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NEWFOUNDLAND.

CORRESPONDENCE

WITH THE

NEWFOUNDLAND DELEGATES

RESPECTING THE

PROPOSED IMPERIAL LEGISLATION

FOR CARRYING OUT THE

TREATIES WITH FRANCE.

Presented to both Houses of Parliament by Command of Her Majesty.
May 1891.



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CONTENTS.

| Serial No. | From or to whom. | Date. | Subject. | Page. |
|------------|--------------------------------|--------------------------|--|-------|
| 1 | Sir. W. V. Whiteway - - | 1891. April 21 | Encloses copy of Minutes of the proceedings of the Colonial Legislature with reference to the appointment of a delegation to the Imperial Parliament. | 3 |
| 2 | Sir W. V. Whiteway - | April 21 | Encloses a memo. containing the proposals of the delegates for providing for the execution of the <i>modus vivendi</i> , &c. | 7 |
| 3 | Foreign Office - - - | April 22 | Encloses copy of a letter from the delegates, submitting certain proposals for the consideration of Her Majesty's Government, with the draft of a proposed reply. | 8 |
| 4 | To Foreign Office - - | April 22 | Concurs in draft reply to the delegates enclosed in Foreign Office letter of 22nd April. | 9 |
| 5 | Sir W. V. Whiteway - - | April 23 | Statement of the case of the Colonial Government made at the bar of the House of Lords. | 9 |
| 6 | To Sir W. V. Whiteway - | April 29 | Inquires whether any and what steps have been taken, or are proposed to be taken in the way of Colonial Legislation for giving effect to the <i>modus vivendi</i> , &c. | 18 |
| 7 | To Sir W. V. Whiteway - | April 30 | Inquires whether his Government are prepared to nominate a delegate to represent the Colony on the Commission of Arbitration. | 18 |
| 8 | The Newfoundland Delegates. | May 1 | Submits for the consideration of Her Majesty's Government propositions with regard to legislation respecting the <i>modus vivendi</i> and with reference to the Lobster Question Arbitration. | 18 |
| 9 | To the Newfoundland Delegates. | May 4 | Expresses regret that the proposals set forth in delegates' letter of 1st instant differ from those stated at the bar of the House of Lords, and observes that failing the desired legislation on the part of the Colony the Imperial Act must proceed. Her Majesty's Government are, however, willing to give the assurance indicated with regard to the Lobster Arbitration. | 21 |
| 10 | The Newfoundland Delegates. | May 6 | Requests a renewal of the assurance given in 1857 that the constitutional rights of the Colony would not be ceded or exchanged without its consent, and engages to procure the enactment of a temporary measure by the Colonial Government if the Imperial Bill is not proceeded with. | 22 |
| 11 | To the Newfoundland Delegates. | May 8 | Points out that the Act to be passed by the Colonial Legislature must be of a permanent character. | 24 |
| 12 | The Newfoundland Delegates. | May 13 | Submits further observations with regard to the Colonial legislation proposed by the Delegates and the objections made thereto by Her Majesty's Government, and encloses copy of resolutions adopted by both Houses of the Local Legislature undertaking to carry into effect the proposals made by Delegates. | 25 |

CORRESPONDENCE

WITH THE

NEWFOUNDLAND DELEGATES

RESPECTING THE

PROPOSED IMPERIAL LEGISLATION FOR CARRYING OUT THE TREATIES WITH FRANCE.

No. 1.

SIR W. V. WHITEWAY to COLONIAL OFFICE.

MY LORD,

Hotel Métropole, London, April 21, 1891.

I BEG leave to enclose, for your Lordship's information, a copy of minutes of the proceedings of the Legislature of Newfoundland relative to the mission of the delegates.

The Right Hon. Lord Knutsford.

I am, &c.,
(Signed) W. V. WHITEWAY.

Enclosure in No. 1.

Re Newfoundland Delegation.

EXTRACTS FROM JOURNAL OF HOUSE OF ASSEMBLY OF NEWFOUNDLAND, 1891.

Thursday, March 19, 1891.

... The Hon. the Premier presented to the House the report of the joint committee appointed to consider the ... despatches ... lately laid on the table, relating to the French treaties question, which report is as follows:—

“The joint committee appointed to consider the despatches from Her Majesty's Government which were yesterday laid upon the tables of both branches of the Legislature report that they have considered the said despatches and recommended the following resolutions for the adoption of the Legislature:—

“Resolved,—That the Newfoundland Legislature have had under consideration the despatches from Her Majesty's Government relative to the French treaties question, and especially the despatches in which it is intimated that Imperial coercive legislation relative to this Colony would be introduced.

Resolved,—That the Legislature humbly and earnestly pray that the House of Lords will be graciously pleased to take the necessary steps to delay the legislation referred to, so as to enable the Legislature of this Colony to present their views before the British House of Commons, which they will do at the earliest possible moment.”

And he moved, seconded by Mr. Morine, that the said report be received and that the said resolution be adopted.

And with the unanimous assent of the House, it was ordered accordingly.

Friday, March 20, 1891.

The Hon. the Premier presented to the House the following resolutions as the present report of the joint committee which was yesterday appointed to consider the despatches lately laid on the table in reference to the French treaties question :—

“ *Resolved*,—That a delegation, to be selected from members of the Legislature, be appointed by the Legislature to proceed forthwith to lay before the British Parliament and people the reasons of this Colony for opposing the proposed legislation in reference to the French treaties question, and that in the meanwhile the committee proceed to consider the propositions which the delegation shall be empowered to make for the settlement of the whole question.

“ *Resolved*,—That the delegation proceed to England immediately for the above purpose.”

It was moved by the Hon. the Premier, seconded by Mr. Morine, that the said resolutions be referred to the committee of the whole of this House which stands first on the order of this day ; and it was ordered accordingly.

Pursuant to order of the day the House then resolved itself into committee of the whole to consider the despatches lately laid on the table in reference to the French treaties question and the report of the joint committee thereon.

Mr. Speaker left the chair.

Mr. Whiteley took the chair of the committee.

Mr. Speaker resumed the chair.

And, the house having sat until twelve of the clock midnight of this twentieth day of March,

Saturday, March 21, 1891.

The Chairman from the said committee reported that they had considered the matter to them referred and had unanimously adopted the resolutions contained in the report of the said joint committee, and asked leave to sit again.

Ordered, that the said report be received, and, with the unanimous assent of the House, it was ordered that the said resolutions be adopted, that the said committee have leave to sit again to-day, and that the same stand first on the order of the day.

It was moved by the Hon. the Premier, seconded by Mr. Morine, that the said resolutions be forthwith forwarded by telegram to the Right Hon. the Secretary of State for the Colonies, to the Lord Chancellor, and to the Right Hon. the Speaker of the House of Commons.

Ordered accordingly.

Tuesday, March 24, 1891.

. The Hon. the Premier laid on the table of the House a report from joint committee on the subject of the despatches lately received relative to French treaty rights, which report is as follows :—

“ The select committee appointed by the House of Assembly to confer with the select committee appointed by the Hon. Legislative Council upon the matters contained in the despatches laid upon the table by command of his Excellency the Governor, relating to French treaty rights, beg to report the following resolutions :—

“ *Resolved*,—That five persons, two from the Council and three from the Assembly, be appointed a delegation, and that the Government and Opposition parties in the Council be permitted to name a representative each, the Government party in the House of Assembly two representatives, and the Opposition party one representative.

“ *Resolved*,—That when a majority of the delegates agree to any basis of arrangement and settlement, the delegation shall recommend it to the Legislature, and that each member of the delegation shall be bound by the decision of a majority of the delegation and pledged to use his best efforts to procure adoption afterwards by the Legislature of any arrangement made by the delegation—all of which is respectfully submitted.

“ (Signed) A. W. HARVEY,
Chairman.

“ Committee Room, March 23, 1891.”

And he moved that the same be read and referred to the Committee of the whole on French treaty questions.

Ordered accordingly.

Pursuant to order of the day the House then resolved itself into committee of the whole to consider despatches relating to the French treaties question.

Mr. Speaker left the chair.

Mr. Whiteley took the chair of the committee.

Mr. Speaker resumed the chair.

The chairman from the said committee reported that they had considered the matter to them referred and had passed the two resolutions this day reported from the joint committee on the French treaties question, without amendment.

Ordered that the said report be received and adopted.

Thursday, March 26, 1891.

