SALISBURY.

The Hon. Sir L. S. West, K.C.M.G.,
&c., &c., &c.

16,827.

No. 22.

Colonial Office to Foreign Office.

DOWNING STREET,
30th August, 1887.

SIR,

With reference to previous correspondence I am directed by the Secretary of State for the Colonies to transmit to you to be laid before the Marquis of Salisbury a copy of a letter* from the Admiralty enclosing a copy of a telegram from the Naval Commander-in-Chief on the North American Station recommending the withdrawal of the instructions recently issued to him with regard to the Canadian Fishery Question.

Sir H. Holland desires me to state that he proposes, with Lord Salisbury's concurrence, to reply to the Admiralty letter that the instructions are very moderate in their character and are drawn upon the lines of the former instructions, and that he thinks that their publication should not be postponed as recommended by Admiral Lyons. Postponement of their publication at the present juncture would have a bad effect in Canada, and would tend to strengthen the erroneous reports as to their nature which it appears from the newspaper extracts which accompanied your letter of the 24th inst.† have already arisen.

I am to request the favour of an early reply.

I am, &c.,
(Signed) ROBERT G. W. HERBERT.

The Under Secretary of State,
Foreign Office.

17,704.

No. 23.

Sir H. T. Holland to Governor-General the Marquis of Lansdowne.

DOWNING STREET,
30th August, 1887.

Confidential.

MY LORD,

I have the honour to acquaint you that I have this day informed you by telegraph that the Government of the United States of America have agreed to the proposal made

* No. 14.

† Not printed.

by Her Majesty's Government for a Joint Commission on the North American Fishery Question, which should meet at Washington in the first week in November.

There are to be three Commissioners on each side, and Her Majesty's Government have selected the Right Hon. Joseph Chamberlain, M.P., and Sir Lionel Sackville West as the English Commissioners.

I also requested your Lordship to inform me by telegraph whom your Government would wish to be named as the third Commissioner to represent Canada.

I have, &c.,
(Signed) H. T. HOLLAND.

The Marquis of Lansdowne.

17,704.

No. 24.

Sir H. T. Holland to Governor-General the Marquis of Lansdowne.

TELEGRAPHIC.

September 1st.—Her Majesty's Government would be very glad if Sir J. Macdonald would act as Commissioner.

17,566.

No. 25.

Sir H. T. Holland to Governor-General the Marquis of Lansdowne.

DOWNING STREET,
1st September, 1887.

Secret.

MY LORD,

I have the honour to transmit to you, for communication to your Ministers, with reference to previous correspondence a copy of a letter* from the Foreign Office enclosing copy of a telegram addressed to Her Majesty's Minister at Washington respecting the proposal to appoint a Joint Mixed Commission to consider the Fisheries Question.

I have, &c.,
(Signed) H. T. HOLLAND.

The Marquis of Lansdowne.

17,697.

No. 26.

Foreign Office to Colonial Office.

FOREIGN OFFICE,
September 1st, 1887.

SIR,

I have laid before the Marquis of Salisbury your letter of the 30th ultimo,† relative to the publication of the instructions issued to the Naval Commander-in-Chief on the North American Station with regard to the Canadian Fishery Question; and I am to acquaint you, in reply, that his Lordship concurs in the answer which Sir Henry Holland proposes to return to the Admiralty on the subject.

I am, &c.,
(Signed) T. V. LISTER.

The Under Secretary of State,
Colonial Office.

* No. 21.

† No. 22.

17,762.

No. 27.

Governor-General the Marquis of Lansdowne to Sir H. T. Holland.
(Received September 2nd, 1887.)

TELEGRAPHIC.

2nd September.—Your telegrams of the 30th of August and 1st of September.* Before naming our representative we should like to know what is scope of the inquiry. Is it limited to the Atlantic Fisheries or will Pacific and Behring Sea be included? Is there any mention of the commercial relations which were the subject of the Sir Charles Tupper correspondence referred to in your telegram of the 16th of July? Can you send me terms of the reference and account of the powers of the Commission as well as the subjects referred to it?

19,306.

No. 28.

Administrator Sir F. B. T. Carter (Newfoundland), to Sir H. T. Holland,

GOVERNMENT HOUSE, NEWFOUNDLAND,
3rd September, 1887.

Confidential.

SIR,

I have the honour to inform you that on this day I transmitted a cypher telegram to Downing Street, at the earnest request of the Executive, asking if Newfoundland Fishery Questions, in relation to the United States, will be subjects of discussion at the proposed Conference, and if Newfoundland will be accorded representation on the Commission.

I have, &c.,
(Signed) F. B. T. CARTER, Administrator.

The Right Hon. Sir Henry Holland, Bart., G.C.M.G., M.P.,
&c., &c., &c.

17,377.

No. 29.

Sir H. T. Holland to Governor H. A. Blake (Newfoundland).

DOWNING STREET,
3rd September, 1887.

No. 51.

SIR,

I have the honour to acknowledge the receipt of Sir F. B. Carter's despatch No. 82 of the 3rd ult.,† forwarding copy of a Minute by the Executive Council with copy of a letter from Sir A. Shea relative to a separate arrangement between Newfoundland and the United States on the Fisheries Question.

In reply I have to acquaint you, for the information of your Ministers, that Her Majesty's Government will not fail to consider whether, without prejudice to other British interests, effect can be given to their wishes to make a separate arrangement with the United States; but it is a question requiring very careful consideration, more especially as the circumstances of the case are altered by the decision to appoint a Mixed Commission to consider the North American Fisheries Questions. I hope to be able shortly to address you further on the subject of this Commission.

I have to add that there must have been some misapprehension on the part of Sir A. Shea when he stated that "if application be made Her Majesty's Government will be ready to assent to the proposal for a separate Treaty between the United States and this Colony," as, so far as I am aware, no such assurance was given to him.

I have, &c.,
(Signed) H. T. HOLLAND.

Governor Blake.

* See Nos. 23 and 24.

† No. 8.

17,697.

No. 30.

*Colonial Office to Admiralty.*DOWNING STREET,
3rd September, 1887.

SIR,

I am directed by the Secretary of State for the Colonies to acknowledge the receipt of your letters of the 20th ult.,* relating to the instructions recently issued to the Naval Officers employed in the protection of the fisheries on the North American Station.

In reply I am to acquaint you for the information of the Lords Commissioners of the Admiralty that he has, in conjunction with the Secretary of State for Foreign Affairs, carefully considered the reasons urged by Admiral Lyons for suggesting that the publication of these instructions should be postponed; and that in their opinion it is not possible in the present position of affairs to entertain that suggestion; both on account of the bad effect which the postponement would certainly produce in Canada, and also because the postponement would tend to strengthen the erroneous reports as to the nature of the instructions which are shown by the American newspapers to be already current.

Sir H. Holland would be glad, therefore, if their Lordships would cause Admiral Lyons to be informed by telegraph that Her Majesty's Government are unable to agree to his recommendation that he should postpone acting on the instructions to support the Canadian cruisers, as laid down in the enclosure in your letter of the 4th ult.

I am, &c.,
(Signed) ROBERT G. W. HERBERT.

The Secretary to the Admiralty.

17,774.

No. 31.

*Sir H. T. Holland to Administrator Sir F. B. T. Carter (Newfoundland).*DOWNING STREET,
5th September, 1887

Confidential.

SIR,

I have the honour to acquaint you that I have this day informed you by telegraph that the questions raised by your Government in your telegram of the 3rd inst., would be fully considered and that I would telegraph again shortly, after consultation with the Marquis of Salisbury.

I have, &c.,
(Signed) H. T. HOLLAND

The Officer Administering the Government.

17,762.

No. 32.

*Sir H. T. Holland to Governor-General the Marquis of Lansdowne.*DOWNING STREET,
5th September, 1887.

Confidential.

MY LORD,

I have the honour to acquaint you that I have this day telegraphed to you in reply to your message of the 2nd inst.,† respecting the Joint Fishery Commission that nothing has yet been decided on the points mentioned by you and that I should of course consult your Government before a final decision was made.

I added that I was in communication with the Foreign Office and hope to telegraph to your Lordship again shortly.

I have, &c.,
(Signed) H. T. HOLLAND.

The Marquis of Lansdowne.

* Nos. 13 and 14.

† See No. 28.

‡ No. 27.

17,566.

No. 33.

Colonial Office to Foreign Office.

DOWNING STREET,
6th September, 1887.

Confidential.

SIR,

I am directed by the Secretary of State for the Colonies to acknowledge the receipt of your letter of the 29th ultimo,* transmitting a copy of the despatch in which the Marquis of Salisbury informed Sir L. West that the United States Government had agreed to the appointment of a Mixed Commission, to consider the North American Fisheries Question.

Sir H. Holland communicated this information to the Governor-General of Canada, and expressed the hope of Her Majesty's Government that Sir John A. Macdonald, the Premier of the Dominion, may be able to represent Canada on the Commission; and I am to enclose a copy of a telegram† which has been received from Lord Lansdowne in reply, and also a copy of a telegram‡ from the Acting Governor of Newfoundland. In both of these telegrams questions are raised which Sir H. Holland desires to bring without delay under Lord Salisbury's consideration.

The Dominion Government asks what is to be the scope of the proposed enquiry.

The Mixed Commission is the result of the correspondence between Mr. Bayard and Sir Charles Tupper, transmitted in the despatch from Lord Lansdowne which was enclosed in the letter of the 1st July§ from this department; and after carefully perusing that correspondence, and consulting Sir Charles Tupper, Sir H. Holland is satisfied that it is the desire of both parties to deal not only with those questions of Fishery limits on the Atlantic coast, which had been specified in Mr. Bayard's proposals transmitted by Mr. Phelps in his note of the 3rd December, 1886, but, as far as may be practicable, with "the entire commercial relations of the two countries," in order that "not only a *modus vivendi* to meet present emergencies but also a permanent plan to avoid future disputes" may be devised.

It appears desirable therefore that there should be no narrow definition of the subjects to be taken into consideration by the Mixed Commission, but that in the communication to be made to the United States' Government, the language used by Mr. Bayard in his letter to Sir C. Tupper of the 31st May, with regard to the scope of the enquiry, should be closely adhered to, in order that the Commission may have full latitude to examine not merely the fishery questions connected with the Atlantic coasts, but also those relating to the seal fisheries in Behring's Sea, as well as all points connected with the commercial intercourse between Canada and the United States.

It remains to decide what answer should be given to the enquiry of the Government of Newfoundland, whether the fishery question as between that Colony and the United States will be discussed by the Mixed Commission, and whether Newfoundland will be represented on that Commission.

Lord Salisbury will remember that the Governments of the United States and of Newfoundland have recently been disposed to desire that there should be an independent agreement between them; but that the Canadian Government has represented that such separate negotiations might seriously compromise the position of Canada; and as matters now stand Sir H. Holland is inclined to think that it may be best, as on previous occasions, not to place a special representative of Newfoundland on the Commission, but, in the event of the proposals of the Commission not appearing to meet in all respects the requirements of Newfoundland, to provide subsequently for a separate arrangement in regard to that Colony. The Government of Newfoundland should however, have their agent at Washington during the sittings of the Commission, ready to confer with the British Commissioners when any point arises of special interest to Newfoundland.

Sir H. Holland will be glad to learn as soon as possible the views of Lord Salisbury on the several points herein submitted, in order that he may be in a position to reply to the questions of the Canadian and Newfoundland Governments.

I am, &c.,

(Signed) ROBERT G. W. HERBERT.

The Under Secretary of State,
Foreign Office.

* No. 21.

† No. 27.

‡ See No. 28.

§ No. 198 in North American No. 121.

18,522.

No. 34.

Admiralty to Colonial Office.

ADMIRALTY,

13th September, 1887.

Confidential.

SIR,

In reference to your letter of 3rd instant,* and also to previous correspondence, I am commanded by my Lords Commissioners of the Admiralty to enclose, for the information of the Secretary of State for the Colonies, a copy of a further letter, dated 22nd ultimo, No. 302, received from the Commander-in-Chief on the North American Station, in the last paragraph of which he reiterates the opinion previously expressed in his telegram of 18th ultimo,† No. 28, in regard to the inexpediency of carrying out the instructions contained in the Colonial Office letter of 6th July last.‡

2. It will be observed that the enclosed letter was written before the Commander-in-Chief had received the Admiralty telegram of 5th instant, informing him that the publication of the instructions could not be postponed.

I am, &c.,

(Signed) E. M. PRIMROSE,
pro Secretary.

The Under Secretary of State,
Colonial Office.

 Enclosure in No. 34.

"BELLEROPHON," HALIFAX,

17th August, 1887.

No. 302.

SIR,

I have the honour to report, for the information of the Lords Commissioners of the Admiralty, that on the receipt of their Lordships' confidential letter, No. 202, of the 30th July last, with its several enclosures, I despatched in cypher the following telegram:—

"Season far advanced. Submit expediency of postponing support by Imperial officers to Canadian authorities; proposed action might possibly cause change of policy on the part of United States. See my letter, 256, of 3rd instant."

My letter alluded to contained in its eighth paragraph this passage:—

"These vessels form the squadron despatched by the Government of the United States for the protection of American citizens fishing in Canadian waters. I am assured by the Rear-Admiral that the instructions issued to the commanders of the cruisers are of a nature studied to meet the wishes of the Imperial and Canadian Governments. And this is confirmed by Commander Gordon, commanding the Dominion steam cruiser 'Acadia,' returned last week from the Gulf of St. Lawrence, who informs me that the American officers are acting in the most conciliatory manner in cautioning their countrymen against improper fishing or violation of the Customs Regulations."

2. In the present circumstances, I cannot but think that complications would be likely to arise by the presence in the fishing grounds of Imperial ships, although it may be for the purpose of moral support alone. Canadian officers and vessels should, I submit, continue to protect the fisheries, at least during the remainder of the present season.

I have, &c.,

(Signed) ALGERNON LYONS,
Vice-Admiral and Commander-in-Chief.

The Secretary to the Admiralty.

* No. 30.

† Enclosure in No. 14.

‡ No. 201 in North American No. 121.

18,649.

No. 35.

Governor-General the Marquis of Lansdowne to Sir H. T. Holland.
(Received September 15th, 1887.)

Confidential.

CITADEL, QUEBEC,
2nd September, 1887.

SIR,

I had the honour of telegraphing to you this day,* requesting that my Government might be supplied with further information both as to the scope of the enquiry which it was proposed to entrust to the Commission which is about to assemble at Washington, and also as to the powers with which the Commissioners will be invested.

2. In your telegram of the 30th ultimo,† you acquainted me that a proposal for a Joint Commission in connection with the "North American Fisheries," had been made by Her Majesty's Government and accepted by that of the United States. On referring, however, to your previous telegram of the 16th of July,‡ I observe that it was stated therein that Her Majesty's Minister at Washington, had been desired to inform Mr. Bayard that if he would propose the "appointment of a Commission as suggested in the correspondence with Sir Charles Tupper," of which you had received copies from me, the proposal would be regarded favourably by Her Majesty's Government.

3. It is, I think, clear from the terms of the letters exchanged by Sir Charles Tupper and Mr. Bayard, as well as from the report made to me by Sir Charles Tupper of the conversation which took place on the occasion of his interview with the Secretary of State in May, that it was in their contemplation that the scope of any Commission or Conference which might be appointed should not be restricted to an examination of the Fisheries Question, but should extend to the various questions arising out of the Commercial Relations of the two countries. Thus, Mr. Bayard in his letter to Sir Charles Tupper of the 31st May, expresses his opinion that "it is by a straightforward treatment on a liberal and statesmanlike plan of the entire Commercial Relations of the two countries that a just and permanent settlement of the differences which have arisen in the interpretation of the Treaty of 1818, could alone be arrived at;" and indeed the whole of Mr. Bayard's letter appears to have been written upon the assumption that something more than a mere adjustment of the dispute which has arisen in regard to the Fisheries was intended.

4. The view thus expressed by Mr. Bayard was concurred in by Sir Charles Tupper in his reply, a copy of which forms part of the correspondence which I had the honour of sending to you.

5. It would, also, be desirable that we should not be left in doubt whether, supposing the reference to be restricted to questions connected with the Fisheries, that reference is to be limited to the Fisheries of the Atlantic Coast, or whether the expression "North American Fisheries" used in the telegram of the 30th of August is intended to include the whole of the Fisheries upon the North American Coast, comprising those upon the Pacific seaboard and in the Behring's Sea.

6. I should also be glad to learn whether it is intended that the Newfoundland Fisheries should be one of the subjects referred to the Commissioners, and if so, whether that Colony will be represented upon the Commission.

7. In regard to my application for information as to the powers of the Commission, my Government is, I presume, correct in assuming that the report of the Commission will not be binding upon the Powers represented until its recommendations have been formally adopted by the Governments interested, and that the Government of the Dominion will have an ample opportunity of making known its views in regard to such recommendations in so far as they may affect the Dominion.

I have, &c.,
(Signed) LANSDOWNE.

The Right Hon. Sir Henry Holland,
&c., &c., &c.

* No. 27.

† No. 23

‡ Not printed but see Enclosure in No. 208 in North American No. 121.

9,272.

No. 36.

Sir H. T. Holland to Governor-General the Marquis of Lansdowne.

Confidential.

DOWNING STREET,
15th September, 1887.

MY LORD,

I have this day informed your Lordship by telegraph that a telegram had been sent to Her Majesty's Minister at Washington, stating that Her Majesty's Government were of opinion that the terms of the reference to the joint Fisheries Commission should be as wide as possible.

Sir L. West was further instructed to propose to the Secretary of State that the following should be the text of the reference :—

“To consider and adjust all or any questions relating to rights of fishery which are in issue between the Government of Her Britannic Majesty and that of the United States of America, and any other questions which may arise in the course of the negotiations, and which they may be authorised by their respective Governments to discuss as part of the settlement.”

He was also desired to telegraph Mr. Bayard's reply.

I have, &c.,
(Signed) H. T. HOLLAND.

The Marquis of Lansdowne,
&c., &c., &c.

19,272.

No. 37.

Colonial Office to the High Commissioner for Canada.

Confidential.

DOWNING STREET,
16th September, 1887.

SIR,

I am directed by the Secretary of State for the Colonies to transmit for your information a copy of the recorder* of a telegraphic message sent to-day to the Governor-General of Canada, informing him of the instructions given to Her Majesty's Minister at Washington, with regard to the scope of the reference to the joint Fisheries Commission.

I am, &c.,
(Signed) ROBERT G. W. HERBERT.

Sir Charles Tupper.

19,271.

No. 38.

*Foreign Office to Colonial Office.*FOREIGN OFFICE,
September 21st, 1887.

Confidential.

SIR,

I am directed by the Marquis of Salisbury, to transmit to you, for the information of Sir Henry Holland, a copy of a despatch from Her Majesty's Minister at Washington relative to the proposed Fisheries Commission.

In view of the objections of the United States Government to the term “Commissioners,” Lord Salisbury presumes that there will be no objection to the title of “Plenipotentiaries.”

I am to add that Her Majesty's Minister at Washington has been instructed by telegraph to enquire how the United States Government would wish the Conference for the proposed Treaty and the negotiations described.

I am, &c.,
(Signed) J. PAUNCEFOTE.

The Under Secretary of State,
Colonial Office.

Enclosure in No. 38.

WASHINGTON,
September 4th, 1887.

Treaty No. 85. Confidential.

MY LORD,

Your Lordship will have seen from the newspaper articles which I have forwarded that the announcement in the House of Commons of the appointment of a Fishery Commission has caused considerable excitement and severe comments on Mr. Bayard's action in the matter from his opponents. There can be no question as to the power of the President to negotiate a Treaty, but the power to appoint a Commission for this purpose is not only questioned but has been denied by the Senate, which body, as your Lordship is aware, arrogates to itself the entire control of the Executive.

I have from time to time pointed out to Mr. Bayard the probability of the rejection by the Senate of any Treaty for the adjustment of the Fisheries Question which might be negotiated and submitted to them, as well as the possibility of the interference of the House of Representatives should it involve any financial or tariff changes, and while fully admitting these difficulties in the way of his policy, and always maintaining the right of action on the part of the President under the treaty-making power, he seems to take it for granted, as indeed all American statesmen do, that their methods of proceeding must or ought to be understood and appreciated by every Foreign Power with which they are brought in contact.

In the absence of official notification of the appointment of the Commission, as announced in the House of Commons, I have refrained from alluding to the subject to Mr. Bayard, but I gather from what he said to me after the visit of Sir Charles Tupper to Washington, that however sincerely desirous he is of coming to a satisfactory arrangement by the negotiation of a Treaty he does not see his way to doing so by the appointment of Commissioners on the part of the United States Government in view of the opposition which such course would meet with from the Senate, and will seek therefore, as far as the United States Government is concerned, that their negotiators should not treat in the capacity of Special Commissioners appointed to act on a joint International Commission, but simply as plenipotentiaries for the negotiation of a Treaty, which character he conceives would not subject them under the treaty-making Power to the supervision of Congress during preliminary negotiations.

It is right that I should state to your Lordship that these observations are not made in consequence of any communication with Mr. Bayard on the subject, but are suggested from what he is reported to have said to those who have questioned him respecting the nature of the Commission and from what he has said to me on previous occasions.

I have, &c.,
(Signed) L. S. S. WEST.The Marquis of Salisbury,
&c., &c., &c.

19,272.

No. 39.

Foreign Office to Colonial Office.

Confidential.

FOREIGN OFFICE,
September 21st, 1887.

SIR,

I have received and laid before the Marquis of Salisbury your letter of the 6th instant,* transmitting copies of telegrams from the Governor-General of Canada and the Officer Administering the Government of Newfoundland relative to the scope of the enquiry to be undertaken by the proposed Fisheries Conference at Washington.

In reply I am to transmit to you for the information of Sir Henry Holland, copies of telegrams to and from Her Majesty's Minister at Washington relative to the terms of the reference.

I am also to state that Lord Salisbury is of opinion that a Commissioner for Newfoundland could not be placed on the Commission, which is limited to three, without

* No. 33.

displacing either the English or Canadian representative, or Her Majesty's Minister at Washington, who has accepted the post of one of the representatives; and that the appointment of a Commissioner for Newfoundland would not in any case add to the harmony of the Commission, or the probability of arriving at a satisfactory result.

I am, &c.,
(Signed) J. PAUNCEFOTE.

The Under Secretary of State,
Colonial Office.

Enclosure 1 in No. 39.

Lord Salisbury to Sir L. West.

Confidential.

September 12th, 1887, 6.15 p.m.

"Fisheries. We think the terms of the reference should be as wide as possible. Propose following text to Secretary of State:—

"To consider and adjust all or any questions relating to rights of fishery which are in issue between the Government of Her Britannic Majesty and that of the United States of America, and any other questions which may arise in the course of the negotiations, and which they may be authorised by their respective Governments to discuss as part of the adjustment."

Telegraph his reply.

Enclosure 2 in No. 39.

Sir Lionel West to the Marquis of Salisbury.

September 16th, 1887.

Treaty. Fisheries. Your Lordship's telegram of the 12th instant. Secretary of State accepts text of terms with following amendments:—

1. To insert after word "fishery," the words "on the coast of British North America."

2. To substitute the word "dispute" for "issue."

3. To strike out at the end the words "discuss as part of the adjustment," and insert "consider and adjust."

Enclosure 3 in No. 39.

The Marquis of Salisbury to Sir L. West.

September 20th, 1887.

Your telegram of the 15th instant. Fisheries reference. The words "on the coasts of British North America" will not be suitable, for they would be liable to an interpretation inconsistent with our views on the headland question. I propose "in the seas adjacent to British North America and Newfoundland."

19,272.

No. 40.

Sir H. T. Holland to Governor-General the Marquis of Lansdowne.

Confidential.

DOWNING STREET,
21st September, 1887.

MY LORD,

I have this day telegraphed to you, for your confidential information, that the terms of the reference to the Fishery Commission, which had been proposed and almost agreed to are as follows:—To consider and adjust all questions respecting Fishery rights in seas adjacent to British North America and Newfoundland, which are in

dispute between the two Governments, and any other questions which may arise in the course of the negotiations, and which they may be authorised by their respective Governments to consider and adjust.

I have, &c.,
(Signed) H. T. HOLLAND.

The Marquis of Lansdowne,
&c., &c., &c.

19,281.

No. 41.

The High Commissioner for Canada to Colonial Office.

Confidential.

9, VICTORIA CHAMBERS, LONDON, S. W.,

September 22nd, 1887.

DEAR MR. BRAMSTON,

I received last night your confidential note, containing the memorandum on the proposed terms of reference to the Fishery Commission. I cannot but think that it would be very desirable that they should be so framed as to embrace the question of the seal fisheries in Behring's Sea, as well as the fisheries on the Atlantic coast. As the basis of this Commission is to be found in Mr. Bayard's letter to me of the 31st May. I do not see how the United States can object to the inclusion of the question under controversy on the Pacific as well as on the Atlantic coast. Mr. Bayard proposed that there should be "terms of arrangement for a *modus vivendi* to meet present emergencies, and also a permanent plan to avoid all future disputes." He also said "I am prepared therefore to meet the authorised agents of Great Britain at this capital at the earliest possible day, and enter upon negotiations for a settlement of all differences." He also said "I am confident we both seek to attain a just and permanent settlement, and there is but one way to procure it, and that is by a straightforward treatment, on a liberal and statesmanlike plan, of the entire commercial relations of the two countries." In these circumstances, I do not see how the United States can refuse to embrace a consideration of the question in which we complain of the seizure of our vessels in the Behring Sea, as well as a consideration of questions connected with the fisheries on the Atlantic coast. It appears to me to be very desirable that, as stated by Mr. Bayard, the reference should be wide enough to cover all the questions of controversy between the United States and Canada.

As suggested by you, I have in the foregoing reduced to writing the substance of my remarks in the interview with which you favoured me this morning.

Believe me, &c.,

CHARLES TUPPER.

19,281.

No. 42.

Colonial Office to Foreign Office.

Confidential.

DOWNING STREET,

22nd September, 1887.

SIR,

With reference to your confidential letter of the 21st instant,* I am directed by Secretary Sir H. Holland, to transmit to you to be laid before the Marquis of Salisbury, copy of a confidential letter† from Sir C. Tupper, on the subject of the terms of reference of the Fishery Commission.

The memorandum which he mentions was a paraphrase of the telegram of September 12th, with the alterations as shown in the two other telegrams enclosed in your letter.

I am, &c.,
(Signed) JOHN BRAMSTON.

The Under Secretary of State,
Foreign Office.

19,494.

No. 43.

Foreign Office to Colonial Office.

Confidential.

FOREIGN OFFICE,
September 26th, 1887.

SIR,

With reference to your letter of the 6th, and to my letters of the 21st instant,* I am directed by the Marquis of Salisbury to transmit to you, for the information of Sir Henry Holland, the decypher of a telegram from Her Majesty's Minister at Washington, on the subject of the proposed Fisheries Conference.

Lord Salisbury is of opinion that the proposed terms of reference should now be communicated confidentially to the Governments of Canada and Newfoundland, the full text of the reference being as follows ;

"Conference of Plenipotentiaries to consider and adjust all or any questions relating to rights of fishery in the seas adjacent to British North America and Newfoundland, which are in dispute between the Government of Her Britannic Majesty and that of the United States of America, and any other questions which may arise in the course of the negotiations, and which they may be authorised by their respective Governments to consider and adjust."

Lord Salisbury would be glad to be informed on as early a date as possible if the proposed terms of reference are agreeable to the Government of Canada ; and also whether Sir John A. Macdonald would be able to represent Canada at the Conference, in order that steps may be taken for making out the appointments of the Plenipotentiaries.

With regard to the question raised in your letter of the 6th instant,† as to the position of Newfoundland at the Conference, I am to inform you that although Lord Salisbury is of opinion that Newfoundland cannot be represented at the Conference by a Plenipotentiary, as stated in my letter of the 21st instant,‡ yet his Lordship sees no objection to the Newfoundland Government having an Agent at Washington during the sittings of the Conference ready to confer with the British Plenipotentiaries when any point arises of special interest to Newfoundland.

I am, &c.,
(Signed) J. PAUNCEFOTE.

The Under Secretary of State,
Colonial Office.

Enclosure in No. 43.

Decypher. Sir L. West, Washington. Received 10 p.m., 21st September, 1887.

Confidential.

Treaty. Your Lordship's telegram marked Treaty of 20th. Secretary of State wishes Conference described as follows ; "Conference of Plenipotentiaries, to consider and adjust, &c." Secretary of State agrees to substitution in terms of reference as proposed by your Lordship.

22,437.

No. 44.

Governor-General the Marquis of Lansdowne to Sir H. T. Holland.

Confidential.

GOVERNMENT HOUSE, OTTAWA,
26th September, 1887.

SIR,

I had the honour to send to you this day a telegraphic message in cypher, the substance of which is as follows :—

"Referring to your message of the 21st,§ Behring Sea is not adjacent to British North America but to Alaska. Are the words adjacent to British North America intended to exclude Behring Sea. It appears not to be desirable to restrict adjustment to questions actually in dispute. If these words are literally interpreted, many questions which could be discussed with advantage might be altogether excluded from the scope of the Commission."

I have, &c.,
(Signed) LANSDOWNE.

The Right Hon. Sir Henry Holland.

* Nos. 33, 38, and 39.

† No. 33.

‡ No. 39.

§ No. 40.

19,272.

No. 45.

Colonial Office to the High Commissioner for Canada.

Confidential.

DOWNING STREET,
September 27th, 1887.

SIR,

I am directed by the Secretary of State for the Colonies to transmit for your information, a copy of a despatch* which he has addressed to the Governor-General of Canada, recording a telegraphic message sent to his Lordship on the 21st instant, stating the terms of the proposed reference to the Joint Fisheries Commission.

I am, &c.,
(Signed) JOHN BRAMSTON.

Sir Charles Tupper.

19,708.

No. 46.

Foreign Office to Colonial Office.

Confidential.

FOREIGN OFFICE,
September 30th, 1887.

SIR,

I have received and laid before the Marquis of Salisbury your letter of the 22nd instant,† enclosing a copy of a letter from Sir Charles Tupper on the subject of the terms of reference of the Fishery Commission.

I am in reply to state to you that, in Lord Salisbury's opinion, it would be difficult to support the contention that Mr. Bayard's note to Sir Charles Tupper of the 31st May last‡ contains any pledge to include the Alaskan Fisheries in the proposed reference.

That letter appears to deal solely with commercial relations, and the difficulties which have arisen out of the Treaty of 1818.

If, however, the negotiations proceed satisfactorily, and a result is arrived at which American public opinion accepts, it will be probably easy to induce the United States Government to deal with the Alaska question by a fresh reference to the same Plenipotentiaries.

His Lordship apprehends that whatever chance there may be of this would be effectually destroyed if the United States Government were forced at this juncture to give a definite reply upon the question of including the Alaskan Fishery dispute in the terms of reference.

I am, &c.,
(Signed) J. PAUNCEFOTE.

The Under Secretary of State,
Colonial Office.

19,494.

No. 47.

*Colonial Office to Foreign Office.*DOWNING STREET,
3rd October, 1887.

SIR,

With reference to your letters of the 21st, 26th, and 30th ult.,§ relating to the terms of reference to the Conference at Washington respecting the North American Fisheries question, I am directed by Secretary Sir Henry Holland to transmit to you, to be laid before the Marquis of Salisbury, a copy of a telegram|| received from the Governor-General of Canada upon this subject.

I am also to enclose copies of telegrams¶ which, with the concurrence of Lord Salisbury, Sir Henry Holland proposes to address to the Governor-General and to the Governor of Newfoundland respectively in reference to this matter.

* No. 40. † No. 42. ‡ Page 247 of North American No 121.
§ Nos. 39, 43, and 46. || See No. 44. ¶ See Nos. 55 and 56.

I am to request to be informed at your early convenience whether his Lordship concurs in the telegrams proposed.

I am, &c.,
(Signed) JOHN BRAMSTON.

The Under Secretary of State,
Foreign Office.

20,141.

No. 48.

Foreign Office to Colonial Office.

FOREIGN OFFICE,
October 4th, 1887.

Confidential.

SIR,

I am directed by the Secretary of State for Foreign Affairs to transmit to you, to be laid before Sir Henry Holland, a copy of a despatch from Her Majesty's Minister at Washington enclosing a copy of a Memorandum which he has drawn up on the Fisheries Question.

I am, &c.,
(Signed) J. PAUNCEFOTE.

The Under Secretary of State,
Colonial Office.

Enclosure in No. 48.

Sir L. West to the Marquis of Salisbury. (Received September 27.)

No. 94. Treaty. Confidential.

WASHINGTON,
September 15th, 1887.

MY LORD,

I have the honour to enclose to your Lordship herewith a Memorandum on the Fisheries question, in which I have endeavoured to set forth the contentions which, under Treaty stipulations, the United States Government is at present likely to uphold in any negotiations which may take place on the subject.

I have, &c.,
(Signed) L. S. SACKVILLE WEST.

Memorandum by Sir L. West on the Fisheries Question.

Confidential.

American Contentions.

Under the IIIrd Article of the Treaty of the 3rd September, 1783, it is contended by the United States Government that her citizens should enjoy common "rights" of fishing the same as when they were British colonists.

According to Mr. Rush, one of the Plenipotentiaries who signed the Treaty of 1818: "We had fought for, had won and enjoyed, the fishing-grounds as British subjects." It is to be remarked, however, that in that part of the Article which relates to fisheries "in the sea," a concurrent "right" is agreed to; but that in the coast and Labrador fisheries simple "liberty" was acceded to, the word "right" in the one case implying a just claim, the term "liberty" in the other only "privilege" or "permission" granted.*

The United States Government also contend that if these rights or liberties were suspended by the War of 1812, there was nothing in the facts of that war to prevent them from recommencing their operation automatically with the peace.

* See Report on Fishery question, 49th Congress, No. 3648, p. 2. Enclosure in Sir L. West's No. 9, Treaty, of the 21st January last. (Enclosure in No. 103 in North American No. 121.)

In the Confidential Memorandum for the use of the Commissioners on the part of the United States in the American-British Joint Commission of 1871, allusion is made to the negotiations which terminated in the Treaty of Ghent, and it is said: "The United States Commissioners claimed that the Treaty of 1783 conferred no new rights upon the United States; that it was an agreement as to a division of property which took place on the division of the British Empire after the success of the American revolution, and was not in that respect abrogated by the war." But this contention does not seem to be maintained in the Report above alluded to, for it says: "The question of amendment or survival of the Treaty of 1783 as to certain specified parts of the coast of British North America was, by the Treaty of 1818, made of no practical importance by the renunciation signed by the United States."*

Thus it is admitted that the two Governments are necessarily thrown back upon the Treaty of 1818, the restrictive clauses of which it is sought to interpret as not inconsistent with the IIIrd Article of the Treaty of 1783, and appeal is therefore made to what it is asserted was the manifest intention of the negotiators of the Treaty of 1818, namely, that the character of these restrictions should be agreed upon by the parties thereto. Great stress is also laid upon the spirit of the subsequent commercial legislation of the two countries having for object the establishment of a more extended commercial intercourse, and which, in the words of Mr. Manning, the late Secretary of the Treasury, broke down the mediæval barriers which had hitherto surrounded the British colonial possessions in North America, and it is sought to prove that the restrictions under the Treaty of 1818 now applied by Canada to American fishing operations are opposed to the commercial intercourse which has gradually grown up under it.

The enforcement of the Fishery Regulations is opposed also to the reciprocal freedom of commerce which it is provided by legislative enactments the ships of the two countries shall enjoy in their respective ports, and it is contended that a fishing-vessel is to all intents and purposes a trading-vessel entitled to buy and sell therein. An American vessel, manned, equipped, and prepared for taking fish, has the same liberty of commercial intercourse in Canadian ports as is applicable to other regularly registered foreign ships.

In the same Confidential Memorandum the following passage occurs:—

"The United States claim that this 'privilege,' *i.e.*, the privilege to enter the British North American bays and harbours, is a privilege to their fishing-vessels to go in and out of those bays and harbours for the purposes named in the Article without the Custom-house formalities, and is not to be confounded with the 'right' which all vessels which bear the flag of the United States have to enter the open British ports for the purposes of trade or any other purpose lawful under the customs of nations."†

In connection with this contention Mr. Manning says:—

"American fishing-vessels duly authenticated, and having a permit to 'touch and trade,' should be permitted to visit Canadian ports and buy supplies, and enjoy ordinary commercial privileges, unless such a right is withheld in our ports from Canadian vessels.

"That right is denied by the Privy Council and the Governor-General of the Canadian Dominion, upon the ground that it would be in effect a *pro tanto* abrogation of the Treaty of 1818. That contention is an error, because the Treaty of 1818 has no application to the subject-matter. If the right claimed for American vessels duly authenticated were conceded by Canada, it would only apply to a few ports established by law for the entry of foreign vessels, and would merely enable United States' fishing-vessels to pursue their regular business after entry into or departure from such ports, under the same rules and regulations as are applied to the commercial vessels of other nations. We ask that American fishing-vessels shall enjoy hospitality in such Canadian ports as are set apart for the entry of foreign vessels, for the unloading and shipment of merchandise, and generally for foreign commerce."‡

It is worthy of remark that the fact that the commercial legislation of the two countries from which resulted commercial intercourse, and which culminated in the Reciprocity Treaty of 1854, is scarcely ever alluded to by American statesmen, nor is the denunciation of that Treaty whereby it may be said that its principles were renounced taken into consideration in arguing against the action of the Canadian

* Papers relating to the Treaty of Washington, vol. vi, 1874 (State Department).

† See first Article of Treaty of 1818.

‡ See reply of Secretary of Treasury, enclosed in Sir L. West's No. 3, Treaty, of January 15, 1887. Page 101 of North American No. 121.

Government under the Treaty of 1818. It is, however, incidentally mentioned by Mr. Manning, in his reply to a Resolution of the House of Representatives, in the following terms :—

“If the Treaty of 1854 had remained in force till this day, the two peoples—divided by a boundary-line which can only be discerned with difficulty from the Arctic Ocean to the Pacific, from the Pacific to Lake Superior, and from Lake Ontario to the Atlantic—would now be one people, at least for all purposes of production, trade, and business.”*

Such, it may be said, is the opinion of all those who are not actuated by political motives in opposing it. The United States Government, moreover, ignore the persistent endeavours of the Canadian Government to have it renewed, and which, in fact, they met by the denunciation of the Fishery Articles of the Treaty of Washington, which had been carefully framed in order, as far as the fisheries were concerned, to replace it. It has been contended in Congress that the Treaty of 1854 and the Fishery Articles of the Treaty of Washington were denounced for good and sufficient reasons, but it is a well-known fact that they consisted in the supposed sympathy of Canada with the Southern rebellion, and in the interest of a fishing monopoly in the New England States.† But whatever may have been the incentive to the policy adopted at that time by the United States Government, and subsequently with regard to the Fishery Articles of the Treaty of 1871, the result of it has been to reproduce the controversies which were left undecided by the Treaty of Ghent, and which were continued during the negotiation of the Treaty of Washington.