The Hon. the Premier having informed the House that the Government party named Mr. Speaker and himself to proceed to England in connection with the French treaties question, and Mr. Munn having informed the House that the Opposition party named Mr. Morine for the said purpose, Mr. Speaker, nominated the said representatives as the delegation from this House pursuant to resolutions adopted on the twenty-fourth instant.

Ordered that a message be sent to the Legislative Council acquainting them with the said nomination.

Tuesday, March 31, 1891.

. A message was received from the Legislative Council acquainting this House, in reply to message of this House of the twenty-fifth instant, that, in accordance with the resolutions reported from the joint select committee appointed by the Legislature to consider the matters relating to French Treaty rights, they have appointed the Hon. Mr. Harvey and the Hon. Mr. Monroe to be a delegation from the Legislative Council to co-operate with the members appointed by the House of Assembly in accordance with the terms of the resolutions.

Wednesday, April 1, 1891.

. The Hon. the Premier moved that the House do now resolve itself into committee of the whole to consider an address to his Excellency the Governor in reference to the French treaties question; and it was seconded by the Hon. Mr. Morris and was ordered accordingly.

Then the House resolved itself into committee of the whole thereon.

Mr. Speaker left the chair.

Mr. Whiteley took the chair of the committee.

Mr. Speaker resumed the chair.

The chairman from the said committee reported that they had passed an address as follows:—

“To his Excellency Sir J. Terence N. O'Brien, Lieut.-Colonel, Knight Commander of the most distinguished Order of St. Michael and St. George, Governor and Commander-in-Chief in and over the Island of Newfoundland and its dependencies.

“May it please your Excellency,

“The Legislative Council and House of Assembly beg to acquaint your Excellency that they have appointed a delegation consisting of the Hon. Mr. Harvey, the Hon. Mr. Monroe, the Hon. the Premier, his Honour the Speaker of the Assembly, and Mr. Morine (one of the members for Bonavista), to proceed immediately to England to lay before the British Parliament and people the reasons of this Colony for opposing the proposed legislation now before the Imperial Parliament in reference to the French treaties question, and respectfully request that your Excellency will be pleased to appropriate and pay out of the general revenue of this Colony such sums as may be necessary towards the expenses of the said delegation, and the Council and Assembly will make due provision for the same.”

Ordered, that the said report be received and adopted, and that the said address do pass and be sent to the Legislative Council with a message requesting their concurrence.

Friday, April 3, 1891.

. The Hon. the Premier presented to the House report of the joint committee appointed to consider the question of French treaty rights, which is as follows:—

To the Honourable the COMMONS OF THE UNITED KINGDOM OF GREAT BRITAIN AND IRELAND
in Parliament assembled.

We the Legislative Council and House of Assembly in Session convened beg leave to approach your Honourable House to appeal to you for protection and support under circumstances which have filled the minds of all classes in this country with profound anxiety and dismay.

Your Honourable House is aware that the old time difficulties consequent upon the treaties between Great Britain and France on the subject of the Newfoundland Fisheries have of late years assumed even unaccustomed gravity, producing painful and ceaseless agitation among our people. Two delegations proceeded from here during last session to represent to Her Majesty's Government the exorbitant growth of the claims of the French under alleged sanction of treaties and the further injustice wrought to the community of Newfoundland. Their efforts for redress have been so far unsuccessful, and we are now confronted with a new evil essentially more intolerable than those with which experience has made us but too familiar.

We refer to the proposal of Her Majesty's Government, by a Bill now before Parliament to re-enact the Act of Geo. 4, cap. 51, For the better conduct of the treaties between Great Britain and France, respecting the Newfoundland Fisheries, which Act was repealed in 1871.

This Act embodied provisions of an oppressive and arbitrary character, wholly repugnant to those principles of liberty and justice which are held to be the basis of modern British legislation. They conferred upon the officers of Her Majesty's ships engaged in the Fisheries protective service who were entrusted with the settlement of Treaty disputes, powers of summary adjudication independent of all the restrictions and safeguards which British law has devised for the defence of the inherent rights of British subjects. These powers extended to most severe penal inflictions and were beyond all appeal. And when it is remembered that they were exercised by persons unacquainted with legal procedure and whose peculiar training and habits of thought and action dictated unquestioning submission to their decrees, it must be manifest that excessive hardships and injustice were the frequent and inevitable results.

It may be alleged that while yet the Act of Parliament in question was on the Statute Book it had been allowed to lapse into comparative desuetude, so incompatible with modern civilisation would have been the application of this barbarous law. But unhappily the record of the years 1887, 1888, and 1889, gives instances of its enforcement under assumed authority with disastrous consequences to the property and industry of some of Her Majesty's subjects engaged in the fisheries of Newfoundland.

We submit that this law could not now possibly be rendered applicable to the circumstances which it is designed to meet. All social and general conditions in Newfoundland, and particularly on those parts of the coasts affected by the treaties, have undergone a radical and complete change in the many years that have elapsed since the law under consideration was enacted. There was then no resident population in these localities. Population has long since settled there in considerable numbers, and trade and various sources of employment have become developed and yield their contributions to our Customs Revenue. Several years ago Her Majesty's Government confirmed the occupation of the coast by acceding to the desire of residents for representation in the House of Assembly and for the appointment of magistrates and police. They are periodically visited by the Supreme Court on circuit; they have regular communication with the rest of the country, and with Canada by mail and passenger steamers; in a word all the ordinary institutions of civil life to the extent to which the means of the Colony enable it to provide them. The permanence of their position being thus conclusively assured and recognised, it can hardly be necessary to point out with what cruel severity, with what destructive effect the proposed law would operate upon the trade, the industries, and every other appreciable interest of this section of our people. It must be clear beyond reach of doubt that to recall this instrument of coercion in their case would be to outrage the feelings and the rights of the law-abiding and loyal inhabitants of this whole dependency of the British Crown.

We would therefore most earnestly implore your Honourable House, by all your honoured and revered traditions, to desist from inflicting upon the people of this country the calamity of such an enactment as that which is now in contemplation.

We would remind your Honourable House that Her Majesty's Government and that of France have lately agreed upon arbitration respecting the Newfoundland fisheries; this tribunal, however, proposing to deal with one question only, and this the recent question of the Lobster Fishery. This partial proceeding has been decided not only without reference to the Newfoundland Government, but against their emphatic protest. We, too, on the part of the Colony beg to present an equally emphatic protest against a course adopted in direct violation of the principles of that constitutional form of Government which it is now our privilege to possess.

We would in conclusion respectfully invoke the aid of your Honourable House for the protection of the Treaty Rights of Newfoundland against the demands of the French for an exclusive fishery including lobster fishing on those portions of coast where they hold acknowledged privileges. The rights of British subjects have been on several occasions declared and the pretensions of the French disallowed by some of the ablest of the statesmen of Britain notably

by Lord Palmerston, and only last year by the Marquis of Salisbury. We feel that your Honourable House will recognise the justice of our prayer that the definitions of these high authorities shall not continue to be mere theoretic pronouncements which France is permitted to contravene, but shall be carried out in their true significance and to their full practical effect.

We beg to inform your Honourable House that we have appointed the Honourables Sir William Vallance Whiteway, K.C.M.G., Augustus W. Harvey, M.L.C., Moses Monroe, M.L.C., his Honour the Speaker of the House of Assembly (George H. Emerson, Esq.), and Mr. Alfred B. Morine, M.H.A., as a delegation to present this remonstrance; and we pray that they may be heard at the bar of your Honourable House.

And he moved that the House do now resolve itself into committee of the whole thereon, and it was ordered accordingly.

Mr. Speaker left the chair.

Mr. Whiteley took the chair of the committee.

Mr. Speaker resumed the chair.

The chairman from the said committee reported that they had considered the matter to them referred, and had adopted the said report, and the petition accompanying the same, without amendment.

And, the House having sat after twelve of the clock midnight of the said third day of April,

Saturday, April 4, 1891.

It was ordered that the said report of the committee of the whole be received and adopted, and that the same do pass and be engrossed and be presented to both branches of the Imperial Parliament.

The following messages were received from the Legislative Council:—

(a.) Acquainting this House in reply to their message of the first of April instant, that the Council concur in the address to his Excellency the Governor requesting that his Excellency will be pleased to appropriate and pay out of the general revenue of this Colony such sums of money as may be necessary towards the expenses of the delegation appointed for the purposes named in the address. Ordered, that the address to his Excellency the Governor, acquainting him of the appointment of a delegation to proceed to England to lay before the British Parliament and people the reasons of this Colony for opposing the proposed legislation in reference to the French treaties question, and requesting him to be pleased to appropriate and pay any sums necessary towards the expenses of the delegation, be presented to his Excellency by such members of this House as are of his Excellency's Executive Council.