In a summary of conclusions contained in the Confidential Memorandum above referred to it is asserted :—

1. That the acquisition of the right to American fishermen to fish on the inshore fisheries from which they are now (1871) excluded, is more important as removing danger of collision than as of great intrinsic value.‡

2. That the British headland doctrine has no foundation in the Treaty, has been decided against Great Britain in a cause where it was the only issue, and is now insisted on theoretically rather than practically.§

3. That the right now asserted to exclude American fishermen from the open ports of the Dominion, to prevent them from purchasing bait, supplies, ice, &c., to prevent them from transshipping their fish in bond under colour of the provisions of the Treaty of 1818, is an assumption and a construction of that instrument which was never acquiesced in by the United States, and is carrying out in practice provisions which were proposed to the United States Commissioners by the British Commissioners in 1818, and were rejected by the former.

4. That the mackerel fishery, out of which the trouble mostly comes, is a matter that has come into existence lately, and it is a subject for consideration whether the terms of the Convention are fairly applicable to it.

These conclusions, arrived at by the United States Government in 1871, will probably be found to embrace the contentions which they will hold in any future negotiations, and the remedies then suggested by which these questions should be adjusted will most likely again be proposed.

These remedies were :—

1. By agreeing upon the terms upon which the whole of the reserved fishing-grounds may be thrown open to American fishermen which might be accompanied by a repeal of the obnoxious laws, and the abrogation of the disputed reservation as to ports, harbour, &c. ; or, failing that,

2. By agreeing upon the construction of the disputed renunciation; upon the principles upon which a line should be run by a Joint Commission to exhibit the territory from which the American fishermen are to be excluded; and by repealing the obnoxious laws and agreeing upon the measures to be taken for enforcing the colonial rights, and penalties to be inflicted for a forfeiture of the same, and a mixed Tribunal to enforce the same. It may also be well to consider whether it should be further agreed that the fish taken in the waters open to both nations shall be admitted free of duty into the United States and the British North American Colonies.||

* See Enclosure in Sir L. West's No. 3, Treaty, of January 15, 1887. Page 101 of North American No. 121.

+ See Senate Report, enclosed in Sir L. West's No. 16, Treaty, of January 26, 1887. Enclosure 2 in No. 107 in North American No. 121.

‡ See Senator Edmunds' Report (Senate), p. 14, enclosed in Sir L. West's No. 16, Treaty, of January 26, 1887.

§ Case of the “Washington,” 1853-54.

(962)

|| See Confidential Memorandum.

F 2

As regards the renunciatory clause of the Treaty of 1818, it is held that, while the British construction is not necessary to secure to the people of the provinces the inshore fisheries, or to protect their rights of property or their territorial jurisdiction, all of which are amply secured by the 3 marine miles restriction, it would materially restrict the full enjoyment of the right which United States citizens possessed before the revolution, which was acknowledged in the Definitive Treaty of Peace, and was not affected by the Treaty of Ghent, and which, according to the decision of Great Britain, expressed in the correspondence which preceded the Convention, was not abrogated by the war of 1812. That right is claimed to be "to take fish of any kind in the Gulf of St. Lawrence and at all other places in the sea where the inhabitants of both countries used at any time heretofore to fish."

As regards the restrictions imposed by the British Colonies in North America, and which, as aforesaid, it is sought should be imposed by mutual consent, it is held that American fishing-vessels have the right to enter the bays and harbours of Canada for the purpose of taking in supplies, and that the restrictions imposed to prevent the abuse of this privilege are so stringent as almost to annul the right or make it at least hazardous for American fishermen to attempt to enjoy it.

Such was the state of the controversy previous to the Treaty of 1854.

That Treaty, however, having expired, it is held that American fishermen must fall back on their rights as thus explained and as heretofore enjoyed.

(Signed) L. S. SACKVILLE WEST.

Washington, September 15, 1887.

20,273.

No. 48a.

Admiralty to Colonial Office.

Confidential.

ADMIRALTY,

4th October, 1887.

SIR,

With reference to your letter of the 6th July*, and to subsequent correspondence on the subject of Imperial support to Canadian officers engaged in the protection of the Fisheries, I am commanded by my Lords Commissioners of the Admiralty to transmit to you for the perusal of the Secretary of State for the Colonies, copy of a letter from the Commander-in-Chief on the North American and West Indian station, dated the 13th September, No. 328, forwarding copy of the instructions given to Captain Beaumont, of H.M.S. "Canada," on the subject.

I am, &c.,
(Signed) EVAN MACGREGOR.

The Under Secretary of State,
Colonial Office.

Enclosure in No. 48a.

Canadian Fisheries.

Confidential.
No. 328.

"BELLEROPHON," AT QUEBEC,
13th September, 1887.

SIR,

Referring to your Confidential letter, $\frac{M}{1635}$, No. 202, of 30th July last, and to subsequent correspondence on the subject of Imperial support to Canadian officers engaged in the protection of the Fisheries.

I have the honour to report for the information of the Lords Commissioners of the Admiralty, that I purpose despatching the "Canada" to-morrow to the Gulf of St. Lawrence, with instructions to Captain Beaumont of which the annexed is a copy.

The "Tourmaline" will next week, on her return to Halifax from Montreal, visit

* No. 201 in North American No. 121.

the fishing grounds near the mainland. The orders I have given Captain Byles are framed in the [same] sense as are those to Captain Beaumont.

I return to-morrow in the "Bellerophon" to Halifax, passing over a great part of the fishing ground in the Gulf of St. Lawrence.

I have, &c.,
(Signed) ALGERNON LYONS,
Vice-Admiral and Commander-in-Chief.

The Secretary of the Admiralty.

"BELLEROPHON," AT QUEBEC,
13th September, 1887.

MEMO.

On the signal to part company being made to-morrow, the 14th instant, you will proceed in the "Canada" under your command to the Gulf of St. Lawrence, for the purpose of visiting the fishing grounds there, and with the view of giving effect to the wishes of Her Majesty's Government, as regards affording support to the officers of the Dominion Government in carrying out the instructions they have received for the protection of Canadian Fisheries.

I enclose for your information and guidance various documents bearing on the subject. You will learn from them that Her Majesty's Government do not desire that Imperial officers should take any active part against American fishing vessels. And you will have understood from our conversation of this morning that I would wish you to consider the cruise on which you are about to proceed as one of observation and not of interference.

Only in the extreme case of actual resistance on the part of the United States fishermen to the legitimate use by the Canadian Authorities of the powers with which they are legally invested should you act, and that duty I, with confidence, rely upon your judgment in performing with the utmost moderation and forbearance.

You are to rejoin my flag at Halifax, when you will have executed the service on which you are about to proceed, keeping me informed of your movements as opportunities offer.

(Signed) ALGERNON LYONS,
Vice-Admiral and Commander-in-Chief.

Captain Beaumont, H.M.S. "Canada."

20,242.

No. 49.

Foreign Office to Colonial Office.

FOREIGN OFFICE,
October 6th, 1887.

SIR,

With reference to the letter from this office of the 10th ultimo,* I am directed by the Secretary of State for Foreign Affairs to transmit to you, to be laid before Her Majesty's Secretary of State for the Colonies, the accompanying copy of a despatch from Her Majesty's Minister at Washington on the subject of the Behring Sea seizures.

I am, &c.,
(Signed) J. PAUNCEFOTE.

The Under Secretary of State,
Colonial Office.

Enclosure in No. 49.

No. 272.

BRITISH LEGATION, WASHINGTON,
September 23rd, 1887.

MY LORD,

I have the honour to acknowledge the receipt of your Lordship's despatch, No. 219, of the 10th instant, and to inform your Lordship that I communicated it this day to the Secretary of State, and at his request left a copy of it in his hands.

Mr. Bayard did not comment on the terms of the dispatch, which, he said, should have his serious consideration, and in alluding generally to the Alaska Seal Fishery question, he observed that, although it certainly might be brought under the consideration of the Conference, and although he was willing that all questions in dispute should be discussed, he did not wish that it should obscure that of the fisheries off the coast of the maritime provinces of the Dominion of Canada.

I have, &c.,
(Signed) L. S. S. WEST.

The Marquis of Salisbury, K.G.,
&c., &c., &c.

20,306.

No 50.

Foreign Office to Colonial Office.

FOREIGN OFFICE,
October 7th, 1887.

SIR,

I am directed by the Secretary of State for Foreign Affairs to transmit to you, to be laid before Sir Henry Holland, a copy of a despatch from Her Majesty's Minister at Washington, relative to the commencement of the negotiations on the North American Fisheries question. I am to add that Mr. Chamberlain will start for the United States by the steamer leaving Liverpool on the 29th instant.

I am, &c.,
(Signed) P. W. CURRIE.

The Under Secretary of State,
Colonial Office.

Enclosure in No. 50.

WASHINGTON,
September 21st, 1887.

Treaty No. 96.

MY LORD,

With reference to your Lordship's telegram of the 19th instant, I have the honour to inform your Lordship that Mr. Bayard has stated to me that he will readily arrange with me to commence the negotiations as soon as possible after the arrival of Mr. Chamberlain in Washington.

I have, &c.,
(Signed) L. S. S. WEST.

The Marquis of Salisbury, K.G.,
&c., &c., &c.

20,334.

No. 51.

Foreign Office to Colonial Office.

FOREIGN OFFICE,
October 7th, 1887.

SIR,

With reference to my letter of the 26th ultimo,* I am directed by the Secretary of State for Foreign Affairs to transmit to you, to be laid before Sir Henry Holland, a copy of a despatch from Her Majesty's Minister at Washington, relative to the proposed Conference and terms of reference on the North American Fisheries question.

I am, &c.,
(Signed) P. W. CURRIE.

The Under Secretary of State,
Colonial Office.

Enclosure in No. 51.

Treaty No. 97.

WASHINGTON,

21st September, 1887.

MY LORD,

Upon the receipt of your Lordship's telegrams of the 20th instant, instructing me to ask how the United States Government wish the Conference for the proposed treaty and the negotiations described, and to propose the substitution of the words "in the seas adjacent to British North America and Newfoundland" for the words "on the coasts of British North America," I immediately informed Mr. Bayard by private note of their contents, and I now have the honour to enclose herewith copy of his reply, the substance of which I telegraphed to your Lordship this day.

I have, &c.,

(Signed) L. S. SACKVILLE WEST.

The Marquis of Salisbury, K.G.,
&c., &c., &c.

Personal.

20th September, 1887.

DEAR SIR LIONEL,

The amendment stated in your note of yesterday morning, which Lord Salisbury suggests to the "terms of reference" that the words "in the seas adjacent to British North America and Newfoundland" should be substituted for the words "on the coasts of British North America" is entirely unobjectionable.

The nomenclature of the agents of the two Governments in negotiation now proposed, seems to have been so proclaimed by Sir James Fergusson in Parliament, and by Her Majesty in the speech of prorogation, that it will be difficult now to change it, although it seemed very desirable that the employment of the word "Commission" should be avoided, because it was so unpleasantly associated in the American ear with the "Halifax Commission," a body whose functions were wholly distinct from these proposed for the negotiations of the anticipated treaty of settlement.

In my correspondence with Mr. Phelps I have styled the representatives of the respective powers "Plenipotentiaries," and I do not see why this accuracy of description should not be followed, and their meeting in Washington, described as "the Conference of Plenipotentiaries to consider and adjust, &c., &c., &c."

Yours &c.,

(Signed) T. F. BAYARD.

Sir Lionel West.

&c., &c., &c.

22,439.

No. 52.

Governor-General the Marquis of Lansdowne to Sir H. T. Holland.

Confidential.

GOVERNMENT HOUSE, OTTAWA,

7th October, 1887.

SIR,

I had the honour to send to you this day a telegraphic message in cypher, the substance of which is as follows:—

Secret and Confidential—I trust that Mr. Chamberlain before going to Washington will come here. I have addressed an invitation to him to come to Government House. Sir John Macdonald may possibly not accept the commissionership. This, however, will not be decided till the arrival of Sir Charles Tupper.

I have, &c.,

(Signed) LANSDOWNE.

The Right Hon. Sir Henry Holland,
&c., &c., &c.

20,347.

No. 53.

*Foreign Office to Colonial Office.*FOREIGN OFFICE,
October 8th, 1887.

SIR,

I am directed by the Marquis of Salisbury to acknowledge the receipt of your letter of the 3rd instant,* enclosing a copy of a telegram from the Governor-General of Canada, and drafts of telegrams which Sir Henry Holland proposes to address to the Governments of Canada and Newfoundland respectively concerning the terms of reference and the order of proceedings to be adopted for the Conference on the North American Fisheries Question.

In reply I am to express Lord Salisbury's concurrence in the proposed telegrams, but his Lordship would suggest that in the telegram to Canada the word "directly" should be inserted before the words "including Alaskan fishery dispute," &c.; and that in the telegram to Newfoundland the whole of the last paragraph should be omitted, as his Lordship considers it would convey an unnecessary pledge as to the order of business at the Conference.

I am further to suggest that both Colonies should be pressed for an immediate reply to these telegrams, as the full powers and instructions for the Plenipotentiaries cannot be drafted till these points are settled.

I am, &c.,
(Signed) J. PAUNCEFOTE.

The Under Secretary of State,
Colonial Office.

20,242.

No. 54.

Sir H. T. Holland to Governor-General the Marquis of Lansdowne.

Secret.

DOWNING STREET,
8th October, 1887.

MY LORD,

I have the honour to transmit to you for the information of your Government with reference to previous correspondence, a copy of a despatch† from Her Majesty's Minister at Washington on the subject of the Behring Sea seizures, and to the question of bringing before the Fisheries Commission the Alaska Seal Fishery question.

I have, &c.,
(Signed) H. T. HOLLAND.

The Marquis of Lansdowne,
&c., &c., &c.

10,501.

No. 55.

Sir H. T. Holland to Governor-General the Marquis of Lansdowne.

Confidential.

DOWNING STREET,
8th October, 1887.

MY LORD,

I have the honour to acquaint you that I have this day telegraphed to you that the following are the terms of reference to the Fisheries Conference finally proposed: "Conference of Plenipotentiaries, to consider and adjust all or any questions relating to rights of fishery in the seas adjacent to British North America and Newfoundland, which are in dispute between the Government of Her Britannic Majesty and that of the United States of America, and any other questions which may arise in the course of the negotiations, and which they may be authorised by their respective Governments to consider and adjust."

I also stated that Her Majesty's Government did not consider it advisable to press the

* No. 47.

† Enclosure in No. 49.

United States Government on the question of directly including the Alaskan fishery dispute in the terms of reference, but that if the negotiations proceeded satisfactorily, the Alaskan question might by agreement be referred to the same Plenipotentiaries, under the concluding words of the reference, which also met the point referred to in your telegram of the 26th September.*

I requested you to inform me whether the terms of reference were agreeable to your Government, and whether Sir J. A. Macdonald would represent Canada at the Conference, and earnestly desired you to send an immediate reply in order that the necessary instructions to the Plenipotentiaries might be prepared.

I have, &c.,
(Signed) H. T. HOLLAND.

The Marquis of Lansdowne,
&c., &c., &c.

19,494.

No. 56.

Sir H. T. Holland to Governor H. A. Blake (Newfoundland).

Confidential.

DOWNING STREET,
8th October, 1887.

SIR,

I have this day informed you by telegraph that the following are the terms of reference to the Fisheries Conference as finally proposed:—"Conference of Plenipotentiaries to consider and adjust all or any questions relating to rights of fishery in the seas adjacent to British North America and Newfoundland which are in dispute between the Government of Her Britannic Majesty and that of the United States of America, and any other questions which may arise in the course of the negotiations and which they may be authorised by their respective Governments to consider and adjust."

I added that the number of British Plenipotentiaries was limited to three, and that they had already been decided upon, namely, Mr. Chamberlain, Sir L. West, and a Canadian representative, and that without displacing one of these a Newfoundland representative could not be appointed. Your Government might, however, send an agent to Washington to be present during the sittings of the Conference ready to confer with the British Plenipotentiaries on points affecting the interests of Newfoundland.

I earnestly requested you to send an immediate reply in order that the necessary instructions to the British Plenipotentiaries might be prepared.

I have, &c.,
(Signed) H. T. HOLLAND.

Governor Blake.

22,818.

No. 56a.

Governor-General the Marquis of Lansdowne to Sir H. T. Holland.

Confidential.

GOVERNMENT HOUSE, OTTAWA,
8th October, 1887.

SIR,

I had the honour to send to you this day a telegraphic message in cypher, the substance of which is as follows:—

"In reply to your message of this day, Sir John Macdonald desires to postpone decision till arrival of Sir Charles Tupper whose arrival is hourly expected. I will cable as to terms on Monday."

I have, &c.,
(Signed) LANSDOWNE.

The Right Hon. Sir Henry Holland,
&c., &c., &c.

* See No. 44.

20,463.

No. 57.

*Governor H. A. Blake, (Newfoundland), to Sir H. T. Holland.
(Received October 10th, 1887.)*

TELEGRAPHIC.

Before I reply to your telegram* [I] wish to know if the Agreement entered into by proposed Commission must be submitted for ratification by the Legislature of Canada and Newfoundland.

20,318.

No. 58.

Colonial Office to Foreign Office.

DOWNING STREET,
October 10th, 1887.

SIR,

I am directed by Secretary Sir Henry Holland to transmit to you, to be laid before the Marquis of Salisbury, the decypher of a telegram† from the Governor-General of Canada respecting the advisability of Mr. Chamberlain's visiting Canada before he proceeds to Washington.

Sir Henry Holland would be obliged if Lord Salisbury would ascertain from Mr. Chamberlain as soon as possible whether he can comply with the wish of the Governor-General.

I am, &c.,
(Signed) JOHN BRAMSTON.

The Under Secretary of State,
Foreign Office.

24,666.

No. 58a.

Governor-General the Marquis of Lansdowne to Sir H. T. Holland.

Confidential.

GOVERNMENT HOUSE, OTTAWA,
October 10th, 1887.

SIR,

I had the honour to send to you this day a Telegraphic Message in cypher, the substance of which is as follows :—

“My Government would desire terms which would be more in accord with those which were formulated in 1885. *Vide* the correspondence laid before Parliament this year No. 1, pages 14 and 15. The terms now proposed seem to be restricted to the questions in dispute, the reference then proposed was of all questions in relation to the Fisheries, and was expressed as being made under circumstances which afforded a prospect of negotiations for the extension and development of trade between Canada and the United States.

“It would be better to omit the words ‘in the course of negotiations and’ as being a limitation which is superfluous and possibly mischievous.

“The Canadian Government understands that as distinct from Alaskan questions the British Columbian Fisheries are included in the reference, and that any Treaty is, like the last, subject to the ratification of the Parliament of Canada.”

I am, &c.,
(Signed) LANSDOWNE.

The Right Hon. Sir Henry Holland,
&c., &c., &c.

* See No. 56.

See No. 52.

19,501.

No. 59.

Sir H. T. Holland, to Governor-General the Marquis of Lansdowne.

Secret.

DOWNING STREET,
10th October, 1887.

MY LORD,

With reference to my confidential despatch of the 8th instant,* I have the honour to transmit to you, for communication to your Government, a copy of a letter† from the Foreign Office, respecting the question of including directly the Alaskan fishery dispute in the terms of reference to the Fisheries Conference.

I have, &c.,
(Signed) H. T. HOLLAND.

The Marquis of Lansdowne.

&c., &c., &c.

20,462.

No. 60

*Governor-General the Marquis of Lansdowne to Sir H. T. Holland.**(Received 11th October, 1887).*

TELEGRAPHIC.

10th October. Canadian Government would desire terms more in accordance with those agreed on in 1885 (see Correspondence before Parliament, 1887, No. 1, pp. 14 and 15; also President's Message to Congress, December, 1885). Terms now seem limited to questions in dispute; the then proposed reference was of all questions relating to fisheries, and was expressed to be made under circumstances affording a prospect of negotiation for the development and extension of the trade between the United States and British North America.

The words, "in course of the negotiations and," had better be omitted as a superfluous and possibly mischievous limitation.

But may [we?] understand that British Columbia fisheries, as distinct from Alaskan question, are included in the reference, and that any Treaty is subject to ratification by the Canadian Parliament?

19,501.

No. 61.

Sir H. T. Holland to Governor H. A. Blake (Newfoundland).

Secret.

DOWNING STREET,
11th October, 1887.

SIR,

With reference to my confidential despatch of the 8th instant,† I have the honour to transmit to you, for the confidential information of your Government, the accompanying extracts of correspondences§ between the Foreign Office and this Department, respecting the question of the representation of Newfoundland at the Fisheries Conference at Washington.

I have, &c.,
(Signed) H. T. HOLLAND.

Governor Blake.

* No. 55.

† No. 46.

‡ No. 56.

§ Nos. 29 and 42.

20,597.

No. 62.

Foreign Office to Colonial Office.

Confidential.

FOREIGN OFFICE,
October 11th, 1887.

SIR,

I am directed by the Secretary of State for Foreign Affairs to transmit to you, to be laid before Sir Henry Holland a copy of a despatch from Her Majesty's Minister at Washington and of Lord Salisbury's reply relative to the mode of designating the Plenipotentiaries in the forthcoming discussion of the Fisheries Question.

I am, &c.,
(Signed) J. PAUNCEFOTE.

The Under Secretary of State,
Colonial Office.

Enclosure 1 in No. 62.

Treaty, No. 98. Very Confidential.

WASHINGTON,
September 21st, 1887.

MY LORD,

At an interview which I had this day with Mr. Bayard, he handed to me the letter, copy of which is enclosed in my preceding despatch, and proceeded to explain to me that, for the reasons therein given, and in view of the action of the Senate in rejecting the appointment of the Commission which had been proposed, he had carefully avoided, in his instructions to Mr. Phelps, the use of the terms "Commission" and "Commissioners" in connection with the forthcoming negotiations, and he regretted that they were used by Sir James Fergusson in the House of Commons, and also in a passage in Her Majesty's speech. I observed to Mr. Bayard that Mr. Phelps had distinctly proposed to your Lordship the appointment of a Commission, and I showed him your Lordship's despatch, No. 56, Treaty, of the 29th of July last. Mr. Bayard replied that he did not think Mr. Phelps has used the term "Commission" in writing, and may inadvertently have done so in making the proposal verbally to your Lordship, and he then proceeded to read to me the instructions which he had sent to Mr. Phelps, in which the terms "Plenipotentiaries" and "Conference" were uniformly used. I replied that I would immediately telegraph to your Lordship that he desired that the phrase "Conference of Plenipotentiaries to consider and adjust, &c.," should be used in connection with the negotiations. He then remarked that he thought that any settlement which might be made should include Newfoundland as an integral part of the British Empire, and seemed to think that for this reason the substitution in the terms of reference proposed by your Lordship was preferable.

I have, &c.,
(Signed) L. S. S. WEST.

The Marquis of Salisbury,
&c., &c. &c.

Enclosure 2 in No. 62.

Treaty, No. 69. Confidential.

FOREIGN OFFICE,
October 11th, 1887

SIR,

I have received your despatch, Treaty, No. 98, marked "Very Confidential," of the 21st ultimo, in which you report the objection entertained by Mr. Bayard to the term "Commissioners" as applied to the Plenipotentiaries to be appointed for the forthcoming discussion of the Fisheries Question.

In reply, I have to request you to inform Mr. Bayard that Mr. Phelps in his interview with me certainly used the words "Plenipotentiaries, or Commissioners," and that I had consequently imagined the choice between the two words to be indifferent to the United States Government.

Mr. Phelps, no doubt, merely intended to explain the kind of duties which the Plenipotentiaries would have to discharge; and I beg that you will assure Mr. Bayard that Her Majesty's Government will carefully bear in mind the wishes expressed by him as to the designation of the negotiators.

I am, &c.,
(Signed) SALISBURY.

The Hon. Sir Lionel Sackville West, K.C.M.G.,
&c., &c., &c.

20,306.

No. 63.

Sir H. T. Holland to Governor-General the Marquis of Lansdowne.

No. 354.

DOWNING STREET,
October 12th, 1887.

MY LORD,

I have the honour to transmit to you herewith, for communication to your Government a copy of a letter from the Foreign Office*, enclosing a copy of a despatch from Her Majesty's Minister at Washington, relative to the commencement of the negotiations on the North American Fisheries question.

Your Lordship's telegram of the 7th instant,† asking that Mr. Chamberlain might first visit Ottawa before proceeding to Washington, has been forwarded to the Foreign Office.

I have, &c.,
(Signed) H. T. HOLLAND.

The Marquis of Lansdowne,
&c., &c., &c.

20,463.

No. 64.

Colonial Office to Foreign Office.

DOWNING STREET,
12th October, 1887.

SIR,

With reference to your letter of the 8th instant, and to mine of this day's date,‡ I am directed by the Secretary of State for the Colonies to transmit to you to be laid before the Marquis of Salisbury a copy of a telegram§ from the Governor of Newfoundland enquiring whether any agreement which may result from the Fisheries Conference will be subject to ratification by the Legislature of that Colony.

I am to enquire what answer should be returned to this telegram.

I am, &c.,
(Signed) JOHN BRAMSTON.

The Under Secretary of State,
Foreign Office.

20,334.

No. 65.

Sir H. T. Holland to Governor-General the Marquis of Lansdowne.

Secret.

DOWNING STREET,
12th October, 1887.

MY LORD,

I have the honour to transmit to your Lordship herewith, for your information, and for that of your Ministers, a copy of a despatch|| received through the Foreign Office from Her Majesty's Minister at Washington relative to the proposed Conference and terms of reference on the North American Fisheries question.

I have &c.,
(Signed) H. T. HOLLAND.

The Marquis of Lansdowne,
&c., &c., &c.

* No. 50.

† See No. 52.

‡ Nos. 53 and 66.

§ No. 57.

|| Enclosure in No. 51.

20,462.

No. 66.

*Colonial Office to Foreign Office.*DOWNING STREET,
12th October, 1887.

SIR,

With reference to your letter of the 8th instant,* relating to the terms of reference to the Conference at Washington on the North American Fisheries question, I am directed by Secretary Sir Henry Holland to transmit to you, to be laid before the Marquis of Salisbury a copy of a telegram† from the Governor-General of Canada on the subject.

Sir Henry Holland would be glad to be informed whether, in his Lordship's opinion, the words in the proposed terms of reference "in the course of the negotiations," have the effect of limiting the scope of the reference in the manner suggested by the Governor-General, and also whether any Treaty or Agreement which may be come to would be subject to the approval of the Canadian Parliament, or would be submitted to that Parliament.

Sir Henry Holland understands that the Fisheries of British Columbia would be included in the terms of reference as now framed, but he would be glad to be informed if this is Lord Salisbury's view.

In regard to the two points first mentioned, Sir Henry Holland assumes that the words "in the course of the negotiations" would not be taken in any way to limit the reference, but that Alaska Fisheries questions and commercial questions could be dealt with under the concluding words of the reference should the respective Governments desire it; and that any agreement would have to be submitted for ratification by the Canadian Parliament.

Lord Salisbury will probably concur with Sir Henry Holland in thinking it undesirable, if it can be avoided, to alter the agreed terms of reference.

I am, &c.,
(Signed) JOHN BRAMSTON.

The Under Secretary of State,
Foreign Office.

22,442.

No. 67.

Governor-General the Marquis of Lansdowne to Sir H. T. Holland.

Confidential.

GOVERNMENT HOUSE, OTTAWA,
13th October, 1887.

SIR,

I had the honour to send to you this day a telegraphic message in cypher, the substance of which is as follows :—

"Our representative will be Sir Charles Tupper. This, however, will not be formally decided until to-morrow by Council."

I have, &c.,
(Signed) LANSDOWNE.

The Right Hon. Sir Henry Holland.

22,443.

No. 68.

Governor-General the Marquis of Lansdowne to Sir H. T. Holland.

Confidential.

GOVERNMENT HOUSE, OTTAWA,
13th October, 1887.

SIR,

I had the honour to send to you this day a telegraphic message in cypher, the substance of which is as follows :—

"Tupper has been formally chosen. The Minister of Justice, Mr. Thompson, will act as legal adviser. This, however, need not be announced."

I have, &c.,
(Signed) LANSDOWNE.

The Right Hon. Sir Henry Holland.

20,918.

No. 69.

Sir H. T. Holland to Governor-General the Marquis of Lansdowne.

TELEGRAPHIC.

October 15th. Fisheries Commission expenses. It is proposed England pay expenses of Chamberlain and assistants; Canada, expenses of Tupper and those with him; Newfoundland, expenses of agent, if any. I will not communicate with Newfoundland pending reply.

20,318.

No. 70.

Sir H. T. Holland to Governor-General the Marquis of Lansdowne.

TELEGRAPHIC.

October 15th. Chamberlain telegraphs Pauncefote: "Consider it undesirable postpone opening Commission already arranged for. Will communicate with Lansdowne, and if necessary can go Ottawa before any final settlement." Telegram ends. Foreign Office concurs.

22,820.

No. 71.

Governor-General the Marquis of Lansdowne to Sir H. T. Holland.

Confidential.

GOVERNMENT HOUSE, OTTAWA,
16th October, 1887.

SIR,

I had the honour to send to you this day a telegraphic message in cypher the substance of which is as follows:—

"Referring to your telegram of October 15th,* the Dominion Government will pay for Tupper and his assistants. It is not, however, disposed to pay those of Newfoundland.

I have, &c.,
(Signed) LANSDOWNE.

The Right Hon. Sir Henry Holland,
&c., &c., &c.

22,821.

No. 71a.

Governor-General the Marquis of Lansdowne to Sir H. T. Holland, Bart.

Confidential.

GOVERNMENT HOUSE, OTTAWA,
16th October, 1887.

SIR,

I had the honour to send to you this day a telegraphic message in cypher, the substance of which is as follows:—

"Would it not be well to point out to the other Maritime Powers that exclusive control over the Behring Sea is now claimed by the United States to the exclusion of the fishermen of other nationalities. See brief published in "New York Herald" of 13th October."

I have, &c.,
(Signed) LANSDOWNE.

The Right Hon. Sir Henry Holland,

20,920.

No. 72.

Governor-General the Marquis of Lansdowne to Sir H. T. Holland.
(Received October 17th, 1887.)

TELEGRAPHIC.

Sir C. Tupper would like Colonel Cameron to act as his secretary. Can you facilitate this.

* No. 70.

20,655.

No. 73.

*Colonial Office to Foreign Office.*DOWNING STREET,
October 17th, 1887.

SIR,

With reference to previous correspondence, I am directed by the Secretary of State for the Colonies to transmit to you, for communication to the Marquis of Salisbury¹ copies of two telegrams* from the Governor-General of Canada respecting the selection of a Canadian representative at the Fisheries Conference.

I am also to enclose a corrected copy of the telegram enclosed in the letter from this Department of the 12th instant,† and to request that it may be substituted for the one previously sent.

I am, &c.,
(Signed) JOHN BRAMSTON.

The Under Secretary of State,
Foreign Office.

20,597.

No. 74.

Sir H. T. Holland to Governor-General the Marquis of Lansdowne.

Secret.

DOWNING STREET,
October 17th, 1887.

MY LORD,

I have the honour to transmit to your Lordship, for your information and for that of your Ministers, a copy of a letter‡ from the Foreign Office, with a despatch from Her Majesty's Minister at Washington, and Lord Salisbury's reply, in reference to the designation of the negotiators in the forthcoming discussion on the Fisheries Question.

I have, &c.,
(Signed) H. T. HOLLAND.

The Marquis of Lansdowne,
&c., &c., &c.

21,015.

No. 75.

*Foreign Office to Colonial Office.*FOREIGN OFFICE,
October 17th, 1887.

SIR,

I am directed by the Marquis of Salisbury to transmit to you a draft of instructions to Her Majesty's Plenipotentiaries at the Fisheries Conference which has been prepared upon the assumption that the terms of reference as at present arranged will not be altered; and I am to request that you will move Sir Henry Holland to inform his Lordship whether he concurs therein.

I am to add that it is of urgent importance to learn as soon as possible who will be the Canadian Plenipotentiary, in order that the necessary full power may be prepared and submitted to the Queen.

I am also to add that if any change should be made in the terms of reference, a corresponding change would be made in the instructions.

I am, &c.,
(Signed) P. W. CURRIE.

The Under Secretary of State,
Colonial Office.

* See Nos. 67 and 68.

† No. 66.

‡ No. 62.

Enclosure in No. 75.

Draft.*

Instructions to Her Majesty's Plenipotentiaries at the Fisheries Conference.

Treaty No. 1.

FOREIGN OFFICE

October , 1887.

GENTLEMEN,

The Queen has been graciously pleased to appoint you to be Her Majesty's Plenipotentiaries to consider and adjust all or any questions relating to rights of fishery in the seas adjacent to British North America and Newfoundland which are in dispute between the Government of Her Britannic Majesty and that of the United States of America, and any other questions which may arise ~~in the course of the negotiations~~, and which the respective Plenipotentiaries may be authorised by their Governments to consider and adjust.

I transmit to you herewith Her Majesty's full power† to that effect, and I have to give the following instructions for your guidance.

The main question which you will be called upon to discuss ~~is that of the rights of fishery enjoyed or claimed~~ *arises in connection with the fisheries prosecuted* by citizens of the United States on the Atlantic shores of British North America and Newfoundland. The correspondence which has already been placed at your disposal will have made you familiar with the historical features of the case up to the conclusion of the Treaty of Washington, and it appears, therefore, needless at the present moment to recapitulate the various negotiations which have taken place on the subject of these fisheries previously to the year 1871.

I transmit to you herewith a copy of the Treaty of Washington of the 8th May, 1871, from which you will perceive that by the Fishery Articles thereof (Articles 18 to 25, 30, 32, and 33) the Canadian and Newfoundland inshore fisheries on the Atlantic coast, and those of the United States north of the 39th parallel of north latitude, were thrown reciprocally open, and fish and fish oil were reciprocally admitted duty free.

In accordance with the terms of these Articles the difference in value between the concessions therein made by Great Britain to the United States was assessed by the Halifax Commission at the sum of \$5,500,000 for a period of period of twelve years, the obligatory term for the duration of these Articles.

At the expiration of the stipulated period the United States Government gave notice of termination of the Fishery Articles, which consequently ceased to have effect on the 1st of July, 1885; but the Canadian Government, being loath to subject the American fishermen to the hardship of a change in the midst of a fishing season, consented to allow them gratuitously to continue to fish *inshore and to obtain supplies without reference to any restrictions contained in the Convention of 1818, the inshores* till the end of the year 1885, on the understanding that a Mixed Commission should be appointed to settle the *fisheries* question, and to negotiate for the development and extension of trade between the United States and British North America.

The proposed Commission not having been constituted, and no settlement having consequently been arrived at, the Convention of the 20th of October, 1818, came into force again at the commencement of the year 1886.

Article 1 of that Convention is as follows:—

“Whereas differences have arisen respecting the liberty claimed by the United States, for the inhabitants thereof to take, dry, and cure fish on certain coasts, bays, harbours, and creeks of His Majesty's Dominions in America, it is agreed between the High Contracting Parties that the inhabitants of the said United States shall have, for ever, in common with the subjects of His Britannic Majesty, the liberty to take fish of every kind on that part of the southern coast of Newfoundland which extends from Cape Ray to the Rameau Islands, on the western and northern coast of Newfoundland, from the said Cape Ray to the Quirpon Islands, on the shores of the Magdalen Islands, and also on the coasts, bays, harbours, and creeks from Mount Joly, on the southern coast of Labrador, to and through the Straits of Belleisle, and thence northwardly indefinitely along the coast, without prejudice, however, to any of the exclusive rights of the Hudson's Bay Company; and that the American fisherman shall also have liberty, for ever, to dry and cure fish in any of the unsettled bays, harbours, and creeks of the southern part of the coast of Newfoundland hereabove described, and of the coast of Labrador; but so soon as the same or any portion thereof shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such portion so settled, without

* The Colonial Office corrections are shown in italics and obliterated type.

† See Enclosure 8 in No. 102, page 73.

previous agreement for such purpose with the inhabitants, proprietors, or possessors of the ground, and the United States hereby renounce for ever any liberty heretofore enjoyed or claimed by the inhabitants thereof to take, dry, or cure fish on or within three marine miles of any of the coasts, bays, creeks, or harbours of His Britannic Majesty's Dominions in America, not included within the above-mentioned limits; provided, however, that the American fishermen shall be admitted to enter such bays or harbours for the purpose of shelter and of repairing damages therein, of purchasing wood, and of obtaining water, and for no other purpose whatever. But they shall be under such restrictions as may be necessary to prevent their taking, drying, or curing fish therein, or in any other manner whatever abusing the privileges hereby reserved to them."

Under these circumstances, numerous seizures of American fishing vessels have subsequently been effected by the Canadian authorities for infraction of the terms of the Convention, *and of their municipal law and customs regulations.*

The enclosed confidential correspondence will place you in full possession of the various points which have consequently arisen in diplomatic correspondence between the two Governments, and I do not desire to enter upon them in detail in the present instructions, nor to prescribe any particular mode of treating them, it being the wish of Her Majesty's Government that a full and frank discussion of the issues involved may lead to an amicable settlement in such manner as may seem most expedient, and having due regard to the interests and wishes of the British Colonies concerned.

Her Majesty's Government feel confident that the discussions in this behalf will be conducted in the most friendly and conciliatory spirit, in the earnest endeavour to effect a mutually satisfactory arrangement, and to remove any causes of complaint which may exist on either side.

Whilst I have judged it advisable thus in the first place to refer to the question of the Atlantic coastal fisheries, it is not the wish of Her Majesty's Government that the discussions of the Plenipotentiaries should necessarily be confined to that point alone; but full liberty is given to you to enter upon the consideration of any questions which may bear upon the issues involved, and to discuss and treat for any equivalents, whether by means of tariff concessions or otherwise, which the United States Plenipotentiaries may be authorised to consider as a means of settlement.

The question of the seal fisheries in the Behring Sea, the nature of which will be explained in a separate despatch, has not been specifically included in the terms of reference, but you will understand that if the United States Plenipotentiaries should be authorised to discuss that subject it would come within the terms of the reference as one of the "questions which may arise in the course of the negotiations," and that you have full power and authority to treat for a settlement of the points involved, in any manner which may seem advisable; whether by a direct discussion at the present Conference, or by a reference to a subsequent Conference, to adjust that particular question.

If the Government of Newfoundland have been requested to depute an agent to attend at Washington during the Conference, and you will avail yourselves of his advice and assistance in any matters concerning Newfoundland, which may arise in the course of the discussions.

21,080.

No. 76.

*Governor H. A. Blake (Newfoundland) to Sir H. T. Holland.
(Received October 18th, 1887.)*

TELEGRAPHIC.

Newfoundland will pay expenses of any delegation that may be sent by the Colony, but my Government wish to have an answer to my telegram of the 10th of October,* asking for information as to the powers of the Commission, before considering the question of the delegation. My Government claim the right of this Colony to be fully represented.

21,076.

No. 77.

*Foreign Office to Colonial Office.*FOREIGN OFFICE,
October 13th, 1887.

SIR,

In reply to your two letters of the 12th instant,* on the subject of the North American Fisheries Conference, I am directed by the Marquis of Salisbury to request you to state to Sir Henry Holland that the words "in the course of the negotiations," would not, in his Lordship's opinion, limit the scope of the reference; but that, in deference to the wish expressed by the Dominion Government, his Lordship has instructed Her Majesty's Minister at Washington to enquire whether Mr. Bayard attaches importance to the retention of these words.

His Lordship is further of opinion that the terms of reference as now arranged would embrace the fisheries of British Columbia; whilst the despatch from Her Majesty's Minister at Washington, No. 272 of the 23rd ultimo, copy of which was inclosed in my letter of the 6th instant,† will indicate Mr. Bayard's readiness to include the Alaska question within the limit of discussion.