I certify that the above-written sixteen pages and this page,* marked with the letter A. to Q. respectively, and by me initialled thus: "G. M. Johnson Clk., H.A.," contain correct extracts from the original journal of the House of Assembly of Newfoundland, which Journal is kept by me.

St. John's, April 6, 1891.

(Signed) GEO. M. JOHNSON,
Clerk of the House of Assembly
of Newfoundland.

No. 2.

SIR W. V. WHITEWAY to COLONIAL OFFICE.

MY LORD,

Hotel Métropole, April 21, 1891.

I BEG leave to enclose a copy of a memorandum in relation to the Newfoundland fishery question, which the delegates this morning had the honour to submit to Lord Salisbury, in accordance with his Lordship's request. As it will probably be impossible for the delegates to give due consideration, before the meeting of the House of Lords on Thursday, to any reply which his Lordship may be pleased to give to our communication, and as it will be very inconvenient, if not wholly impossible, for the delegates to complete the statement which they desire to make in the House of Lords before the second reading of the Bill now before Parliament, the delegates respectfully solicit that the second reading of the Bill may be deferred until some day in next week and as Thursday is Budget day, it may be convenient for the Government to accede to the request of the delegates.

'The Right Hon. Lord Knutsford.

I have, &c.,
(Signed) W. V. WHITEWAY.

* Of the original MS.

Enclosure in No. 2.

MEMORANDUM IN RELATION TO THE NEWFOUNDLAND FISHERY QUESTION.

Hotel Métropole, April 21, 1891.

THE delegates would respectfully submit to the consideration of Lord Salisbury the following proposals which they trust will meet with his Lordship's approval:—

FIRST.—(A.) The Newfoundland legislature to pass immediately an Act authorising the execution for this year of the *modus vivendi*, the award of the Arbitration Commission regarding the lobster question, and the treaties and declarations, under instructions from Her Majesty in Council:

(B.) The further progress of the Bill now before Parliament to be deferred until the passing of the above Act and the Bill then to be withdrawn.

(C.) The terms of an Act to empower Courts and provide for regulations to enforce the treaties and declarations to be discussed and arranged with the delegates now in this city, as rapidly as possible, and to be enacted by the legislature of the Colony as soon as agreed upon.

SECOND.—(A.) The present Arbitration agreement not to be allowed to operate further than the lobster question without the prior consent of the Colony, and in this case the Colony to be represented upon the Commission.

(B.) The Colony desires an agreement for an unconditional arbitration on all points that either party can raise under the treaties and declarations, and if this be arranged between Great Britain and France, Newfoundland will ask to be represented upon such arbitration, and pass an Act to carry out the award.

No. 3.

FOREIGN OFFICE to COLONIAL OFFICE.

SIR,

Foreign Office, April 22, 1891.

I AM directed by the Marquis of Salisbury to transmit to you, herewith, to be laid before Lord Knutsford, copy of a letter from the Newfoundland Delegates, submitting certain proposals in relation to the Newfoundland Fishery question, for the consideration of Her Majesty's Government.

I am at the same time to forward the accompanying draft* of the reply which Lord Salisbury proposes, with Lord Knutsford's concurrence, to return to the above-mentioned communication.

The Under Secretary of State,
Colonial Office.

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

Enclosure 1 in No. 3.

NEWFOUNDLAND DELEGATES to the MARQUIS OF SALISBURY.

MY LORD,

Hotel Métropole, London, April 21, 1891.

WE beg to inclose herewith the proposals† which your Lordship was so kind as to ask us to submit in writing. The Delegates feel that the adoption by Her Majesty's Government of the propositions now made will cause the excitement now prevailing in the Colony to subside, and will secure harmony upon the debatable ground.

We also beg to inclose, for your Lordship's information, copies of the Minutes of Proceedings‡ in the Legislature of Newfoundland in connexion with our mission, from which your Lordship will perceive that we have ample powers to make the propositions now submitted.

May we ask that your Lordship will favour us by expressing the views of Her Majesty's Government upon the proposals now made, in time for our consideration before the day now set down for the second reading of the Bill now before the House of Lords?

We have, &c.,
(Signed) W. V. WHITEWAY.
A. W. HARVEY.
M. MONROE.
GEORGE H. EMERSON.
A. B. MORINE.

* The letter is printed here as actually sent.

† See Enclosure in No. 1.

‡ See Enclosure in No. 2.

Enclosure 2 in No. 3.

GENTLEMEN,

Foreign Office, April 22, 1891.

I HAVE to acknowledge the receipt of your letter of yesterday's date.

The suggestions contained in it have received our immediate and careful consideration.

We willingly recognise the sincerity of your desire to make proposals which should be acceptable to Her Majesty's Government.

But we feel that at the stage at which the question has arrived, and in view of the international considerations which it involves, it is not possible for us now under any circumstances to withdraw the Bill which has been introduced into Parliament. The Bill is merely facultative in its provisions, and nothing will be more satisfactory to Her Majesty's Government than that timely and adequate legislation by the Colony should render it unnecessary to bring it into effect.

The Newfoundland Delegates.

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

No. 4.

COLONIAL OFFICE to FOREIGN OFFICE.

SIR,

Downing Street, April 22, 1891.

I AM directed by Lord Knutsford to acknowledge the receipt of your letter of this day's date,* and to request that you will inform the Marquis of Salisbury that his Lordship concurs in the terms of the reply which it is proposed to return to the letter from the Newfoundland delegates, dated yesterday, containing a memorandum on the Newfoundland Fishery question.

Lord Knutsford will transmit copies of the correspondence between the delegates and the Foreign Office for the information of the Colonial Government.

The Under Secretary of State,
Foreign Office.

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

No. 5.

STATEMENT MADE BY SIR W. V. WHITEWAY IN THE HOUSE OF LORDS
ON 23RD APRIL 1891.

MAY IT PLEASE YOUR LORDSHIPS,

ON behalf of the Legislature of Newfoundland, I beg to express deep gratitude for the great privilege which has been conceded to its delegates by your Lordships in permitting us to appear at the bar of this most noble and august assembly, to express the Legislature's objections to the Bill entitled "An Act to revive certain sections of an Act of the fifth year of the reign of George IV., chap. 51, for the purpose of carrying into effect engagements with France respecting Fisheries in Newfoundland."

I shall express those objections as concisely as possible.

It will not be necessary to tire your Lordships by reading those portions of the treaties and declarations which refer to Newfoundland, with all of which you are already familiar; and I will therefore content myself with saying that the 13th article of the Treaty of Utrecht (1713) was revived by the 5th article of the Treaty of Paris (1763), and that the Treaty of Versailles (1783) again restored the fishery rights of the French to their position under the Treaty of Utrecht. The Treaty of Paris (1814) restored matters to the status they were in in 1792, under the Treaty of Versailles, and in 1815 the third Treaty of Paris confirmed the treaty made in the previous year. Your Lordships' attention is particularly drawn to the 6th article of the Treaty of Paris (1763), to the 4th article of the Treaty of Versailles (1783), and to the declarations which accompanied the latter treaty.

(The articles of the several treaties and the declarations form Appendix A to this paper.)

HISTORY OF LEGISLATION.

A brief history of the legislation in connexion with the treaties and declarations will be found instructive and significant when the arguments which I shall venture to adduce come to be considered.

* No. 3.

It is a remarkable fact that for 75 years—from 1713 to 1788—no legislation seems to have taken place with reference to the execution of the Treaties of Utrecht, Paris, or Versailles. The first Act upon the subject was passed in July 1788—five years after the Treaty of Versailles was signed. It first set forth the engagements made by the treaties and declarations accompanying the Treaty of Versailles, and then enacted as follows:—

Section I.

“It shall and may be lawful for His Majesty, His heirs and successors, by advice of Council, from time to time to give such orders and instructions to the Governor of Newfoundland, or to any officer or officers on that station, as he or they shall deem proper and necessary to fulfil the purposes of the definitive treaty and declaration aforesaid; and, if it shall be necessary to that end, to give orders and instructions to the Governor, or other officer or officers as aforesaid, to remove or cause to be removed any stages, flakes, train vats, or other works whatever, for the purpose of carrying on fishery, erected by His Majesty’s subjects on that part of the coast of Newfoundland which lies between Cape St. John passing to the north, and descending by the western coast of the said island to the place called Cape Rage, and also all ships, vessels, and boats belonging to His Majesty’s subjects which shall be found within the limits aforesaid; and also, in case of refusal to depart from within the limits aforesaid, to compel any of His Majesty’s subjects to depart from thence; any law, custom, or usage to the contrary notwithstanding.”