In regard to the question of any Treaty being subject to ratification by the Parliaments of Canada and Newfoundland, I am to request that the Colonial Governments may be informed that Her Majesty's Government will proceed according to the uniform practice of this country in dealing with the Colonies, and that no new Treaty respecting the fisheries will be concluded without previous communication with the Colonial Governments, so far as it may affect each Colony.

I am, &c.,
(Signed) J. PAUNCEFOTE.The Under Secretary of State,
Colonial Office.

20,273.

No. 77a.

*Colonial Office to Foreign Office.*DOWNING STREET,
20th October, 1887.

SIR,

With reference to your letter of the 1st of September‡ and previous correspondence, I am directed by Secretary Sir H. Holland to transmit to you, to be laid before the Marquis of Salisbury, a copy of a letter§ from the Admiralty enclosing the instructions issued by the Commander-in-Chief on the North American Station to the captain of the ship detached on service in connexion with the protection of the Canadian Fisheries, together with a draft of the reply which,|| with his Lordship's concurrence, he proposes to return to the Admiralty letter.

I am, &c.,
(Signed) JOHN BRAMSTON.The Under Secretary of State,
Foreign Office.

21,080.

No. 78.

Sir H. T. Holland to Governor H. A. Blake (Newfoundland).

TELEGRAPHIC.

October 21. Referring to your telegrams 10th October, 18th October,¶ no new Treaty respecting Fisheries will be concluded without previous communication with Colonial Governments as far as may affect each Colony. No separate Commissioner, Newfoundland, but interests will be fully protected. Chamberlain leaves 29th October.

• Nos. 64 and 66.
(962)

† No. 49.

‡ No. 26.

§ No. 48a.

|| No. 88.

¶ Nos. 57 and 67.

21,015.

No. 79.

Colonial Office to Foreign Office.

DOWNING STREET,
21st October, 1887.

SIR,

I am directed by Secretary Sir H. Holland to acknowledge receipt of your letter of the 17th instant,† covering the draft of the proposed instructions to Her Majesty's Plenipotentiaries at the Fisheries Conference, and to express his concurrence in the draft, subject to the following remark on the last paragraph.

It seems to Sir H. Holland preferable not to use the word "requested" in reference to the self-governing Colony of Newfoundland, and he would suggest omitting the words "have been requested to," so that it will run "If the Government of Newfoundland depute an agent, &c."

I am, &c.,
(Signed) JOHN BRAMSTON.

The Under Secretary of State,
Foreign Office.

21,395.

No. 80.

Governor-General the Marquis of Lansdowne to Sir H. T. Holland.
(Received October 22nd, 1887).

TELEGRAPHIC.

21st October.—Referring to your letter of 5th October, besides Minister of Justice, Tupper will have with him Wallace Graham, Q.C., who was employed on Halifax arbitration and has special knowledge of legal bearings of dispute.

21,418.

No. 81.

Foreign Office to Colonial Office.

FOREIGN OFFICE,
October 22nd, 1887.

SIR,

I am directed by the Secretary of State for Foreign Affairs to transmit to you, to be laid before Sir Henry Holland, copy of a despatch from Her Majesty's Minister at Washington, enclosing an extract from the "New York Tribune" relative to the Plenipotentiaries chosen to assist Mr. Bayard at the Fisheries Conference.

I am, &c.,
(Signed) J. PAUNCEFOTE.

The Under Secretary of State,
Colonial Office.

Enclosure in No. 81.

Treaty No. 103.

WASHINGTON,
October 3rd, 1887.

MY LORD,

I have the honour to transmit herewith the accompanying extract from the "New York Tribune" relative to the gentlemen chosen by Mr. Bayard to assist him on the Fisheries Commission.

I have, &c.,
(Signed) L. S. SACKVILLE WEST.

The Marquis of Salisbury, K.G.,
&c., &c., &c.

Extract from the "New York Tribune" of 30th September, 1887.

THE AMERICAN NEGOTIATORS.

The Men selected by Mr. Bayard.

William L. Putnam, of Maine, and James B. Angell, of Michigan, to sit on Mr. Bayard's Fisheries Commission.

Washington, September 29th.—The President has invited William L. Putnam, of Maine, and James B. Angell, of Michigan, to act with the Secretary of State in the negotiation for a settlement with Great Britain of the dispute growing out of the questions connected with the rights of American fishermen in the territorial waters of the Dominion of Canada and Newfoundland.

Both of these gentlemen have accepted, and it is believed by Secretary Bayard that their fitness for their important duty will be recognised by the country. Mr. Putnam has been the Counsel for the United States for the last two years in cases arising under law and treaty in connection with the fisheries disputes, and Mr. Angell is President of the University of Michigan and has had experience in international transactions, having been one of the Commissioners by whom the latest treaty with China was negotiated.

Mr. Putnam is a member of the Democratic party and Mr. Angell of the Republican party. The Secretary said their selection was not only a recognition of the two political parties but a geographical recognition. The interests of the Western States lying along the Canadian border were equally great with the interests of the New England States in securing a settlement of the difficulty with Canada.

From the information received here it is expected that Mr. Chamberlain will leave England about the end of October, and that the negotiators will meet in Washington by the middle of November.

James Burrill Angell, LL.D., is of New England origin, having been born in Scituate, R. I., in 1829. He was graduated from Brown University, and supplemented his course in that institution with two years of study abroad. At the age of twenty-four he entered the service of his *alma mater* as Professor of Modern Languages and Literature. Seven years later he became the Editor of "The Providence Journal," the paper with which the late Henry B. Anthony was so long identified as chief owner and source of political inspiration. Professor Angell's editorship covered the critical period of the Civil War, terminating in 1866. He then accepted the presidency of the University of Vermont, which in 1871 he surrendered for that of the University of Michigan. In 1880 President Hayes selected him for a particularly delicate diplomatic duty. For two or three years there had been an increasing sentiment in this country hostile to Chinese immigration, and a growing demand, expressed in legislation which was vetoed for a check upon this Mongolian invasion of the United States. The President desired to satisfy popular feeling in a manner that should not violate the faith of the Government already pledged to the Celestial Empire, nor prejudice the rapidly developing commercial relations between the two countries. He therefore appointed three Commissioners to visit Peking and enter upon negotiations to this effect. Professor Angell was in March made Minister to China and head of the Commission, and John F. Swift, of California, and William Henry Trescott, of South Carolina, were designated as his coadjutors. So effectively was their work performed, that when Congress assembled in December, two treaties—one relating to emigration and the other to commerce—were submitted to the Senate for the necessary ratification, which they duly received. Professor Angell remained in China however, until 1882, when he resigned the office of Minister and returned to America.

He is widely recognised as a man of high character, intellectual gifts and culture, and qualified by nature and experience for diplomatic work.

Mr. Putnam was born in Boston about fifty-six years ago, and was graduated from Bowdoin College in September, 1857. In the winter of 1856-57 he was assistant clerk of the House of Representatives at Augusta. After leaving college Mr. Putnam studied law, and has been in practice for more than a quarter of a century. He was appointed by Governor Robie, Judge of the Supreme Court to succeed Judge Symonds, but the honour was declined. He is counsel for the Boston and Maine Railway Company. He is an independent Democrat, and has never affiliated with the rank and file of his party.

21,076.

No. 82.

Sir H. T. Holland to Governor-General the Marquis of Lansdowne.

TELEGRAPHIC.

October 22nd. Referring to your telegram of 10th October,* terms of reference amended as desired by striking out words "in the course of negotiations," Foreign Office consider that British Columbia Fisheries are included. Her Majesty's Government will formally accept terms as now settled, Treaty will not be concluded without previous communication with your Government, so far as it may affect Canada. Chamberlain starts 29th October.

1,076.

No. 83.

Sir H. T. Holland to Governor-General the Marquis of Lansdowne and Governor H. A. Blake (Newfoundland.)

Canada, No. 363.

Newfoundland, No. 55.

DOWNING STREET,

October 22nd, 1887.

MY LORD,

SIR,

With reference to previous conference respecting the North American Fisheries Conference, I have the honour to transmit to you, to be laid before your Lordship's Government, copies of two letters† from the Foreign Office on the subject.

I have, &c.,
(Signed) H. T. HOLLAND.

The Marquis of Lansdowne.
Governor H. A. Blake.

21,080.

No. 84.

Colonial Office to Foreign Office.

DOWNING STREET,

22nd October, 1887.

SIR,

With reference to previous correspondence respecting the North American Fisheries Conference, I am directed by the Secretary of State for the Colonies to transmit to you for communication to the Marquis of Salisbury, copies of a telegram† from the Governor of Newfoundland, and of the reply§ which had been returned to it, on the subject.

I am, &c.,
(Signed) JOHN BRAMSTON.

The Under Secretary of State,
Foreign Office.

21,395.

No. 85.

Colonial Office to Foreign Office.

DOWNING STREET,

24th October, 1887.

SIR,

With reference to previous correspondence I am directed by the Secretary of State for the Colonies to transmit to you, for the information of the Marquis of Salisbury, a

* No. 60.
‡ No. 76.

† Nos. 75 and 77.
§ No. 78.

copy of a telegram* from the Governor-General of Canada reporting that Mr. Wallace Graham, Q.C., will accompany Sir C. Tupper to Washington as well as the Minister of Justice.

I am, &c.,
(Signed) JOHN BRAMSTON.

The Under Secretary of State,
Foreign Office.

21,587.

No. 86.

Foreign Office to Colonial Office.

Confidential.

FOREIGN OFFICE,
October 25th, 1887.

SIR,

With reference to previous correspondence, I am directed by the Secretary of State for Foreign Affairs to transmit to you, to be laid before Sir Henry Holland, copies of a telegram and of despatches addressed to Her Majesty's Minister at Washington on the subject of the proposed Fisheries Conference at Washington.

I am, &c.,
(Signed) J. PAUNCEFOTE.

The Under Secretary of State,
Colonial Office.

Enclosure 1 in No. 86.

Telegram to Sir L. West, Washington. (Sent October 24th, 1887, 4.40 p.m.)

"Fisheries Conference. Address note to Mr. Bayard, recapitulating terms of reference as now arranged, with omission of words mentioned in your telegram of 20th instant, and stating that Her Majesty's Government accept them in this form. Ask for acknowledgment."

Enclosure 2 in No. 86.

Treaty No. 73.

FOREIGN OFFICE,
October 24th, 1887.

Telegram Extender.

SIR,

I have received your telegram of the 20th instant, acquainting me that Mr. Bayard has no objection to the omission of the words "in the course of the negotiations and" from the terms of reference to the North American Fisheries Conference.

In reply, I have to request that you will address a note to Mr. Bayard, recapitulating the terms of reference as now arranged, with the omission of these words—as follows:—

"Conference of Plenipotentiaries to consider and adjust all or any questions relating to rights of fishery in the seas adjacent to British North America and Newfoundland which are in dispute between the Government of Her Britannic Majesty and that of the United States of America, and any other questions which may arise, and which they may be authorised by their respective Governments to consider and adjust."

You will state that Her Majesty's Government accept the terms of reference in this form, and you will ask for acknowledgment of your note to confirm the acceptance of United States' Government.

I am, &c.,
(Signed) SALISBURY.

The Honourable Sir L. S. West, K.C.M.G.,
&c., &c., &c.

Enclosure 3 in No. 86.

Treaty No. 74.

FOREIGN OFFICE,
October 24th, 1887.

SIR,

With reference to my despatch Treaty No. 73 of this day's date, I have to request that you will inform Mr. Bayard that the Queen has been graciously pleased to appoint Mr. Joseph Chamberlain, M.P., yourself, and Sir Charles Tupper, G.C.M.G., C.B., High Commissioner for the Dominion of Canada in London, to be Her Majesty's Plenipotentiaries at the North American Fisheries Conference.

You will add that Mr. J. H. G. Bergne, C.M.G., Superintendent of the Treaty Department of this office, has been appointed Secretary to Her Majesty's Plenipotentiaries, to assist them generally in the business of the Conference, and that Mr. Willoughby R. D. Maycock of this office has been appointed Assistant Secretary.

I am, &c.,
(Signed) SALISBURY.The Honourable Sir L. S. West, K.C.M.G.,
&c., &c., &c.

21,558.

No. 87.

*Foreign Office to Colonial Office.*FOREIGN OFFICE,
October 25th, 1887.

SIR,

I have laid before the Marquis of Salisbury your letter of the 20th instant,* transmitting a copy of a letter from the Admiralty enclosing the instructions issued by the Commander-in-Chief on the North American Station to the captain of the ship detached on service in connection with the protection of the Canadian fisheries, together with a draft of the reply which Sir Henry Holland proposes to return to the Admiralty letter; and I am to state to you, in reply, that his Lordship concurs in the terms of the proposed reply.

I am, &c.,
(Signed) J. PAUNCEFOTE.The Under Secretary of State,
Colonial Office.

20,273.

No. 88.

*Colonial Office to Admiralty.*DOWNING STREET,
29th October, 1887.

SIR,

I am directed by the Secretary of State for the Colonies to acknowledge the receipt of your letter of the 4th inst.,† enclosing a copy of a letter from the Commander-in-Chief on the North American and West Indian Station forwarding copy of the instructions given to Captain Beaumont of H.M.S. "Canada" respecting the support to be given by Her Majesty's ships to Canadian officers engaged in the protection of the fisheries.

I am to point out in reply that Admiral Lyons' instructions do not exactly follow the terms suggested in the letter from this department of the 6th of July last.‡ On reference to that letter it will be seen that not only was it intended that Her Majesty's ships should act in cases of actual resistance to the Canadian authorities on the part of United States vessels, but that they should be authorised to seize, on their own initiative, vessels committing the offence of fishing within three miles of land.

As, however, the present fishing season is now practically over, Sir H. Holland does not propose that the instructions issued by Admiral Lyons should be altered.

I am, &c.,
(Signed) JOHN BRAMSTON.

The Secretary to the Admiralty.

* No. 77a.

† No. 48a.

‡ No. 201 in North American No. 121.

22,277.

No. 89.

*Governor H. A. Blake (Newfoundland) to Sir H. T. Holland.
(Received November 3rd, 1887.)*

Secret.

GOVERNMENT HOUSE, NEWFOUNDLAND,
October 25th, 1887.

SIR,

With reference to your telegram of the 21st instant,* I have the honour to enclose a copy of a Minute submitted to me to-day by the Members of the Executive Council, for transmission to you.

2. On the receipt of your telegram on Saturday evening, I informed the Premier of its contents, and, in accordance with his request, I held a Council yesterday to consider the matter. It was evident at the meeting of Council that there is considerable irritation at the exclusion of Newfoundland from direct representation at the Conference, and a strong feeling that in some way or other the interests of this Colony will be sacrificed to those of Canada, whose interests are not identical with those of Newfoundland. I found, also, a disinclination to send an agent to Washington, as suggested, in what my Ministers seemed to think would be an undignified position that no responsible member of the mercantile world would accept.

3. At the meeting of the Council, a very strong, and, indeed, rather violently worded, protest was read by the Attorney-General, having been drawn up at the meeting of the Ministers on Saturday evening. I pointed out to the Council that it was hardly fair to assume from the necessarily curt diction of a telegram that the representations of the Colony on the subject had not been fully and carefully considered, and endeavoured to allay the irritation upon that and other points. I argued that the objection that the members of the Conference would have no information available on the subject of the interests of Newfoundland would be obviated by sending an agent to confer with the Plenipotentiaries at Washington, and that refusing to send an agent, whose representations might profoundly influence the results of the Conference as regards our interests, because he could not have the more important position of Plenipotentiary, would hardly be justifiable. I assured the Council that, from my own knowledge of the feeling of the Home Government, there was no fear of the interests of Newfoundland being neglected in any way, much less sacrificed to those of Canada. Ultimately the Ministers adopted my suggestion that the language of the Minute should be modified. They met last evening, and the Minute, of which I enclose a copy, is the outcome of their further consideration. It was read at a Council convened for to-day.

4. In my opinion the Ministers felt it necessary to place on record a very strong protest, that they may be in a position to produce it when questioned, as most probably they will be by the Opposition during the next Session. An agent will, I am informed, be appointed and sent to Washington, and, I think, that on the manner in which he is received by the members of the Conference, and consulted by them on all questions that may affect the interests of this Colony, will depend to a great extent the spirit in which the consideration of the conclusions of the Conference as affecting Newfoundland will be approached when submitted to this Government.

5. My Ministers are uneasy because your telegram of the 22nd instant does not assure them that arrangements made affecting the interests of Newfoundland, must be accepted by this Government before being ratified. I have endeavoured to reassure them on the point.

I have, &c.,
(Signed) HENRY A. BLAKE,
Governor.

The Right Hon. Sir H. Holland, Bart.,
&c., &c., &c.,
Colonial Office.

Enclosure in No. 89.

Extract from Minutes of Executive Council of Newfoundland, October 25th, 1887.

The Council cannot refrain from the expression of an acute feeling on their part that the proceedings in relation to the proposed Commission, so far as they relate to

* No. 78.

this Colony, indicate a want of due regard for its vital interests, which at present at least, appear to be in jeopardy.

The fact that this Colony occupies a separate and independent position in relation to the various matters within the functions of the Commission, that its interests are not only not identical with those of Canada, but different from, and, in some instances, probably conflicting with them; that if not absolutely, yet relatively the fishery questions entrusted to the Commission, are of far greater importance to this Colony than to the Dominion of Canada, that the proper treatment of those questions in the interests of the Colony must necessitate a special and separate consideration for local facts and circumstances; that the relations of this Colony not only with other British subjects, but with foreign powers, are different from those of Canada, and are necessarily peculiar and complicated. These facts and circumstances make it obvious that the effective and adequate protection of the interests of Newfoundland upon such a Commission must of necessity be the subject of separate and special concern, requiring separate and special provision.

This necessity and the claim of the Colony to some such provision on its behalf have been fully recognised, though not in express terms, in the despatch of the Right Hon. Secretary of State for the Colonies, to his Excellency of the 3rd September, in which the fact that the fisheries of this Colony are included in the matter to be dealt with by the proposed Commission, is assigned as the reason for not agreeing to the making of a separate arrangement in relation to those fisheries, between this Colony and the United States.

For the reasons above stated, it is impossible that the Imperial Commissioners can be possessed of that minute acquaintance with the various and complicated questions affecting the peculiar and separate interests of the Colony which can only be acquired by careful study, and from local knowledge and experience; and the method suggested for supplying the information necessary for the efficient discharge of this important trust on behalf of the Colony must of necessity be altogether inadequate to the grave exigencies of the occasion.

The Government of the Colony are further under the serious disadvantage as regards the method suggested, arising from the want of that information in relation to the whole subject, which is indispensable as a preliminary to a suitable representation of the interests of the Colony upon the Commission. The Colony has not until within the past few weeks received any intimation whatever, except from outside and unauthorised sources as to the formation of the Commission, its constitution or powers, the scope of the subjects to be dealt with, the extent to which this Colony is to be affected by its conclusions, or the power of the Colony to accept or reject those conclusions. The authorised information upon these points so far elicited has been in reply to very recent inquiries from the Government of this Colony by telegraph, stimulated by the natural anxiety felt by the Government upon the whole subject, and the great uneasiness occasioned by the publication of announcements pointing to the exclusion of the Colony from any representation whatever upon the Commission, and the information so received does not contain any definite or specific replies to questions relating to some of the most vital and radical points involved.

The Council therefore feel themselves under the painful necessity of making their most earnest protest against the entrusting of the most vital interests of the Colony to a Commission, of the nature, scope, and powers of which the Government are not informed, and upon which the only efficient and suitable means of protecting those interests must be by the presence of a fully accredited representative.

While under all the circumstances the Government believe that they would not be justified in declining to accept the offer of Her Majesty's Government in relation to an agent of the Colony at Washington to confer with the Imperial Commissioners, the acceptance of this proposal is to be understood as not waiving or withdrawing the objections to the course proposed, but subject to the protest above set forth.

M. FENELON,
Clerk of Executive Council.

22,200.

No. 90.

*Governor H. A. Blake (Newfoundland) to Sir H. T. Holland.
(Received November 3rd, 1887.)*

TELEGRAPHIC.

Having appointed Attorney-General Agent for the Colony at Washington, during the meeting of Fishery Commission, request that you will be good enough to inform [them that] Plenipotentiaries ; he leaves 5th November.

22,200.

No. 91.

Colonial Office to Foreign Office.

DOWNING STREET,
3rd November, 1887.

SIR,

With reference to previous correspondence, I am directed by the Secretary of State for the Colonies to transmit to you, to be laid before the Marquis of Salisbury, a copy of a telegram* from the Governor of Newfoundland, reporting the appointment of Mr. J. S. Winter, Attorney-General of the Colony, as Agent for the Colonial Government at the Fisheries Conference.

Sir H. Holland would be glad if Lord Salisbury would cause the information contained in Mr. Blake's message to be communicated by telegraph to Her Majesty's Minister at Washington.

I am, &c.,
(Signed) JOHN BRAMSTON.

The Under Secretary of State,
Foreign Office.

22,463.

No. 92.

Foreign Office to Colonial Office.

FOREIGN OFFICE,
November 5th, 1887.

SIR,

I am directed by the Marquis of Salisbury, to acknowledge the receipt of your letter of the 3rd instant,† enclosing a telegram from the Governor of Newfoundland in which he reports that Mr. J. S. Winter, Attorney-General of the Colony, has been appointed Agent to the Fisheries Conference for the Colonial Government, and that he leaves for Washington on November 5th.

I am to request that you will inform Secretary Sir H. Holland, that this information has been telegraphed to Her Majesty's Minister at Washington for communication to the Plenipotentiaries.

I am, &c.,
(Signed) T. V. LISTER.

The Under Secretary of State,
Colonial Office.

22,511.

No. 93.

Foreign Office to Colonial Office.

Confidential.

FOREIGN OFFICE,
November 5th, 1887.

SIR,

I am directed by the Secretary of State for Foreign Affairs to transmit to you, to be laid before Secretary Sir H. Holland copies of confidential print relating to the Fisheries Conference.

I am, &c.,
(Signed) T. V. LISTER.

The Under Secretary of State,
Colonial Office.

Enclosure 1 in No. 93.

Sir L. West to the Marquis of Salisbury. (Received October 31st.)

WASHINGTON,
October 20th, 1887.

No. 109. Treaty.

My Lord,

I have the honour to inclose to your Lordship herewith an article from the New York "Times" on the Fisheries Conference.

I have, &c.,
(Signed) L. S. SACKVILLE WEST.

Extract from the New York "Times" of October 17th, 1887.

THE FISHERIES CONFERENCE.

As the time approaches for the meeting of the Commissioners appointed by Great Britain and the Conferees named by Secretary Bayard to consider the question of the fisheries, it is interesting to inquire what prospects there may be for a satisfactory result. The first difficulty which will suggest itself to those who have followed the fisheries discussion is the evident indisposition of England to do anything at all in the matter. So far as argument is concerned, Minister Phelps brought the negotiations to a logical conclusion months ago. He presented the contentions and the rights of this country in so clear and forcible a manner that no reply was made and none attempted. England's policy since then has been one of evasion and inaction. Mr. Joseph Chamberlain and his associates may be animated by a different spirit, but of that the public has at present no knowledge.

The next obstacle in the way of these negotiations is the attitude of the United States Senate. On the 18th January, 1886, Senator Frye, of Maine, introduced the following Resolution:—

"Resolved,—That in the opinion of the Senate, the appointment of a Commission in which the Governments of the United States and Great Britain shall be represented, charged with the consideration and settlement of the fishing rights of the two Governments on the coasts of the United States and British North America, ought not to be provided for by Congress."

This Resolution was debated at great length, and on the 13th April was adopted by a vote of 35 to 10. The hostility of the Senate to any plan of settlement adopted at the Conference may therefore be assumed, unless in the meantime the majority of the Senate shall get new light. This we regard as extremely improbable, for the reason that the discussion upon Senator Frye's Resolution showed plainly that the protectionist sentiment is the real basis of the opposition to the appointment of a Commission. The tone and temper of the speeches made by Senator Frye and other Republican Senators leave no doubt of this. Senator Frye said, in speaking upon his Resolution: "We simply ask, as I have heard other people ask before now, let us, for heaven's sake, alone; keep your hands off and keep Great Britain's hands off, and we

"will take care of ourselves." The Senatorial champions of the New England fishermen profess to have no wish to secure the right to the inshore fisheries. They are content to take their chances in the open sea, and they ask only that the Dominion of Canada shall accord the fishermen the right to buy ice and bait in their ports, privileges which are now denied. But these Protectionist Senators are unwilling that these privileges shall be purchased by the removal of our customs duties upon fish, or that any method of securing them shall be discussed by a Commission.

If the result of the Conference shall be the submission of the plan of settlement to Congress and that plan shall fail of adoption through the hostility of the Protectionist Senators, the State Department and the Administration will have no course left save a resort to the retaliatory powers with which Congress has invested the President. These powers, if they are used at all, will be used, not merely to compel a recognition of the right of our fishermen to buy bait and ice in Dominion ports, but also a general right of American deep-sea fishing-vessels to enter those ports for the ordinary purposes of trade.

What results would come from a resort to the policy of retaliation, whither it would carry us, and where it would leave us, cannot be foretold. But persons in the least degree familiar with the history of international disputes know that after retaliation has been resorted to and has failed war is the next and only step—unless, indeed, the claims in dispute are abandoned. The Protectionist Senators who have strenuously contended for the inviolability of fishing schooners and of the American Tariff would be quite content, we believe, to see the Administration forced into a position where it would have no resource but retaliation. Indeed, the Administration has been roundly censured by the newspaper organs which represent the views of these Senators for its failure to declare non-intercourse with Canada. In view of the patient, earnest, and unremitting efforts of the State Department to bring the fishery dispute to a fair and honourable conclusion, and in view of the failure with which its efforts are now threatened, through the attitude of certain Senators, it is worth while for the people of the country to take a sober look at the situation and its prospects. In particular, we think it will be well for the business men of the United States to consider whether it would be worth while for this country to put aside all other plans of settlement in deference to the views of a few high-Tariff Senators, and then to resort to sweeping retaliatory measures, with all their possible and grave consequences, all for the sake of an annual "catch" of 4,500,000 dollars' worth of codfish and mackerel.

Enclosure 2 in No. 93.

Sir L. West to the Marquis of Salisbury. (Received October 31st.)

WASHINGTON,
October 20th, 1887.

No. 111. Treaty. Ext.

My LORD,

At an interview, which I had with the Secretary of State after the receipt of your Lordship's telegram of the 15th instant, I informed him that it was desired to omit the words in the terms of reference, "in the course of negotiations," and I now have the honour to inclose a copy of a private letter which I have received from him stating that he has no objection to their omission and inclosing an amended draft, as to which he requests a statement of the acceptance by Her Majesty's Government

I have, &c.,
(Signed) L. S. SACKVILLE WEST.

Mr. Bayard to Sir L. West.

WASHINGTON,
October 19th, 1887.

MY DEAR SIR LIONEL,

There is no reason apparent to me why the words "in the course of the negotiations," which you tell me your Government instructs you to ask to have omitted from the "terms of reference," should not be so omitted.

The words referred to were contained in the draft sent by Lord Salisbury, and were agreed to by me.

If it is now considered important to omit them, and that it will assist the great object in view of settling a long-standing cause of difference between the United States and Great Britain, I will not object.

Therefore I return you my note to you of the 14th September last (which you left with me just now), with the draft of proposed terms of reference attached, and with it a draft of the terms as now amended, as to which I would be pleased to receive a statement of the acceptance by your Government.

I am, &c.,
(Signed) T. F. BAYARD.

Proposed Terms of Reference (as amended October 19th, 1887).

To consider and adjust all or any questions relating to rights of fishery in the seas adjacent to British North America and Newfoundland which are in dispute between the Governments of Her Britannic Majesty and that of the United States of America, and any other questions which may arise, and which they may be authorised by their respective Governments to consider and adjust.

Enclosure 3 in No. 93.

Mr. Phelps to the Marquis of Salisbury. (Received October 31st.)

LEGATION OF THE UNITED STATES, LONDON,
October 29th, 1887.

MY LORD,

I have the honour to acknowledge the receipt of your note of the 25th instant, transmitting to me the text of the terms of reference to the North American Fisheries Conference. And further, stating the names of the gentlemen who have been appointed British Plenipotentiaries to that Conference.

I have, &c.,
(Signed) E. J. PHELPS.

22,425.

No. 94.

*Governor-General the Marquis of Lansdowne to Sir H. T. Holland.
(Received November 7th, 1887).*

No. 409.

GOVERNMENT HOUSE, OTTAWA,
October 20th, 1887.

SIR,

I have the honour to transmit to you a copy of an approved report of a Committee of the Privy Council to which is appended a copy of a despatch from his Honour the Lieutenant-Governor of British Columbia covering a Minute of his Executive Council setting forth the value to British Columbia of the present sealing industry in Behring's Sea.

You will observe that the Executive Council of British Columbia consider that the rights of British subjects, as regards the Behring's Sea, should be included in the scope of the duties of the International Fisheries Commission.

I have, &c.,
(Signed) LANSDOWNE.

The Right Honourable Sir Henry Holland,
&c., &c., &c.

Enclosure in No. 94.

Certified copy of a Report of a Committee of the Honorable the Privy Council for Canada, approved by his Excellency the Governor-General in Council on the 15th October, 1887.

The Committee of the Privy Council have had under consideration a despatch dated 15th September, 1887, from the Lieutenant-Governor of British Columbia covering a Minute of his Executive Council, setting forth the value to British Columbia of the present sealing industry in Behring Sea, together with the opinion of the Executive, that the rights of British subjects should have the same protection and consideration on the Pacific as on the Atlantic, and that these rights, as regards the Behring Sea, should be included in the scope of the duties of the International Fisheries Commission in process of organisation.

The Minister of Marine and Fisheries to whom the despatch and enclosures were referred recommends that a copy of the despatch referred to with its enclosures be transmitted to Her Majesty's Government.

The Committee advise that your Excellency be moved to transmit a copy of the papers herein mentioned to the Right Honorable the Secretary of State for the Colonies for the information of Her Majesty's Government.

All which is respectfully submitted.

JOHN J. MCGEE,
Clerk, Privy Council for Canada.

HARRISON HOT SPRINGS, BRITISH COLUMBIA,

15th September, 1887.

SIR,

I have the honour to transmit herewith, copy of a Minute of my Executive Council approved by me on the 9th instant, representing the value to the province of British Columbia of the present sealing industry in Behring Sea, the number of vessels, men, &c., engaged in the same, the loss to the province certain to ensue from the destruction of this trade by the seizures and confiscation made by the United States' cruisers.

That the rights of British subjects should have the same protection and consideration on the Pacific as on the Atlantic, and that full compensation and redress for injuries already received and assurances of future non-interference should be obtained from the United States Government.

That this question should be included in the scope of the duties of the International Fishery Commission now understood to be in process of organisation and that it is desirable said Commission should hold some of its sittings in Victoria for reasons therein set forth, &c.

I have, &c.,
(Signed) HUGH NELSON,
Lieutenant-Governor.

To the Hon. the Secretary of State,
Ottawa, Canada.

PROVINCE OF BRITISH COLUMBIA.

Copy of a Report of a Committee of the Honourable the Executive Council, approved by his Honour the Lieutenant-Governor on the 9th day of September, 1887.

On a Memorandum from the Honourable the Minister of Finance and Agriculture, dated the 6th September, 1887, setting forth:—

That there are usually engaged in seal fishing in Behring Sea seventeen vessels wholly owned by people residing in this city, of the aggregate value of \$125,000.

That the outfit for each semi-annual voyage of these vessels represents an expenditure of \$75,000 equal to \$150,000 a year.

That each of these vessels, on an average, employs a crew of five whites and about twenty Indians, or fifteen to eighteen whites as hunters.

That the probable aggregate value of the product of each voyage is \$200,000 or \$400,000 a year.

That this industry, though as yet only in its infancy, is a very important one for so small a community.

That the glaring and unlawful seizures and confiscations in Behring Sea during last season, and the present year are completely crushing out this infant industry and causing ruin, and, in several known instances, actual distress to those who have invested their all in the business and relied upon it for a livelihood.

That the destruction of this industry not only entails ruin and distress upon those directly engaged therein, but it affects most injuriously the trade of the province, and drives from these waters a race of hardy and adventurous fishermen, who with their families, are large consumers, and who would in time become a very important element of strength, if not the nucleus of the future navy of Canada on the Pacific.

That the rights and interests of British subjects, whether in fisheries or commerce are entitled to the same consideration and protection on the Pacific as on the Atlantic, and that it is, therefore, the duty of the Dominion Government to employ every proper means for obtaining immediate and full compensation and redress for past injuries and wrongs, as well as to guard against the possibility of a repetition of these highhanded outrages in the future.

That it is believed to be desirable that this question should be included in the scope of the duties of the International Commission now understood to be in process of organisation for the settlement of the fishery disputes existing between Canada and the United States of America, and it is considered most important that the said Commission should hold one or more of its sittings in this city, in order that those more directly acquainted with and interested in the Pacific fisheries may have a better opportunity of being heard and making the Commissioners more thoroughly acquainted with the subject than would otherwise be possible.

The Committee advise approval and that a copy of this Minute be forwarded to the Honourable the Secretary of State for Canada.

Certified,
(Signed) JNO. ROBSON,
Clerk, Executive Council.

22,673.

No. 95.

Foreign Office to Colonial Office.

FOREIGN OFFICE,
November 9th, 1887.

SIR,

I am directed by the Secretary of State for Foreign Affairs to transmit to you, to be laid before Secretary Sir H. Holland, a copy of a despatch with its enclosures, received from Her Majesty's Minister at Washington, in regard to the Fisheries Conference.

I am, &c.,
(Signed) J. PAUNCEFOTE.

The Under Secretary of State,
Colonial Office.

Enclosure in No. 95.

WASHINGTON,
October 26th, 1887.

No. 112, Treaty.

MY LORD,

Upon the receipt of your Lordship's telegram of the 24th instant, I immediately addressed a note to the Secretary of State, recapitulating the terms of reference as set forth in his communication to me of the 19th instant, copy of which was enclosed in my despatch, No. 111 of this series, of the 20th instant, and stating that Her Majesty's Government accept them, and I now have the honour to enclose to your Lordship here-

with copy of the reply which I have received, stating the acceptance of the same on the part of the Government of the United States.

I have, &c.,
(Signed) L. S. SACKVILLE WEST.

The Marquis of Salisbury, K.G.,
&c., &c., &c.

DEPARTMENT OF STATE, WASHINGTON,
October 25th, 1887.

SIR,

I beg to acknowledge your note of yesterday containing the "terms of reference," as set forth at length in my communication to you of the 19th instant, and stating the acceptance of the same on the part of Her Majesty's Government.

Responding also to the wish expressed in your note that a similar acceptance of the same on the part of the Government of the United States should be communicated to you, I have now the honour to state such acceptance.

I am, &c.,
(Signed) T. F. BAYARD.

The Hon. Sir Lionel S. West,
&c., &c., &c.

22,277.

No. 96.

Colonial Office to Foreign Office.

DOWNING STREET,
9th November, 1887.

SIR,

With reference to the letter from this Department of the 3rd instant,* and to previous correspondence respecting the question of the Colony of Newfoundland being represented at the Fisheries Conference about to assemble at Washington, I am directed by Secretary Sir Henry Holland to transmit to you, to be laid before the Marquis of Salisbury, a copy of a despatch,† from the Governor of Newfoundland, enclosing copy of Minute of his Executive Council relating to this matter.

I am also to enclose a copy of a despatch‡ which, with Lord Salisbury's concurrence, Sir Henry Holland proposes to address to the Governor in reply.

Sir Henry Holland would suggest, for Lord Salisbury's consideration, with reference to your letter of the 5th instant,§ that a further telegram should be addressed to Sir L. West without delay, instructing him that every facility should be given by the British Plenipotentiaries to the Agent representing Newfoundland to place before them the views of his Government, so that they may receive their attentive consideration and full discussion.

I am, &c.,
(Signed) JOHN BRAMSTON.

The Under Secretary of State,
Foreign Office.

22,807.

No. 97.

Foreign Office to Colonial Office.

Confidential.

FOREIGN OFFICE,
November 11th, 1887.

SIR,

Your letter of the 9th instant|| has been laid before the Marquis of Salisbury.

In reply I am to request that you will state to Sir H. Holland that his Lordship concurs in the terms of the despatch which it is proposed to address to the Governor of

* No. 91.
(962)

† No. 89.

‡ No. 101.

§ No. 92.

|| No. 96.

Newfoundland in regard to the question of the direct representation of the Colony at the Fisheries Conference at Washington.

I am at the same time to transmit to you a copy of a telegram which was sent to Sir L. West on the 10th instant, directing him to request the British Plenipotentiaries to afford every facility to the Agent who has been appointed to represent Newfoundland during the meeting of the Conference for placing before them the views of his Government, so that they may receive their attentive consideration and full discussion.

I am, &c.,
(Signed) T. V. LISTER.

The Under Secretary of State,
Colonial Office.

Enclosure in No. 97.

Telegram to Sir L. West November 10th, at 4.30p.m.

No. 46.

My Telegram No. 45.

Request British Plenipotentiaries to give every facility to Agent representing Newfoundland to place before them views of his Government, so that they may receive their attentive consideration and full discussion.

23,007.

No. 98.

Admiralty to Colonial Office.

ADMIRALTY,
11th November, 1887.

Confidential.

SIR,

I am commanded by my Lords Commissioners of the Admiralty to transmit, for the perusal of the Secretary of State for the Colonies, copy of a letter from the Commander-in-Chief on the North American and West Indian Station, dated the 20th October, No. 404, with a copy of the reports from the officers in command of Her Majesty's ships which have recently returned from visiting the Canadian fishing grounds.

In forwarding these reports, I am commanded by their Lordships to request that a spare copy of the instructions under which the Canadian cruisers act may be supplied to the Admiralty.

I am, &c.,
(Signed) EVAN MACGREGOR.

The Under Secretary of State,
Colonial Office.

Enclosure in No. 98.

Canadian Fisheries.

"BELLEROPHON," AT HALIFAX,
20th October, 1887.

Confidential. No. 404.

SIR,

With reference to your confidential letter of the 30th July last, No. 202, I have the honour to forward reports from the officers in command of Her Majesty's ships which have recently returned from visiting the Canadian fishing grounds.

2. Owing to the unusually early close of the fishing season this year, most of the United States' vessels engaged in this industry had started on their return home before our cruisers had reached the grounds.

It will be observed from Captain Beaumont's report that the officers in command of the Dominion cruisers concur in their statements that they had found no difficulty in dealing with the American fishermen, or in enforcing the regulations

as to the three-mile limit, though they would fish inside whenever they got the chance.

3. No request for support in carrying out their instructions was made by the officers of the Dominion Government to those in command of Her Majesty's ships.

I have, &c.,

(Signed) ALGERNON LYONS,
Vice-Admiral and Commander-in-Chief.

The Secretary of the Admiralty.

Visit to Canadian Fishing Grounds.

Confidential. No. 58.
1887.

"CANADA," AT HALIFAX,
28th September, 1887.

SIR,

I have to honour to report that, in obedience to your signal of the 16th instant, to part company, and in pursuance of the instructions contained in your confidential memo. of the 13th September, I have visited the principal fishing grounds in the Gulf of St. Lawrence, which border those coasts of the Dominion of Canada, within three miles of which American fishermen are precluded from fishing.

2. I have the honour to inform you that, owing to what I am told by the officers in command of the Canadian cruisers is the unusually early close of the fishing season this year, I have only been able to identify one American schooner.

Along the south coast of Anticosti there were no fishermen whatever of either nationality.

In the bays of Gaspé, Chaleur, and Miramichi, and along the coasts joining them, there were only the local fishermen in open boats.

Along the north coast of Prince Edward Island there were a few schooners, in addition to the local fishermen, but it was not until after rounding the east point of that island that the fishery fleet proper was met with. It consisted of from twenty to twenty-five sail, all schooners of from fifty to eighty tons; on passing them I saw that each had one or two whale boats towing astern, with a seine net in each.

One schooner hoisted American colours.

3. At Souris, where I landed an hour later, I was informed by the officers in command of the Canadian cruisers "Advance," and "Critic," that only three American schooners remained in the Gulf, one at anchor there had just arrived from Miramichi. Another had started that morning for the Gut of Canso on her return to the States, and the third I had passed with the rest of the fishing fleet. Both these officers, Messrs. MacLaren and Knowlton, concurred in their statements that they had found no difficulty in dealing with the American fishermen, or in enforcing the regulations as to the three-mile limit, though they would fish inside it whenever they got the chance. They also told me that the mackerel had already made for the north coast of Cape Breton, where a few American schooners might be tempted to return from the States for a second trip, going up the the east side of the island to Sydney.

4. At Georgetown I found the "Acadia," Lieutenant Gordon in command, who confirmed the reports of the above officers and told me that he was then changing his headquarters from Georgetown to Sydney, Cape Breton.

He passed me on his way there yesterday in the Gulf of Canso.

5. I have had a record carefully kept of all the schooners and other vessels which have been met on the various fishing grounds, but as it only includes one American schooner it is of no practical value.

6. At Gaspé, I met the Canadian cruiser "La Canadienne," and Dr. Wakeham, in command, informed me that he was then on his way to inspect the fisheries on the Labrador Coast.

7. I regret that my opportunities of obtaining information and making observations have been so small owing to the lateness of the season, but I should judge from what I have seen and heard as to the nature of the service required in cruising on the fishery grounds, that small vessels of light draught, which could anchor almost anywhere along the coast would be most suitable.

I have, &c.,

(Signed) S. A. BEAUMONT,
Captain.

Vice-Admiral Algernon McL. Lyons,
Commander-in Chief.

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Reporting Proceedings.

H.M.S. "TOURMALINE," AT HALIFAX,
2nd October, 1887.

SIR,

In obedience to your written orders and telegram of the 22nd ultimo, I left Montreal at 6 A.M., on Monday, the 26th ultimo, I anchored at Quebec that evening and again proceeded at daylight the following morning. I experienced fine weather, but it was rather foggy passing the Narrows and again when making Richibucto.

2. I passed the inshore fisheries outside the three-mile limit; I observed no vessels of any nationality fishing inside that limit. Passing Gaspé, Miramichi, &c., I observed there were many open boats fishing from three to eight miles from the shore. These were all local fishermen and carrying two to three men in each boat. Three Canadian schooners were in the vicinity but not fishing. After passing Chaleur Bay we did not find any more fishing craft until Saturday morning when passing through the Gut of Canso. Many schooners were just weighing and proceeding north. These schooners all seemed to be Canadian. I took most of their names, but only in the case of a few of them could be ascertained to what port they belonged, and none of them shewed any colours.

Outside the Gut again many open boats were fishing and several shoals of fish, apparently mackerel, were observed. No Canadian cruisers were fallen in with during the passage. The confidential documents received with my sailing orders are herewith returned; also a list of the fishing craft seen during the passage.

3. We arrived here without any mishap this morning at 11 A.M.

I have, &c.,
(Signed) MATHER BYLES,
Captain.

Vice-Admiral Algernon McL. Lyons,
Commander-in-Chief.

H.M.S. "Tourmaline" at Halifax.

List of Fishing Vessels, &c., seen during passage from Montreal to Halifax.

Where seen.	Description.	Name or No.	No. of men.	Colours shown.	Fishing or not.	Distance from shore.	Remarks.
Off Cape Gaspé..	Open boats	About 50	2	None	Under sail, apparently proceeding to fishing ground	½ to 2 miles.	
In Mal Bay ..	Open boats	About 20	2	None	Some fishing, others under sail		
In Mal Bay	Schooner	"Dawn"	6	Canadian	Not fishing	3 miles.	
Off Bonaventure	Brigantine	J. C. B. on bows	—	Canadian	Ditto	Outside 3 miles.	
Off Bonaventure	Open boats	About 40	2	None	Some fishing, others under sail	3 to 6 miles.	
Outside Chaleur Bay	Open boats	About 25	2	None	Ditto, some with nets drying	10 to 15 miles.	
Outside Chaleur Bay	Open boats	About 30	2 and 3, one 4	None	Ditto	15 to 18 miles.	
Outside Chaleur Bay	Open boat	1	3	Red flag. Union Jack at jack. Gold crown in upper centre. Green crest with red diagonal bar and white border at fly	Sailing	18 miles from Point Birch and Bonaventure.	
Outside Chaleur Bay	Open boat	1	3	Red flag.	Ditto		
Off Point Birch ..	Open boats	12 or 14	3	None	Some fishing, others under sail	6 to 10 miles.	
Between Gut of Canso and Cape Canso	Open boats	About 90	2 and 3	None	Ditto	All over the bay.	
Between Gut of Canso and Cape Canso	Schooners	About 40	—	None	Sailing	In bay	

(Signed) MATHER BYLES,
Captain.

Reporting Proceedings.

No. 12.

H.M.S. "WRANGLER" AT HALIFAX,
15th October, 1887.

SIR,

I have the honour to report that, in accordance with orders received from you, I left Halifax on October 1st, and proceeded along the coast of Nova Scotia and Cape Breton Island, anchoring in Sydney Harbour on the 4th.

On October 7th I left Sydney and exchanged colours with the Dominion steamer "Acadia." On the 8th I anchored in Aspey Bay on account of a strong north-west wind.

On Sunday, October 9th, I proceeded round Cape North arriving at Souris on October 10th.

I left Souris on the evening of October 12th and touched at Port Hawkesbury for mails leaving that port at 11.30 for Halifax.

The mackerel fishing season appears to be entirely over and the only fishing boats seen were a few schooners outside Souris fishing for cod, and I was told at Souris that all foreign fishing boats had left the coast.

I enclose herewith the Admiralty letter and enclosures.

I have, &c.,
(Signed) HARRY D. LAW
Lieutenant and Commander.

Vice-Admiral Lyons,
&c., &c., &c.

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No. 99.

Governor-General the Marquis of Lansdowne to Sir H. T. Holland.
(Received November 12th, 1887).

No. 416.

GOVERNMENT HOUSE, OTTAWA,
23th October, 1887.

SIR,

I regret to find that amongst the despatches addressed to me by the Colonial Office, and remaining unanswered, is one from the Honourable E. Stanhope, dated September 9th, 1886,* in which my attention was called to the action of the officer commanding the Canadian schooner "Conrad" in forbidding the United States schooner "Golden Hind," to enter the Bay des Chaleurs last summer.

This despatch, which was received during my absence from Canada on leave, was at once referred to the Department of Marine and Fisheries, and the facts were, as you will observe from the papers now forwarded, investigated without loss of time. Owing to some oversight, however, the matter was not brought in the usual manner before Council, and was consequently altogether overlooked for some months. There were several fishery cases reports upon which had been sent to you or your predecessor before the arrival of any complaints from the United States Government, and I found that the Minister, when I called his attention to Mr. Stanhope's despatch, was under the impression that in the case of the "Golden Hind," he had been furnished with such a report and his despatch consequently answered by anticipation.

I now forward for your information a copy of an approved Minute of my Privy Council dealing with Mr. Bayard's complaint.

The report of the Captain of the cruiser "Conrad" enclosed with this Minute shows, I think, conclusively that Mr. Bayard was misinformed as to the facts, and that although the "Golden Hind" was warned not to enter the Bay des Chaleurs, there is no foundation for the statement of her Captain, that he applied for and was refused permission to obtain water at Port Daniel in the above bay.

I have, &c.,
(Signed) LANSDOWNE.

The Right Honourable Sir Henry Holland,
&c., &c., &c.

Enclosure in No. 99.

Certified Copy of a Report of a Committee of the Honourable the Privy Council for Canada, approved by his Excellency the Governor-General in Council, on the 27th October, 1887.

The Committee of the Privy Council have had under consideration a despatch, dated 9th September, 1886, from the Right Honourable the Secretary of State for the Colonies, transmitting a copy of a communication from the Foreign Office, together with a note from Mr. Secretary Bayard, protesting against the action of the Commander of the Canadian cruiser "F. E. Conrad," in forbidding the Master of the United States' fishing schooner "Golden Hind" to enter the Bay Chaleur for the purpose of renewing his supply of fresh water.

The Minister of Marine and Fisheries to whom the despatch and enclosure were referred, submits herewith Captain Smeltzer's statement of what occurred on the day the schooner "Golden Hind" is stated to have been at Bay Chaleur.

The Minister observes that Captain Smeltzer denies that the Master of the "Golden Hind" mentioned any desire to enter the bay for water, but that he asked for a copy of the "Warning" which had been issued by the Fisheries Department to the Masters of United States' fishing vessels, which was given him. This "Warning" states distinctly the purposes for which United States fishing vessels can enter Canadian ports.

The Minister further observes that there are no grounds to substantiate the charge of a violation of the treaty and the common rights of hospitality to which Mr. Bayard gives expression.

The Committee recommend that your Excellency be moved to transmit a copy of this Minute and enclosure to the Right Honourable the Secretary of State for the Colonies.

All of which is respectfully submitted.

JOHN J. MCGEE,
Clerk, Privy Council.

GOVERNMENT SCHOONER "F. E. CONRAD,"
SOURIS, P.E.I.,
5th October, 1886.

SIR,

I am this day in receipt of your letter, dated 27th September, concerning a complaint made by Reuben Cameron, Master of the American fishing schooner "Golden Hind," of Gloucester. In reply, referring to my boarding book, I find I boarded the said vessel on the 22nd July, 1886, near the entrance to the Bay Chaleur. On boarding him I asked him for his report, &c., which he gave me. I then told him my orders were not to allow any American fishermen to enter the bay and warned him not to do so. He then asked me if I had any printed "warning" to give him; I told him I had. He then sent his boat to my vessel for the same. I gave him one, and to impress my orders on his mind, I wrote on the back "don't enter the Bay Chaleur." He did not say he wanted water, nor did he say he wanted to go into Port Daniel. He merely asked me about the headlands of the bay. The foregoing particulars are exactly what occurred with reference to my boarding the said schooner "Golden Hind."

I am, &c.,

(Signed) MATHIAS SMELTZER,
In command of Schooner "F. E. Conrad."

The Deputy Minister of Fisheries, Ottawa.

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No. 100.

Sir H. T. Holland to Governor-General the Marquis of Lansdowne.

No. 386

DOWNING STREET,
12th November, 1887.

MY LORD,

I have the honour to transmit to you, for communication to your Ministers with

reference to my despatch No. 363 of the 22nd ultimo, and my telegram of the same date,* a copy of despatch,† received through the Foreign Office, from Her Majesty's Minister at Washington with its enclosure in regard to the Fisheries Conference.

I am, &c.,
(Signed) H. T. HOLLAND.

The Marquis of Lansdowne,
&c., &c., &c.

22,277.

No. 101.

Sir H. T. Holland to Governor H. A. Blake.

DOWNING STREET,
12th November, 1887.

Secret.

SIR,

I have the honour to acknowledge the receipt of your despatch marked "Secret" of the 25th ultimo,‡ enclosing a copy of a Minute of your Executive Council on the subject of the question of the direct representation of Newfoundland at the Fisheries Conference at Washington.

I regret that your Government should feel any dissatisfaction that it has not been found possible to include a representative of Newfoundland among the Plenipotentiaries to meet at the Conference, but my telegram of the 21st ultimo§, assured you that Newfoundland interests would be fully protected, and that no new treaty respecting Newfoundland fisheries would be concluded without previous communication with the Colonial Governments. The papers enclosed in my subsequent despatch of the 22nd|| of October, will have placed your Ministers more fully in possession of the nature and scope of the reference to the Conference, and the Secretary of State for Foreign Affairs has instructed Her Majesty's Minister at Washington that every facility should be given by the British Plenipotentiaries to Mr. Winter, the Agent of your Government, to place before them the views of your Ministers, so that they may receive their attentive consideration and full discussion.

I am, &c.,
(Signed) H. T. HOLLAND.

Governor Blake.

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No. 102.

Foreign Office to Colonial Office.

Confidential.

FOREIGN OFFICE,
November 12th, 1887.

SIR,

I am directed by the Secretary of State for Foreign Affairs to transmit to you, to be laid before Secretary Sir H. Holland, copies of correspondence in regard to the affairs of the Fisheries Conference at Washington.

I am, &c.,
(Signed) T. V. LISTER.

The Under Secretary of State,
Colonial Office.

* Nos. 82 and 83.
‡ No. 89.

† Enclosure in No. 95.
§ No. 78. ¶ No. 83.

Enclosure 1 in No. 102.

The Marquis of Salisbury to Sir L. West.

No. 68. Treaty.

FOREIGN OFFICE,
October 10th, 1887.

SIR,

I have to acquaint you that the Right Honourable J. Chamberlain, First British Plenipotentiary at the Fisheries Conference to be held at Washington, will leave Liverpool by the Cunard Steamship "Etruria," on the 29th instant, accompanied by Mr. Bergne and Mr. Maycock, of this office, and by two servants.

I have to request that you will take the necessary steps to obtain the usual facilities, in order that the luggage of Mr. Chamberlain and suite may be passed by the Customs authorities at New York without examination.

I am, &c.,
(Signed) SALISBURY.

Enclosure 2 in No. 102.

*Foreign Office to Mr. Chamberlain.*FOREIGN OFFICE,
October 13th, 1887.

SIR,

I am directed by the Marquis of Salisbury to transmit to you a copy of a telegram from the Governor-General of Canada, inquiring whether you can visit Ottawa before going to Washington; and I am to inquire what reply you would desire should be made to Lord Lansdowne's telegram.

I am to state that so far as Lord Salisbury can judge, delay in the meeting of the Commission would be prejudicial, but that his Lordship has not means of judging very confidently.

I am, &c.,
(Signed) JULIAN PAUNCEFOTE.

Enclosure 3 in No. 102.

Mr Chamberlain to Foreign Office. (Received October 15th.)

TELEGRAPHIC.

BELFAST,
October 15th, 1887.

Think not desirable to postpone opening of Commission already arranged; will communicate with Lansdowne, and if necessary can go Ottawa before any final settlement.

Enclosure 4 in No. 102.

The Marquis of Salisbury to Sir L. West.

TELEGRAPHIC.

Treaty.

FOREIGN OFFICE,
October 15th, 1887, 6.10 P.M.

Fisheries : Terms of reference.

Canadian Government would like omission of words, "in the course of the negotiations and," as superfluous and possibly restrictive.

Ask Mr. Bayard whether he attaches importance to them.

Enclosure 5 in No. 102.

The Marquis of Salisbury to Sir L. West.

TELEGRAPHIC.

No. 72. Treaty.

FOREIGN OFFICE,
October 20th, 1887, 5.35 P.M.

Fisheries : Terms of reference.

Please send answer immediately by telegraph to my telegram of the 15th instant.

Enclosure 6 in No 102.

Sir L. West to the Marquis of Salisbury. (Received October 21st.)

TELEGRAPHIC.

Treaty.

WASHINGTON,
October 20th, 1887.

Your telegram of 15th.

Secretary of State has no objection to omission of the words "in the course of negotiations" in terms of reference.

Enclosure 7 in No. 102.

Sir L. West to the Marquis of Salisbury. (Received October 24th.)

No. 107. Treaty. Confidential.

WASHINGTON,
October 13th, 1887.

MY LORD,

At an interview which I had this day with the Secretary of State I alluded to the appointment of Mr. Putnam and Mr. Angell as his assistants in the forthcoming negotiations on the Fisheries question, and I asked him whether, as stated in the newspapers, he had made such appointments.

Mr. Bayard said he had appointed these gentlemen, but that, as the Canadian Government had not moved in the matter, and that, as I had made no official communication to him of Mr. Chamberlain's appointment, he had deemed it better to wait until the official notification of the several appointments could be made simultaneously.

I have, &c.,
(Signed) L. S. SACKVILLE WEST.

Enclosure 8 in No. 102.

Full Powers to Mr. Chamberlain, Sir L. West, and Sir C. Tupper to negotiate, &c., on the North American Fisheries Conference, October 24th, 1887.

Victoria R. and I.,

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland. Queen, Defender of the Faith, Empress of India, &c. To all and singular to whom these presents shall come, greeting.

Whereas for the purposes of considering and adjusting in a friendly spirit with
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Plenipotentiaries to be appointed on the part of our good friends the United States of America, all or any questions relating to rights of fishery in the seas adjacent to British North America and Newfoundland which are in dispute between our Government and that of our said good friends, and any other questions which may arise which the respective Plenipotentiaries may be authorised by their Governments to consider and adjust, we have judged it expedient to invest fit persons with full power to conduct on our part the discussions in this behalf.

Know ye, therefore, that we, reposing especial trust and confidence in the wisdom, loyalty, diligence, and circumspection of our right trusty and well-beloved Councillor, Joseph Chamberlain, a member of our most Honourable Privy Council, and a Member of Parliament, &c., &c.; of our trusty and well-beloved The Honourable Sir Lionel Sackville Sackville West, Knight Commander of our most distinguished Order of St. Michael and St. George, our Envoy Extraordinary and Minister Plenipotentiary to our said good friends the United States of America, &c., &c., and of our trusty and well-beloved Sir Charles Tupper, Knight Grand Cross of our most distinguished Order of St. Michael and St. George, Companion of our most Honourable Order of the Bath, Minister of Finance of the Dominion of Canada, &c., &c.

Having named, made, constituted, and appointed, as we do by these presents name, make, constitute, and appoint them our undoubted Plenipotentiaries, giving to them or to any two of them all manner of power and authority to treat, adjust, and conclude with such Plenipotentiaries as may be vested with similar power and authority on the part of our good friends the United States of America, any Treaties, Conventions, or Agreements that may tend to the attainment of the above-mentioned end, and to sign for us and in our name everything so agreed upon and concluded, and to do and transact all such other matters as may appertain to the finishing of the aforesaid work in as ample manner and form, and with equal force and efficiency as we ourselves could do if personally present.

Engaging and promising upon our Royal word that whatever things shall be so transacted and concluded by our said Plenipotentiaries shall be agreed to, acknowledged, and accepted by us in the fullest manner, and that we will never suffer, either in the whole, or in part, any person whatsoever, to infringe the same, or act contrary thereto, as far as it lies in our power.

In witness whereof we have caused the Great Seal of our United Kingdom of Great Britain and Ireland to be affixed to these presents, which we have signed with our Royal hand.

Given at our Court at Balmoral, the 24th day of October, 1887, and in the fifty-first year of our reign.

Enclosure 9 in No. 102.

The Marquis of Salisbury to Her Majesty's Plenipotentiaries at the Fisheries Conference.

No. 2.

FOREIGN OFFICE,
October 24th, 1887.

GENTLEMEN,

I have to acquaint you that Mr. J. H. G. Bergne, C.M.G., Superintendent of the Treaty Department of this Office, has been appointed Secretary to Her Majesty's Plenipotentiaries at the Fisheries Conference, and that Mr. Willoughby R. D. Maycock, also of this Office, has been appointed Assistant Secretary.

You will avail yourselves of their services in connection with the business of the Conference in any manner which may seem desirable.

I am, &c.,
(Signed) SALISBURY.

Enclosure 10 in No. 102.

*The Marquis of Salisbury to Mr. Phelps.*FOREIGN OFFICE,
October 25th, 1887.

SIR,

I have the honour to transmit to you, for your information, the text of the terms of reference to the North American Fisheries Conference which has been finally agreed upon between Her Majesty's Government and that of the United States of America.

I have the honour, further, to acquaint you that the Right Honourable Joseph Chamberlain, M.P., Sir Lionel S. Sackville West, and Sir Charles Tupper have been appointed British Plenipotentiaries to the Conference, and that Sir Lionel West has been instructed by telegram to-day to notify officially to your Government the above appointments.

I have, &c.,
(Signed) SALISBURY.

Enclosure 11 in No. 102.

The Marquis of Salisbury to Her Majesty's Plenipotentiaries at the Fisheries Conference.

No. 3.

FOREIGN OFFICE,
October 27th, 1887.

GENTLEMEN,

With reference to my despatch No. 1 of the 24th instant I transmit to you herewith printed correspondence relative to the recent seizures of British sealing schooners by American cruisers in the Behring Sea, which will place you in full possession of the facts of the case so far as they have at present been brought to the knowledge of Her Majesty's Government.

The two printed historical Memoranda annexed refer to questions which had arisen in the earlier part of this century regarding the limit of maritime jurisdiction in the Northern Pacific, and the despatch to Her Majesty's Minister at Washington, No. 219 of the 10th ultimo,* indicates the view taken by Her Majesty's Government in regard to the present aspect of the question.

The accompanying documents relative to the circumstances which led to the passing in 1875 of a British Act of Parliament for the protection of the seal fisheries within a certain defined area of the Arctic Sea, may be useful in case discussion should arise on such a point in connection with the seal fisheries of Alaska; † and I annex a copy of the Act of Parliament in question, which was put in operation by an Order in Council dated the 28th November, 1876. ‡ The Governments of Russia, Germany, Sweden and Norway, and Holland passed Acts of a similar description in regard to the same area of the Arctic Sea.

Relying fully upon your judgment and discretion it is unnecessary for me at present to furnish you with any precise instructions as to the best mode of treating the question of seal-fishing in the Behring Sea should it become the subject of discussion in the Conference

In such case you will give me timely information.

I am, &c.,
(Signed) SALISBURY.

Enclosure 12 in No. 102.

The Marquis of Salisbury to Sir L. West.

TELEGRAPHIC.

FOREIGN OFFICE,
November 5th, 1887, 2.45 P.M.

No 45.

Governor of Newfoundland has appointed Mr. J. S. Winter, Attorney-General of the Colony, as Agent for Colonial Government at Fisheries Conference.

He leaves 5th November.

Inform Plenipotentiaries.

* Memoranda by Mr. L. Hertslet, 1885, No. 1587; and Sir E. Hertslet, October 19th, 1886, No. 5340.

† Board of Trade Blue Book, No. 1712.

‡ 38 Vic., cap. 18, 1875.

Enclosure 13 in No. 102.

The Marquis of Salisbury to Sir L. West.

No. 266. Ext. 45.

FOREIGN OFFICE,
November 5th, 1887.

SIR,

I have to request you to inform the Plenipotentiaries to the North American Fisheries Conference that the Governor of Newfoundland has appointed Mr. J. S. Winter, Attorney-General of the Colony, as Agent at the Conference for the Colonial Government.

Mr. Winter leaves Newfoundland for Washington on the 5th November.

A copy of a letter from the Colonial Office containing this information is enclosed.

I am, &c.,
(Signed) SALISBURY.

Enclosure 14 in No. 102.

Sir L. West to the Marquis of Salisbury. (Received November 7th.)

No. 113. Treaty.

WASHINGTON,
October 27th, 1887.

MY LORD,

In obedience to the instructions contained in your Lordship's telegram of the 25th instant, I lost no time in officially informing the Secretary of State that Mr. Chamberlain, myself, and Sir Charles Tupper had been appointed British Plenipotentiaries to attend the Fisheries Conference.

I have, &c.,
(Signed) L. S. SACKVILLE WEST.

Enclosure 15 in No. 102.

Sir L. West to the Marquis of Salisbury. (Received November 7th.)

No. 114. Treaty.

WASHINGTON,
October 27th, 1887.

MY LORD,

With reference to my preceding despatch, I have the honour to enclose herewith to your Lordship copy of the note of the Secretary of State informing me that the President has designated as Plenipotentiaries to the approaching Fisheries Conference, to be associated with himself, Mr. William L. Putnam, and Mr. James B. Angell.

I have, &c.,
(Signed) L. S. SACKVILLE WEST.

*Mr. Bayard to Sir L. West.*DEPARTMENT OF STATE, WASHINGTON,
October 26th, 1887.

SIR,

With reference to the announcement conveyed in your note of yesterday's date of the appointment of British Plenipotentiaries to the approaching Fisheries Conference, I have the honour to inform you that the President has designated as Plenipotentiaries, to be associated with myself on behalf of the Government of the United States in that Conference, Mr. William L. Putnam and Mr. James B. Angell.

I have, &c.,
(Signed) T. F. BAYARD.

Enclosure 16 in No. 102.

Sir L. West to the Marquis of Salisbury. (Received November 7th.)

No. 115. Treaty. Confidential.

WASHINGTON,
October 28th, 1887.

MY LORD,

In accordance with the instructions contained in your Lordship's despatch No. 69, Treaty, Confidential, of the 11th instant, I have informed Mr. Bayard that your Lordship would have regard to his wishes respecting the terms "Commissioners" or "Plenipotentiaries."

Mr. Bayard asked me for a Memorandum of your Lordship's despatch, which I gave to him.

I have, &c.,
(Signed) L. S. SACKVILLE WEST.

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No. 103.

*Governor-General the Marquis of Lansdowne to Sir H. T. Holland.
(Received November 14th, 1887.)*

Secret.

GOVERNMENT HOUSE, OTTAWA,
3rd November, 1887.

SIR,

I had the honour of receiving your despatch No. 363 of the 22nd of October,* enclosing copies of two letters from the Foreign Office, dated respectively the 17th and 18th of October, with respect to the North American Fisheries Conference.

2. My Government has learnt with satisfaction that in consequence of its representations, the Marquis of Salisbury instructed Her Majesty's Minister at Washington to suggest the omission of the words to which attention was called in my telegram of 10th October,† from the terms of reference to the Washington Conference.

3. With regard to the statement contained in the same telegram to the effect that my Government understood that any treaty would be "subject, like the last, to ratification by the Parliament of Canada," I observe that in Sir Julian Pauncefote's letter to you of the 18th of October‡ it is stated "that Her Majesty's Government will proceed according to the uniform practice in this country in dealing with the Colonies, and that no new treaty respecting the fisheries will be concluded without previous communication with the Colonial Governments so far as it may affect each Colony." I shall be glad if you will be good enough to inform me whether I may understand from the words quoted that any treaty which may be provisionally concluded by the Plenipotentiaries will, in so far as it affects the Dominion, not come into operation without the expressed concurrence of the Canadian Parliament.

I have, &c.,
(Signed) LANSDOWNE.

The Right Hon. Sir Henry Holland,
&c., &c., &c.,
Colonial Office.

22,994.

No. 104.

*Colonial Office to Foreign Office.*DOWNING STREET,
16th November, 1887.

SIR,

With reference to your letter of the 18th ultimo,‡ I am directed by the Secretary of State for the Colonies to transmit to you, to be laid before the Marquis of

* No. 83.

† No. 58a.

‡ No. 77.

Salisbury, a copy of a despatch,* from the Governor-General of Canada, asking whether it is to be understood that any treaty provisionally concluded by the Plenipotentiaries will not come into operation without the expressed concurrence of the Dominion Parliament?

I am to enquire what answer should be returned to Lord Lansdowne?

I am, &c.,
(Signed) ROBERT G. W. HERBERT.

The Under Secretary of State,
Foreign Office.

23,381.

No. 105.

Governor H. A. Blake (Newfoundland), to Sir H. T. Holland.
(Received November 17th, 1887.)

No. 19.

GOVERNMENT HOUSE, NEWFOUNDLAND,
5th November, 1887.

SIR,

I have the honour to inform you that the Hon. J. S. Winter, Attorney-General, left St. John's this day to be present as Agent for the Colony at the North American Fisheries Conference at Washington. Mr. A. J. W. McNeily, Q.C., is Acting Attorney-General during his absence.

I have, &c.,
(Signed) HENRY A. BLAKE,
Governor.

The Right Hon. Sir Henry Holland, G.C.M.G.,
&c., &c., &c.

23,382.

No. 106.

Governor H. A. Blake (Newfoundland) to Sir H. T. Holland.
(Received November 17th, 1887.)

No. 20.

GOVERNMENT HOUSE, NEWFOUNDLAND,
7th November, 1887.

SIR,

I have the honour to enclose a copy of a letter I wrote to Sir Sackville West concerning the Hon. J. S. Winter's appointment as Agent for the Colony at the Washington Conference.

I have, &c.,
(Signed) HENRY A. BLAKE,
Governor.

The Right Hon. Sir Henry Holland, G.C.M.G.,
&c., &c., &c.

Enclosure in No. 106.

GOVERNMENT HOUSE, NEWFOUNDLAND,
4th November, 1887.

SIR,

I have the honour to inform your Excellency that my Government has nominated the Hon. J. S. Winter, Attorney-General, as Agent for this Colony, with instructions to proceed to Washington, and to confer with the British Plenipotentiaries at the coming Conference on such matters as may arise concerning the interests of Newfoundland.

2. This course has been taken in consequence of a suggestion to that effect from the Imperial Government. I have the honour to enclose copies of communications between this Government and the Colonial Office that will explain the position to your Excellency. The nomination of the Attorney-General was made only two days ago,

therefore it will be some days before your Excellency receives the intimation of this appointment from the Imperial Government.

3. Mr. Winter, who, with other members of the Ministry, has had an opportunity of consulting with the members of the Chamber of Commerce on the subject of the approaching Conference, is thoroughly acquainted with the questions at issue as they affect the interests of this Colony, and I have no doubt that the cordial relations that I anticipate between him and the British Plenipotentiaries will be of material value in the consideration of the final arrangements so far as they affect this Colony, when submitted to the Legislature of Newfoundland.

I have, &c.,
(Signed) HENRY A. BLAKE,
Governor.

His Excellency the Hon. Sir L. Sackville West, K.C.M.G.,
Her Britannic Majesty's Minister, Washington.

23,585.

No. 107.

Foreign Office to Colonial Office.

FOREIGN OFFICE,
November 19th, 1887.

Confidential.

SIR,

Your letter of the 16th instant,* enclosing a copy of a despatch from the Governor-General of Canada, marked "Secret," of the 3rd of November, has been laid before the Marquis of Salisbury.

In that despatch Lord Lansdowne calls attention to a statement made in Sir Julian Pauncefote's letter to you of the 18th ultimo,† the text of which is quoted, and enquires whether it is to be understood from the words so quoted that any treaty which may be provisionally concluded by the Plenipotentiaries who are about to meet at Washington to discuss the fisheries question, will in so far as it affects the Dominion not come into operation without the expressed concurrence of the Canadian Parliament.

In reply, I am directed by Lord Salisbury to request that you will state to Sir Henry Holland that, in Lord Salisbury's opinion, so far as any treaty that may be concluded depends for its operation on any change in the laws of Canada, it obviously cannot take effect without the concurrence of the Canadian Parliament.

Lord Salisbury does not imagine that it is the intention of the Canadian Government to make any reservation of a more extensive character; but if, in their judgment, the right of the Canadian Parliament is larger than is expressed by the above words, I am to request that Sir Henry Holland will move Lord Lansdowne to state in more precise terms the character of the stipulations which, in his view, should be reserved for the expressed concurrence of the Canadian Parliament.

I am, &c.,
(Signed) J. PAUNCEFOTE.

The Under Secretary of State,
Colonial Office.

24,253.

No. 108.

Foreign Office to Colonial Office.

FOREIGN OFFICE,
November 19th, 1887.

SIR,

With reference to your letter of the 17th of June last,‡ I am directed by the Secretary of State for Foreign Affairs to transmit to you, to be laid before Secretary Sir H. Holland, a copy of a despatch from Her Majesty's Minister at Washington relating to the "Laura Sayward."

I am, &c.,
(Signed) J. PAUNCEFOTE.

The Under Secretary of State,
Colonial Office.

* No. 104.

† No. 77.

‡ No. 192 in North American No. 121.

Enclosure in No. 193.

Sir L. West to the Marquis of Salisbury. (Received November 14th.)

(No. 117. Treaty.)

WASHINGTON,

November 1st, 1887.

MY LORD,

With reference to your Lordship's despatch No. 33, Treaty, dated the 30th June last, I have the honour to enclose herewith copy of a note which I have received from the Secretary of State, forwarding a copy of the affidavits of Captain Rose and Augustus Rogers, by which it appears that his declaration of the 20th April was obtained from him by Collector Atwood through fear and intimidation.

I have, &c.,
(Signed) L. S. SACKVILLE WEST.

Mr. Bayard to Sir L. West.

DEPARTMENT OF STATE, WASHINGTON,

October 31st, 1887.

SIR,

On the 19th July last I had the honour to receive from you a letter dated the day previous, enclosing a printed copy of a declaration made by Medeo Rose, formerly master of the schooner "Laura Sayward," of Gloucester, Massachusetts, in which he contraverts certain statements theretofore made by him under oath in relation to his treatment by Mr. Atwood, Collector of Customs at Shelburne, Nova Scotia, on the 13th October, 1886.

Upon receiving your letter, I at once communicated its contents to the Collector of the port of Gloucester, Massachusetts, through whom the original complaint had been forwarded to this Department.

To-day, for the first time, I was informed that on the 5th August last a reply and sworn statement, by way of explanation of this variance between his affidavit of the 13th October, 1886, and his subsequent declaration at Sandy Point, Nova Scotia, dated the 20th April, 1887, had been in my absence received at this Department, and by inadvertence not laid before me until to-day.

I therefore now enclose a copy of the affidavits of Captain Rose and Augustus Rogers, made at Gloucester, Massachusetts, on the 3rd August last, before a Notary Public, by which it appears that his declaration of the 20th April, 1887, was not voluntary, but was obtained from him by Collector Atwood, through fear and intimidation, under circumstances fully stated.

I should transmit these documents without further comment but that, in closing your note to me of the 18th July last, you stated that you were "further instructed to ask whether the United States Government have any observations to make thereupon."

In my reply to you on the 19th July I promised to comply with your request, and for that reason I now remark that the incident which has been the subject of this correspondence affords but another illustration and additional evidence, if any were needed, of the unwisdom of imperilling the friendly relations of two kindred and neighbouring countries by intrusting the interpretation and execution of a treaty between them to the discretion of local and petty officials, and vesting in them powers of administration wholly unwarranted and naturally prolific of those irritations which wise and responsible rulers will always seek to avoid.

On the eve of a negotiation touching closely the honour and interests of two great nations, I venture to express the hope that the anticipated result of our joint endeavours to harmonise all differences may render it hereafter impossible to create a necessity for those representing our respective Governments to be called upon to consider such questions as are presented in the case of the "Laura Sayward."

I have, &c.,
(Signed) T. F. BAYARD,

Affidavits of Captain Rose and Augustus Rogers.

I, Medeo Rose, of Gloucester, being under oath, do depose and say :—

That I was master of the schooner "Laura Sayward" during the year 1886, and that I am now master of the schooner "Gleaner," of Gloucester.

On the 18th April, 1887, I went into the lower harbour of Shelburne, Nova Scotia, in said schooner "Gleaner" for shelter and water.

On the morning of the 19th April, Mr. Atwood, the Collector of Customs, with two men wearing badges, which I supposed were Government badges, came on board. Their appearance filled me with fear, for I felt some trouble must be in store for me when Collector Atwood would leave his office and come so far (about 4 miles) to board my vessel. I invited him into the cabin, where he showed me a copy of my statement of the 13th October, 1886, in regard to the treatment I received from him when in the schooner "Laura Sayward" (5th October, 1886), and asked me if I made that statement. I told him I did. "Well," said he, "everything in that statement is false." I told him my statement was true. He then produced a prepared written statement, which he read to me, which stated that my statement of the 13th October was untrue, and told me I must go on shore and sign it. Being nervous and frightened, and fearing trouble if I refused, I went on shore with him to the store of Mr. Purney, and before Mr. Purney signed and swore to the statement.

On the afternoon of the same day, realising the wrong I had done, I hired a team, and with one of my crew (Augustus Rogers) went to the custom-house and asked Collector Atwood to read to me the statement I had signed. He did so, and I again told him it was wrong, and that my first statement was true. He said I did not ask for all the articles mentioned in my first statement; that he did not refuse me my papers, and also that that statement might be the cause of his removal from his office. I told him I did not want to injure him, and I did not want to make myself out a liar at Washington.

About the 3rd day of June last, I went into Shelburne again solely to get a copy of the last statement. I went to the custom-house, taking the same man (Augustus Rogers) with me, and asked Collector Atwood for a copy of the statement. He refused to give it to me, and said my lawyer had been advising me what to do, and that I need never expect a favour from him.

The above is a true statement of the case. The statement obtained from me by Collector Atwood was obtained through my fear of seizure if I refused.

(Signed) MEDEO ROSE.

I, Augustus Rogers, one of the crew of the schooner "Gleaner," being duly sworn do depose and say :—

That I went with Captain Medeo Rose to the custom-house at Shelburne, Nova Scotia, on the 19th day of April last, and also on the 3rd day of June. I heard his conversation with Collector Atwood on both occasions, and hereby certify that the statement of those interviews, as made above, are correct and true.

(Signed) AUGUSTUS ROGERS,

Mass., Essex, ss.

August 3rd, 1887.

Personally appeared Medeo Rose and Augustus Rogers, and made oath to the truth of the above statements.

Before me,
(Signed) AARON PARSONS, Notary Public.

22,425.

No. 109.

Colonial Office to Foreign Office.

DOWNING STREET,
19th November, 1887.

SIR,

With reference to previous correspondence, I am directed by Secretary Sir H. Holland to transmit to you, to be laid before the Marquis of Salisbury, a copy of a

despatch* from the Governor-General of Canada, forwarding a Minute of the Executive Council of British Columbia respecting the value to that Province of the sealing industry in Behring Sea.

I am to ask what answer should be returned to Lord Lansdowne, and to suggest that copies of these papers should be forwarded to Her Majesty's Minister at Washington.

I am, &c.,
(Signed) JOHN BRAMSTON.

The Under Secretary of State,
Foreign Office.

22,823.

No. 110.

Colonial Office to Foreign Office.

DOWNING STREET,
19th November, 1887.

SIR,

With reference to your letter of the 6th of September, 1886,† enclosing a copy of a despatch from Her Majesty's Minister at Washington, with a note from Mr. Bayard protesting against the action of the officer of the Canadian schooner "F. E. Conrad," towards the United States' schooner "Golden Hind," I am directed by Secretary Sir Henry Holland to transmit to you, to be laid before the Marquis of Salisbury, a copy of a despatch‡ with its enclosures received from the Governor-General of Canada on the subject.

I am also to enclose a copy of the despatch§ from the Secretary of State to which the Governor-General's despatch is a reply.

I am, &c.,
(Signed) JOHN BRAMSTON.

The Under Secretary of State,
Foreign Office.

23,585.

No. 111.

Sir H. T. Holland to Governor-General the Marquis of Lansdowne.

Secret.

DOWNING STREET,
24th November, 1886.

MY LORD,

I referred to the Secretary of State for Foreign Affairs your despatch marked "Secret" of the 3rd instant|| asking whether it is to be understood that any treaty provisionally concluded by the Plenipotentiaries assembled at Washington to discuss the fisheries question will not come into operation without the express concurrence of the Parliament of Canada.