Section II.

“And be it further enacted by the authority aforesaid, That if any person or persons shall refuse, upon requisition made by the Governor, or any officer or officers acting under him, in pursuance of His Majesty’s orders or instructions as aforesaid, to depart from within the limits aforesaid, or otherwise to conform to such requisition and directions as such Governor or other officer as aforesaid shall make or give for the purposes aforesaid, every such person or persons so refusing or otherwise offending against the same, shall forfeit the sum of two hundred pounds, to be recovered in the Court of Session or Court of Vice-Admiralty in the said island of Newfoundland, or by bill, plaint, or information in any of His Majesty’s Courts of Record at Westminster; one moiety of such penalty to belong to His Majesty, His heirs, and successors, and the other moiety to such person or persons as shall sue or prosecute for the same: provided always that every such suit or prosecution, if the same is commenced in Newfoundland, shall be commenced within three months, and if commenced in any of His Majesty’s Courts of Record at Westminster, within twelve months from the time of the commission of such offence.”

War terminated the Treaty of Versailles; and though the Treaty of Paris (1814) restored to France “the colonies, fisheries, and factories of every kind which were possessed by France on the 1st January 1792,” it does not appear to have been considered that this treaty revived the Act above quoted, for in 1824 an Act intitled “An Act to repeal several Laws relating to the Fisheries carried on upon the Banks and Shores of Newfoundland, and to make provision for the better conduct of the Fisheries for five years, and from thence to the end of the then next session of Parliament,” contained two sections—12 and 13—which were almost literally the same as those above quoted; and these two sections it is proposed to re-enact by the Bill now before your Lordships.

An Act was passed in 1829 to continue the Act 5 Geo. IV. chap. 51. last referred to, until the 31st of December 1832; and in 1832 the Act 5 Geo. IV., chap. 51. was further extended until 1834, “and no longer.” In 1832 a legislature was granted to Newfoundland, its first assembling taking place in 1833; and Parliament did not in 1834 further continue in force the law enacted in 1824, leaving to the Legislature of the Colony the task of passing laws and enforcing regulations to carry out the treaties and declarations.

The Legislature of the Colony did not, however, assume this duty, nor does it appear by the records that its attention was ever called to the matter. The fact remains, however, that in 1834 the last Act of Parliament in this connexion expired by virtue of one of its own provisions, and that from that year until the present time no legal authority has existed for the enforcement of Her Majesty’s instructions to naval commanders upon the coast of Newfoundland. It is now proposed to re-enact the provisions of the Act 5 Geo. IV., chap. 51. and to give them an application in a manner never before suggested.

The Act now before your Right Honourable House contains the following clauses:—

“1.—(1.) The enactments set out in the Schedule to this Act shall be revived and have full effect, and the treaty or treaties therein named shall include not only the Newfoundland fishery engagements, *but also any temporary arrangement* made with France either *before* or *after* the passing of this Act for adjusting the differences arising out of those engagements.

' (2.) If *any permanent arrangement* is made between the United Kingdom and France with respect to the differences which have arisen upon the Newfoundland fishery engagements, it shall be lawful for Her Majesty, by Order in Council, to direct that *the enactments hereby revived shall apply*, and the same shall apply accordingly as if such permanent arrangement were a treaty mentioned in the said enactments :

"(3.) Provided that before such Order is made, the draft thereof shall have been communicated to the Government of Newfoundland, and lain on the table of both Houses of the Imperial Parliament for not less than one month.

" 2.—Where Her Majesty the Queen in Council is satisfied that by any law made before or after the passing of this Act by the Legislature of Newfoundland, sufficient provision is made for carrying into effect, *under Her Majesty's orders and instructions*, the Newfoundland fishery engagements, or any such arrangement as above in this Act mentioned, it shall be lawful for Her Majesty in Council to suspend the operation of this Act, or any part thereof, so long as such law continues in force, and no longer, and to direct that such law or any part thereof shall have effect with or without modifications and alterations as if it were part of this Act and any Order in Council so made shall have full effect.

" 3.—This Act may be cited as 'The Newfoundland Fisheries Act, 1891.' "

OBJECTIONS.

Having thus briefly stated the provisions of the treaties and declarations and the history of the legislation connected herewith, we humbly beg to solicit your attention to the objections which the Colony entertains to the Bill now proposed.

FIRST.—We object to the passage of the Bill now before your Lordships, because it was introduced into Parliament before the Government, the Legislature, or the people of Newfoundland had an opportunity to accept or oppose it, or to suggest its amendment; which is opposed to the principles of responsible government granted to the Colony, and in direct opposition, as we conceive, to the assurance given to the Colony in 1857, when the Right Honourable the Secretary of State sent the following despatch to the Government of Newfoundland announcing the abandonment of a proposed Convention with France :—

SIR, Downing Street, March 26, 1857.
When Her Majesty's Government entered into the Convention with that of France, they did so in the hope of bringing to a satisfactory arrangement the many complicated and difficult questions which have arisen between the two countries on the subject of the Newfoundland fisheries. But they did so with the full intention of adhering to two principles which have guided them, and will continue to guide them—namely, that the rights at present enjoyed by the community of Newfoundland are not to be ceded or exchanged without their assent; and that the constitutional mode of submitting measures for that assent is by laying them before the Colonial Legislature.

"For this reason they pursued the same form of proceeding which had been before pursued in the case of the Reciprocity Convention with the United States, and which was in that case adopted and acted upon by the Newfoundland Legislature. It was in perfect uniformity with the same precedent that it appeared necessary in the present instance to add a condition respecting Parliamentary enactment, in order that, if necessary, any existing obstacles to the arrangement in the series of Imperial Statutes might be subsequently removed.

"The proposals contained in the Convention having been now unequivocally refused by the Colony, they will, of course, fall to the ground. And you are authorised to give such assurance as you may think proper that the consent of the community of Newfoundland is regarded by Her Majesty's Government as the essential preliminary to any modification of their territorial or maritime rights.

"To Governor Darling, &c., &c.,
Newfoundland."

I have, &c.,
(Signed) H. LABOUCHERE.

Neither the present Act nor any other specific Act has ever been submitted to the Colonial Government or Legislature for definite acceptance, rejection, or amendment. Information that this Act would be introduced was not given to the Government of the Colony till the 17th day of March last, nor to the Legislature till the 18th day of the same month, though the British Government determined in the middle of January to procure its enactment, and transmitted a despatch to Governor O'Brien on the 19th of that month giving information in regard to this Bill, which must have been received by him before the middle of February,

but was not submitted to the Government of the Colony until the date above mentioned. Knowledge of the introduction of the Act into Parliament on the 19th day of March last was first received by the Government and Legislature of the Colony on the same day by means of telegrams from private persons, and repeated applications by the Legislature to the British Government for a copy of the text of the Bill failed to procure it prior to our departure from the Colony. If this Bill had before its introduction been submitted to the Government and Legislature of the Colony, with an intimation of the British Government's intention to procure its enactment by Parliament, such arrangements might have been made as would have prevented the present unpleasant condition of affairs.

We respectfully submit that the power of legislation on all matters concerning the territory within the jurisdiction of the Colony is vested in the Local Legislature, subject, of course, to Her Majesty's assent; and although we do not pretend to contend that power to legislate for the Colony does not reside in the Imperial Parliament, we most humbly urge that it is a power which should not be exercised before the Local Legislature has most clearly and distinctly refused to enact laws adequately meeting the necessities of the case, and then only in cases of extreme emergency.

By Clause 1, "any temporary arrangement made with France either *before* or *after* the passing of this Act" is enforceable as though it were a treaty; and by Clause 2, "any permanent arrangement" with France "with respect to the differences which have arisen upon the Newfoundland fishery engagements" are also enforceable as though they were treaties. To us it appears that these provisions are intended to legalise the *modus vivendi* made with France in 1890, as well as its renewal this year, and therefore that it is retroactive legislation, calculated to injuriously affect suitors claiming damages for losses sustained in 1890 in consequence of the operation of that *modus vivendi*; and we submit that this is in interference with a right of the subject which ought not to be permitted. But a far more serious danger, and a far greater infringement of constitutional right, than this, appears to be contemplated by the provisions legalising future arrangements. As we interpret the Act, the Government would have power, were it enacted, to cede to France the most valued rights of the Colony, without the Colony's consent, and in spite, indeed, of its most earnest protests. Nay, more, the Imperial Parliament itself seems by the terms of the Bill to be virtually deprived of a constitutional check which it has exercised at all times.