I have now the honour to transmit to you for your information and for that of your Ministers a copy of a confidential letter¶ which has been received from the Foreign Office in reply.

I have, &c.,
(Signed) H. T. HOLLAND.

The Marquis of Lansdowne.

* No. 94. † No. 174 in North American No. 118.
§ No. 176 in North American No. 118. || No. 103.

‡ No. 99.
¶ No. 107.

23,007.

No. 112.

Colonial Office to Foreign Office.

Confidential.

DOWNING STREET,
25th November, 1887.

SIR,

I am directed by Secretary Sir Henry Holland to transmit to you herewith, for the information of the Marquis of Salisbury a copy of a letter* received through the Admiralty, from the Commander-in-Chief on the North American and West Indian Station dated the 20th of October with copies of the reports from the officers in command of Her Majesty's ships which have recently returned from visiting the Canadian fishing grounds.

I am, &c.,
(Signed) JOHN BRAMSTON.

The Under Secretary of State,
Foreign Office.

24,315.

No. 113.

Foreign Office to Colonial Office.

Confidential.

FOREIGN OFFICE,
November 29th, 1887.

SIR,

I am directed by the Marquis of Salisbury to acknowledge the receipt of your letter of the 19th instant,† with its enclosures, showing the value to British Columbia of the present sealing industry in Behring Sea.

His Lordship notes the opinion expressed in the Minute of the Executive Council of the Colony, that this question should be included in the scope of the duties of the Fisheries Conference now sitting at Washington.

I am now to request that in laying this letter before Secretary Sir H. Holland you will state to him that copies of Lord Lansdowne's despatch, No. 409, of the 20th ultimo, and of its enclosures will be forwarded to the British Plenipotentiaries at the Conference.

I am also to call attention to the instructions in regard to this subject, contained in Lord Salisbury's despatch, No. 1, of the 24th ultimo, to the British Plenipotentiaries, which were communicated to you in the letter from this Department of the 12th instant.‡

It was then stated that "the question of the seal fisheries in the Behring Sea. . . . has not been specifically included in the terms of reference, but you will understand that if the United States' Plenipotentiaries should be authorised to discuss that subject, it would come within the terms of the reference, and that you have full power and authority to treat for a settlement of the points involved in any manner which may seem advisable, whether by a direct discussion at the present Conference, or by a reference to a subsequent Conference to adjust that particular question."

Lord Salisbury would suggest, for Sir H. Holland's consideration, that the substance of these instructions should be communicated to the Governor-General of Canada.

I am, &c.,
(Signed) J. PAUNCEFOTE.

The Under Secretary of State,
Colonial Office.

* Enclosure in No. 98.

† No. 109.

‡ No. 102.

24,499.

No. 114.

*Foreign Office to Colonial Office.*FOREIGN OFFICE,
December 3rd, 1887.

SIR,

I am directed by the Secretary of State for Foreign Affairs to transmit to you, to be laid before Secretary Sir H. Holland, a copy of a despatch from Mr. Chamberlain with regard to the movements of Sir Charles Tupper and the proceedings of the Commissioners at Washington.

I am, &c.,
(Signed) J. PAUNCEFOTE.

The Under Secretary of State.
Colonial Office.

Enclosure in No. 114.

Mr. Chamberlain to the Marquis of Salisbury.
(Received November 28th.)

Separate.

WASHINGTON,
November 18th, 1887.

MY LORD,

With reference to my despatch, marked Separate, of the 10th instant, I have now the honour to acquaint your Lordship that Sir Charles Tupper and his suite arrived at New York on the 16th instant from Ottawa, and on the following day we left New York together for Washington, where we arrived yesterday, and were met at the station by Sir Lionel West and the members of Her Majesty's Legation.

Sir Charles Tupper is accompanied by the Honourable J. S. D. Thomson, Minister of Justice in Canada; Major-General D. R. Cameron, Official Secretary to Sir Charles, and Mr. Chipman, his Private Secretary. Mr. Wallace Graham, Q.C., and Mr. George Johnson complete the Canadian party.

Accompanied by Sir Lionel West and Sir Charles Tupper, I this day visited Mr. Bayard, Secretary of State, and he informed me that the official proceedings would commence on Monday next. Reports of those proceedings will be duly forwarded to your Lordship in despatches signed by myself and my colleagues on the negotiation.

It has been arranged that the President will accord an interview to-morrow to the British negotiators and the gentlemen who accompany them.

I have, &c.,
(Signed) J. CHAMBERLAIN.

24,253.

No. 115.

Sir H. T. Holland to Governor-General the Marquis of Lansdowne..

No. 410.

DOWNING STREET,
6th December, 1887.

MY LORD,

With reference to my despatch No. 265 of the 6th of August, 1887,* enclosing a copy of a despatch from Her Majesty's Minister at Washington relating to the case of the United States fishing schooner "Laura Sayward," I have the honour to transmit to you herewith, for communication to your Government, a copy of a further despatch, received through the Foreign Office from Sir Lionel West, with its enclosures, in reference to the same case.

I have, &c.,
(Signed) H. T. HOLLAND.

The Marquis of Lansdowne.

* No. 4.

† Enclosure in No. 108.

24,670.

No. 116.

*Governor-General the Marquis of Lansdowne to Sir H. T. Holland.
(Received December 7th, 1887.)*

Secret.

GOVERNMENT HOUSE, OTTAWA,
22nd November, 1887.

SIR,

I had the honour of receiving your secret despatch of the 25th August last,* transmitting a copy of a letter from the Foreign Office, with a note from the United States Minister in London in reply to the criticisms which had been made by Her Majesty's Government upon the *ad interim* arrangement with regard to the fisheries question proposed by Mr. Bayard on the 15th of November, 1886.

In view of the approaching discussion of this question by the Conference of Plenipotentiaries now assembled at Washington, it was not thought necessary to deal at once with Mr. Bayard's observations. As, however, some of these are of a nature calling for comment, and as it is desirable that the correspondence recording the negotiations which have hitherto taken place should contain a complete record of the views of the Canadian Government, I now beg to forward herewith a copy of a Minute of the Privy Council of Canada in which you will find a statement of some of the reasons for which my Government takes exception to Mr. Bayard's argument.

I have, &c.,

(Signed) LANSDOWNE.

The Right Hon. Sir Henry Holland,
&c., &c., &c.

Enclosure in No. 116.

Certified copy of a Report of a Committee of the Honourable the Privy Council for Canada, approved by His Excellency the Governor-General in Council on the 21st November, 1887.

The Committee of the Privy Council have had under consideration a despatch dated 25th August, 1887, from the Right Honourable the Secretary of State for the Colonies, transmitting copy of a letter from the Foreign Office, enclosing a note from the American Ambassador at London, replying to the criticisms of Her Majesty's Government on the *ad interim* arrangement with regard to the Fisheries Question proposed by the Hon. Mr. Bayard.

The Minister of Marine and Fisheries, to whom the despatch and enclosure were referred, observes with reference thereto :

ARTICLE I. It is not denied that a prior agreement between the two Governments as to the proper definition of the bays and harbours from which United States fishermen are to be excluded would facilitate the labours and give finality to the action of the proposed Conference. But the Canadian Government objects to the making of any such agreement on the basis proposed on the ground that it would place a new and unwarranted interpretation upon the Convention of 1818 ; would make common those waters which, by the law of nations, long usage and the terms of the Convention have been considered as exclusively Canadian ; and involve a surrender of old and well recognised Canadian fishing rights.

The contention that the privileges enjoyed by United States fishermen under the Reciprocity Treaty of 1854, and the Treaty of Washington, respectively, and that the instructions under which the Canadian cruisers exercised their police powers in 1870-2, furnish adequate proof that Canada did not consider herself possessed of an exclusive right to these territorial waters, does not appear to be well founded.

United States fishermen enjoyed the freedom of our inshore fisheries from 1854 to 1866, and from 1871 to 1885, by virtue of express treaty stipulations which have ceased to operate, and in consideration of compensating advantages by way of participation in the inshore fisheries of the United States, as far south as the 36th and 39th parallels of latitude, respectively, of admission of Canadian fish and other natural products free of

duty to United States markets, and by the payment in addition of a large money award. It cannot be contended that privileges granted by treaty, for a limited period, and in consideration of material compensations, should be held to warrant their assumption as a right after the treaty has expired, and the compensations are no longer given. That United States fishing vessels were permitted from 1866 to 1870, to have access to our inshore fisheries on payment of a license fee, or that after the abolition of the license system they were allowed to fish to within three miles of our shores, does not constitute a waiver of exclusive rights of fishing within the bays and harbours. In fact, the taking of such licenses by the United States fishermen may be considered a recognition of the right of Canada to the exclusive enjoyment of these fishing grounds. These rights were, during this time, expressly and repeatedly asserted, and the privileges granted to United States fishermen were those of friendly concession and not of right, and were made in view of pending negotiations which it was hoped would result in the conclusion of a new treaty, as in fact they did. The arrangement was expressly declared to be exceptional, and the waters in respect of which the licenses were given were expressly declared to be the "exclusive" property of "Canada."

The Baie des Chaleurs was cited to illustrate the nature of the concessions which Canada would be called upon to make under the proposed ten-mile limit, as in this case, a bay of large extent, almost landlocked, and extending seventy miles inland, and which has always been held as territorial waters, would be thrown open to United States fishermen. It was not cited for the purpose of showing the inapplicability to Canada under existing treaties of the rule adopted in the Fishery Convention of 1839, between France and Great Britain. That inapplicability rests upon other and well-defined grounds.

The opinion of the umpire to whose decision the cases of the "Washington" and "Argus" were finally referred, as to the headland question, cannot be considered binding upon the Government of Canada, or Great Britain, in the matter of interpreting a treaty. It had been agreed by the two Governments to submit the special cases of the "Washington" and "Argus" to arbitration, and each Government was in duty bound to acquiesce in the decision of the Arbitrators, in so far as related to the compensation awarded, but it cannot surely be held that the views of any Member of the Board of Arbitrators, expressed by him as reasons for his judgment, are to be taken as authoritative in the matter of interpretation of a treaty, or settlement of questions of international law. The Statute 14 and 15 Vic., cap. 63, 7th August, 1851 (Imp.), has a bearing on the present discussion because it is part of the evidence that the Baie des Chaleurs has been subject to the Sovereignty of Great Britain for many years. The Baie des Chaleurs cannot be governed by different principles in this respect from the Delaware Bay, or any other of the Bays on the Coasts of the United States which have been held to be territorial waters by the tribunals of that country.

The observations on the restrictions contemplated by the Convention cannot be acquiesced in by the Government of Canada, but a further discussion of them may be deferred in view of the time for the opening of the Conference having so nearly approached.

ARTICLE II. It does not appear that a reference to Article VI of the United States proposal removes the serious objections which were urged by the Canadian Government to the adoption of Article II of Mr. Bayard's memorandum. By that Article all the Statutes and Regulations of Canada and Great Britain would be suspended in so far as United States fishing vessels are concerned, with the exception of those relating to United States vessels found fishing, to have been fishing, or preparing to fish in Canadian waters. Article VI promises merely the co-operation of the United States authorities in securing obedience by its fishermen to the Canadian Customs Laws. The combined effect of these two sections would, therefore, be to suspend all other Statutes of Canada and Great Britain, except those relating to the three offences above-named, and preclude all action by British authorities with regard to violation by United States fishermen of the Custom Laws, and substitute therefor whatever may be meant by a friendly admonition and co-operation of a foreign power, in securing the observance by United States fishing vessels of these laws. This would greatly tend to widen the scope of the Convention of 1818, to abrogate Canadian Laws and take away from Canadian authority its right to enforce obedience to its laws within its own territorial jurisdiction.

ARTICLE III. The objections taken by the Canadian Government to the proposal embodied in Article III of Mr. Bayard's Memorandum are fundamental, and are not to be

met by an enlargement of the list of enumerated offences so as to include infractions of regulations established by the Commission. These objections are not answered in the reply on behalf of the United States. The practical difficulties in the way of any effective working of such a proposed court of enquiry constitute, it is believed, an unsurmountable obstacle to its establishment.

ARTICLE IV. The Treaty of 1818 was for the purposes of restricting the rights and privileges which United States fishing vessels had, previously to 1812, enjoyed in the waters of the British Provinces, and for preventing the abuse of those rights and privileges. One express provision of this treaty was that United States fishing vessels should enter the bays and harbours in these waters for the purposes of shelter and repairs, taking wood and procuring water, and for no other purpose whatever, and it is held that no subsequent treaty between Great Britain and the United States, gave to United States fishing vessels any commercial status. That this was not rigorously insisted upon in the years 1854-66 and 1872-85 was due to the friendly spirit of the Provincial and Dominion authorities, which under the mutually beneficial conditions consequent upon the treaties in force during these periods, chose to allow their well understood rights in this regard to remain in abeyance. But it surely cannot be contended that this friendly course, pursued under widely different conditions, is now to be construed into an abandonment of well defined treaty rights, when the compensating advantages of mutually favourable treaties no longer exist.

Earl Kimberley's opinion, as cited by the United States, was at the time of its utterance a mere suggestion, it was not acquiesced in by the Canadian Government, nor has it been since embodied in the policy of Great Britain with relation to the fishing interests of this country.

The right to obtain "bait," which was asked for by the American negotiators, but not allowed, was not the right to catch bait but to obtain it by purchase. The right to catch fish for any purpose had been already renounced, without any qualification, and this right was asked for in the enumeration of privileges altogether irrespective of fishing, such as shelter, repairs, and the obtaining of wood and water.

ARTICLE V. The vessels seized are held to have been lawfully seized, and whatever proceedings have been taken are held to have been legally taken, and a request cannot be justly made against the Government of Her Majesty or that of Canada for a reference to any tribunal of claims for damages arising out of the seizures that have been made. The Canadian Courts have been and still are open to any person deeming himself aggrieved, and in these Courts citizens of the United States have precisely the same standing as citizens of Canada. In no case, however, has any claim of the kind indicated in the Article been presented to the Courts, and the Government of Canada has no knowledge of their existence.

There does not seem to be any greater reason for making any claims of that character subjects of reference to a special tribunal, than to demand that any other instance of the enforcement against citizens of another country of the revenue laws, the pilotage laws, or the laws relating to shipping or harbours, or of any other part of our body of municipal laws, should be subject to revision by arbitration, or other exceptional mode of adjudication.

The Committee concurring in the above report of the Minister of Marine and Fisheries, advise that your Excellency be moved to transmit a copy of this Minute to Sir Henry Holland as requested in his despatch of the 25th August last, upon the communication under consideration.

All which is respectfully submitted for your Excellency's approval.

(Signed) JOHN J. MCGEE,
Clerk, Privy Council.

24,719.

No. 117.

Foreign Office to Colonial Office.

Confidential.

FOREIGN OFFICE,

December 7th, 1887.

SIR,

With reference to your letter of the 19th ultimo,* I am directed by the Secretary of State for Foreign Affairs to transmit to you, to be laid before Secretary Sir H. Holland, a copy of a despatch which has been addressed to Her Majesty's Minister at Washington with regard to the case of the "Golden Hind."

I am, &c.,

(Signed) J. PAUNCEFOTE.

The Under Secretary of State,
Colonial Office.

Enclosure in No. 117.

The Marquis of Salisbury to Sir L. West.

FOREIGN OFFICE,

November 24th, 1887.

No. 278.

SIR,

The Earl of Iddesleigh, by his despatch No. 51 Treaty, of the 6th September of last year, requested you to inform Mr. Bayard that immediate inquiry should be made into the case of the United States' vessel "Golden Hind," to which he had called attention in his note of the 17th August, enclosed in your despatch No. 78 Treaty, of the 18th of that month.

I transmit to you a copy of a letter which was accordingly addressed to the Colonial Office, and a copy of the reply from that Department dated the 19th instant.†

You will observe, from Lord Lansdowne's despatch of the 28th ultimo, inclosed in the Colonial Office letter, that by an oversight the reply from the Canadian Government to the reference made to them by Her Majesty's Secretary of State for the Colonies has been considerably delayed, though there was no delay on the part of the Canadian authorities in obtaining a Report from the officer in command of the schooner "F. E. Conrad" on the subject of the complaint made by the master of the American fishing-schooner "Golden Hind," that he had been forbidden by the Commander of the "F. E. Conrad" to enter the Baie des Chaleurs when he attempted to put into Port Daniel for the purpose of obtaining a fresh supply of water.

The commander of the "F. E. Conrad" states that the master of the American vessel did not inform him that he wanted water, nor that he desired to enter Port Daniel.

I have to request you will express to Mr. Bayard my regret that the United States Government should have remained so long without a reply to their representation in the case of the "Golden Hind," and that you will communicate to Mr. Bayard the papers enclosed in the Colonial Office letter.

I am, &c.,

(Signed) SALISBURY.

* No. 110.

† To Colonial Office, September 6th, 1886.

61 Secret.

No. 118.

Foreign Office to Colonial Office.

Confidential.

FOREIGN OFFICE,
December 10th, 1887.

SIR,

I am directed by the Secretary of State for Foreign Affairs to transmit to you, to be laid before Secretary Sir H. Holland, copies of confidential print, relative to the North American Fisheries Question.

I am, &c.,
(Signed) P. W. CURRIE.

The Under Secretary of State,
Colonial Office.

Enclosure 1 in No. 118.

Her Majesty's Plenipotentiaries at the Fishery Conference to the Marquis of Salisbury.
(Received December 3rd.)

No. 1. Confidential.

WASHINGTON,
November 24th, 1887.

MY LORD,

We have the honour to enclose herewith, for your Lordship's information, a Memorandum of the proceedings of the Fishery Conference at their meeting of the 21st instant.

We have, &c.,
(Signed) J. CHAMBERLAIN.
L. S. SACKVILLE WEST.
CHARLES TUPPER.

WASHINGTON FISHERY CONFERENCE.

November, 1887.

British Plenipotentiaries—

The Right Honourable JOSEPH CHAMBERLAIN, M.P.
The Honourable Sir L. S. SACKVILLE WEST, K.C.M.C.
Sir CHARLES TUPPER, G.C.M.G., C.B.

United States Plenipotentiaries—

T. F. BAYARD, Secretary of State.
J. B. ANGELL.
WM. LE B. PUTNAM.

An informal meeting was held at the State Department at 12 o'clock on Monday, the 21st November.

The respective full powers were examined and found in good and due form.

Mr. Chamberlain proposed that Mr. Bayard should be the President of the Conference, but Mr. Bayard, whilst expressing his appreciation of the proposal, thought that no President was necessary.

Mr. Bayard thought it desirable to explain that the powers of the American Plenipotentiaries were limited by the constitutional usage of the country, and that any Agreement or Treaty which might be signed by the Plenipotentiaries would require the assent of the Senate by a two-thirds majority; and, further, if such Agreement or Treaty involved any legislative change in the United States, the action of both Houses would be requisite. For instance, if tariff changes were needed the action of the House of Representatives, as well as that of the Senate, would be required. As an example of this, he cited the case of the Treaty between the United States and Mexico.

Mr. Chamberlain stated that any arrangement would, on the part of Great Britain,
(962) N

be submitted, so far as necessary, for confirmation to the Legislatures of Canada and Newfoundland.

Sir C. Tupper added that this course was pursued in the cases of the Reciprocity Treaty of 1854, and of the Treaty of Washington of 1871.

Mr. Bayard said that it was expressly so stipulated in those Treaties, and thought that if a similar proviso was required in the present case it should also be expressly so stated in any Treaty signed.

It was agreed that the proceedings should be entirely secret; that the Protocols should contain a brief record of the proceedings without detail, and only embody conclusions arrived at; but that the Protocolists were each at liberty to keep a record for their own side.

The first formal meeting of the Conference was appointed for 2 P.M. the following day, the 22nd November, when the United States' Plenipotentiaries promised to submit a Memorandum in writing.

Enclosure 2 in No. 118.

Her Majesty's Plenipotentiaries at the Fishery Conference to the Marquis of Salisbury.
(Received December 5th.)

No. 2. Confidential.

WASHINGTON,
November 24th, 1887.

MY LORD,

We have the honour to enclose herewith, for your Lordship's information, a Memorandum of the proceedings of the Fishery Conference at their meeting of the 22nd instant.

We have, &c.,
(Signed) J. CHAMBERLAIN.
L. S. SACKVILLE WEST.
CHARLES TUPPER.

WASHINGTON FISHERY CONFERENCE.

Meeting of November 22nd, 1887.

The first formal meeting of the Conference was held on Tuesday, the 22nd November, all the Plenipotentiaries being present.

The respective full powers, which had been examined at the informal sitting of the preceding day, were taken as read and accepted.

Mr. John B. Moore, Third Assistant Secretary of State, on the part of the United States, and Mr. J. H. G. Bergne, Superintendent of the Treaty Department of the British Foreign Office, on the part of Great Britain, were appointed joint Protocolists, and their credentials were produced.

Mr. Bayard opened the proceedings by recalling attention to what he had said at yesterday's meeting as to the Constitutional Treaty-making power in the United States.

He then proceeded to read the Memorandum which he had alluded to (see Appendix A).

Mr. Chamberlain stated that the first step would be to receive copies of this Memorandum for careful consideration. In the meanwhile, whilst cordially reciprocating the friendly sentiments contained therein, he must remark that the Memorandum dealt only with points, and recapitulated arguments, which had already been exhausted in diplomatic correspondence.

He quoted the following passage in Mr. Bayard's letter to Sir C. Tupper of the 31st May, 1887:—

"I am confident we both seek to attain a just and permanent settlement, and there is but one way to procure it, and that is by a straightforward treatment on a liberal and statesmanlike plan of the entire commercial relations of the two countries."

Sir C. Tupper, in his reply to Mr. Bayard of the June, 1887, had also quoted and indorsed the passage in question, and it was on the faith of it that Sir L. West had on the 9th July, 1887, been instructed to inform Mr. Bayard "that if he would formally

propose the appointment of a Commission as suggested in his correspondence with Sir C. Tupper, Her Majesty's Government would agree with great pleasure."

Thereupon Mr. Phelps had proposed the appointment of the Commission, and Her Majesty's Government had assumed that the objects of the Commission would be on the lines suggested by Mr. Bayard.

Mr. Chamberlain therefore urged that a settlement should be sought on those lines, without recurring to the disputed interpretation of the Convention of 1818. If that could be done, any claims preferred by the United States' Government on account of past seizures might be considered and discussed.

Mr. Bayard replied that the matter was initiated by the visit of Sir C. Tupper to Washington; that the unofficial communications which had then passed between them had originated by Sir L. West introducing Sir C. Tupper; and that those communications must be considered as a whole, without special reference to isolated passages.

Mr. Chamberlain still maintained that Her Majesty's Government had acted on the faith of the statements contained in Mr. Bayard's communication to Sir C. Tupper, and especially of the passage previously quoted, which clearly indicated Mr. Bayard's view as to the proper aim and method of negotiation.

Mr. Bayard, however, insisted that the scope of the negotiation was defined by the terms of reference, which he quoted as follows:—

"Conference of Plenipotentiaries to consider and adjust all or any questions relating to rights of fishery in the seas adjacent to British North America and Newfoundland which are in dispute between the Governments of Her Britannic Majesty and that of the United States of America, and any other question which may arise, and which they may be authorized by their respective Governments to consider and adjust."

Mr. Chamberlain considered that these terms of reference were sufficiently wide to include the negotiation of any arrangement such as those come to in 1854 (the Reciprocity Treaty) and in 1871 (the Treaty of Washington).

Mr. Bayard replied that any proposal which the British Plenipotentiaries might make must be judged by itself as to whether it came within the terms of reference, when the United States' Plenipotentiaries could consider whether they were empowered to discuss it, or whether fresh powers from the President would be requisite if it were discussed.

The discussion was then continued as to the scope of the terms of reference.

Sir Charles Tupper reserved any opinion upon the points stated in the Memorandum which had been read by Mr. Bayard. He desired, however, to disclaim in the strongest possible manner any intention on the part of the Canadian Government to treat American fishing-vessels in an inhospitable manner, or to endeavour, by a harsh construction and enforcement of the Convention of 1818, to extort Tariff concessions from the United States.

The status and privileges of American fishing-vessels, as distinct from trading-vessels, were clearly defined by the Convention of 1818.

He recalled the nature of the remedies which had been sought in the past to obviate the difficulties arising in connection with the terms of that Convention, and the beneficial operation of the Reciprocity Treaty of 1854.

That Treaty had been denounced by the United States, and the fishery troubles immediately recommenced. A solution was then found in 1871, not by reconstruing the Convention of 1818, but by the mutual opening of the fisheries and free trade in fish and fish-oil, together with the arbitration of the Halifax Commission.

The Fishery Articles of the Treaty of Washington had been denounced, again by the action of the United States, and the troubles at once began again.

He pointed out that the existing Canadian law provided for the remission by an Order in Council, without further legislation, of duties on certain American products, whenever the same should be remitted by the United States.

He referred to the Halifax Award, which indeed had caused irritation in the United States, but was not, in his opinion, excessive.

On the termination of the Fishery Articles of the Treaty of Washington, the Canadian Government was bound to take effective steps to enforce the Convention of 1818; but nothing had been done which was not absolutely necessary for that purpose. The desire of Canada to maintain the most amicable relations with the United States had been plainly evinced by the opening of the fisheries for one year, without any compensation or even the remission of the duties on fish and fish-oil; the only consideration being a promise on the part of the United States' Government that they would recommend the appointment of an International Commission, not, be it observed, to be confined in its discussions to a revision of the Convention of 1818, but to include a complete

review of the commercial relations between the two countries. The Senate, however, rejected that proposal, and eventually passed a Bill authorizing the President to proclaim retaliation by means of commercial non-intercourse with Canada.

Sir Charles could not believe that the United States Government were in favour of such a policy, and when he received from Mr. Bayard an intimation through a private source that an interview would be acceptable, he (Sir Charles), on behalf of the Government of Canada, at once came to Washington.

The first conversation which ensued was private, but Mr. Bayard's unofficial letter of the 31st May, 1887, was not so private, and Sir Charles took it as a positive indication that Mr. Bayard wished to bring about what was proposed therein. The proposal was, therefore, at once transmitted to London by Lord Lansdowne, as Sir C. Tupper had stated in his reply to Mr. Bayard that it would be, and was immediately afterwards clothed with an official character, by the instructions from Lord Salisbury to Sir L. West of the 9th July, 1887, which had been quoted by Mr. Chamberlain.

If the proposal of the United States had been understood to mean only a review of the Convention of 1818, it would never have been accepted. It would be useless to depart from the basis originally proposed by Mr. Bayard, and any attempt to do so would be attended by grave difficulties.

Mr. Bayard said that we had evidently reached at the outset a proposal to extend the terms of reference, but, in his opinion, the preliminary discussions should be conducted according to the strict terms of reference as limited thereby.

His meeting with Sir C. Tupper was promoted by feelings of anxiety as to the situation as existing at that time, and he had welcomed any information tending to show how good relations could be re-established.

In 1886 Sir L. West was authorized to endeavour to reach a mutual understanding as to the true interpretation of the Convention of 1818, and had instructions to negotiate a *modus vivendi*, but Sir L. West withdrew, and the negotiations came to an end, for what reason he did not know.

Mr. Bayard then alluded to Mr. Wiman's project for commercial union, and stated that as a result of an interview with that gentleman he stated that he would welcome any opportunity to discuss any matters with a representative Canadian, and which would tend to facilitate a settlement. He saw no difference between the character of the interview and the correspondence he had with Sir C. Tupper. Both were unofficial; but he did not on that account desire that they should be withheld. He thought, however, it would be impossible to take that as a basis of discussion. He wished, therefore, to know whether the British Plenipotentiary desired to introduce other matters into the terms of reference.

Mr. Chamberlain considered that the terms of reference were ample to include a settlement on the lines suggested in Mr. Bayard's letter to Sir C. Tupper, and it would certainly be within the powers of the British Plenipotentiaries to propose any mode of settlement including a revision of present commercial arrangements. He added that the communications made by Sir L. West were for the conclusion of an *ad interim* arrangement, pending a permanent settlement, and that the same necessity does not now arise for a temporary arrangement, since the fishery season is closed. He therefore urged that the Conference should now seek the permanent settlement. It was apparently hopeless to reconcile the divergent views disclosed in the diplomatic correspondence which had passed between the two Governments as to the interpretation of the Convention of 1818; and Her Majesty's Government, in consenting to the appointment of the Plenipotentiaries, had therefore understood that the Conference was convened with the object of finding a settlement on other lines.

Mr. Bayard was of opinion that the Conference ought first to discuss the history and the points involved in the construction of the Convention of 1818; but that if the British Plenipotentiaries had any definite proposal to make, it would be for the United States Plenipotentiaries to consider whether it would be necessary that they should ask the President for an extension of their powers.

The discussion then turned on the debates in Congress on the Retaliatory Bill, Mr. Chamberlain saying that it pointed decidedly to a review of the commercial relations between the United States and Canada.

Mr. Bayard said that the question of commercial relations came into debate only because the Convention of 1818 does, in fact, deny commercial relations in certain particulars. The point then arose whether there could be said now to exist any commercial relations between Canada and the United States. Could it be said that a Convention which does not directly refer to such relations does in fact include them?

This being the scope of the debates in Congress, the question of commercial relations was necessarily discussed. He concluded by expressing his belief that the Plenipotentiaries on both sides were agreed that the discussions at the present Conference are defined in the terms of reference.

Mr. Chamberlain replied that the powers given to the British Plenipotentiaries undoubtedly gave them full authority to treat any questions incidental to a settlement of the Fisheries question, as well as any other subjects which might come up for discussion,—such as extradition, &c. He offered to prove this by producing an extract from the instructions which the British Plenipotentiaries had received from their Government.

Mr. Bayard replied that in that case any such proposal should come from the British side.

Sir Charles Tupper considered that Mr. Bayard's letter of the 31st May, 1887, contained his deliberate views as to the only mode of obtaining a settlement, and that Lord Salisbury's subsequent action was based upon the same view. The terms of reference must therefore be considered in connection with the correspondence in question.

Mr. Bayard then read *in extenso* his letter to Sir C. Tupper, and added that his view of the matter was supported by the fact that Lord Iddesleigh had asked for some proposal from the United States for a settlement, and that such a proposal had in fact been made by Mr. Phelps on the 15th November, 1886. That observations on this proposal were made on behalf of Great Britain after reference to Canada, and that counter-observations had thereon been made by the Government of the United States.

Mr. Chamberlain replied that the proposal in question was only invited by Her Majesty's Government as an *ad interim* arrangement, and in contemplation of some more permanent settlement.

The discussion was then continued as to the meaning to be attached to the passage in Mr. Bayard's letter to Sir C. Tupper, Mr. Bayard ultimately expressing the hope that the power of suggestion on the part of the British Plenipotentiaries might be sufficiently ample to allow of their proposing some mode of settlement.

Sir C. Tupper emphasised the point that Mr. Bayard's letter to him was really the basis proposed for a settlement, and read his letter to Mr. Bayard in reply.

Mr. Bayard then read the instructions which were sent to Mr. Phelps on Sir L. West's communicating to him the text of the telegram from Lord Salisbury to Sir L. West of the 9th July, 1887.

Mr. Chamberlain remarked that those documents showed that the views of both Governments really were convergent; and

Sir C. Tupper pointed to a passage in the above-mentioned instructions to Mr. Phelps as proving that a settlement of all points at issue was contemplated, including improved commercial relations.

Mr. Bayard said that the action of Congress in regard to the Retaliatory Law was the real cause of Sir C. Tupper's visit to Washington in May, 1887. The origin of that law was the fisheries, and the commercial questions connected with the fisheries. Was it not then preapparent that the commercial questions became involved only by the action of Congress in connection with the fishery question? The fishery troubles had periodically reappeared because the settlements arrived at in 1854 and 1871 were not of the nature originally proposed by the United States negotiators, viz., to remove the difficulties incidental to the wording of the Convention of 1818.

Sir C. Tupper replied that the whole difficulty arose from the persistency with which United States fishermen infringed Canadian territorial waters when closed to them, and therefore it had been apparent that the efforts of negotiators must be directed to some arrangement whereby those waters should be thrown open.

Mr. Bayard then said that the proper basis of discussion for the present Conference was the proposal made by Mr. Phelps for an *ad interim* arrangement.

Mr. Chamberlain replied that that was not the view of Her Majesty's Government. Having signally failed to come to any agreement as to the interpretation of the Convention of 1818, they had agreed to the installation of the present Conference to seek a settlement on other lines, and especially by the discussion of commercial relations as originally proposed by Mr. Bayard in his letter to Sir C. Tupper. The British Plenipotentiaries were not debarred from considering the Memorandum which had been put in by the United States Plenipotentiaries, but if they should reply by making a proposal for the review of commercial relations, would the United States Plenipotentiaries be empowered to receive it?

Mr. Bayard thought the proposal might at all events be made ; and

Mr. Chamberlain then inquired whether a proposal for the renewal of the Reciprocity Treaty of 1854 would come within the powers of the United States Plenipotentiaries to discuss. The British Plenipotentiaries would be warranted by their instructions in making such a proposal.

Mr. Bayard said that if the proposal were made, the United States Plenipotentiaries could then ascertain whether their powers sufficed to enable them to deal with it.

Mr. Putnam discussed the manner in which the terms of reference were arrived at. He was of opinion that Lord Salisbury did not wish any matters beyond the mere Fishery question to be discussed at the Conference. The whole difficulty on the present occasion had arisen in regard to the insignificant trade in bait, amounting to about 60,000 dollars a-year, and he believed that Lord Salisbury considered that that difficulty should be removed before any other points were discussed. The powers of the British Plenipotentiaries would evidently allow them to follow the course proposed by the United States Plenipotentiaries, viz., first to endeavour to remove the difficulties arising on the points connected with the questions of fishery and bait, and a settlement on these points could probably be reached without much difficulty.

Mr. Bayard then reverted to the proposed *ad interim* arrangement, and said that in the correspondence which had passed in relation thereto no allusion was made to anything save the purely fishery disputes.

Mr. Chamberlain said that the Plenipotentiaries on each side were agreed up to a certain point, viz., that all the trouble springs from the fishery dispute; but the American proposal now is that Canada should entirely abandon their view of this question. The British Plenipotentiaries meet that proposal by saying that, if it is agreed to, the United States must give something in return. This has always been done in the various settlements which have been made from time to time since the conclusion of the Convention of 1818. The United States have invariably complained that they had paid too much, and had consequently denounced the treaties.

The British Plenipotentiaries might therefore put their case, that Canada has something to sell. What are the United States prepared to give for it?

Mr. Putnam argued that Canada had already received their consideration by the free importation of a certain portion of fish, one-half of the fish imports from Canada to the United States, viz., fresh fish, being now admitted duty free. But could not the British Plenipotentiaries try to find some points of contact in the arguments and proposals put forward in the Memorandum handed in by the United States Plenipotentiaries?

Mr. Angell said that the constitutional difficulty in the United States must not be forgotten in the consideration of any give and take settlement. The United States did not wish to buy the inshore fisheries, but desired an amicable settlement by means of an interpretation of the Convention of 1818.

Mr. Chamberlain having stated that he would like some days for the consideration of the Memorandum, copies of it were handed to the British Plenipotentiaries, together with two documents, "Selected Cases of Maltreatment of American Fishing Vessels" (Appendix B), and "Proposed *ad interim* Arrangement, with Observations thereon" (Appendix C); the latter being the proposal already made by Mr. Phelps on behalf of the United States.

The Conference was adjourned till Monday, the 28th instant, at 12 o'clock.

(Initialled) J. C.
L. W.
C. T.

J. H. G. B.

APPENDIX (A).

Memorandum.

The attention of Her Majesty's Plenipotentiaries is drawn to the constitutional provisions respecting the treaty-making powers under which the advice and consent of the Senate of the United States are essential to ratify and confirm any treaty made by the President.

But a single subject of difference is known to exist which this Conference has been called to adjust. It is the treatment to which fishing vessels of the United States entering the territorial waters of the Dominion of Canada, or of the Province of Newfoundland, have been subjected since April, 1886.

The correspondence on this subject between the two Governments, including the proposal of the United States of the 15th November, 1886, is offered as the basis of discussion.

A few cases, selected from a large class, and authentically descriptive of the treatment referred to, will be presented, by which it will appear that the authority asserted for the proceedings on the part of the Dominion officers is alleged to be founded upon the treaty of the 20th October, 1818, between the United States and Great Britain, and upon certain imperial and provincial statutes.

The cases exhibit grounds for several classes of complaints, viz. :—

1. Transactions like those at Shelburne, and exactions of compulsory pilotage, directly violating the rights expressly guaranteed by the treaty; and
2. Breaches of that customary international comity and hospitality which our vessels are justly entitled to receive independently of all treaty.
3. Other classes or sub-divisions, which, on careful examination of the facts, may not be thought to group themselves under either No. 1 or No. 2.

It is the desire of the United States to comply fully and in good faith with the terms of the treaty, and, so far as they touch the controversies, to arrive at a just and harmonious understanding with the Government of Great Britain concerning their interpretation and effect.

The terms of a convention are subject to construction only by the parties to it, in this case the United States and Great Britain; and as against each other they cannot be controlled or impaired by the subsequent domestic legislation of either.

Treaties of the United States are made by our constitution the supreme law of the land; and for their infraction our citizens may be made liable to punishment, and equally are entitled to be protected in their rights thereunder.

To this end it is the duty of our Government to secure a just interpretation of its treaties, and to instruct its citizens in the measure of their rights and duties in reference thereto.

The United States do not accept the interpretation placed by the Dominion authorities upon Article I of the Treaty of 1818, or upon Article XXIX of the Treaty of the 8th May, 1871 (known as the Treaty of Washington); and the consequences of these differences fall upon their citizens, who suffer from the resulting uncertainty, and are entitled to look to their Government for relief.

It is, therefore, our imperative duty to bring these questions to the consideration of Her Majesty's Plenipotentiaries, in order to obtain a common understanding and agreement, based upon the principles of liberal equity and reciprocity, for the just and definite interpretation of the treaties in question, and for a joint declaration of the duties which each Government shall enjoin upon its citizens.

If, owing to the progress of events since 1818, new interests, usages, and commercial relations and privileges have come into existence which are materially affected by the terms and conditions of the existing treaties, then, in promotion of the mutual convenience or reciprocal advantage of the parties, revision or modification of the terms thereof should be agreed upon.

Since the Treaty of 1818 the United States have entered into many Conventions with Great Britain, all of which have recognised, in greater or less degree, the gradual changes, by both perceptible and imperceptible growth, in commercial usages and international law, and have tended to co-operative action and more unrestricted commercial relations.

The IVth Article of the Treaty of 1818 extended for ten years the Treaty of Amity and Commerce of 1815, and this was again, in 1827, renewed indefinitely, with the right of termination on giving twelve months' notice—and is to-day in force.

The Treaty of 1842, settling so many important and difficult questions, is especially marked by features of liberal expansion of facilities for Canadian navigation and commerce, providing the free and open use, by the subjects of each country, of all water communications and all the usual portages along the line of Lake Superior to the Lake of the Woods, and also of grand portage from the shore of Lake Superior to Pigeon River, as well as the free navigation in common of the River St. John.

The Treaty of 1846 provided *inter alia* for the free navigation in common of the channel and Straits of Fuca and of the great River Columbia.

The Treaty of 1871 completed the full and free navigation in common and for ever of the St. Lawrence, and also secured to Great Britain for ever the free navigation of the great Rivers Yukon, Porcupine, and Stikine.

The two nations have joined hands by treaties to put an end to the African Slave Trade on the ocean.

The Treaty of 1842 for the extradition of criminals has been of great mutual value in the expedition of criminal justice, and propositions for expanding its provisions for the greater protection of life and property in both countries are pending.

The reciprocal liberty of commerce, proclaimed by the Treaty of 1815—which was twice renewed, and still exists—did not include the British possessions in the West Indies and North America in its provisions; but by the repeal on the one side of restrictive statutes by the Government of the United States between 1819 and 1830, followed by the Proclamation of the President, under the authority of Congress, in 1830; and on the other side by contemporaneous British Orders in Council, and ending in the British Shipping and Navigation Act of 1849, the commercial freedom secured by the Treaty of 1815 between the United States and British territories in Europe became equally the law for the British possessions in North America and the West Indies.

Since 1830 Consuls for the protection of trade of the United States have been established in British America, whose exequaturs have been granted under the same terms as those of the Treaty of 1815.

Commercial intercourse has thus grown into its present vast proportions between British North America and the United States.

Thus, step by step, by treaties, and by independent yet co-operative legislation, we find that commercial privileges have become, in large degree, common all along our border, and that the great chain of water communications, lakes and rivers, waterways, natural and artificial, have been made free to the inhabitants of both countries.

Of those other links of steel that bind the interests of the citizens of both countries we need not speak at length. Their rapid multiplication under the mighty forces of mutual production and exchange increases daily. The growth of railway communication between the two countries is remarkable, and statistics of the connecting lines now in operation, and in course of construction, will disclose the vast amount of capital and enterprise employed in the development of commerce. Under the XXIXth Article of the Treaty of 1871 the right of bonded transit for all goods, wares, and merchandise is mutually secured, and also, under the provisions of United States laws, facilities of the same nature are allowed; so that railway cars may pass freely from Canada through and over the vast and populous area of the American Union, using the railways in their route, and conveying merchandise of all descriptions, including the products of the Canadian fisheries. Of these latter more than half are, by existing laws, admitted free of duty, and the remainder, upon which an impost is laid, are subjected to an *ad valorem* duty less than one-half of the average *ad valorem* of the tariff of United States on other merchandise. Connected with the bonded transit are the warehousing privileges, which extend equally to Canadian merchandise.

The laws of the United States permit Canadian fishermen to come freely into any American port for supplies. They freely obtain in our ports complete outfits for their business, including supplies of bait, which is also purchased in large quantities and shipped from United States' ports for the use of Dominion fishermen. No case is known where a fine has been imposed in the United States upon a Canadian fisherman for failure to report when putting in for shelter.

It is to be remembered that the United States have consistently maintained, and in every branch, executive, judicial, and legislative, have acted invariably upon the principle that by their first treaty with Great Britain in 1783 they took nothing by grant, but the treaty was expressly and in terms a recognition of pre-existing rights, a solemn acknowledgement of their sovereignty and independence. Under no circumstances, nor in any negotiation, was this basis of their rights ever abandoned or left in doubt. In all instructions to our envoys by this government, and by them in their proposals to the British envoys, this is steadily enforced. So that in 1818, when the inshore fishing rights in British American territorial waters were under consideration, the final terms agreed upon distinctly recognised this principle by continuing "for ever" to "the inhabitants of the United States" the liberty "to take, dry, and cure fish" in certain places in the British possessions, and by our renouncing the liberty, theretofore enjoyed, to do so in certain other places. The employment of this phrase of renunciation by both parties to the treaty reaffirmed the basis of the American claims when the partition of the territory and dominion, formerly under one Government, was effected between two Governments, in which the rights of the younger were recognised as existing from the time of the Declaration of Independence, which it had made and had been able to maintain.

Should the situation of the two Governments be considered as though no fishing rights in the British American waters had ever been recognised as belonging to the United States and their inhabitants, the question would then be treated in the light of comity between friendly nations, and of the privileges and customs recognised by international law. And so tested it would appear that such privileges were ever and are now freely extended to Canadian fishermen in American ports, but are refused to American fishermen in Canadian ports, and that in respect to the refusal of such privileges the Convention of 1818 has no pertinence, and offers no defence for the Dominion authorities.

The American fishermen engaged in open sea fishing—neither "fishing nor preparing to fish," nor even suspected of intending so to do, within the marine belt of three miles from Canadian shores—have experienced oppressive and inhospitable treatment, and the privileges denied them are those of customary hospitality. The strictest performance of commercial formalities has been exacted, and every ordinary commercial convenience or privilege has been strictly denied.

This is inconsistent with neighbourly relations and duty, and of it the United States have an unquestioned right to complain, to ask redress for their citizens, and to take measures for their protection.

And also, when it is remembered that the United States are lawfully entitled to certain express rights in these waters, which are as clear as those of the mother country, and are

solemnly recognised by treaties, the action of Canada, so far as it affects these express rights, seems even more unwarrantable.

The four purposes for the enjoyment of which the "liberty" is "for ever" expressly secured are stated in general terms, and may be accomplished whenever desired, and at any locality within the region in which the former privilege "to take, dry, and cure fish" is renounced.

No construction can be held admissible that would destroy or impair these liberties which were so expressly secured. Yet the United States have been asked to accept such an interpretation as would convert these "liberties" into restrictions inconsistent with the ordinary privileges recognised by international law, and due in the absence of any treaty.

This Conference would be futile, and we would be derelict in duty, should we disregard the deliberate judgment and decisions of our own Government upon this subject, as made manifest by the Act of the 3rd March, 1887, copies of which will be furnished Her Majesty's Plenipotentiaries.

The debates will disclose the unanimity of the Congress in its passage, the only difference between the two Houses being the preference of the House of Representatives for a measure which was claimed to be more positive.

This Statute must be taken as the judgment of our Government, and the restrained and scrupulous discretion of the President has enabled the question to reach the serene atmosphere of this Conference, in which it is earnestly hoped all cause of misunderstanding and anxiety will be removed.

The far-reaching importance of placing the relations of the two countries we respectively represent upon such a footing as will make their progress one of increasing good-will and mutual confidence and beneficence must impress itself on us all.

In the correspondence it appears that the Dominion authorities claim as legitimate the right to enforce an extreme and irritating construction of a Treaty between the United States and Great Britain, in order to procure a change in the Tariff Laws of the United States. Such a claim has no just foundation in the circumstances now before us, and cannot be admitted without raising a question of national independence and self-respect, and must therefore be met *in limine*.

We would not disguise the condition of the public mind in the United States in respect of the Canadian contention.

Under this contention American fishermen, with certain rights in Canadian waters, secured by treaty and international law, are denied the use and enjoyment of those rights except under such severe restrictions as impair, if not destroy, their value, and also are denied such common hospitality and friendly treatment as would be freely accorded to them in the ports of any nation in Europe in the absence of any treaty whatever.

There is a deep and widespread sense of the injustice thus suffered by a simple and meritorious class of our people engaged in a calling exceptionally favoured by all nations.

We therefore ask reasonable compensation for the injuries already inflicted, and a removal of the cause.

APPENDIX (B).

Selected Cases of Mal-Treatment of American Fishing Vessels.

The following are cases and propositions selected as illustrating the various grounds of complaint made by the United States, arising from the conduct of Canadian officials with reference to fishing vessels of the United States, especially in the year A.D. 1886:—

The "Ella M. Doughty."

St. Ann's Bay, protected on the south by Cape Dolphin or Dauphin, is situated on the extreme eastern coast of Cape Breton, in latitude about 46° 30' north and longitude 60° 30' west. It is connected by a narrow opening with the inner bay known as St. Ann's Harbour, which we have here called the inner harbour, because there is also anchorage at the head of the bay.

The axis of the bay and harbour lies northerly or north-east. A very small settlement, known as St. Ann's, exists on the westerly shore of the strait connecting the bay and harbour, and a somewhat larger though scattered settlement known as English Town, containing in all a population of about 400 people, is situated on the eastern side of the same strait, extending along the shore of the bay and inner harbour.

The whole eastern coast of Cape Breton, including St. Ann's Bay, is crowded with ice fields coming down from the Gulf of St. Lawrence until late in the spring.

What remains of the once famous fortress and city of Louisburg lies on the southern coast of Cape Breton, somewhat to the eastward of south of the Bay of St. Ann's, in latitude of about 45° 85' north, and very close to the 60th parallel. Between Louisburg and St. Ann's Bay on the eastern coast of Cape Breton, some 30 miles overland from Louisburg, but approachable by water only after difficult passage around Scatari Island, Cape Morien, and Cape Percy, lie Sydney and its adjacent port of North Sydney. To the southward of Louisburg on each side of the same parallel, but in latitude of about 44° north, lies Sable Island; and to the westward of Sable Island the great bank known as Sable Island Bank, commonly called by the fishermen the Western Banks, extend-

ing over more than three parallels and almost connecting with other banks, more or less known until the Georges shoals or banks are reached somewhere near parallel 67°, the principal intermediate banks being La Have, the Roseway, and Brown's Bank. The names of each of these are used somewhat carelessly and indiscriminately by fishermen, alike in describing the place for which vessels are fitted away and the place where fishing actually occurs, by reason of the proximity of the banks to each other and of the similarity of fishing pursuits on or near each of them.

Northerly and north-easterly of the Bay of St. Ann's and of Cape North, which is the extreme north-eastern point of Cape Breton, at the very mouth of the Gulf of St. Lawrence, and also within the gulf, lie other banks of lesser extent than those already described, resorted to also for fishing.

Halibut catchers seek all the banks above named and the deep waters bordering on them, trawling for halibut at a depth of 250 fathoms, and at even greater depths.

The schooner "Ella M. Doughty," of the gross tonnage of 75½ tons United States measurement, owned by reputable merchants and other reputable people living at or near Portland in Casco Bay, which is situate on the coast of Maine, in the latitude of the Western Banks and between the 70th and 71st parallels, commanded by Captain Warren A. Doughty, and manned by a crew of eleven fishermen, nearly all residents of Portland or its vicinity, with expensive trawls and other expensive gear for halibut catching, and fully equipped with provisions, bait, and other supplies for the ordinary halibut-fishing trip to the eastward on the Western Banks and such other banks as might be visited, estimating a trip to last not over six weeks, sailed from Portland on the 26th April, A.D. 1886, and arrived on or near the Western Banks the 29th of the same month. Not finding fishing favourable, she soon put away for the neighbourhood of banks in the Gulf of St. Lawrence, but was forced by the ice to seek shelter at Lousburg, where the vessel arrived on the 1st May. She remained there until the 6th May: and on that day, the coast being apparently clear of ice, she started again on her voyage, but was forced into North Sydney. There she was notified by the Customs authorities to report, which she did, and paid harbour dues. On Monday, the 10th May, she again sailed for the gulf, but the next day she was forced by the ice into the Bay of St. Ann's. On Wednesday the 12th of the same month, she again attempted to work her way through the ice fields, but failed. She made another attempt on Wednesday, the 13th May, but was again forced back into the bay; and this time she hauled into the inner harbour of St. Ann's, where she laid until the next Monday. Meanwhile, finding her bait, which consisted of iced fresh herring, deteriorating or in danger of deteriorating by her unexpected detention through stress of ice, Captain Doughty purchased of the inhabitants of English Town, who were willing enough to sell to him, small supplies of herring taken by them from their weirs on their shores, not 10 dollars' worth in all.

The witnesses for the Crown at the trial of the vessel which afterwards took place, as will appear by the printed minutes of the case, produced no evidence of actual fishing or of intention to fish within prohibited limits, or of any act looking to fishing anywhere except the purchase of bait. And they said there was no fishing in the Bay of St. Ann's in which a vessel of this class could engage, that the vessel was forced back Thursday evening by ice and wind, and through the rest of the week the wind was to the eastward, which would be against her going out, that there was ice outside, that the ice was pretty heavy, and that it would not be safe for her to go out in that kind of ice.

The proofs for the Crown looked to showing that Captain Doughty was apprehensive he might involve his vessel in trouble by purchasing bait, and that therefore the last bait he purchased he declined to receive until his vessel was under way. But this does not touch the merits of the case; and, moreover, it appears by the letter of the Marquis of Lansdowne to Earl Granville, of the 19th May, A.D. 1886, published in the Dominion volume of correspondence relative to the Fisheries Question of A.D. 1885 to A.D. 1887, p. 55, the Sub-Collector telegraphed that—"The captain acknowledged the facts and showed the bait bought, but claimed that he had a permit or licence signed by the Collector of Customs at Portland, to touch and trade at any foreign port."

It appears by the testimony of the Sub-Collector of Customs at English Town that he first saw the "Ella M. Doughty" on the 11th May, coming to anchor outside of the lighthouse in the Bay of St. Ann's; that he could see her from his own house, and saw her all that afternoon; that he seized her on Monday, the 17th May; that then she was lying on the north side of the inner harbour; and that he saw her every day between Tuesday and the Monday of her seizure.

It is clear from this testimony that, although the vessel was thus under his nose, he made no request she should report at the custom-house, and no complaint because she did not report, and took no proceedings against her on that account during the six days she was lying there prior to the day of her seizure.

The Sub-Collector admits that never in his experience of ten or eleven years had fishing-vessels been required to report in that bay or harbour.

On the 17th May the Sub-Collector seized the vessel, and took possession and control of her.

Precisely what was the original cause of seizure is not clear. The Sub-Collector, McAulay, testified on cross-examination as follows:—

"I seized this vessel on the charge that she did not report, and that she had bought bait. She was seized on both charges."

Being pressed further, he thinks he said in the telegram to the Collector regarding the seizure that he had "seized the vessel for buying bait."

Again, in his testimony the following question and answer appeared:—

"Q. Did you have any instructions in May, 1886, to seize American fishing-vessels for not reporting?—A. I do not think I did."

Again, he said:—

“I seized her for trading and not reporting, because I thought she was the first vessel that had made a breach of the law in not reporting. I know that during the last eleven years American vessels came in there and did not report, and I did not seize them. Previous to this they had the privilege of going in and out. Since the expiration of the treaty I have not received any instructions with reference to seizing any American vessels for not reporting.”

In the letter from the Marquis of Lansdowne to Earl Granville of the 19th May, already referred to, he reports:—

“The ‘Ella M. Doughty’ has been held for not reporting, and an inquiry is now proceeding whether there has or has not been an infraction of the Fishery Law of the Dominion.”

On the 25th May the Collector filed in the Vice-Admiralty Court at Halifax the affidavit necessary to secure a warrant against the vessel, which will be found on p. 109 of the Canadian Correspondence relative to the Fisheries Question for A.D. 1885-87. This affidavit is well described by the Solicitor for the Crown in his letter of the 5th August, A.D. 1886, to the Deputy-Minister of Justice at Ottawa, p. 107 of the same book, in which he says:—

“It is very brief, and contains no particulars of fact. The Admiralty Rules only require that it should state the nature of the claim.”

The other papers referred to in that letter were not filed in Court, and the owners of the vessel had not in any way the benefit of them.

Pursuant to the Rules of the 23rd August, A.D. 1883, touching the practice to be observed in the Vice-Admiralty Courts, this affidavit was followed by a writ of summons, Rules 5 to 8 each inclusive, and Forms Nos. 4 to 7 each inclusive.

This writ of summons gave no indication of the demand or offence alleged, except that Rule 5 required it should be indorsed with “a statement of the nature of the claim and of the relief or remedy required, and of the amount claimed, if any.” The forms come under the numbers already referred to, and require an indorsement of the briefest and most general character—even more meagre, if possible, than the affidavit of the Collector according to the description in the letter of the Solicitor already referred to.

That this indorsement was no more specific than the affidavit, and gave the master and owners of the vessel no specific information, will be seen by reference to it, as it appears at length in the printed record of the case.

So that to this point there was not on file, either in the Vice-Admiralty Court or elsewhere accessible to the owners of the vessel, any specific statement of the offence with which the vessel was charged.

No. 55 of the series of Rules already referred to direct that every action “shall be heard without pleadings, unless the Judge shall otherwise order.”

In pursuance of this Rule, and in accordance with the arrangement between Counsel, the Crown filed its petition or libel against the vessel during the first week in the month of July next succeeding the seizure. A copy of this petition is found commencing p. 110 of the Canadian Fishery Book already referred to.

It was even more indefinite than the affidavit of the Collector, because it alleged in several Articles every possible offence which could arise under either the Imperial or Dominion Acts relative to the fisheries, covering without specification of dates, or places, or other particulars of facts, the entire months of April and May, A.D. 1886.

To this point, therefore, the owners of the vessel had no proper information of the true nature of the claim, and were only told that, under the provisions of the Acts to which we will hereafter refer, the burden was on them to acquit their vessel from every possible charge which could possibly be brought against her under any of the above allegations covering the period named.

Meanwhile, another provision of law came in to trouble this vessel.

Vessels of the United States engaged in fishing in the north-eastern waters ship their men very largely on shares, so that the earnings of the crew depend on their employment, and not merely on their being aboard the vessel, as would be if they were shipped on monthly wages. Consequently, it is impossible to detain a crew of fishermen in port idle pending slow legal proceedings against a vessel; therefore, with reference to vessels of this class, the expedition required from the Courts by the old maxim that ships were made to plough the sea is especially necessary. Delay in the trial of a fishing-vessel caught in a port distant from home is equal to total denial of justice with reference to vessels of not very great value, in which category many of them fall.

Merchant-vessels in foreign ports, seized for breach of Customs or other Laws, are supposed to find consignees or other friends at hand prepared to assist them by procuring counsel, furnishing security for costs, and other matters of that nature; but there is no such presumption or fact in favour of fishing-vessels.

The Dominion Act of the 22nd May, A.D. 1868, 31 Vict., cap. 61, “Respecting Fishing by Foreign Vessels,” being a Statute under which the proceedings against the “Doughty” were taken, provides in its 12th section that no person shall “enter a claim to anything seized under the Act until security has been given in a penalty not exceeding 240 dollars, to answer and pay costs occasioned by such claim; and that in default of such security the thing seized shall be adjudged forfeited, and shall be condemned.”

Few fishing-vessels carry with them on their voyages that amount of money, or are able to give security promptly for that sum.

The result in the case of this vessel, and also in the case of the “David J. Adams,” which will be hereafter referred to, was that before security could be arranged, as required by the Statute, the crew scattered; in the case of the “Doughty” imposing on the vessel great expense and delay in obtaining the return of the witnesses to Halifax, and in the case of the “Adams,”

many of the crew of which were aliens, involving inability to secure all the witnesses at any time, and in each case practically compelling postponement of trial until the pending fishing season was closed.

A prompt trial being therefore impracticable, the cause ran into the usual course of legal proceedings. It is supposable that, notwithstanding the absence of specific allegations, the Counsel for the vessel relied on the statement made by the Sub-Collector at the time of the seizure, that the vessel was seized for purchasing bait, until it came to their ears that a claim was made that the vessel had been actually guilty of fishing. However this may have been, on or about the 18th October, A.D. 1886, defendants filed a motion for a bill of particulars, which was resisted by the Crown and fully argued before the Court.

Although under the common practice in the United States a bill of particulars would be ordered as a matter of course, the right to it in the Vice-Admiralty Courts of Great Britain seems to be not clearly defined, and the Court held the motion under consideration, and it never has been decided.

The case was finally brought to trial in June, A.D. 1887, without any bill of particulars and under the general allegations of the Petition which have already been described.

The printed record of the case shows that at the trial the Crown claimed that under the 10th section of the Act of the 22nd May, A.D. 1868, the burden throughout was on the vessel.

The Proctor for the Crown argued as follows:—

“Now suppose that this term ‘preparing to fish’ has the meaning which is contended for in the answer, and that it means preparing within the 3-mile limit, and that they can prepare within the 3-mile limit to fish outside of that limit. I ask your Lordship to look at this evidence closely, and inasmuch as the burden is placed on the claimant, I ask your Lordship to hold that he has not shown that the fishing was to be carried on outside of the 3-mile limit.

“Now, that provision of the Act which places the burden upon the claimant will be found in section 10, chapter 61, of the Acts of 1868. What takes place in these cases, and all revenue cases, is this: The law provides for the master and crew of the vessel to do certain things, or the vessel shall be forfeited, and it provides for seizure. The seizure is made, and the claimant comes forward and claims the property. It is in the possession of the law, it is forfeited, and he puts forward a claim. The legality of the seizure is then to be tried. Of course, the form of the pleadings may be like the ordinary common law actions—as if it was between a plaintiff and defendant; but the question which your Lordship is called upon to try is the legality of the seizure. Was it a case where the officer was justified in making a seizure? And under all revenue laws the burden of proving the illegality of the seizure is placed on the claimant, and that is the exact language of this Statute.”

In other words, as already explained, the vessels were charged with every conceivable offence under both the Imperial and the Dominion Fishery Acts, spread over a period of two months, and asked to prove themselves innocent, notwithstanding by the delays which the course of proceedings inevitably involved their witnesses were scattered and might have been entirely lost.

It is useless to say, with such claims on the part of the Crown, that the depositions of witnesses might have been taken, because in the absence of specific allegations, no human ingenuity was equal to anticipating all the contingencies which might prevent justice, unless the witnesses were present in Court to meet unexpected suggestions at the trial.

These things are in no way the fault of the Courts or of the Bar of the maritime provinces. No Courts are held in higher esteem by the lawyers of New England, and no Bars have a more brilliant record for ability, fair dealing, and professional courtesy. The result comes from applying to fishing-vessels a system which, with less injustice, is frequently applied to merchantmen voluntarily entering the ports where proceeded against.

The result of which the foregoing is only an illustration is that one of these fishing-vessels, wholly unprepared for a contest in a foreign Court, proceeding peaceably within the 3-mile limit, may be captured, taken into port, held for trial without specific allegations, and compelled to acquit herself of a great number of possible charges covering an indefinite period of time, after, by force of the nature of proceedings, her crew have been scattered.

The “David J. Adams.”

The “David J. Adams,” a fishing-vessel of about the same tonnage as the “Doughty,” belonging to Gloucester, Massachusetts, having no licence to touch and trade, but having a license to fish, was seized in Digby Basin a few days earlier than the “Doughty,” on the 7th May, A.D. 1886.

It cannot be doubted, from what appears in the depositions in the case, that she was seized for purchasing bait. Indeed, Captain P. A. Scott, by whose authority she was seized on the 11th May, in his Report, found on p. 51 of the fisheries correspondence above named, states in terms that he “seized her for violating the Dominion Fishery Act.” Subsequently, a charge of not reporting at the Custom-house was superadded, of which the Report of Captain Scott makes no mention.

The case of the “Adams” differs from that of the “Doughty,” in respect that the “Adams” was not in distress, but made a short run from Eastport across to Digby Basin voluntarily for bait, and was in there parts of two or three days. It is claimed she concealed her name and port, but this is not important, and one of the principal witnesses for the Crown states distinctly the captain told him that she was an American vessel.

In the subsequent proceedings as to pleadings, effort to obtain a bill of particulars and all

other matters, the case went *pari passu* with that of the "Doughty," except only increased difficulty and expense in obtaining witnesses after they were once scattered, by reason of so many of them being aliens and living at remote places.

Both of the cases remain to this time undecided.

It must, on the whole, be said that the seizures were wholly unexpected by the Government of the United States and by the owners of the vessels concerned, and involved a change of policy of which neither had received actual warning. No known instructions or orders had been issued in accordance with the 4th section of the Act of George III, chapter 38. Neither that Act nor any Act of the Dominion gave any clear warning that mere preparation for fishing was an offence, except for fishing within prohibited waters. The note of Her Majesty's Minister at Washington to Mr. Bayard of the 19th March, A.D. 1886 (see Dominion Fisheries correspondence, p. 24), asked only whether Mr. Bayard would give notice that United States fishermen were precluded from "fishing," and called attention to nothing else; and the Memorandum passed Mr. Bayard on the 19th March by Her Majesty's Minister (see same correspondence, pp. 23 and 24) likewise called attention only "to foreign fishing-vessels fishing in the waters of the Dominion."

In the note of Her Majesty's Minister to the Marquis of Lansdowne of the 19th March, A.D. 1886, printed in the Dominion Fisheries correspondence, p. 23, he used the following language in reference to an interview with Mr. Bayard, namely: "Suggesting to him at the same time that all danger or friction might perhaps be avoided if it was clearly understood that no American vessel would be allowed to 'fish' in Canadian waters within the 3-mile limit without a licence."

"Warnings" from the Minister of Marine and the Minister of Customs at Ottawa had but little publicity, they were contradictory and misleading, and apparently, as appears by Mr. Bayard's letter of the 29th May, A.D. 1886 (see Dominion Fisheries correspondence, p. 64), did not come to the knowledge of the Department of State at Washington until about the date of the letter.

A Memorandum about these "warnings" will be found in the Appendix attached hereto.

Under these circumstances these seizures in May A.D. 1886, must well be regarded as a surprise to the owners of the vessels, the authorities of the United States, and all its people.

The position of the Government of the United States and that of Canada, immediately taken with reference to the question, are shown by the following extracts.

Mr. Bayard, on the 10th May, A.D. 1886, wrote to Her Majesty's Minister at Washington as follows:—

"I shall be most happy to come to a distinct and friendly understanding with you, as the Representative of Her Britannic Majesty's Government, which will result in such a definition of the rights of American fishing-vessels, under the Treaty of 1818, as shall effectually prevent any encroachment by them upon the territorial waters of the British provinces for the purpose of fishing within those waters, or trespassing in any way upon the littoral or marine rights of the inhabitants, and at the same time prevent that Convention from being improperly expanded into an instrument of discord by affecting interest and accomplishing results wholly outside of and contrary to its object and intent, by allowing it to become an agency to interfere with, and perhaps destroy, those reciprocal commercial privileges and facilities between neighbouring communities, which contribute so importantly to their peace and happiness."

On the next day, namely, on the 11th May, the Marquis of Lansdowne wrote Earl Granville as follows:—

"As your Lordship is no doubt aware, American fishing-vessels frequenting the coast of Canada have been in the habit of depending, to a great extent, upon Canadian fishermen for their supplies of bait. It has been usual for such vessels hailing from New England ports, as soon as the supplies with which they had provided themselves on starting for their trip have become exhausted, to renew them in Canadian waters. Such vessels, if compelled, as soon as they run short of bait, to return from the Canadian banks to an American port, would lose a great part of their fishing season, and be put to considerable expense and inconvenience."

Without explaining corresponding details in the case of the "Adams," the seizure of the "Doughty" was at once accompanied by the following penal demands, namely:—

1. Demand the forfeiture of the vessel, already referred to, under which she was bailed for 3,000 dollars.

2. Demand for security for costs, 240 dollars.

3. Payment of penalty claimed for not reporting at the Customs, demanded under section 29 of "The Consolidated Customs Act of 1883," by which it is provided that the captain "shall forfeit the sum of 400 dollars, and the vessel may be detained until the said fine be paid."

4. The sum of 200 dollars required to be deposited to pay costs of the proceedings which the Crown might take to determine the penalty of 400 dollars; which proceedings have never been commenced, although the 200 dollars is still retained.

5. A suit in behalf of the Crown against the captain for three penalties of 200*l.* each.

Customs Laws.

"The Consolidated Customs Act of the Dominion of 1883," section 29, provides, if the master fails to make report "he shall forfeit the sum of 400 dollars, and the vessel may be detained until the said fine be paid."

The nature of the report required is shown by section 25 of the same Act. It requires that vessels entering from "any port or place out of the Dominion of Canada or coastwise," whether "laden or in ballast, shall go without delay, when such vessel is anchored or moored, to the custom-house for the port, and there make report in writing, stating her name," &c., and "whether she is laden or in ballast," and "if laden, the marks and numbers of every package and parcel of goods on board, and where the same was laden, and the particulars of any goods stowed loose, and when, where, and to whom consigned."

It is plain that although that section may possibly be broad enough to include fishing-vessels, yet whoever drew it did not have them in contemplation. As it is in no way fitted to their peculiar circumstances, he evidently had in mind only merchant-vessels.

It will not be questioned that, when that Act was passed, the practice was in accordance with that theory. Fishing-vessels had not previously, when coming in merely for shelter or for making minor purchases, been required to report and enter or clear. To such extent had this become the prevalent practice, that it never occurred to the Sub-Collector at English Town to request or warn the Captain of the "Ella M. Doughty" to report, or to make any complaint that he did not report, although he lay under his eyes within a-half or three-fourths of a mile of his residence for the larger part of a week.

In all the cases to which this paper will refer, with one exception, not only was a new policy to enforce the Customs laws suddenly developed, but it was done with the utmost severity: and vessels were not only not warned nor cautioned of the change, but the fines were insisted on, and payment compelled by detention of the vessels.

For the case of the "Rattler" we refer to the Memorandum of the proceedings of the Privy Council found in "The Correspondence relative to the Fisheries Question in A.D. 1885-87," p. 136.

The Memorandum states, in the first place: "It does not appear at all certain from the statements submitted that this vessel put into Shelburne for a harbour *in consequence of stress of weather.*" It is well enough to dwell on this, because at different times, from A.D. 1836 down to the present time (apparently never before A.D. 1836) it has been claimed in Nova Scotia that the expression of the Convention of A.D. 1818, "for the purpose of shelter," should be limited to cases of harbour sought "in consequence of a stress of weather," that the local authorities had the right to determine whether there was stress, and how long the vessel might lie on account of such stress, and that their determination was conclusive.

The Memorandum proceeds:—Immediately upon the "Rattler's" coming into port Captain Quigley sent his chief officer to inform the Captain of the "Rattler" that, before sailing, he must report his vessel at the custom-house, and left on board the "Rattler" a guard of two men to see that no supplies were landed or taken on board, or men allowed to leave the vessel during her stay in Shelburne Harbour." And the Memorandum further observes, as with a claim of right, that, "every vessel entering a port in Canada is required immediately to report at the Customs, and the strict enforcement of this regulation as regards United States fishing-vessels has become a necessity in view of the illegal trade transactions carried on by United States fishing-vessels when entering Canadian ports under pretext of their treaty privileges."

It may be said in this connection that the Dominion Government has utterly failed to show that any facts have transpired indicating that United States fishing vessels have engaged in illegal trade since A.D. 1885, or especially that any vessels which have been harassed during the year A.D. 1886 were engaged in such illegal trade, or had any disposition to so engage.

Then proceeds the report further, as follows:—"Under these circumstances a compliance with the Customs Act involving only a report of the vessel cannot be held to be a hardship or an unfriendly proceeding."

That might be so in cases where the vessel was in the inner port, and entering at the Customs involved only sending a boat ashore; but to discuss whether or not putting a guard of two men aboard a peaceful vessel entering only for shelter, and as to which there was no charge that any supplies had been landed or taken on board, and no evidence of intention of doing either, must be regarded as an "unfriendly proceeding," is outside the purposes of this Memorandum.

The fact is, Shelburne Harbour is a long estuary, and the places to which the "Rattler" and other vessels to which the statement refers resorted for shelter was in the lower harbour from 5 to 10 miles from the custom-house. If such vessels touching for shelter, it may be at night, the "Marion Grimes," indeed, at midnight, intending to leave by daybreak for the home port, deeply laden, needing dispatch, are forced to send from 5 to 10 miles to report thus, perhaps, involving a loss of fair wind, indefinite delay, and the spoiling of the cargo, this must be regarded as a great hardship.

The Captain of the "Rattler" described the matter as follows, according to his statement appearing in Executive document No. 19, House of Representatives, 49th Congress, 2nd Session, p. 190:—

"On Tuesday, the 3rd August (having secured a fare of mackerel, and while on our passage home), at 7 P.M., the wind blowing hard, the sea being rough, and our vessel deeply loaded, with two large seine boats on deck, we put into the harbour of Shelburne, Nova Scotia, for shelter. Just inside of the harbour we were brought to by a gun fired from the Canadian cruiser "Terror," Captain Quigley, and came to anchor.

"Immediately a boat from the "Terror," came alongside, and its commander, Lieutenant Bennett, asked why we were in the harbour. My reply was, "for shelter." Then, taking the name of our vessel, names of owner and captain, where from, where bound, and how many fish we had, and forbidding any of the crew to go on shore, he returned to the "Terror" for further instructions.

"Boarding us again after a lapse of perhaps forty-five minutes, he put two armed men on board of us, asked for our crew list, and said if I remained until morning I must enter at the custom-house; but if I could sail in the night to tell his men to fire a revolver, and a boat would be sent to take them off."

In his Report of the 30th September, A.D. 1886, Dominion Fisheries correspondence, p. 139, Captain Quigley reports the same matter as follows:—

"In the case of the "Rattler," she came into Shelburne Harbour on the evening of the 4th

August, at 6 o'clock. She being at some distance from where I was anchored, and it being too rough to send my boat so far, I fired a musket signal for her to round to, which she did, and came to an anchor alongside of my vessel.

"I then sent the chief officer to board her. He reported she put in for shelter. The captain was then told by the chief officer to report his vessel before he sailed, and that he must not let his men on shore, and that I would leave two men on board to see that he did not otherwise break the law."

Subsequent events are not pursued, as the facts concerning them are disputed.

The case of the "Marion Grimes" is described in the despatch from Mr. Bayard to Mr. Phelps of the 6th November. A.D. 1886, Executive document, No. 19, p. 153.

The statement of the captain is found in the same document, p. 162, as follows:—

"On the night of Thursday, the 7th October, the wind blowing almost a gale from the south-east, and a heavy sea running, we came to anchor in the entrance of Shelburne Harbour about midnight for shelter. We were then fully 10 miles from the custom-house at Shelburne. At 4.30 A.M. of the next day we hove up our anchor to continue our voyage, the wind having died away almost to a calm. Just as we had got our anchor on the bow an officer and boat's crew from the Canadian cruiser 'Terror,' which laid off Sand Point, some 3 miles above us, came on board and told me we must come to anchor at once, and go to the custom-house at Shelburne and enter and clear. I at once anchored the vessel, and, taking my boat and two of my crew, started for the custom-house. When we reached the 'Terror,' Captain Quigley ordered me to come on board his vessel, leave my boat and men, and go with him in his boat to Shelburne. I arrived at the custom-house at about 8.30 A.M., and waited until 9 A.M., when Collector Attwood arrived. I then entered and cleared my vessel, and was about to pay the charges and depart, when Captain Quigley entered the office and told the Collector he ought not to clear my vessel, as I had attempted to leave the harbour without reporting, and that the case should be laid before the authorities at Ottawa. Collector Attwood then withheld my papers until a decision should be received from Ottawa. I then tried to find the American Consul, calling at his office three times during the day, and was unable to find him; but in the afternoon found a Mr. Blatchford in the Consul's office, who informed me that my vessel had been fined 400 dollars, and I wired my owners accordingly. At 4 P.M. returned with Captain Quigley on board the "Terror," and when on board he informed me that my vessel was fined 400 dollars."

The vessel was detained at Shelburne until the 12th October, and it is understood she was finally released on payment of 8 dollars for watching.

It is also understood that the facts, as stated by the master of the schooner, are not disputed.

It is not deemed necessary here to repeat the facts of the violent hauling down the flag of the "Marion Grimes," as this was afterwards apologized for by the Dominion authorities.

Subsequent to the claims made against the "Doughty" and the "Adams" for the customs penalties, as already stated, in the early part of May, A.D. 1886, there seems to have been quiet in this matter until early in the following July, when the "City Point," "G. W. Cushing," and "C. B. Harrington" were almost simultaneously seized at Shelburne.

The "City Point" was seized 5 miles below the town on her way up for some repairs, the captain having stopped to fill his water casks as a matter of convenience, and two men from the vessel, residents in that locality, having landed.

The "C. B. Harrington" came to anchor about 7 miles below the town, sent ashore, inquired whether there was any ice for sale, bought none, was soon after seized by the "Terror" and taken to Shelburne.

The "G. W. Cushing" came to anchor about 7 miles below the custom-house, sent ashore to ascertain whether bait could be purchased, finding none, put about to sea again, cast anchor in the evening off the outer lighthouse, about 10 miles below the town, was captured by the "Terror," and also taken to Shelburne.

No pretence was made that any goods were unlawfully landed from these vessels, or that there was any intention of smuggling. The captain of each of them was acting innocently and in accordance with the long-continued custom on that coast; and yet the owners of each were compelled to pay the fine imposed by the 29th section referred to, and never have been able to secure refunding thereof.

The Statutes of Canada with reference to this penalty of 400 dollars provide that the vessel may be detained until the fine is paid. They give the owner no opportunity for hearing, place his vessel on demurrage until he pays the fine, and provide no specific proceedings for the owner by which he may recover back the fine or ascertain his just liability in reference to it.

It is claimed there were numerous other cases quite as technical and severe as these which have been described; but it is not necessary to detail them, as the seizures already cited are admitted to have been made in pursuance of a policy, and the other cases to a certain extent involve disputed questions of fact.

The same remarks may be made as to those hereafter cited illustrating this rigorous policy of A.D. 1886 in other respects, which policy has since been modified only slightly, if at all. It is enough to say that, as soon as the fishing-vessels of the United States fully understood this policy they avoided so far as possible the ports of Nova Scotia, and abandoned the benefit of the Treaty right of shelter in preference to incurring the risk of a harsh application of a system the complications and limitations of which they could not understand.

Landing of Crews of Fishing-vessels prohibited.

The course about this appears in Captain Quigley's Report relative to the "Shilo," dated the 30th September, A.D. 1886, "Fisheries correspondence," p. 140, as follows:—

"In the case of the "Shilo" she came into the harbour about 6 P.M. on the 9th August at Liverpool, and a signal was fired in her case the same as the others.

"When she anchored I boarded her, and the captain reported he was in for water. I told him it was then too late to report at the Customs till morning, and that he must not allow his crew on shore; also that I would leave two men on board to see that he did not otherwise break the law and that my instructions were carried out."

Again, on the same page he states the general policy as follows:—

"In all cases where a vessel puts in for shelter the captain reports, and the rest of his crew are not allowed ashore, as the vessel only puts in for the privilege of a shelter, and for no other purpose.

"When she puts in for water, after reporting, the captain is allowed to take his boats and the men he requires to procure water, and the rest remain on board, after which he is ordered to sea."

In Captain Quigley's Report of 19th January, A.D. 1887, about the "Jennie Seaverns," p. 237, he says his instructions to the captain were:—

"After he reported, no person from his vessel was to go ashore, as he had got all he put in for, namely, shelter, and he reported his vessel putting in with that purpose and no other, not for the purpose of letting his crew on shore."

In the affidavit of Captain Tupper, of the "Jennie Seaverns," p. 236, he says he asked Captain Quigley for permission to visit some of his relations who resided at Liverpool, where his vessel had made harbour on account of a south-east gale and heavy sea, stating to Captain Quigley that he had not seen them for many years, and that this privilege was denied him. He also says some of his relatives came off to see him, and when Captain Quigley saw their boat alongside he sent an officer and boat's crew and ordered them away, and at sundown placed an armed guard aboard his vessel. Captain Tupper continues, that he had complied to the Canadian laws, and had no intention or desire to violate them in any way, and he describes himself, notwithstanding his innocent intention; "as being made a prisoner on board of my own vessel, and treated like a suspicious character."

The Report of the Committee of the Privy Council of the 23rd March, A.D. 1887, p. 234, while it does not contravene the statements of Captain Tupper, affirms the conduct of Captain Quigley, and concludes that Captain Tupper had nothing to complain of, as he came in solely for shelter, and this was not denied him. The Report, however, directs a more moderate course in the future.