It is proposed by the Bill that when any permanent arrangement with France has been made, it shall be lawful for Her Majesty to enforce it by Order in Council; and although it is provided that such Order must be "communicated to the Government of Newfoundland, and lain on the table of both Houses of the Imperial Parliament for not less than one month," no effective means of protest, and no power of rejection, is secured to the Colony, while the mere omission of the Imperial Parliament to express its disapproval of the Order in Council would for ever fasten upon the Colony the burden of any arrangement which might be made.

The Legislature of the Colony is appalled at the danger with which it is thus menaced. Arrangements proposed in the past have caused it to fear undue concession of the rights of the Colony to France, and it is feared that it is now intended to impose upon the Colony an arrangement to which it would not willingly consent. Whether this be the intention or not, the Bill now before your Lordships evidently confers power to do so, and is therefore, a menace to that right of prior consent promised to the Colony by the British Government in 1857.

The people of the island may at any moment find themselves hampered by arrangements which may prove ruinous to their interests, without any opportunity to prevent them; and we beg further to remind your Lordships that Conventions were made in 1857, and in 1884-5, which provided for concessions to the French, which, if carried out, would have been attended with disastrous results to the fishing interests of the Colony. What has occurred may occur again, and the Bill now before your Lordships provides the opportunity of making such arrangements permanent. It is indeed provided that the Legislature of the Colony may enact legislation to take the place of the present Bill; but this Bill is not to be suspended until the Local Legislature confers upon Her Majesty in Council the precise powers she would have under this Bill, and this provision is therefore but an illusory concession, meaning only that the burden of an Act of this Parliament can only be removed by enacting a similar Act in the Colonial Legislature.

In referring to the arrangements of 1884-5, the Right Honourable the First Lord of the Treasury has publicly stated that it was at first accepted by the Government and Legislature of Newfoundland, and afterwards rejected. In this the right honourable gentleman was misinformed. The Government of the Colony refused at the outset to do more than submit the arrangement to the Legislature after certain amendments were made, and the Legislature was not consulted in any manner at that time. Before the proposed amendments were agreed

to, a new Administration had come into office; and in the session of 1886 the concluded arrangement was first submitted to the Legislature, which referred it to a Joint Select Committee of both Houses, which considered the matter for two sessions, and ultimately the arrangement was unanimously rejected. We may be allowed, in reply to a statement that the Colonial Legislature acted unreasonably in rejecting the Convention, to call attention to a very significant fact. Sir George William Des Vœux, now Governor of Hong Kong, was sent to Newfoundland to induce the Legislature to adopt the Convention. Within a few months of his arrival he expressed his views on the subject, in a despatch to the Colonial Office, in the following forcible language:—

“Now that I fully comprehend the present position of the Colony, it is to me no longer a matter of wonder that the Legislature has hitherto failed to ratify the proposed ‘arrangement’ with France; indeed, I can scarcely conceive it possible that this arrangement will ever be accepted so long as the bait clause remains in it, and no security is taken that the export bounties will not be maintained on their present footing.

“For though all the other articles have the appearance of concession on the part of the French, and some are no doubt substantial concessions, they are all immeasurably outweighed by the single concession required on the part of this Colony. For if there were granted to the French an inalienable right to procure bait here, the future, not only of the coast where they already have fishing rights, *but of the whole Colony, would practically be placed within the control of their Government.*”

SECOND.—We object to this Act because it is modelled after an Act passed at a period when the Colony had no Legislature of its own, and when there was but a small population upon the coast directly affected, whereas the Colony has had a Legislature for over half a century, and the treaty shore is now settled from end to end. The Colony was granted a Legislature in 1832, and settlement upon the treaty shore has been permitted by the British Government for many years past. With their consent grants of lands, subject to French treaty rights, have been given, and the land has been settled upon and improved; with their consent representation in the Legislature has been granted to the settlers, magistrates and custom officers have been appointed upon the coast, telegraphic steam and mail communication have been established, taxes are collected, and public money expended. In face of this great alteration in the whole condition of affairs it should be impossible to re-enact a law first made over a century ago, and which would make it possible for naval officers to render valueless every iota of property on the land or in the waters of the treaty shore—the property not alone of the thousands who dwell there, but also of the other thousands who annually visit and fish there—for no provision of any kind is made in the proposed Act for compensating persons whose property may be in any way affected; and under this Bill power would be vested in the Governor of Newfoundland, or any officer on the station, on his mere volition, arbitrarily to remove a British subject and his property from the treaty coast, and to leave him absolutely divested of any redress or compensation whatever.

In the face of these facts, we submit it would be a terrible injustice to British subjects to give the power to naval officers which is contemplated and given by this Bill.

Should this Bill become law, it must necessarily have the effect of preventing capital being invested for the development of the minerals, of agricultural and lumbering resources, on one half of the island of Newfoundland. This part must ever remain a wilderness, for with the possibility of establishments being removed at any moment, on the mere volition of one man, persons will not be found to risk their capital in so uncertain and precarious a venture.

If this Bill becomes law, and British people can be removed from British soil at the will of a naval officer, we humbly submit that, so far as this part of the island is concerned, the sovereignty of the island is a mere myth, a name without value, whilst the possession of an easement by the French to catch and dry fish on the strand vests in them all that is of value.

THIRD.—We object to the Act now before your Lordships because it is to be used to enforce regulations to carry out treaties the interpretation of which is disputed, and which regulations have hitherto been framed in a manner making them oppressive and unjust to British subjects. British statesmen have declared that under the treaties the French have only a right to fish in the waters along the treaty shore in common with British subjects; but, acting under regulations and orders similar to those which this Act seeks to legalise, British naval officers have prevented our fishermen from exercising common rights with the French, have driven our boats out of the harbours of shelter along the shore, and have otherwise acted as though British subjects had no rights at all upon the treaty shore which were not inferior to those possessed by the French. Thus British statesmen have practically invited our people to do those acts for which British officers have punished them, and thus it will be in the future until the meaning of the treaties is definitely decided. We ought not to be subjected to burdens at once odious and uncertain.

FOURTH.—We object to this Bill because, utterly ignoring the Municipal Courts, it commits the enforcement of the treaties and regulations to the care and supreme control of naval officers not learned in the law, unskilled in legal procedure, and not trained in a manner qualifying them to adjudicate upon abstruse questions affecting the peace of the empire upon the one hand, and the rights of individuals upon the other. The sovereignty of the island of Newfoundland is in Her Majesty, and the right of fishing and drying fish on the coast was conceded to the French merely as an easement. To the enjoyment of this easement they are entitled, and for any interruption or injury they may allege to have sustained, appeal for redress should be made by them to the judicial tribunals of the sovereign of the soil in the first place.

We therefore most earnestly urge that her Majesty's ordinary courts of justice in Newfoundland are the tribunals which should adjudicate upon questions arising between British and French fishermen. From any judgment a final appeal would lie to Her Majesty and the Privy Council. In no case should naval officers be permitted to try causes arising as aforesaid, since courts of justice already exist in the Colony for the purpose, and if it be deemed impossible for the ordinary courts to enforce the law in such a manner as to adequately ensure justice to the French, special courts could and should be provided.

FIFTH.—We object to this Bill because it is intended to aid in the enforcement of a *modus vivendi*—

- (a.) Both made and renewed without the Colony's consent ;
- (b.) Renewed after a positive pledge that it was "for one year only ;"
- (c.) Renewed without providing for the operation of factories erected, completed, or made ready for operation in consequence of the pledge that the original *modus vivendi* was "for one year ;"
- (d.) Renewed without providing for the compensation of those who relied upon this pledge.

SIXTH.—We object to the Bill because it provides for the enforcement of the award of an Arbitration Commission definitively empowered to deal with one issue only, and that an issue against the separate submission of which the Colony has again and again protested. The Colony is ready and willing to submit to unconditional arbitration all the questions arising under the treaties and declarations, asking only that no single question shall be decided until a decision has been arrived at as to all other points at issue, and that the award shall then be enforceable as a whole. According to the terms of the agreement for arbitration recently entered into, no questions can be submitted except those which affect the fishery upon the French treaty shore, and these only as they may be agreed upon from time to time. This totally excludes from the purview of this arbitration one most important question which the Colony desires to have decided (that, namely, which refers to the French occupation and use of the islands of St. Pierre and Miquelon), and makes it possible for either of the high contracting parties to withhold any of those questions affecting even the fisheries themselves which such party may deem it inexpedient in its own interests to have decided. Either party at any time after the settlement of the lobster question, or whenever dissatisfied with a decision upon any particular point, may withdraw from further arbitration ; and such a result may occur at a time most embarrassing to the other side. While, therefore, the Colony perceives that under the present arrangement it will be impossible to have all question, decided, it has no assurance that upon certain issues adverse decisions may not be arrived at, with no compensating advantages from decisions in its favour upon other points. While, therefore, it would welcome arbitration upon every question at issue, it deprecates in the most earnest manner a piecemeal settlement.

It has been publicly stated by the Right Hon. the First Lord of the Treasury that the terms of the arbitration agreement were made known to the Government of the Colony before they were finally agreed to. This, we regret to say, is not the case. On the 7th of March last, the Right Hon. the Secretary of State for the Colonies informed the Governor that arbitration would shortly take place on the lobster fishery question, and the Government of the Colony promptly telegraphed a protest against any arbitration which did not include all the questions arising under the treaties and declarations. Seven days afterwards—on the 16th of March last, that is—the Right Hon. Secretary of State telegraphed that an agreement for arbitration had been signed *five days before*, and then first made known its terms.

SEVENTH.—We object to this Bill because, while it permits the removal of property from the treaty coasts, it makes no provision for the compensation of those who may suffer loss thereby, and thus makes the title to property extremely precarious. The effect which this Bill will have in retarding the development of the Colony's resources has been already dwelt upon, but we cannot too strongly urge the duty of protecting private rights ; and if the

settlers upon the French treaty coasts are to be liable at all times to removal by naval officers, they ought at least to be assured compensation. If the few are to be sacrificed for the good of the many, the many should compensate them, and to this compensation they should, we submit, be entitled by the terms of any Bill which may be enacted by Parliament.

We are not unaware or unappreciative of the difficulties with which Her Majesty's Government have to grapple, and we are sincerely desirous of aiding in their solution. Actuated with this spirit, we have approached the Government with proposals calculated, we sincerely believe, to give all necessary power to execute the treaties, declarations, and agreements with France according to their true intent and meaning. Those proposals are as follows :—

First.—(a.) The Newfoundland Legislature to pass immediately an Act authorising the execution for this year of the *modus vivendi*, the Award of the Arbitration Commission regarding the lobster question, and the treaties and declarations under instructions from her Majesty in Council ;

(b.) The further progress of the Bill now before Parliament to be deferred until the passing of the above Act, and the Bill then to be withdrawn ;

(c.) The terms of an Act to empower Courts and provide for regulations to enforce the treaties and declarations to be discussed and arranged with the delegates now in this city as rapidly as possible, and to be enacted by the Legislature of the Colony as soon as agreed upon.

Second.—(a.) The present arbitration agreement not to be allowed to operate further than the lobster question without the prior consent of the Colony, and in this case the Colony to be represented upon the Commission.

(b.) The Colony desires an agreement for an unconditional arbitration on all points that either party can raise under the treaties and declarations ; and if this be arranged between Great Britain and France, Newfoundland will ask to be represented upon such arbitration, and will pass an Act to carry out the award.

We regret that up to the present moment these propositions have not been accepted, nor any hope been held out that they will be. The temporary legislation which we have proposed to procure the enactment of would be immediately adopted by the Legislature of the Colony, and present needs thereby amply met. The details of a permanent and thoroughly satisfactory measure could be arranged and enacted without delay by the Legislature of the Colony. The adoption of our proposals would at once cause excitement to subside, and would induce peace under conditions which make coercion by war-ships extremely difficult, if not impossible. If the Bill now before your Lordships becomes law, its provisions will have to be enforced upon a resentful people ; but if our propositions are adopted, every good object which the present Bill can have in view will be easily and pleasantly attained, and without injury to the proper pride of a people who, though few in number, are as much entitled to consideration as the inhabitants of the proudest portion of the British Empire. No good can possibly come from coercing, or threatening to coerce, a people willing to do their whole duty ; and to enact the Bill now before your Lordships, in face of the propositions made by us, would be a needless indignity to a loyal people.

In humbly praying that the Bill now before your Lordships may not be read a second time, we feel confident that we are consulting the best interests of Newfoundland and of the Empire. Its enactment will leave a rankling wound in the hearts of the Colonists, and establish a precedent that must ever give a feeling of insecurity to every self-governing Colony. In offering, on behalf of the Colonial Legislature, to enact laws adequately providing for the honourable fulfilment of obligations of an exceedingly odious kind, we are animated by a spirit of patriotism and devotion to the Empire ; and we most respectfully submit that persistence in the passage of the present Bill would under the circumstances be but a poor return for that faith in Parliament which animated the Legislature when sending us to the bar of this House.

In conclusion, I may add that the time at our disposal has not enabled us to prepare such a full and complete statement of our case as we wished to lay before you, and we had hoped that the time for making this statement would have been extended ; but we have to express our gratitude for the patient hearing which you have afforded us, and we are confident that the defects in our case will be supplied by your Lordships, as we are aware of the deep interest which you take in, and your knowledge of, the subject under consideration. We therefore leave the matter with your Lordships, in perfect confidence that you will mete out to the Colony we represent that justice which is traditional of this most noble House.

APPENDIX A.

ARTICLES in the TREATIES and the DECLARATIONS referred to by SIR WILLIAM WHITEWAY.

Article 13 of the Treaty of Utrecht (1713) is as follows :—

“The island called Newfoundland, with the adjacent islands, shall from this time forward belong of right wholly to Great Britain; and to that end the town and fortress of Placentia, and whatever other places in the said island are in the possession of the French, shall be yielded and given up, within seven months from the exchange of the ratification of this treaty, or sooner, if possible, by the most Christian King, to those who have a Commission from the Queen of Great Britain for that purpose. Nor shall the most Christian King, his heirs and successors, or any of their subjects, at any time hereafter, lay claim to any right to the said island or islands, or to any part of it or them. Moreover, it shall not be lawful for the subjects of France to fortify any place in the said island of Newfoundland, or to erect any buildings there, besides stages made of boards and huts necessary and usual for drying of fish, or to resort to the said island beyond the time necessary for fishing and drying of fish. But it shall be allowed to the subjects of France to catch fish, and to dry them on land, in that part only, and in no other besides that, of the said island of Newfoundland which stretches from the place called Cape Bonavista to the northern point of the said island, and from thence, running down by the western side, reaches as far as the place called Point Riche. But the island called Cape Breton, as also all others, both in the mouth of the River St. Lawrence and in the gulph of the same name, shall hereafter belong of right to the French, and the most Christian King shall have all manner of liberty to fortify any place or places there.”

Articles 5 and 6 of the Treaty of Paris (1763) are as follows :—

“*Article 5.*—The subjects of France shall have the liberty of fishing and drying on a part of the coasts of the island of Newfoundland, such as it is specified in the 13th article of the Treaty of Utrecht, which article is renewed and confirmed by the present treaty (except what relates to the island of Cape Breton, as well as to the other islands and coasts in the mouth and in the gulph of St. Lawrence); and his Britannic Majesty consents to leave to the subjects of the most Christian King the liberty of fishing in the gulph of St. Lawrence on condition that the subjects of France do not exercise the said fishery but at the distance of three leagues from all the coasts belonging to Great Britain, as well those of the continent as those of the islands situated in the said gulph of St. Lawrence. And as to what relates to the fishery on the coast of the island of Cape Breton, out of the said gulph, the subjects of the most Christian King shall not be permitted to exercise the said fishery but at the distance of fifteen leagues from the coast of the island of Cape Breton; and the fishery on the coasts of Nova Scotia or Arcadia, and everywhere else out of the said gulph, shall remain on the foot of former treaties.

“*Article 6.*—The King of Great Britain cedes the islands of St. Pierre and Miquelon in full right to his most Christian Majesty, to serve as a shelter to the French fishermen; and his said most Christian Majesty engages not to fortify the said islands, to erect no buildings upon them but merely for the convenience of the fishery; and to keep upon them a guard of fifty men only for the police.”

Articles 4, 5, and 6 of the Treaty of Versailles (1783) are as follows :—

“*Article 4.*—His Majesty the King of Great Britain is maintained in his right to the island of Newfoundland, and to the adjacent islands, as the whole were assured to him by the 13th article of the Treaty of Utrecht; excepting the islands of St. Pierre and Miquelon, which are ceded in full right by the present treaty to his most Christian Majesty.