It is the purpose of this paper to avoid cases the facts of which are not admitted by the Dominion authorities. Nevertheless, the statement of Captain John McQuinn is worth quoting, although so far as known it never has been admitted or denied by the local officers. He went into Canso in the "Druid," having before transferred to her from another vessel a young man who desired to go to his home at Canso. He says: "when I got into Canso I reported. He was in a hurry to get home to college, but they would not allow me to land him. They allowed it first, but fetched him back, and I finally had to take him aboard and bring him home," that is, to Gloucester.

This statement is found in "Senate Report No. 1683, 49th Congress, 2nd Session," p. 133.

The controverted statements as to refusals of permission to land in case of sickness are not dwelt on; because in the only case where apparently the facts are not controverted, namely, the "Craig" at Brooklyn, Nova Scotia, the action of Captain Quigley was overruled in the interests of humanity by his superior officer, Captain Scott.

Refusals of Petty Amounts of Provisions.

The circumstances of these cases so clearly indicate that they were in pursuance of a general policy, only two need be cited.

It appears by the Report of the Privy Council of the 31st March, A.D. 1887, p. 241 of the "Dominion Fisheries correspondence," that the Collector at Port Hood refused the "Mollie Adams" on her homeward voyage on the 25th October, A.D. 1886, permission to purchase a half-barrel of flour; and Mr. Attwood, Collector at Shelburne, by his Report of the 5th January, A.D. 1887, p. 235, on the 6th October, declined to permit the "Laura Sayward," then homeward bound from the banks, to purchase seven pounds of sugar, three pounds of coffee, one barrel of potatoes, and two pounds of butter without authority from Ottawa. Between 4 and 5 o'clock in the afternoon such authority was telegraphed for, and no reply having been received the next morning at half-past 6, the wind being fair with a good breeze, the vessel concluded to wait no longer. The Collector adds Captain Rowe said he had plenty of flour, fish, and other provisions sufficient for the voyage home, that the collector did not consider it a case of actual distress, and that all the vessel really needed was water.

Shipment of Fish in Bond.

The XXIXth Article of the Treaty of Washington of A.D. 1871 is understood to still remain in force. Under that Article, and even independently of it, the practice of delivering at ports of the United States merchandize intended for points in the Dominion, and at ports in the Dominion

of merchandize intended for points in the United States, has long been in the regular course of business; and until A.D. 1886 no discrimination was made in the ports of the Dominion against fishing-vessels or their catch. In A.D. 1886 and ever since both the Treaty and law, so far as this matter is concerned, remained the same as it was before the United States denounced various Articles of the Convention. So large was this commerce that it appears by the Reports of the Consuls of the United States, No. 82, August, A.D. 1887, p. 219, that at Port Mulgrave alone there were transferred during the fishing season of A.D. 1885, to the Intercolonial Railway from United States fishing-vessels, and carried into United States ports, equal to 140 car-loads, or 2,235,600 lbs. of fish.

In A.D. 1886 further transshipments of this sort were forbidden, and have never since been allowed, as appears in the Report of the Privy Council of the 14th August, A.D. 1886, p. 118, of the "Correspondence relative to the Fisheries, A.D. 1885-87."

The question first arose with reference to the "Novelty" who offered her cargo of fish at Pictou for transshipment as in the previous course [case?]. The Report says the "Novelty" was in character and purpose a fishing-vessel, and as such came under the provision of the Treaty of A.D. 1818; and the Report in substance refused to give her the benefit of the unlimited general phraseology of the XXIXth Article of the Treaty of Washington.

Poaching by American Vessels.

The Dominion authorities, when pressed on account of the measures hereinbefore set out, have attempted divers justifications therefor.

1. That given by the Marquis of Lansdowne in his despatch of the 11th May, A.D. 1886, already cited, namely, that if American vessels are compelled "as soon as they run short of bait to return from Canadian banks to an American port, they would lose a great part of their fishing season and be put to considerable expense and inconvenience."

The truth and force of this proposition are not denied. Its effect, if applied as a general principle to control the relations of Christian nations, is to be judged of.

2. That since the denouncing of the Treaty of Washington and the consequent loss by the fishermen of the United States of any right to fish within limits prohibited by the Treaty of 1818, the rigid enforcement of the Customs law is necessary to prevent illegal trading.

No evidence, however, is offered showing a disposition on the part of the United States fishing-vessels to indulge in illegal trading, or that if there was such disposition, there had been any increase of it since A.D. 1885, or to overcome the presumption that there is less danger of illegal trading when the United States fishing-vessels are excluded from the 3-mile limit than when they are freely admitted to it.

3. It is said by the Minister of Justice of Canada in his Report of the 22nd July, A.D. 1886, —see "Fisheries Correspondence," p. 150— that "the purpose was to prevent the fisheries from being poached on, and to preserve them to the subjects of His Britannic Majesty in North America not only for the pursuit of fishing within the waters adjacent to the coast, which can, under the law of nations, be done by any country, but as a basis of supplies for the pursuit of fishing in the deep sea."

This embraces two propositions, the second of which is the same as that of the Marquis of Lansdowne already cited, and on the first of which the following facts seem pertinent:—

In A.D. 1886 the Dominion Government employed as fisheries-police cruisers the schooner "L. Howlett," schooner "Critic," schooner "F. E. Conrad," schooner "Terror," schooner "General Middleton," schooner "Lizzie Lindsay," steamer "Lansdowne," steamer "Acadia," and perhaps others; and it is understood that the fleet in the season of 1887 was even larger. Yet during both seasons only one poacher has been captured, namely the "Highland Light," though two other vessels were detected and their boats and seines taken; and it may well be questioned whether the case of the "Highland Light" was one of intentional violation of the limits, although undoubtedly the vessel was liable to forfeiture by the letter of the law, and her condemnation was not made the ground of international reclamation.

The fisheries within the prohibited waters are the possessions of the Dominion. These possessions like all other property carry with them the danger of "thieves, moth, and rust," against which the Dominion ought to be able to protect itself without violating the rules of good neighbourhood, even though to accomplish this involves trouble and expense. It ought not to expect to bear any less burden than other rich inheritors living in Christian communities.

Unfriendly and Extraordinary Legislation.

Some features of the peculiarly harsh Dominion and provincial legislation have already been stated. In addition thereto, attention is called to the peculiar provision of the 8th section of the Act of A.D. 1868, which permits delivery of the property seized on bail only "with the consent of the person seizing the property;" although there has been no practical difficulty on this score during the last two years.

Attention is also called to the very extraordinary provisions peculiar to this statute concerning remedies against the seizing officer, and particularly the provision which gives the owner of the property in fact but two months within which to bring his suit.

By the 14th section there is an absolute limitation of three months, and by the 13th section no action can be brought until one month after notice. All this was undoubtedly intended to practically bar actions for unlawful seizure by non-resident owners; because these provisions, as well as all the other provisions to which attention has hereinbefore been called, find their origin in

the Nova Scotia Act of the 12th March, A.D. 1836, passed at a time when methods of communication and delays arising therefrom were such as to inevitably defeat proceedings for unlawful seizures in the remote parts of Nova Scotia, especially near the close of the season.

Attention is also called to the Dominion Act approved the 24th December, A.D. 1886, which was protested against in Mr. Bayard's note to Her Majesty's Minister at Washington, of the 29th May, A.D. 1886, already referred to; and is commented on by the note of Mr. Phelps to the Marquis of Salisbury of the 26th January, A.D. 1887, in the following language:—

“Since the receipt of Lord Iddesleigh's note the United States Government has learned with grave regret that Her Majesty's assent has been given to the Act of Parliament of Canada, passed at its late Session, entitled ‘An Act further to amend the Act respecting fishing by foreign vessels,’ which has been the subject of observation in the previous correspondence on the subject between the Governments of the United States and of Great Britain.

“By the provisions of this Act any foreign ship, vessel, or boat, whether engaged in fishing or not, found within any harbour in Canada, or within 3 marine miles of ‘any of the coasts, bays, or creeks of Canada,’ may be brought into port by any of the officers or persons mentioned in the Act, her cargo searched and her master examined upon oath touching the cargo and voyage, under a heavy penalty if the questions asked are not truly answered; and if such ship has entered such waters ‘for any purpose not permitted by Treaty or Convention, or by the law of the United Kingdom, or of Canada, for the time being in force, such ship, vessel, or boat, and the tackle, rigging, apparel, furniture, stores, and cargo thereof shall be forfeited.’”

The phraseology of this Act is so sweeping and general, that its enforcement under high political pressure in Canada would probably involve a conflict with the United States of a serious character.

The Marquis of Lansdowne, in his despatch to Earl Granville of the 19th May, A.D. 1886, Dominion Fisheries Correspondence, p. 55, points out the purposes for which this Act was intended. The language of the Act goes far beyond any of those purposes.

A comparison between this Act and Imperial legislation appears in the Appendix.

The United States has not failed at every step to remonstrate urgently against all this unfriendly legislation, which originated, as already stated, in Nova Scotia in A.D. 1836.

The diplomatic correspondence shows sufficiently well that the Act was not known in the United States until the series of difficulties commenced in A.D. 1839. It appears by the letters of the Acting Secretary of State of the 10th July, A.D. 1839 (Senate document, 1st Session, 32nd Congress, vol. x, p. 100), that the United States then claimed seizures were being made for causes of a trivial character, and with a rigour not called for by circumstances; but the despatch proceeds to express confidence that justice will ultimately be done the sufferers by Colonial Courts, which expression subsequent correspondence shows us was in ignorance of the peculiar provisions of the Statute of A.D. 1836. This became known at Washington a few months afterwards, as appears by the purport of Mr. Forsyth's despatch to Mr. Stevenson, of the 20th February, A.D. 1841, same volume, p. 106, wherein he used the following language:—

“In short, some of these Rules and Regulations are violations of well-established principles of the common law of England, and of the principles of all just Powers, and of civilised nations, and seem to be expressly designed to enable Her Majesty's authorities, with perfect impunity, to seize and confiscate American vessels, and to embezzle, almost indiscriminately, the property of our citizens employed in the fisheries on the coasts of the British possessions.”

This was communicated to Lord Palmerston by Mr. Stevenson, the 27th March, A.D. 1841, p. 115.

Subsequently the Honourable Edward Everett, Minister of the United States at London, in his note of the 9th October, A.D. 1844, to the Earl of Aberdeen, p. 132, reasserts the complaint of Mr. Stevenson, and proceeds as follows:—

“The undersigned again feels it his duty, on behalf of his Government, formally to protest against an Act of this description. American vessels of trifling size, and pursuing a branch of industry of the most harmless description, which, however beneficial to themselves, occasions no detriment to others, instead of being turned off the debatable fishing-ground—a remedy fully adequate to the alleged evil—are proceeded against as if engaged in the most undoubted infractions of municipal law or the law of nations, captured and sent into port, their crews deprived of their clothing and personal effects, and the vessels subjected to a mode of procedure in the Courts which amounts, in many cases, to confiscation; and this is done to settle the construction of a Treaty.

“A course so violent and unnecessarily harsh would be regarded by any Government as a just cause of complaint against any other with whom it might differ in the construction of a national compact. But when it is considered that these are the acts of a Provincial Government with whom that of the United States has and can have no intercourse, and that they continue and are repeated while the United States and Great Britain, the only parties to the Treaty, the purport of whose provisions is called in question, are amicably discussing the matter with every wish on both sides to bring it to a reasonable settlement. Lord Aberdeen will perceive that it becomes a subject of complaint of the most serious kind.”

It is to be observed that while no man was ever more guarded and precise in his expressions than Mr. Everett, nor more judicial in the performance of the functions of the distinguished offices which he held, he puts forth these quoted expressions, not merely under instructions, but as representing his personal sentiments.

The citations made indicate that all this legislation, when initiated, was earnestly protested against by the United States, both in the crisis following the legislation of A.D. 1836 and also in A.D. 1886.

Practical Construction of the Treaty.

In the same volume. x, p. 92, will be found a Report from the Acting Secretary of State to the President of the United States of the 14th August, A.D. 1839, containing a summary history of matters affected by the Convention of A.D. 1818, from the execution of that Treaty to the date of the Report. This says: "It does not appear that the stipulations in the Article above quoted have, since the date of the Convention, been the subject of conflicting questions of right between the two Governments." But, it continues, that the committing of the execution of the Treaty to the hands of subordinate British Agents "might naturally be expected to give rise to difficulties growing out of individual acts on either side;" and it concludes that the recent seizures had their origin in such causes.

This Report, which seems to be carefully drawn and candidly expressed, bears with it persuasive evidence that down to the period in which it was written, there had been no pretensions whatever of the character which were made near that time by the provincial authorities.

This is made more apparent from the despatch of Mr. Stevenson to Lord Palmerston of the 27th March, A.D. 1841, already referred to, wherein it is said, p. 114, as follows: "The fishermen of the United States believe, and it would seem they are right in their opinion if uniform practice is any evidence of correct construction, that they can with propriety take fish anywhere on the coast of the British provinces, if not nearer than 3 marine miles to land, and have the right to resort to their ports for shelter, wood, and water."

This last expression as to shelter is in reply to the new pretence that such vessels could not resort to provincial ports for shelter "unless in actual distress."

So again Mr. Everett, in his note to Lord Aberdeen, of the 10th August, A.D. 1843, p. 122, referring to the expectation of the President as to an early and equitable adjustment, said as follows:—

"This expectation is the result of the President's reliance upon the sense of justice of Her Majesty's Government, and of the fact that, from the year 1818, the date of the Convention, until some years after the attempts of the provincial authorities to restrict the rights of American vessels by Colonial legislation, a practical construction was given to the 1st Article of the Convention in accordance with the obvious purport of its terms, and settling its meaning as understood by the United States."

The same assertion of fact is made in Mr. Upshur's despatch to Mr. Everett of the 30th June, A.D. 1843, p. 117, and in Mr. Everett's note to Earl of Aberdeen, of the 25th May, A.D. 1844, pp. 123-7.

It is not understood that the Imperial authorities, in reply to these oft-repeated statements as to the practical construction of the Treaty during this period of about twenty years contested them, their replies being limited to thoroughly reasoned arguments about the meaning of the Treaty as drawn from its very terms.

Apparently, none of the pretensions which originated at this period from A.D. 1836 to A.D. 1844 came from Great Britain herself; and it is undoubtedly to this fact that the Acting Secretary alluded in the expression which we have quoted from his Report of the 14th August, A.D. 1839. They were all provincial. Some of them were quite promptly rejected by the Imperial authorities, others never have been fully acquiesced in, and others were acquiesced in only after considerable hesitation and delay.

1. It was claimed, as is set out in Mr. Stevenson's note to Lord Palmerston of the 27th March, A.D. 1841, already referred to, that United States vessels were to be excluded from British ports unless "in actual distress," and that the provincial authorities had a right to warn them to depart or get under way whenever they should suppose they had remained a reasonable time.

2. It was also claimed, as appears by the questions submitted at the request of the authorities of Nova Scotia to the Law Officers of the Crown in A.D. 1841, that fishermen had no right to purchase wood or obtain water, except under the circumstances of having a full supply in their home ports and running short through the contingencies of the sea. The Law Officers of the Crown summarily rejected this proposition.

3. What is known as the "headland" proposition, which was covered by the second of the questions referred to, where the word "headland" was used, leading the distinguished legal advisers in their reply to assume that the word was found in the Treaty.

In a note to Phillimore's "International Law" vol. i, p. 233, second edition, he says: "The term 'headland,' however, does not occur in the treaty. The Law Officers probably gave their opinion on a statement of the colonists in which the word did occur."

These early controversies do not seem to contain clear evidence that the precise question was raised which is to-day under discussion, namely, whether by the *terms of the Treaty* fishing-vessels of the United States waived and abandoned the rights which, in the event of there being no treaty, might come to them in common with merchant-vessels, as the relations of Canada and the United States became more and more close, and as views about international exchanges of traffic and hospitality became more and more enlightened.

There seems to be nothing in this early correspondence to indicate that there was any clear claim made by the provincials, except as to the rights which fishing-vessels of the United States were guaranteed by the Treaty of A.D. 1818, and as to the limitations which that treaty imposed on those rights. Indeed, other considerations and questions could hardly have been expected at that period, as commercial relations between Nova Scotia and the United States had commenced but a few years before, and were even then in an inchoate condition.

There is nothing to show that there was any discussion of the precise proposition whether or not fishing-vessels might purchase supplies at provincial ports the same as merchant-vessels might

provided they complied with the customs laws and relied on the same usages as merchant-vessels did, and subjected themselves to the same limitations and restrictions.

The attention of Nova Scotia was, however, later called to this precise question in the correspondence between Captain Daly and the late Provincial Secretary, Mr. Howe, as follows :—

“ PROVINCIAL SCHOONER “DARING,” GUT OF CANSO,
“ August 28th, 1852.

“ SIR,

“ On my arrival here this morning from Port Hood I found an American fishing-schooner taking on board empty barrels for her fishing voyage, and as the thing is becoming quite a practice, and as the question has been several times asked me if it can be done, to which I declined giving any answer until I have had the opinion of the Government on the subject.

“ I have been told that more than one American vessel has landed a load of herrings from Magdalen Islands in the strait, and fitted out again for the mackerel fishery.

“ Our fishermen complain that American vessels, with all their other advantages, should be allowed to fit out so convenient to the fishing ground. As the hook and line fishery has not as yet commenced on Cape Breton shore, I will await your answer in visiting all parts of the strait and Arichat, calling at Plaister Cove on mail day, where you will please direct.

“ I am, &c.,
(Signed) “ JAMES DALY.

“ The Honourable Joseph Howe,
“ Provincial Secretary, Halifax.”

“ PROVINCIAL SECRETARY’S OFFICE,
“ September 1st, 1852.

“ SIR,

“ Referring to your letter of the 25th ult., I beg to acquaint you that American vessels which have regularly entered at a port where there is a revenue officer can land fish or purchase barrels ; but they have no right to an irregular use of this privilege at places where no officer is stationed.

“ I am, &c.,
(Signed) “ JOSEPH HOWE.

“ Captain Daly,
“ Commanding schooner “ Daring.””

The Secretary in his reply uses only the words “ American vessels ;” but, as Captain Daly was asking specifically about an American fishing-schooner, and as there could be no possible doubt that merchant-vessels might lawfully do the things in the manner stated in the reply of the Secretary, it cannot be questioned that he in his reply also intended to cover fishing-vessels.

As appears by the Appendix attached hereto relative to “ warnings” and Circular 371 in A.D. 1886, so in A.D. 1870, four years after the expiration of the first Reciprocity Treaty, and also after the Dominion Government concluded to refuse licences to American fishing-vessels, the objection made with reference to such vessels was simply that they should be prohibited from fishing.

This appears first in the note of the Minister of Justice of Canada, dated the 8th April, A.D. 1870, p. 408, Foreign Relations of the United States, 3rd Session, 41st Congress, wherein he states that “ henceforth all foreign fishermen will be prevented from fishing in the waters of Canada ;” and this letter was communicated by Sir Edward Thornton to Mr. Fish the 14th April, A.D. 1870. So in the instructions from the English Admiralty in May, A.D. 1870, appearing pp. 415 and 416, which were communicated on the 26th May, A.D. 1870, by Sir Edward Thornton to Mr. Fish, the vessels of Great Britain were expressly directed “ not to seize any vessel unless it is evident and can be clearly proved that the offence of fishing has been committed and the vessel itself captured within three miles of land.”

It may, perhaps, be justly said that in giving these instructions and the other instructions which we hereafter copy, the Imperial Government was seeking the friendly side ; but, nevertheless, such instructions in connection with the other matters to which this paper calls attention are certainly confirmatory proof, even if of slight weight.

It seems that, notwithstanding these official communications from Great Britain to the United States, and without notice, the fishing vessels of the United States were later in the season ordered off, and prohibited from taking bait and supplies ; and in consequence thereof, the Assistant-Secretary of State, by his Circular under date of the 13th September, A.D. 1870, appearing p. 427, directed an enquiry as to the practice with reference to shipping fish in bond, and with reference to obtaining supplies previous to the date of the first Reciprocity Treaty.

Mr. Jackson, Consul at Halifax, in his report of the 3rd October, A.D. 1870, p. 428, replied as follows :—

“ In no Act is there any prohibition against fishing-vessels visiting colonial ports for supplies. The silence of all the Acts upon this point, and the practice of more than half-a-century under Imperial laws framed expressly for the purpose of carrying into effect the provisions of the Treaty, justify the conclusion that no such prohibition was contemplated. This view of the subject derives additional support from the fact, that at the time of the adoption of the Treaty the mackerel fishing as now carried on was comparatively unknown.

“ During the intervening years between 1818 and 1870, throughout all the controversies between the United States and Great Britain on the subject of the fisheries, no question until the

present had arisen in reference to supplies. They were always readily procured in colonial ports, and the trade, being profitable to the people of the Colonies, was facilitated by the local authorities."

And again, on p. 431 in the same report, he says the proceedings were "contrary to all former practice," and that "these rigorous measures were now for the first time adopted."

The Consul-General at Montreal, on the 3rd November, A.D. 1870, p. 433, speaks of these matters as "acts which the captains of American vessels had been permitted to do from time immemorial, as well before as subsequent" to the Treaty.

The "Sessional Papers of Canada," vol. iv, 1871, contain in many places indubitable evidence of the practical construction given to the Law and Treaty on this point, as follows:—

Lieutenant Cochrane said in a letter of the 30th September, A.D. 1870:—

"The Collector at St. Andrew's informed me that the custom-house officers had no orders against allowing American fishing-vessels to go in for salt or stores of any description whatever."

The Lieutenant-Governor of Prince Edward's Island, 23rd November, 1870, speaking of the American fishing-vessels purchasing supplies, said:—

"The people look forward with satisfaction to re-opening their ports next summer to their remunerative and welcome visitors."

Lieutenant Cochrane again wrote, 18th November, A.D. 1870:—

"The inhabitants of the Nova Scotia coast, from St. Mary's Bay to Cape Sable, I believe, prefer the Americans coming in, as they are in the habit of selling them stores, bait, and ice."

Commander Bateman wrote, 1st November, A.D. 1870:—

"The Collectors of Customs at the places I have been at inform me that they have no instructions to prevent American fishing vessels from buying supplies, as ice, bait, &c."

Commander Poland wrote, 18th November, A.D. 1870, from Charlotte Town:—

"Every facility is given in the ports of this island to fishermen for obtaining and replenishing their stock of stores and necessaries for fishing."

In the despatch from Earl Kimberley to Lord Lisgar of the 17th March, 1871, the following appears:—

"I think it right, however, to add that the responsibility of determining what is the true construction of a Treaty made by Her Majesty with any foreign Power must remain with Her Majesty's Government, and that the degree to which this country would make itself a party to the strict enforcement of Treaty rights may depend not only on the liberal construction of the Treaty, but on the moderation and reasonableness with which those rights are asserted."

And in another despatch from the same to the same of the 16th February, 1871, appears the following:—

"The exclusion of American fishermen from resorting to Canadian ports, except for the purpose of shelter and of repairing damages therein, purchasing wood, and of obtaining water, might be warranted by the letter of the Treaty of 1818 and by the terms of the Imperial Act 59 Geo. III, cap. 38; but Her Majesty's Government feel bound to state that it seems to them an extreme measure, inconsistent with the general policy of the Empire, and they are disposed to concede this point to the United States' Government under such restrictions as may be necessary to prevent smuggling, and to guard against any substantial invasion of the exclusive rights of fishing which may be reserved to British subjects."

Benefits which Canada and especially the Maritime Provinces are receiving from the United States in Matters of Fisheries.

Bait.—Clams are the best bait for hand-line fishing for cod on the Grand Banks and elsewhere. The maritime provinces have no clams, and the need of the Dominion fishermen for clam bait is greater and the quantities required by them in excess of the need and use of Dominion herring bait by fishing-vessels of the United States.

As clam bait is by the Tariff Customs Law of Canada free, it seems to come into the Dominion without much care as to reporting it, and the extent of the transactions is not shown by the Dominion statistics.

The amount of bait exported from only the port of Portland, Maine, direct to ports of Nova Scotia for each of the seasons A.D. 1885, 1886, and 1887, are shown by the copy of the statement of Josiah Chase, Deputy Collector of Customs at the Port of Portland, in the Appendix; and other such exports from the United States to the maritime provinces also appear there.

Free Fish.—Canada and Newfoundland enjoyed the privilege of exporting to the United States, free of duty, in the year ending the 30th June, 1886, to the value of 1,065,381 dollars, and in the year ending the 30th June, 1887, to the value of 1,155,674 dollars, according to the statement appearing in the Appendix headed "Imports of fish into the United States free of duty." These amounts exceed the amounts of imports of fish for the corresponding periods subject to duty.

Transshipment in Bond.—By the ruling of the Treasury Department of the United States, large quantities of Dominion fish in ice and Dominion frozen fish are admitted free of duty into the United States. Accordingly, fresh mackerel are caught in the Gulf of St. Lawrence by Dominion fishermen, iced, transferred by them to rail at Port Mulgrave, Pictou, and other ports on the Gulf of St. Lawrence, and shipped free of duty to Portland, Boston, and other points in the United States, notwithstanding the same privilege is refused fishing-vessels of the United States as shown in this statement. Fish are also frozen at various points of the Dominion as far west as

the Manitoba Lakes and as far east as Margaree River in Cape Breton, shipped by rail and vessel and distributed over the whole eastern section of the United States free of duty, competing with and driving out fish cured by United States' fishermen.

An explanation of this appears in the Appendix.

Leniency of Customs Authorities to Dominion Vessels in the Ports of the United States.—This is sufficiently made clear and practically illustrated by the copies of statements of Lewis B. Smith, Deputy Collector, and William O. McCobb, appearing in the Appendix.

General Reciprocal Benefits.—Substantially all the agricultural products of New Brunswick and Nova Scotia find their market in the United States. It will also be found, notwithstanding there is not any Treaty of Reciprocity nor reciprocal legislation as between the Dominion and the United States, that, nevertheless, the total values imported from the Dominion into the United States for the year ending the 30th June, A.D. 1886, free of duty, was 12,005,563 dollars, as against dutiable merchandize 25,309,103 dollars; and that reverse imports for the same period free of duty were 15,198,167 dollars, against, subject to duty, 29,659,876 dollars.

These values are in excess of the average free imports under the Reciprocity Treaty of A.D. 1854.

These figures are not given as attempting to indicate any balance of benefits *pro* or *con*, but as showing that there has grown up a practical reciprocity of great value, which will inevitably increase with the continuance of friendly relations, and will be destroyed under reverse conditions.

Port Dues, Compulsory Pilotage, and other Charges of like Class.

It is understood that light duties and fees for buoy-service have been exacted from vessels putting in for shelter at sundry ports in Nova Scotia.

The Hon. M. H. Phelan, Consul-General of the United States at Halifax, Nova Scotia, wrote, on the 26th August, A.D. 1886, as follows:—

“The schooner ‘City Point,’ a fishing-vessel belonging at Portland, Maine, was driven into Halifax by the late storm, with sails torn and otherwise in need of repairs. She reported at the Custom-house, I accompanying the master, and there I paid 1 dollar for harbour duties, 1 dollar for signal charges, and 50 cents for making out papers. I duly entered my protest against all these charges.”

Before the Committee of the Senate of the United States on Foreign Relations, as appears by Senate Report No. 1683, 49th Congress, 2nd Session, p. 169, the fishing-schooner “Ontario” put into St. John’s, Newfoundland, in June, A.D. 1886, paid light duties, 24 cents a ton on 86 tons, water-rates, 5 cents a ton on 86 tons; pilotage inward and outward, 7 dols. 50 c., although she neither took nor needed water or pilotage, and, it is understood, put in for shelter.

It is understood that light duties are frequently charged United States fishing-vessels seeking shelter in the waters of Newfoundland.

Efforts to obtain information as to the various charges made in Dominion ports have not resulted very satisfactorily, and either there is a lack of uniformity in the various ports, or our efforts to obtain information have not been sufficiently thorough.

Mr. Phelan to Mr. Adee.

UNITED STATES CONSULATE-GENERAL, HALIFAX, NOVA SCOTIA,
November 8th, 1887.

SIR,

Referring to my despatch, dated the 3rd September last, on the liability of American fishing-vessels for pilotage upon entering a Canadian port for shelter under the Treaty of 1818, as stated in that despatch, I addressed the following communication to the Minister of Marine and Fisheries:—

“UNITED STATES CONSULATE-GENERAL, HALIFAX, NOVA SCOTIA,
September 1st, 1887.

“Hon. George E. Foster,

“Minister Marine and Fisheries, Ottawa.

“SIR,

“On the 19th ultimo five American fishing-vessels entered the outer harbour of Halifax and anchored under Meagher’s Beach for shelter. They entered at the Halifax Custom-house, and on the following day applied for clearances, which were refused because they had not paid pilotage, amounting to 8 dollars for each vessel. The captains say they did not need a pilot, that they came in for shelter only, which was within their Treaty rights. An explanation was made to the Secretary of the Pilots’ Commission, who replied that all foreign vessels of over 80 tons were liable for pilotage, and that he could not clear the vessels until it was paid. This Office could not acquiesce in this ruling, and the following telegram was sent to you:

HALIFAX,
August 20th, 1887.

“‘Hon. Minister Foster, Ottawa,

“‘Are American fishing-vessels anchoring at the outer entrance Halifax Harbour for shelter liable for pilotage when use of pilot not required, and when such pilotage not exacted of domestic vessels of same class?’

(Signed) “‘M. H. PHELAN,’

"After waiting a reasonable time for a reply, and not wishing to detain the vessels, this Consulate-General guaranteed the pilotage if, after an examination, it was found to be conformable to Treaty rights. The vessels were accordingly cleared. The Pilot Commissioners held a meeting and sustained the Secretary in his rulings, but suspended further action pending a decision from you. As the question has arisen several times it should be settled, and with that end in view, I would ask you to pass upon the question submitted in the telegram above.

"I am, &c."
(Signed) "M. H. PHELAN
Consul-General, United States."

To-day I received the following reply:—

"MARINE DEPARTMENT, OTTAWA,
"November 4th, 1887.

"SIR,

"I am directed by the Minister of Marine and Fisheries to acknowledge the receipt of your letters of the 1st and 21st September last relative to certain pilotage dues collected from United States fishing-vessels in the port of Halifax, and your objections to the payment of the same. From a careful examination of the papers submitted, the Minister is of the opinion that the Pilotage Commissioners acted in this case entirely within the scope of their powers as defined by chapter 80, Revised Statutes of Canada, and by Rules framed thereunder and approved by Order in Council.

"As to your contention that United States fishing-vessels seeking shelter in Canadian ports under the provisions of the Treaty of 1818 can claim exemption from pilotage dues, the Minister is of the opinion that all vessels, whether foreign or not, coming within the limits of a pilotage district, and not exempted by the above-mentioned Act or by the Pilotage Commissioners, under Regulations approved by Governor-General in Council, are liable to a compulsory payment of pilotage dues. The mere fact of the recognition by a Treaty of the right of vessels to come into a harbour for shelter is not of itself a ground of exemption from the payment of such dues.

"I am, &c.,
(Signed) "JOHN HARDIE,
Deputy Minister of Marine."

The above practically adds a proviso to the Treaty of 1818 something like this:—

"Provided such vessels shall pay pilotage, signal, entrance, harbour and such other dues as the Canadian Government may think proper to impose.

"Canadian vessels of 120 tons and under are exempt from pilotage and all other dues. The pilotage claimed from these vessels is in my hands. I do not think they are liable, and submit the question as to payment to the Department. The right claimed by Canada to impose burdens on our fishing-vessels entering her harbours under the Treaty, which are denied all commercial privileges, should be settled, and the fact should be made known that Canada has one law for American vessels and another for her own of the same class."

I am, &c.,
(Signed) M. H. PHELAN.

APPENDIX.

Memorandum concerning "Warnings" from the Minister of Marine and Minister of Fisheries at Ottawa in A.D. 1886.

As appears in the text, the first knowledge of these had by the State Department at Washington was about the 29th May, A.D. 1886, which was several weeks after the "Adams" and "Doughty" were seized, the "Adams" having been seized on the 7th May and the "Doughty" on the 17th May.

The following references are to the Dominion volume of "Correspondence relative to the Fisheries Question, A.D. 1885-87":—

Page 26, it appears the Marquis of Lansdowne wrote Earl Granville on the 25th March, A.D. 1886, inclosing copy of "warning," which his despatch says "was published;" but where published, or to what extent, is not known.

He also inclosed instructions which had been issued to the fisheries officers, &c., dated the 19th March, A.D. 1886; which instructions, as appears by the index of the volume, were confidential. At any rate, it is believed that they were not known either to the United States or its vessels.

The "warning" inclosed purports to bear date the 5th March, A.D. 1886, was signed by the Minister of Marine and Fisheries, and warns all foreign vessels not only from fishing, but from entering except for the purposes specified in the Convention of A.D. 1818.

On the 29th May, A.D. 1886, p. 64, Mr. Bayard called the attention of Her Majesty's Minister at Washington to a copy of Circular No. 371, described below.

June 3, A.D. 1886, p. 66, cables were passed to Earl Rosebery by Mr. Phelps concerning the same matter, and Earl Granville cabled the Marquis of Lansdowne for the purport of Circular No. 371.

This cabling seems to have called the attention of the Home Government to the "warning"

purporting to bear date the 6th March, for, on the 4th June, p. 66, a cable is sent to the Marquis of Lansdowne criticising it.

This is followed by correspondence which appears pp. 66 and sequence, and resulted in the amended "warning," appearing p. 70. This sets out the provisions of the Convention of A.D. 1818, certain provisions of Statute law, avoids specific information, and ends merely with the words "Of all which you will take notice and govern yourself accordingly."

May 7, A.D. 1886, p. 31, the Commissioner of Customs also issued a "warning" or circular, known as "Circular No. 371, and which probably was the only circular obtaining general publicity. As this bears date the day the "Adams" was seized, of course it could not have come to her knowledge. This also seems to have been criticised in the correspondence already referred to, and the effect of it in its amended form was stated by the Marquis of Lansdowne, p. 70, as follows:—"Every fishing-vessel belonging to the United States found contravening the existing Canadian Statutes will, if not departing within twenty-four hours after receiving such warning, be detained under the conditions prescribed."

Subsequently the circular was further amended on or about the 12th July, A.D. 1886, as appears p. 52; and then, for the first time, it was made specifically clear that if a vessel had been fishing or preparing to fish, the twenty-four hours were not to be allowed her, but an officer was to be put aboard at once.

All these circulars use the language of the Statute, "preparing to fish within 3 marine miles of the shore," and not the language now claimed as the construction of the Statute, "preparing within 3 marine miles of the shore to fish." In any event they were contradictory, inconsistent, and misleading.

Exports of Clam Bait to the Dominion.

STATEMENT of Clams exported from the Port of Portland, Maine, to the Dominion of Canada, during the years of 1884, 1885, 1886, and 1887.

Date.	Name of Vessel.	Packages and Contents.	Value.	Whence Exported.
1884				
	British schooner—	Barrels.	Dollars.	
March 24	Hannah Eldredge	398	902	Cape Island, N.S.
April 2	Divina	657	3,942	Lockport, N.S.
" 2	Nova Stella	560	3,920	Ditto.
June 11	Eider	720	5,040	Ditto.
" 11	Ocean Bride	630	4,421	Ditto.
" 21	Annie M. Bell	180	1,638	Pubuico, N.S.
" 27	Matilda	94	720	Cape Island, N.S.
1885				
March 28	Ellen Maud	686	4,459	Lockport, N.S.
" 30	Hannah Eldridge	251	1,493	Barrington, N.S.
April 10	Edward T. Russell	835	6,428	Lockport, N.S.
" 20	Blanche	97	631	Lunenburg, N.S.
May 29	Bridgewater Packet	870	5,655	Lockport, N.S.
June 1	Ocean Bride	640	3,840	Ditto.
" 8	Royal Charlie	185	1,110	Barrington, N.S.
1886				
March 24	Alice Louise	223	1,227	Ditto.
" 31	Nova Stella	363	1,978	Lockport, N.S.
April 5	Ella Maud	717	3,944	Ditto.
" 8	May	120	710	Shelburne, N.S.
May 29	April	995	5,320	Lockport, N.S.
June 2	Nina Page	230	1,265	Barrington, N.S.
1887				
April 4	Ella Maud	499	2,679	Lockport, N.S.
" 7	Clifford	295	1,623	Ditto.
May 23	Ella Maud	544	2,856	Ditto.
" 26	Minnie May	235	1,175	Port Medway, N.S.
		11,024	65,976	

DISTRICT OF PORTLAND AND FALMOUTH, PORT OF PORTLAND, MAINE,
October 17th, 1887.

I, Josiah Chase, Deputy Collector of Customs for the Port of Portland, Maine, hereby certify that the customs records aforesaid show exportations of clams in barrels from this port to ports in the Dominion of Canada, during the years 1884, 1885, 1886, and 1887, according to the foregoing statements.

(Seal) (Signed) JOSIAH CHASE,
Deputy Collector of Customs.

CUSTOM-HOUSE, BOSTON, MASS., COLLECTOR'S OFFICE
November 2nd, 1887.

EXPORTATION of Clams (bait) from the Port of Boston to the Dominion of Canada during the fiscal years ending June 30, 1885, 1886, and 1887, respectively.

July 1, 1884, to June 30, 1885.

Nationality.	Rig.	Name of Vessel.	Barrels.	Value.
American	Steamer	Carroll	391	Dollars. 2,427
"	"	Worcester	598	4,415
British	Brig	Clio	106	606
"	"	Clyde	97	533
"	Schooner	Cyrene	60	450
"	"	Henrietta	61	384
"	"	Mary E. McDougal	20	125
"	"	Narcissus	127	762
"	"	Rival	50	50
"	"	Virgillia.. ..	105	600
Total			1,615	10,352

July 1, 1885, to June 30, 1886.

American	Steamer	Carroll	315	1,781
"	"	Worcester	190	1,051
British	"	Alpha	100	100
"	"	Dominion	120	805
"	"	Linn O'Dee	100	600
"	Brig	Diadem	50	300
"	"	W. E. Stowe	223	1,115
"	Schooner	Amanda.. ..	60	300
"	"	Blanche O	20	120
"	"	Blizzard	233	1,398
"	"	D. A. Maher	45	250
"	"	Louise	90	450
"	"	Mary Alice	110	550
"	"	Narcissus	224	1,344
"	"	S. G. Irwin	25	125
Total			1,905	9,789

July 1, 1886, to June 30, 1887.

American	Steamer	Carroll	504	2,869
"	"	Worcester	165	1,050
British	"	Alpha	116	257
"	"	Dominion	65	130
"	"	Yarmouth	164	332
"	Brig	Clio	197	1,083
"	Schooner	Conductor	256	1,350
"	"	Dexter	30	210
"	"	Donzella	111	666
"	"	Mary C.	90	525
"	"	Morris Wilson	85	510
Total			1,783	8,982

RECAPITULATION.

Fiscal Years.	American.				British.			
	Steam.		Sail.		Steam.		Sail.	
	Barrels.	Value.	Barrels.	Value.	Barrels.	Value.	Barrels.	Value.
July 1, 1884, to June 30, 1885..	989	Dollars. 6,842	..	..	..	..	626	3,510
July 1, 1885, to June 30, 1886..	505	2,832	..	..	220	905	1,180	6,052
July 1, 1886, to June 30, 1887..	669	3,919	..	..	345	719	769	4,344
Total.. ..	2,163	13,593	..	..	565	1,624	2,575	13,906

Grand total: Barrels, 5,903; value, 29,123 dollars.

Respectfully forwarded.

(Signed) J. M. FISKE,
Special Deputy Collector,

Hospitalities received by Dominion Vessels in United States Waters.

PORTLAND, MAINE,
October 15th, 1887.

DEAR SIR,

Will you kindly give me answers to the following questions, so far as you can, in your reply following each question with its answer, and merely answering the questions without additional statement? It may be when I get this, I shall have to trouble you again, but I hope not.

1. How long have you been Deputy Collector of the Port of Portland, Maine?

Answer (1). Twenty-three years last April.

2. Under the laws and regulations, how long may Dominion vessels, whether engaged in the fisheries or otherwise, lie at the Port of Portland before being required to report at the Custom-house when in only for shelter?

Answer (2). Twenty-four hours.

3. In cases where such vessels do not report within twenty-four hours after arrival, what is the practice with reference to obtaining reports from them?

Answer (3). Boarding officer boards all vessels arriving from foreign ports on their arrival, or as soon thereafter as possible. He obtains and deposits at Custom-house manifest of the vessel. This is accepted as a "Report" from the master,

4. During the time you have been Deputy Collector, whether or not there have been numerous cases of Dominion vessels, including vessels engaged in fishing, in our port which have failed to report, though lying more than twenty-four hours after arrival? And, if yes, what penalties have been imposed for such failures during the whole term of your service?

Answer (4). As I remember, there have been many instances of Dominion vessels failing to "report," though lying more than twenty-four hours after arrival, their presence having been overlooked by the boarding officer.

I do not recall from memory a single instance where or when the penalty for such failure was imposed, and find no reference to such payments on the records of this office.

5. In case of such vessels arriving in this port for shelter, are they forbidden or prevented from landing any person aboard of the vessel? And, if yes, are they required to report at the Custom-house simply on account of such landing? Please explain quite fully the practice about this.

Answer (5). "Such vessels" arriving in this port for shelter are not forbidden or prevented from landing any person from on board except *passengers*. In that case a "report" and a "*passenger entry*" is required. The "report" in this case is not of a character requiring an "*entry*" of the vessel. The "*passenger entry*" is made by the master of the vessel.

6. What has been during that time the practice with reference to purchase of ordinary supplies and fishing supplies by such vessels, and are such vessels required to report at the Custom-house merely in consequence of making such purchases?

Answer (6). The practice in the matter of purchase of ordinary supplies and fishing supplies by such vessels has been that there have been no restrictions upon masters or crews within my recollection relative to such purchases. Vessels would be required to "report" within twenty-four hours in any event, but not "in consequence" of making such purchases?

7. What is the practice with reference to requiring vessels to report who touch in for shelter under Richmond's Island, or other places which are within the limits of this port as known to the law, yet are distant 5 or 10 miles from the Custom-house itself?

Answer (7). No Customs officers are stationed at the points or places named in 7th interrogatory. No reports to my knowledge have been received from vessels seeking shelter under Richmond's Island, or at points distant 5 or 6 miles from the Custom-house.

8. Have you any statistics, either official or unofficial, showing the number of such vessels seeking shelter at this port during any of the last three or four years? If yes, kindly give them to me; if not, kindly advise me, if you can, where I can obtain them.

Answer (8). There have been sixty-nine such vessels seeking shelter within the past three years at this port, which have laid forty-eight hours. Have no record of number of such vessels not making "report" within the period mentioned.

It is possible that the information you desire on this latter subject may be obtained at the office of Chas. P. Ingraham, Esq., Commercial Wharf.

9. Will you give me, if you can, an official statement of the number of foreign vessels which have arrived at this port during your period of service as Deputy Collector, including those which have arrived only for shelter and have not reported? And, if you cannot give me an official statement, please, if you can, give me the entire number unofficially, or advise me where I can obtain the information.

Answer (9). The whole number of foreign vessels that have arrived at this port during my period of service as Deputy Collector, as ascertained by the records of this office, has been 6,974. There is *not* included in this number vessels arriving only for shelter, except those reported (sixty-nine) in my answer to 8th interrogatory.

10. Kindly give me the total amount of penalties which have been imposed on all such vessels during your whole period of service for failure to report.

Answer (10). No penalties have been imposed on any such vessel during my whole period of service.

See also second paragraph of my answer to your fourth interrogatory.

11. What fees, if any, are required from vessels arriving at this port for delay in not reporting at the Custom-house? And what fees are required from them on reporting?

Answer (11). No fees are required from vessels for delay in not reporting, and none required from them on reporting within twenty-four hours.

12. Are any fees required from vessels remaining less than forty-eight hours? And what fees for those remaining over forty-eight hours?

Answer (12). No fees are required from vessels remaining less than forty-eight hours.

Fees for those remaining over forty-eight hours are as follows, viz., vessels 100 tons and under, entry 1 dol. 50 c.; surveyor, 1 dol. 50 c. if with dutiable cargo, 67 cents if with free cargo; vessels over 100 tons, entry 2 dol. 50 c.; surveyor, 3 dollars if with dutiable cargo, 67 cents if free cargo; tonnage dues, 3 cents per ton, to be paid five times in each calendar year, or 15 cents per ton for the twelve months.

Very truly yours,
(Signed) LEWIS B. SMITH, Deputy Collector.

Answered from 1 to 12, as above, at Custom-house, Portland, Maine, October 17th, 1887.

(Signed) LEWIS B. SMITH, Deputy Collector.

BOOTH BAY,
November 4th, 1887.

MY DEAR SIR,

In answer to your telegram to Deputy Collector Carlisle, of Booth Bay, Maine, I will state that I have been a marine reporter at Booth Bay for a number of years for the "Boston Daily Post," of Boston, Mass., to the 24th October, and at the present time I am not a reporter for the "Boston Post."

The number of vessels that has arrived and sailed from this port for the past three years I can give account from three books that I used in taking the names in, and parts of them are lost. The books I have has been in the last three years.

The number of vessels from the coast of New Brunswick, also from the coast of Nova Scotia, by count, is 350.

I have taken them from the books by count as often as they appear from day to day, for I have reported daily. Some of the vessels' names will appear a number of times during the year. The probability is, a great many more have put in at night and sailed in the morning before I could report them. I will say all vessels put in for shelter and storms at sea. Also, I have learned the facts as above in the course of my duties as a marine reporter.

Yours truly,
(Signed) W. O. MCCOBB.

CUSTOM-HOUSE, WISCASSET, MAINE, COLLECTOR'S OFFICE,
November 3rd, 1887.

DEAR SIR,

Twenty British vessels have entered at this port during the past three years.

Very truly yours,
(Signed) EDWIN AMSDEN.

Wm. E. Reed, Esq., Booth Bay, Maine.

*Instructions of the English Admiralty—Seizures not to be made except Vessels actually Fishing—
May 26th, 1870.*

Mr. Thornton to Mr. Fish.

No. 257.

WASHINGTON,
May 26th, 1870.

SIR,

In compliance with instructions which I have received from the Earl of Clarendon, I have the honour to inclose, for the information of the Government of the United States, copies of letters which have been addressed by the Admiralty to Vice-Admiral George C. Wellesley, commanding Her Majesty's naval forces on the North America and West Indies Stations, and of a letter from the Colonial Department to the Foreign Office, from which you will see the nature of the instructions to be given to Her Majesty's and the Canadian officers who will be employed in maintaining order at the fisheries in the neighbourhood of the coasts of Canada.

(Signed) EDW. THORNTON.

Mr. Wolley to Vice-Admiral Wellesley.

ADMIRALTY,
April 9th, 1870.

SIR,

I am commanded by my Lords Commissioners of the Admiralty to transmit, for your information and guidance, the inclosed copies of Foreign Office letters, dated the 2nd, 7th, and 9th instant,
(926)

Q 2

referring to the Resolution of the House of Representatives at Washington in regard to the intention of the Government of the Dominion of Canada to suspend the licences to foreign vessels for the inshore fisheries on the coasts of the Dominion. My Lords desire that you will detach a sufficient force to Canadian waters to protect Canadian fishermen, and to maintain order, and you are to instruct the senior officer of such force to co-operate cordially with any United States' force sent on the same service.

I am, &c.,
(Signed) THOMAS WOLLEY.

P.S.—The following telegram has been sent this day to Her Britannic Majesty's Consul at New York:—

“Please to communicate the following instructions to the Senior Naval Officers at Halifax and Bermuda by first opportunity:

“Admiral Wellesley to make preparations at once for sending vessels to protect Canadian fisheries in concert with United States' naval authorities. Instructions sent to Halifax by to-day's post.”

Mr. Lushington to Mr. Hammond.

ADMIRALTY,
May 9th, 1870.

SIR,

In reply to your letter of this day requesting that copies of the recent instructions given to Vice-Admiral Wellesley for the protection of the Canadian fisheries may be sent to you for communication to the Government of the United States, I am commanded by my Lords Commissioners of the Admiralty to transmit to you a copy of a letter addressed to the Vice-Admiral on the 9th April, of which you were informed by letter of the same date, and of a letter addressed to him on the 5th instant on a representation from the Secretary of State for the Colonies.

My Lords request that you will lay the same before the Earl of Clarendon.

I am, &c.,
(Signed) VERNON LUSHINGTON.

Sir Frederic Rogers to the Secretary of the Admiralty.

DOWNING STREET,
April 30th, 1870,

SIR,

In Mr. Secretary Cardwell's letter to the Lords Commissioners of the Admiralty of the 12th April, 1866, it was stated that American vessels should not be seized for violating the Canadian fishing laws “except after wilful and persevering neglect of the warnings which they may have received, and in case it should become necessary to proceed to forfeiture, cases should, if possible, be selected for that extreme step, in which the offence has been committed within 3 miles of land.”

The Canadian Government has recently determined, with the concurrence of Her Majesty's Ministers, to increase the stringency of the existing practice of dispensing with the warnings hitherto given, and seizing at once any vessel detected in violating the law.

In view of this change and of the questions to which it may give rise, I am directed by Lord Granville to request that you will move their Lordships to instruct the officers of Her Majesty's ships employed in the protection of the fisheries that they are not to seize any vessel unless it is evident and can be clearly proved that the offence of fishing has been committed and the vessel itself captured within 3 miles of land.

I am, &c.,
(Signed) F. ROGERS.

Mr. Wolley to Vice-Admiral Wellesley.

ADMIRALTY,
May 5th, 1870.

SIR,

With reference to my letter of the 9th April last in regard to the protection of Canadian Fisheries, I am commanded by my Lords Commissioners of the Admiralty to transmit to you, for your information and guidance, the inclosed copy of a letter from the Under-Secretary of State for the Colonies, dated the 30th ultimo, relative to the recent determination to increase the stringency of the existing practice by dispensing with the warnings hitherto given, and seizing at once any vessel detected in violating the law.

My Lords desire me to remind you of the extreme importance of commanding officers of the ships selected to protect the fisheries exercising the utmost discretion in carrying out their instructions, paying special attention to Lord Granville's observation that no vessel should be seized

unless it is evident and can be clearly proved that the offence of fishing has been committed, and that the vessel is captured within three miles of land.

I am, &c.,
(Signed) THOMAS WOLLEY.

Mr. Holland to the Under-Secretary of State for Foreign Affairs.

COLONIAL OFFICE,
May 13th, 1870.

SIR,

I am directed by Earl Granville to acknowledge the receipt of your letter of the 9th instant, requesting to be furnished, for communication to the Government of the United States, with copies of the instructions issued to the commanders of the Canadian vessels engaged in the protection of the fisheries.

Lord Granville desires me to state, for the information of Lord Clarendon, that the Governor-General of the Dominion has been requested by telegraph to forward to this office any instructions already issued on the subject, or that may be issued in consequence of Lord Granville's despatch to the Governor-General, of which a copy is enclosed.

I am, &c.,
(Signed) H. T. HOLLAND.

Lord Granville to Sir John Young.

COLONIAL OFFICE,
April 30th, 1870.

SIR,

I have the honour to transmit to you the copy of a letter which I have caused to be addressed to the Admiralty respecting the instructions to be given to the officers of Her Majesty's ships employed in the protection of the Canadian fisheries.

Her Majesty's Government do not doubt that your Ministers will agree with them as to the propriety of these instructions, and will give corresponding instructions to the vessels employed by them.

I have, &c.,
(Signed) GRANVILLE.

His Excellency the Right Honourable Sir John Young, Baronet, &c. .

Importations of Frozen Fish from the Dominion to the United States.

The following references and extracts are made from "The Reply of the Secretary of the Treasury" to the resolution of the House of Representatives concerning the interpretation of the Tariff Law relative to duties on fish, Executive document No. 78, House of Representatives, 49th Congress, 2nd Session, pp. 1 to 37 of the Appendices:—

Lafin and Co., of Chicago, wrote the Secretary of the Treasury, the 26th December, A.D. 1885, that they were called on to pay at Port Huron 90 dollars duties "on a car-load of frozen smelts from New Brunswick;" that "Manitoba for the past two years has flooded the country with their fresh-water frozen fish, duty free." and that at the Sault Saint Marie, Michigan, large quantities of fish were imported, caught by the Canadians at the Lizard's Islands, and were shipped to Detroit and as far as Buffalo.

On the 30th January, A.D. 1886, the Assistant-Secretary of the Treasury (p. 18) wrote the Collector of Customs at St. Vincent, Minnesota, referring to the fact that large quantities of fresh fish, caught in the lakes of Manitoba, and naturally frozen, are imported into the port named free of duty.

On the 9th February, A.D. 1886, Percy L. Shuman, Chicago (p. 20), wrote to the Secretary of the Treasury explaining at length the imports of frozen smelts from New Brunswick and Nova Scotia.

On the 18th February, A.D. 1886, C. W. Outhit wrote from Halifax, Nova Scotia, to the Secretary of the Treasury that he had made a shipment to Chicago of frozen fish for immediate consumption.

G. L. Young, of St. John, New Brunswick (p. 29), wrote, the 14th April, A.D. 1886: "Shipped a car-load of frozen herring consigned to Chicago."

On the 19th October, A.D. 1886, the Collector at Bangor, Maine (p. 35), wrote the Secretary of the Treasury concerning the freezing of salmon at Margaree Harbour, Cape Breton, for importation into the United States.

It appears from the correspondence that the opinion of the Department at first changed as to the true construction of the law; but the final conclusion is found in the following extract from the letter of the Acting Secretary of the Treasury of the 18th November, A.D. 1886, to R. J. Godwin and Sons, New York City (p. 37):—

"The circumstances surrounding each importation will have to be taken into consideration by

the Collectors at the ports of arrival; but the fact that fish are frozen is not sufficient in itself to make them dutiable, if the other circumstances surrounding the importation are sufficient to establish the fact that they are imported fresh for immediate consumption."

Hostile Proceedings against United States Fishing-vessels have always been without Warning.

In the text, and also in the Appendix concerning "warnings," in A.D. 1886, it appears that during the period from A.D. 1836 to A.D. 1839, as well as in A.D. 1886, these severe proceedings were commenced against vessels of the United States in breach of the before-existing practices, for the continuance of which the vessels of the United States might well look, and without that clear and seasonable warning or notice which is to be expected as among friendly nations.

In A.D. 1870, as the following extracts will show, not only was there no warning or notice, but, on the other hand, there was such diplomatic communication from Great Britain as justly entitled the United States to expect the contrary.

We have already referred to the communication of the Minister of Justice of the 8th April, A.D. 1870, a copy of which was sent by Sir Edward Thornton to Mr. Fish of the 14th April, A.D. 1870, and also to the instructions from the Admiralty, communicated by Sir Edward Thornton to Mr. Fish the 26th May, A.D. 1870, as already stated, full copies of which appear in the Appendix.

Whether the United States, in view of these communications, had a right to assume that there would be no hostile proceedings against their vessels for buying bait or supplies, or for anything except fishing, is a matter of deduction; but that there might be no possibility of misunderstanding, Mr. Fish made inquiries of Sir Edward Thornton on the 8th June, A.D. 1870, and Sir Edward Thornton replied, the 11th June, 1870, "Foreign Relations of the United States, 3rd Session, 41st Congress," pp. 420 and 421, his reply containing the following:—

"I had the honour to receive yesterday your note of the 8th instant relative to an apparent discrepancy between the instructions issued by Vice-Admiral Wellesley, enclosed in my note of the 3rd instant, and those given by the Admiralty to him which accompanied my note of the 26th ultimo. You are, however, quite right in not doubting that Admiral Wellesley, on the receipt of the later instructions addressed to him on the 5th ultimo, will have modified the directions to the officers under his command, so that they may be in conformity with the views of the Admiralty. In confirmation of this I have since received a letter from Vice-Admiral Wellesley, dated the 30th ultimo, informing me that he had received instructions to the effect that officers of Her Majesty's ships employed in the protection of the fisheries should not seize any vessel unless it were evident, and could be clearly proved, that the offence of fishing had been committed and the vessel itself captured within 3 miles of land."

Notwithstanding all this, it appears by the letter of Mr. Hall, dated Charlottetown, 19th August, A.D. 1870, that Her Majesty's steamers "Valorous" and "Plover" had closed up all branches of trade, including landing of mackerel in ports of Prince Edward's Island, ordered off a Gloucester schooner, and would not allow her to take bait or supplies.

On the 25th of the same August the Consul at Halifax wrote to Mr. Fish, p. 423, that it appeared by the "Halifax Morning Chronicle," transshipment in bond from Canadian and other provincial ports of American-caught fish had been prohibited; and on the 5th September, A.D. 1870, the same Consul communicated to Mr. Fish, p. 424, certain correspondence with Her Britannic Majesty's Vice-Admiral, showing that the Dominion authorities had issued orders prohibiting ice, bait, and other supplies being furnished in the colonial ports to American fishermen; and the Consul said this was neither announced nor enforced "until after the commencement of the fishing season and after our fishing-vessels were on their voyages to the fishing grounds."

The Vice-Admiral, in his letter of 3rd September, A.D. 1870, p. 426, seems to have supposed that notice of his orders had been sent to the United States Secretary of State; but it will sufficiently appear from the despatch of Mr. Fish to the Consul-General at Montreal of the 29th October, A.D. 1870, p. 331, that to that time he had not received notice of the new instructions, and had apparently heard of the proceedings, or intended proceedings in accordance with them, only by reports from the Consular officers and from the parties interested. Indeed, so clear is this, that the Secretary proceeds on the following assumption: "These alleged causes of seizure are regarded as pretensions of over-zealous officers of the British navy and the colonial vessels."

Also, the Assistant Secretary of State, in his despatch to the Consul at Halifax, 13th September, A.D. 1870, p. 427, said: "It is understood that the Government of the Dominion of Canada is prohibiting vessels of the United States," &c., showing that even to that date the Department had no positive knowledge, and that their understanding was that the orders came from the Dominion and not from the Imperial authorities.

In the extract made in the text from the Report of the Consul-General of the United States at Montreal of the 3rd November, A.D. 1870, p. 433, he stated that "no adequate nor suitable notice was given to the captains of American fishing-vessels" of this change of policy; and, indeed, taking it altogether, it seems undoubted that, notwithstanding the Imperial authorities at the outset gave the United States diplomatic advices that proceedings would be taken only for actual fishing within 3 miles from the shore, the whole policy was changed, and fishing-vessels of the United States were driven out of Dominion ports without any formal diplomatic notice to the United States thereof, and without any explanation whatsoever to enable either the Department of State or the owners of vessels to understand the meaning and extent of the change.

Subsequently, vessels were seized for mere purchase of supplies, of which one, the "White Fawn," was taken into St. John and acquitted on the ground that there was no Statute authorizing her seizure. Another, the "J. H. Nickerson," was taken into Halifax and condemned, the Court holding the reverse doctrine.

IMPORTS of Fish into the United States free of Duty.

1885-86.

Month.	Fresh.				Lobsters, Canned and Preserved.	All other.
	Salmon.		All other.			
	Lbs.	Dollars.	Lbs.	Dollars.	Dollars.	Dollars.
1885.						
July	402,103	38,515	1,552,858	54,103	80,786	19,072
August	103,012	11,356	1,074,551	36,410	83,860	2,795
September	64,078	6,095	1,732,636	45,246	55,163	281
October	24,223	2,349	2,031,370	45,074	25,334	605
November	27,312	2,814	1,337,430	33,634	6,692	500
December	52,637	6,426	1,872,351	58,940	1,863	343
1886.						
January	25,377	3,309	2,055,411	48,704	906	482
February	422	46	2,241,261	46,425	5	367
March	350	94	1,286,997	27,629	357	807
April	1,099	523	572,659	16,432	3,716	13,429
May	58,766	8,066	1,623,065	42,506	4,614	15,512
June	663,341	65,196	2,352,258	70,692	75,686	19,014
Total for year	1,422,720	144,789	19,732,787	625,795	338,982	67,107

1886-87.

Month.	Fresh.				Lobsters, Canned and Preserved.	All other.
	Salmon.		All other.			
	Lbs.	Dollars.	Lbs.	Dollars.	Dollars.	Dollars.
1886.						
July	242,266	24,157	1,750,934	52,940	94,413	14,017
August	90,592	9,746	1,617,858	52,377	92,131	2,673
September	42,726	4,248	1,679,527	40,939	38,322	36
October	11,250	1,381	1,962,028	50,744	16,291	630
November	2,431	379	1,525,621	36,527	7,909	673
December	1,170	122	2,055,807	58,496	20,764	721
1887.						
January	6,555	664	3,849,186	90,751	28	271
February	2,652	268	4,840,855	75,662	3,990	301
March	9,043	987	2,443,079	47,866	15,393	788
April	3,017	794	653,617	16,838	8,956	1,086
May	38,851	5,623	2,070,797	47,190	3,408	29,127
June	653,337	58,465	2,979,817	73,885	35,402	19,038
Totals for year	1,104,090	106,553	27,301,586	643,113	337,047	68,961

The Table shows that the heaviest imports of fresh salmon occur in the summer months; while the imports of all other (fresh) fish are largest at two seasons of the year—summer and winter.

Comparison of Imperial and Dominion Legislation, showing Unjust Discrimination by the Latter against the United States.

[Imperial Statutes, 46 & 47 Vict., cap. 22. "Sea Fisheries Act, 1883."]

Exclusive Fishery Limits.

7. (1) A foreign sea-fishing boat shall not enter within the exclusive fishery limits of the British Islands, *except for purposes recognized by international law*, or by any Convention, Treaty, or arrangement for the time being in force between Her Majesty and any foreign State, or for any lawful purpose.

(2) If a foreign sea-fishing boat enters the exclusive fishery limits of the British Islands, (a) the boat shall return outside of the said limits, so soon as the purpose for which it entered has been answered; (b) no person on board the boat shall fish or attempt to fish while the boat remains within the said limits; (c) such regulations as Her Majesty may from time to time prescribe by Order in Council shall be duly observed.

(3) In the event of any contravention of this section on the part of any foreign sea-fishing boat, or of any person belonging thereto, the master or person for the time being in charge of such boat shall be liable on summary conviction to a *fine not exceeding in the case of the first offence ten pounds, and in the case of a second or any subsequent offence twenty pounds.*

[Dominion Statutes, 49 Vict., cap. 114.]

An Act further to amend the Act respecting Fishing by Foreign Vessels.

[Reserved by the Governor-General on Wednesday, June 2, 1886, for the signification of the Queen's pleasure thereon. Royal Assent given by Her Majesty in Council on the 26th day of November, 1886. Proclamation thereof made on the 24th day of December, 1886.]

Whereas it is expedient, for the more effectual protection of the inshore fisheries of Canada against intrusion by foreigners, to further amend the Act intituled "An Act respecting Fishing by Foreign Vessels," passed in the thirty-first year of Her Majesty's reign, and chaptered sixty-one :

Therefore Her Majesty, by and with the advice and counsel of the Senate and House of Commons of Canada, enacts as follows :

(1) The section substituted by section 1 of the Act 33 Vict., cap. 15, intituled "An Act to amend the Act respecting Fishing by Foreign Vessels," for section 3 of the hereinbefore recited Act is hereby repealed, and the following section substituted in lieu thereof :

"3. Any one of the officers or persons hereinbefore mentioned may bring any ship, vessel, or boat being within any harbour in Canada, or hovering in British waters *within three marine miles of any of the coasts, bays, creeks, or harbours in Canada*, into port and search her cargo, and may also examine the master upon oath touching the cargo and voyage ; and if the master or person in command does not truly answer the questions put to him in such examination, he shall incur a penalty of 400 dollars ; *and if such ship, vessel, or boat is foreign, or not navigated according to the laws of the United Kingdom, or of Canada, and (a) has been found fishing or preparing to fish, or to have been fishing in British waters within three marine miles of any of the coasts, bays, creeks, or harbours of Canada, not included within the above-mentioned limits, without a licence, or after the expiration of the term named in the last licence granted to such ship, vessel, or boat, under section 1 of this Act, or (b) has entered such waters for any purpose not permitted by Treaty or Convention, or by any law of the United Kingdom, or of Canada, for the time being in force, such ship, vessel, or boat, and the tackle, rigging, apparel, furniture, stores, and cargo thereof shall be forfeited.*"

(2) The Acts mentioned in the schedule hereto are hereby repealed.

(3) This Act shall be construed as one with the said "Act respecting Fishing by Foreign Vessels," and the amendments thereto.

History of Legislation concerning the Extension across the State of Maine of the Canadian Pacific Railway.

The Legislature of Maine, by the Act of the 2nd February, A.D. 1871, entitled "An Act to incorporate the Penobscot and Lake Megantic Railroad Company," incorporated certain persons including Hon. J. H. Pope and Sir A. T. Galt, with the right to construct a railroad in Maine from the line of the European and North American Railway to the St. Francis and Lake Megantic International Railroad, "or to any other railroad which might be constructed from Lennoxville in the Province of Quebec to the east line of the State of Maine."

By the Act approved the 25th February, A.D. 1881, cap. 65, the same Legislature changed the title of the Company to "The International Railway Company of Maine," and amended section 10 of the Act of the 2nd February, A.D. 1871, to read as follows:—

"Section 10. Said corporation shall have power to make, order, and establish all necessary byelaws and regulations consistent with the constitution and laws of this State for its own government, and for the due and orderly conducting of its affairs and management of its property ; and it is also hereby authorised and empowered to make connection with any other railroad corporation ; *to lease or sell its line of railroad and property, either before or after its completion, to any other railroad company, either domestic or foreign ; to take a lease of or buy any other connecting line of railroad and property, whether domestic or foreign, either before or after its completion ; or to amalgamate its stock with the stock of any connecting railroad, whether domestic or foreign in order to form with such railroad a single corporation, upon such terms as may be mutually agreed upon, which lease, sale, purchase, or amalgamation shall be binding upon the parties according to the terms thereof.*"

By the Act approved the 16th February, A.D. 1885, cap. 403, the Charter was amended so as to authorize a change of the route in order to cross Moosehead Lake.

This route being found impracticable, the Legislature again, by the Act of the 14th March, A.D. 1887, cap. 256, empowered the Company to go to the southward of Moosehead Lake, although by so doing it enabled it to parallel the road of the Bangor and Piscataquis Railroad Company.

The railroad of the European and North American Railway, now the Maine Central Railroad Company, is near the eastern line of the State of Maine, and extends from Bangor, in the State of Maine, to such eastern line, where it connects with the New Brunswick Railway ; which latter railway crosses the St. John River by a bridge, reaches St. John, in New Brunswick, and thence by the Governmental railway connects with Halifax in Nova Scotia and various points on the Gulf of St. Lawrence.

The New Brunswick Railway comprehends substantially all the railway system of New Brunswick, and is one of the subordinate corporations of the Canadian Pacific Railway.

That portion of the European and North American Railway interposing between the International Railway of Maine, authorized by the above Charter of the 2nd February, A.D. 1871, and the east line of the State of Maine, is fifty-six miles in length.

The Canadian Pacific Railway has, by contract, the right of joint occupation for running its trains over this piece of railway.

Therefore the Act of the 2nd February, A.D. 1871, with its amendments and the other arrangements above described, give a continuous line from Lennoxville or Sherbrooke, in the Province of Quebec, across the State of Maine to St John and Halifax.

The Canadian Pacific Railway, with its new bridge across the St. Lawrence River at Lachine, has an unbroken railway from the Pacific Ocean to Lennoxville and Sherbrooke, and now controls the line from Sherbrooke and Lennoxville to the east line of the State of Maine, and also the above Charter of the 2nd February, A.D. 1871, with all its amendments.

This line in Maine is being nominally constructed by the Atlantic and North-west Railway, one of the subordinate corporations of the Canadian Pacific Railway system, and the same subordinate corporation which constructed the new St. Lawrence Bridge at Lachine.

Therefore after this line in Maine is completed, the Canadian Pacific Railway can run its trains across the State of Maine continuously to and from the Pacific Ocean and all intermediate points to and from tide-waters at St. John and Halifax and various termini on the Gulf of St. Lawrence, so far avoiding delivery or receipt of traffic to or at New York, Boston, or Portland, the latter an important seaport in the very State by whose comity it is enabled to extend its line to the maritime provinces of Canada.

SUB-APPENDIX IN (B).

Mr. Phelan to Mr. Porter.

UNITED STATES CONSULATE-GENERAL, HALIFAX,
August 26th, 1886.

SIR,

I have the honour to acknowledge the receipt of instructions, dated the 19th August, 1886, directing me to ascertain and report the precise formalities involved in our fishing-vessels reporting at a Canadian custom-house, and whether it implies entry and clearance or payment of port charges.

In obedience to these instructions, I have to report that every fishing-vessel of the United States entering a harbour in the maritime provinces of Canada is required to enter and clear the same as a merchant-vessel, and pay harbour dues and, if over 80 tons, pilot dues. Canadian vessels in the coasting trade are exempt from these charges. Every fishing-vessel of the United States entering the harbour of Halifax is required, in addition to the above charges, to pay on every entry a signal tax of 1 dollar, and in all cases 25 cents, and in some ports 50 cents, for making out papers. Canadian fishing-vessels are exempt from this tax. This morning the "City Point," released on bond, entered the harbour of Halifax for repairs. Her master reported at this Consulate-General; I accompanied him to the custom-house to report, when the sum of 1 dollar was exacted as a signal tax and 25 cents for making out the papers. I called on Collector Ross, and pointed out the inconsistency of requiring the payment of a tax to secure commercial privileges in the port, and then denying them the privileges so secured. Mr. Ross very courteously stated that he recognized the delicate character of his duties towards American fishermen, and endeavoured to discharge them honestly and as kindly as possible; that the fees paid were of no benefit to him; he had no discretion but to collect them. I paid the fees under protest, and send you herewith receipts for the same. I overlooked the Harbour-master. He sent a boat, and notified the captain to call at the office and pay his harbour dues. I paid them under protest, and send you herewith the receipt for the amount of 1 dollar, making a total of fees in the harbour of Halifax for this entry of 2 dol. 25 c. I also send you receipts for fees paid at Shelburne and Liverpool by the same vessel, amounting to 2 dol. 75 c., being 1 dol. 50 c. for Shelburne and 1 dol. 25 c. for Liverpool.

* * * * *

I am, &c.
(Signed) M. H. PHELAN.

(Enclosure 1.)

Receipt for Halifax Signal Dues.

CUSTOM-HOUSE, HALIFAX, NOVA SCOTIA,
August 25th, 1886.

Received from the master of the vessel "City Point," of Portland, Maine, from Western Banks, the sum of 1 dollar on entry, on account of the service of the signal-station at Halifax for the present voyage.

(Seal.)

(Signed) S. NOBLE, Jr., Collector.

Endorsed:

Paid under protest.

(Signed) M. H. PHELAN,

United States' Consul-General.

(Enclosure 2.)

Receipt for Harbour-Master's Fee.

HARBOUR-MASTER'S OFFICE, 60, BEDFORD ROW, PORT OF HALIFAX, NOVA SCOTIA,
August 25th, 1886.

Received from Captain Keene, master of "City Point," burthen 59 tons, the sum of 1 dollar, being the amount of Harbour-master's fees.

(Signed) GEO. MCKERRDOR, Harbour-master.

Endorsed :
Paid under protest.
(Signed) M. H. PHELAN,
United States, Consul-General.

(Enclosure 3.)

Certificate of Entry of Schooner "City Point."

No. A. 6.

INWARDS, PORT OF HALIFAX.

In the schooner "City Point," of Portland, Maine, 59 tons register, ten men, Stephen Keene, master, for the present voyage, from the Western Banks, freight in full. tons weight, tons measurement, freight to be landed at this port.

900 quint. green codfish, 3 casks cod oil.

(Seal of Surveyor of Customs.)

Entered this port to make repairs.

I, Stephen Keene, master of the ship or vessel called the "City Point," of 59 tons measurement or thereabouts, last cleared from the port of Shelburne, do solemnly swear that, since the said vessel was so cleared, I have not broken bulk, nor has any part of her cargo been discharged or landed, or moved from the said vessel; and I further swear that the manifest now exhibited by me, and hereto annexed doth, to the best of my knowledge and belief, contain a full, true, and correct account of all the goods, wares, and merchandize laden on board such vessel at the said port of Shelburne, or at any port or place during her present voyage, except those reported and landed according to law at

(Signed) STEPHEN KEENE, Master or Purser.

Sworn to at Halifax, the 25th day of August,
1886, in the presence of

(Signed) A. D. B. BRENNIN, Collector.

(Enclosure 4.)

Receipt for Harbour Dues at Shelburne.

PORT OF SHELBURNE, NOVA SCOTIA.

Capt. Step. Keene, Dr.

To harbour dues, commencing from June 30, 1886.

Dol. c.

Received payment.

1 00

One $\frac{1}{2}$ dollar.

0 50

"Citie Pointe,"

(Signed) JOHN LODICTI, Harbour-master.

1 50

	Dol. c.
Amount harbour dues	1 00
Making out papers	0 50
	1 50

(Enclosure 5.)

Receipt for Harbour Dues at Liverpool.

HARBOUR-MASTER'S OFFICE, LIVERPOOL, NOVA SCOTIA,

April 21st, 1866

Schoner "City Point," 59 tons.

To W. A. Kenney, *Dr.*, Harbour-master.

Harbour-master's dues ..	..	..	..	..	..	..	Dol. c.
Clearance ..	..	..	..	..	..	..	1 00
							0 25
							<hr/>
							1 25

Received payment,
(Signed) W. A. KENNEY,
Harbour-master.

APPENDIX (C).*

24,719.

No. 119.

Sir H. T. Holland to Governor-General the Marquis of Lansdowne.

DOWNING STREET,

12th December, 1887.

No. 414.

MY LORD,

With reference to your despatch, No. 416, of the 28th of October,† I have the honour to transmit to you, for communication to your Lordship's Government, a copy of a letter‡ from the Foreign Office with its enclosure respecting the case of the "Golden Hind."

I have, &c.,
(Signed) H. T. HOLLAND.

The Marquis of Lansdowne.

&c., &c., &c.

24,315.

No. 120.

Sir H. T. Holland to Governor-General the Marquis of Lansdowne.

Secret.

DOWNING STREET,

15th December, 1887.

MY LORD,

In my despatch of the 22nd of October last,§ I communicated to you the draft of the Instructions proposed to be given to Her Majesty's Plenipotentiaries at the Fishery Conference of Washington. I now enclose copies of the instructions as finally issued by the Marquis of Salisbury, in his despatch of the 24th of October last.

The last paragraph but one of these instructions refers to the subject of the submission to the Conference of the Behring Sea fishery question, and I beg to refer you to that paragraph in connection with the Minute of the Executive Council of British Columbia, enclosed in your despatch, No. 409, of the 20th October,|| to which I have replied in a public despatch of this day's date.¶

I have, &c.,
(Signed) H. T. HOLLAND.

The Marquis of Lansdowne,

&c., &c., &c.

* See Enclosure in No. 12.
§ No. 83.

† No. 99.
|| No. 94.

‡ No. 117.
¶ No. 121.

24,315.

No. 121.

Sir H. T. Holland to Governor-General the Marquis of Lansdowne.

No. 415.

DOWNING STREET,
15th December, 1887.

MY LORD,

I have the honour to acknowledge the receipt of your Lordship's despatch, No. 409, of the 20th October,* transmitting a Minute of the Executive Council of British Columbia respecting the value to that Province of the seal fishing industry in Behring's Sea.

Her Majesty's Government have noted the wish expressed in this Minute, that the question should be included in the scope of the duties of the Fisheries Conference, now sitting at Washington, and I have the honour to inform you that a copy of your despatch and of its enclosures has been duly forwarded to the British Plenipotentiaries at the Conference.

I have, &c.,
(Signed) H. T. HOLLAND.

The Marquis of Lansdowne.

&c., &c., &c.

24,670.

No. 122.

*Colonial Office to Foreign Office.*DOWNING STREET,
17th December, 1887.

SIR,

Sir H. Holland forwarded to the Governor-General of Canada, in a despatch of which a copy is enclosed,† your letter of the 18th of August last, with the note which accompanied it, from the United States Minister at this Court, replying to the criticisms of Her Majesty's Government on the *ad interim* arrangement with regard to the fishery question proposed by Mr. Bayard.

I am now to enclose, to be laid before the Marquis of Salisbury, a copy of a despatch‡ which has been received from the Governor-General, with copy of a Minute of his Privy Council upon the subject of Mr. Bayard's arguments.

Sir Henry Holland understands that this Minute of the Privy Council is only sent here to be recorded, and he does not therefore propose to do more than acknowledge its receipt.

I am, &c.,
(Signed) JOHN BRAMSTON.

The Under Secretary of State,
Foreign Office.

82.

No. 123.

Foreign Office to Colonial Office.

Confidential.

FOREIGN OFFICE,
December 31st, 1887.

SIR,

With reference to your letter of the 19th ultimo,§ I am directed by the Secretary of State for Foreign Affairs to transmit to you, to be laid before Secretary Sir H. Holland a copy of a despatch from Her Majesty's Minister at Washington respecting the case of the "Golden Hind."

• No. 94.

† No. 19.

‡ No. 116.

§ No. 110.

A copy of Lord Salisbury's despatch to Sir L. West, No. 278 of November 24th, was sent to you on the 7th instant.*

I am, &c.,
(Signed) J. PAUNCEFOTE.

The Under Secretary of State,
Colonial Office.

Enclosure in No. 123.

Sir L. West to the Marquis of Salisbury. (Received December 19th.)

No. 336.

WASHINGTON,
December 6th, 1887.

MY LORD,

In accordance with the instructions contained in your Lordship's despatch No. 278 of the 24th ultimo, I have communicated to the Secretary of State the papers therein alluded to, relative to the action of the officer in command of the Canadian cruiser 'Conrad' in the case of the United States fishing schooner "Golden Hind."

I have, &c.,
(Signed) L. S. SACKVILLE WEST.

82.

No 124.

Sir H. T. Holland to Governor-General the Marquis of Lansdowne.

No. 20.

DOWNING STREET,
19th January, 1888.

MY LORD,

I have the honour to transmit to you for communication to your Government with reference to my despatch No. 414, of the 12th ulto.,† the accompanying copy of a despatch‡ from Her Majesty's Minister at Washington respecting the case of the "Golden Hind" which has been received from the Foreign Office.

I have, &c.,
(Signed) H. T. HOLLAND.

The Marquis of Lansdowne.

* No. 117.

† No. 119.

‡ Enclosure in No. 123.