“*Article 5.*—His Majesty the most Christian King, in order to prevent the quarrels which have hitherto arisen between the two nations of England and France, consents to renounce the right of fishing, which belongs to him in virtue of the aforesaid article of the Treaty of Utrecht, from Cape Bonavista to Cape St. John, situated on the eastern coast of Newfoundland, in fifty degrees north latitude; and his Majesty the King of Great Britain consents, on his part, that the fishery assigned to the subjects of his most Christian Majesty, beginning at the said Cape St. John, passing to the north, and descending by the western coast of the island of Newfoundland, shall extend to the place called Cape Ray, situated in forty-seven degrees fifty minutes latitude. The French fishermen shall enjoy the fishery which is assigned to them by the present article, as they had the right to enjoy that which was assigned to them by the Treaty of Utrecht.

“*Article 6.*—With regard to the fishery in the gulph of St. Lawrence, the French shall continue to exercise it, conformably to the 5th article of the Treaty of Paris.”

The following declaration was made by his Britannic Majesty upon the signing of the Treaty of Versailles :—

“The King, having entirely agreed with his most Christian Majesty upon the articles of the definite treaty, will seek every means which shall not only insure the execution thereof,

with his accustomed good faith and punctuality, and will besides give, on his part, all possible efficacy to the principles which shall prevent even the least foundation of dispute for the future.

“To this end, and in order that the fishermen of the two nations may not give cause for daily quarrels his Britannic Majesty will take the most positive measures for preventing his subjects from interrupting in any manner, by their competition, the fishery of the French, during the temporary exercise of it which is granted to them upon the coasts of the islands of Newfoundland; but he will, for this purpose, cause the fixed settlements which shall be formed there to be removed. His Britannic Majesty will give orders that the French fishermen be not incommoded in cutting the wood necessary for the repair of their scaffolds, huts, and fishing vessels.

“The 13th article of the Treaty of Utrecht, and the method of carrying on the fishery, which has at all times been acknowledged, shall be the plan upon which the fishery shall be carried on there. It shall not be deviated from by either party, the French fishermen building only their scaffolds, confining themselves to the repair of their fishing vessels, and not wintering there; the subjects of his Britannic Majesty, on their part, not molesting in any manner the French fishermen during their fishing, nor injuring their scaffolds during their absence.

“The King of Great Britain, in ceding the islands of St. Pierre and Miquelon to France, regards them as ceded for the purpose of serving as a real shelter to the French fishermen, and in full confidence that these possessions will not become an object of jealousy between the two nations, and that the fishery between the said islands and that of Newfoundland shall be limited to the middle of the channel.”

The following counter declaration of his most Christian Majesty the King of France was made at the same time:—

“The principles which have guided the King in the whole course of the negotiations which preceded the re-establishment of peace, must have convinced the King of Great Britain that His Majesty has had no other design than to render it solid and lasting by preventing, as much as possible, in the four quarters of the world, every subject of discussion and quarrel.

“The King of Great Britain undoubtedly places too much confidence in the uprightness of His Majesty’s intentions not to rely upon his constant attention to prevent the islands of St. Pierre and Miquelon from becoming an object of jealousy between the two nations.

“As to the fishery on the coasts of Newfoundland, which has been the object of the new arrangements settled by the two sovereigns, upon this matter it is sufficiently ascertained by the 5th article of the Treaty of Peace signed this day, and by the declaration likewise delivered to-day by His Britannic Majesty’s Ambassador Extraordinary and Plenipotentiary; and His Majesty declares that he is fully satisfied on this head.

“In regard to the fishery between the island of Newfoundland and those of St. Pierre and Miquelon, it is not to be carried on by either party but to the middle of the channel; and His Majesty will give the most positive orders that the French fishermen shall not go beyond this line. His Majesty is firmly persuaded that the King of Great Britain will give like orders to the English fishermen.”

Articles 8 and 13 of the Treaty of Paris (1814) are as follows:—

“*Article 8.*—His Britannic Majesty, stipulating for himself and his allies, engages to restore to His most Christian Majesty, within the term which shall be hereafter fixed, the colonies, fisheries, factories, and establishments of every kind which were possessed by France on the 1st January 1792, in the seas and on the continents of America, Africa, and Asia, with the exception, however, of the islands of Tobago and St. Lucie, and the Isle of France and its dependencies, especially Rodrigues and the Seychelles, which several colonies and possessions his most Christian Majesty cedes in full right and sovereignty to his Britannic Majesty, and also the portion of St. Domingo ceded to France by the Treaty of Basle, and which his most Christian Majesty restores in full right and sovereignty to his Catholic Majesty.

“*Article 13.* The French right of fishery upon the Great Bank of Newfoundland, upon the coasts of the island of that name, and of the adjacent islands in the gulph of St. Lawrence, shall be replaced upon the footing in which it stood in 1792.”

Article 11 of the Treaty of Paris (1815) is as follows:

“The Treaty of Paris, of the 30th of May 1814, and the final act of the Congress of Vienna, of the 9th of June 1815, are confirmed and shall be maintained in all such enactments which shall not have been modified by the articles of the present treaty.”

No. 6.

COLONIAL OFFICE to SIR W. WHITEWAY.

SIR, Downing Street, April 29, 1891.
 I AM directed by Lord Knutsford to acquaint you that the Committee on the Newfoundland Fisheries Bill stands as an order of the day for Monday next in the House of Lords, and I am to ask that you will be good enough to inform his Lordship at your earliest convenience whether any and what steps have been taken, or are proposed to be taken, towards the passing in the Colonial Legislature of a measure for giving effect to the *modus vivendi* for 1891, the award of the arbitrators upon the lobster questions, and the existing treaties and declarations under instructions from Her Majesty in Council.

Sir William Whiteway.

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

No. 7.

COLONIAL OFFICE to SIR W. V. WHITEWAY.

SIR, Downing Street, April 30, 1891.
 WITH reference to the proposals contained in your letter to the Marquis of Salisbury of the 21st instant,* I am directed by Lord Knutsford to acquaint you that as the question of appointing British delegates to the arbitration with France must now be considered and dealt with, he would be glad to learn definitely whether your Government proposes to nominate a delegate to represent the Colony of Newfoundland on the Commission of Arbitration on the question of Lobster Factories.

Sir W. V. Whiteway, K.C.M.G.

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

No. 8.

THE NEWFOUNDLAND DELEGATES to COLONIAL OFFICE

MY LORD, Hotel Métropole, London, May 1, 1891.
 IN acknowledging the receipt of your communication of the 29th ultimo,† we beg to say that, having very carefully considered the speeches made in the House of Lords on Monday the 27th ultimo, we desire to lay before Her Majesty's Government the following propositions:—

(a.) If the Bill now before the Lords be not further proceeded with, and if Her Majesty's Government admit the principle of a measure for the creation of courts to adjudicate upon complaints arising in the course of the enforcement of the treaties and declarations relative to French treaty rights, and engage to discuss and arrange with us as rapidly as possible the terms of a Bill embodying that principle, we will with all possible speed procure the enactment by the Colonial Legislature of a measure giving power to Her Majesty in Council during the current year to enforce in the same manner as heretofore her rules and regulations for the observance of the *modus vivendi*, the award of the arbitration, and the treaties and declarations with France, which temporary Act the Colonial Legislature will replace by a permanent measure for securing the enforcement of the treaties under the orders of the special courts referred to above, provided that if, as the result of the enforcement of the award of the arbitration, the property of Her Majesty's subjects is disturbed they shall be entitled to compensation.

If a temporary Act by the Colonial Legislature is to supersede the Bill now before Parliament, Her Majesty's Government will perceive how wise it will be to prevent greater irritation in the Colony by refraining from proceeding further with the Bill

now before the House of Lords, and will not hesitate, we hope, to accede to our requests in this respect. The burdens under which the colonists suffer are great, the causes of irritation many, and they feel that as the claims of the French are being unduly pressed for the purpose apparently of affecting the policy of Great Britain in other parts of the world, they may be said to be suffering for the benefit of the Empire at large. A proper recognition of their unfortunate position would induce Her Majesty's Government, we think, to be extremely considerate, and not to press forward the pending Bill in a manner which may be regarded by our fellow colonists as indicating a want of confidence in us and them.

The temporary act suggested should be exceedingly simple in its provisions, and delay in framing it would neither be desirable nor necessary. If our propositions can be accepted, the terms of such an Act may be telegraphed to the Legislature, and enacted in a few days, thus relieving Her Majesty's Government of all anxiety as to the enforcement of the treaties and engagements during the present year.

Heretofore the orders, regulations, and instructions of Her Majesty in Council for securing the observance of the treaties and declarations with France, have been carried into effect by naval officers, who have apprehended, judged, and punished our fellow colonists, combining, in fact, the functions of policemen, judges, and juries, and no right either of appeal or redress has been possessed by those who may have considered themselves aggrieved. We do not desire to cast any imputations upon the naval officers, many of whom have proven true friends of the Colony, but the very nature of their duties and powers has made hardship inevitable. We propose that they should now be relieved of a portion of their functions. They may continue to patrol the treaty coasts, and may apprehend those against whom complaint is made for infringement of fishing rights; but in all cases the decision upon such complaints should be given by a qualified judicial officer appointed for the purpose, who would hear the evidence in each case and decide summarily, and whose decision the naval officers could carry into effect. In cases of complaints of interruption of rights of fishing the judicial officers should have power upon the trial of such complaints to issue and enforce such orders or injunctions as they deemed necessary to prevent such interruptions, and the parties to such complaints should have a right of appeal upon points of law to the Supreme Court of the Colony, and from the Supreme Court to the Privy Council, but not so as to prevent the execution of any orders or injunctions issued for the purpose of preventing any interruptions complained of. In cases of complaints arising upon the land, however, the decision of the judicial officer should not be enforceable, if and when an appeal upon points of law had been taken to the Supreme Court, and the Supreme Court on circuit should also be made a court of first instance in cases concerning such complaints, if the parties making complaints preferred to commence their actions in such Supreme Court. The judicial officers should have a knowledge of local conditions, and of the manner of carrying on the fishery, and they should of course be thoroughly acquainted with legal procedure. It would therefore be necessary that they should be appointed by the Colonial Government, with the approval of Her Majesty in Council, and with such other safeguards as might be deemed necessary to secure their thorough impartiality. It would be necessary, perhaps, to provide that a judicial officer should be placed on board each ship of war upon protection service, or that several such officers should be stationed at various places on the treaty shores during the fishing season, but this is a matter of detail which could be arranged. The creation of such courts as we here suggest would insure our fellow colonists fair trials, and would relieve the naval officers of a task which must be uncongenial; and the efficiency of the protection service would be increased rather than decreased.

The details of such measure as we have outlined, though their preparation need not occupy a long time, cannot, we apprehend, be arranged in time to be made applicable this year, and therefore, if Her Majesty's Government agree in the main with the principle of our suggestions in this respect, the temporary legislation referred to can be proceeded with at once, and the details of the permanent measure be more deliberately worked out. It would, however, be necessary to agree upon the terms of the permanent legislation before we leave this city, and extremely desirable to come to an agreement so speedily as to make it possible to enact the measure in the local legislature before the present session concludes, so that it could come into force at the beginning of next year. We represent all parties in the Legislature, and therefore a Bill agreed upon by and with us, will be more satisfactory to the Colony, and be more likely to obtain acceptance, than a measure arranged at any other time and with any other persons.

In reference to the present Arbitration Commission we have to make the following proposals:—

If it be possible to abandon arbitration upon the lobster question, we strongly urge that it be done, for we fear grave complications as its result. But if it be not possible now to withhold that question, we ask an assurance—

- (1.) That no further questions shall be submitted to the Arbitration Commission without prior consultation with the Government of the Colony;
- (2.) That the opinion of the Colonial Government will not be disregarded in the absence of some paramount consideration involving the welfare of the Empire; and
- (3.) That compensation will be given to those persons, if any, whose property may be disturbed by the award of the arbitration.

In asking this assurance we recognise the fact that a definition of existing treaties is not necessarily a cession or modification of our rights, since the object of an attempt to define them is but to ascertain what those rights are; but it cannot be too clearly or strongly pointed out that a settlement of disputed questions in a partial or piecemeal fashion may result in seriously affecting the Colony's interests, and therefore that such a settlement should never be attempted without consulting the Colony, and not without its prior consent, except in cases where the interests of the Empire were of paramount importance to those of the Colony.

Her Majesty's Government have already recognised the principle of compensating the owners of lobster factories, by ordering the appointment of a commission to investigate into their losses under the original *modus vivendi*, and the same principle would of course be applicable to those who suffered as the result of the present *modus vivendi* or of the award. The recognition of the principle in the latter case would be very acceptable in the Colony.

If the arbitration upon the lobster question is unavoidable, and Her Majesty's Government convey to us the assurances we have requested, it will be advisable for the Colony to be represented upon the arbitration, and we would advise the acceptance of the invitation already made to the Colonial Government to appoint a delegate-arbitrator from the Colony.

So far our remarks have applied solely to an arbitration which we understand to be limited to a judicial interpretation of the meaning of the treaties and declarations. Arbitrations or arrangements to provide a way of modifying or abrogating those treaties and declarations would of course be upon an entirely different footing, and concerning such arbitrations or arrangements we desire from Her Majesty's Government a reassurance "that the rights at present enjoyed by the community of Newfoundland are not to be ceded or exchanged without their assent; and that the constitutional mode of submitting measures for that assent is by laying them before the Colonial Legislature."

In repeating the declaration that we are willing to submit every question arising under the treaties and declarations to an unconditional arbitration, we do not fail to recognise how impossible it is for Her Majesty's Government to procure such a submission without the consent of France; but we trust that such consent is not wholly out of the question, and express the hope that the relations between France and Newfoundland may speedily be upon a more satisfactory basis than at present. The Colony only desires an equitable arrangement of pending difficulties, and acknowledges the duty incumbent upon the Empire of securing to the French to the fullest extent the enjoyment of their rights, or of amply compensating them in some manner for their voluntary abrogation.

Having submitted our views so fully and frankly, we respectfully request that a reply may be vouchsafed as speedily as possible, and that any divergence of opinion may be pointed out.

What is to be done must be done quickly, as Her Majesty's Government has indicated and we hold ourselves in readiness at all times to perform our part.

We are, &c.,
(Signed) THE NEWFOUNDLAND DELEGATES.

To the Right Hon. Lord Knutsford,
&c. &c. &c.

COLONIAL OFFICE to THE NEWFOUNDLAND DELEGATES.

GENTLEMEN,

Downing Street, May 4, 1891.

I AM directed by Lord Knutsford to acknowledge the receipt of your letter of the 1st instant,* stating certain conditions under which you propose that Colonial legislation should be substituted for the Bill now before Parliament for the purpose of giving effect to the *modus vivendi*, to the award of the arbitrators on the lobster question, and to the treaties and declarations respecting the Newfoundland fisheries.

2. Her Majesty's Government regret to observe that the proposals now presented differ in form from those made on your behalf at the bar of the House of Lords.

3. You are aware, from the statement made by Lord Knutsford in moving the second reading of the Imperial Bill on the 27th ultimo, that Her Majesty's Government agreed not to move the second reading of the Bill in the House of Commons until after Whitsuntide, and then not to proceed with it any further if in the meantime an Act had been passed by the Colonial Legislature authorising the execution of the *modus vivendi*, the award of the Arbitration Commission regarding the lobster question, and the treaties and declarations under instructions from Her Majesty in Council.

4. Her Majesty's Government were under the impression that you clearly understood that the Colonial Act, while providing for the execution of the *modus vivendi* for 1891, was also to secure permanently both the execution of the award of the Arbitration Commission on the lobster question and the fulfilment of the treaties and declarations. Her Majesty's Government, at the same time, recognised the objections raised by you against continuing powers to the Naval Officers to act on land, and expressed their readiness to consider at once, but as a separate matter, "the terms of an Act to empower courts and provide for regulations to enforce the treaties and declarations," understanding that the passing of the Colonial Act referred to in the first part of the proposal would not be delayed, but that if, as they anticipated, the terms of such a measure could be agreed upon, another Colonial Act would be brought in to amend the former Act.

5. It appears, however, from your letter under reply that it is now made a condition precedent to Colonial legislation that the Imperial Bill should not be further proceeded with, and it is also stated that the Colonial Act is to be altogether temporary.

6. Her Majesty's Government regret that they cannot assent to this altered proposal. Taking an average of years, and judging from the reports of the naval officers and other official documents, it seems that the cod fishery on the West Coast of Newfoundland begins about the middle of May, and that lobster factories get to work on some parts of the treaty shore towards the end of that month; but the Governor has just informed Her Majesty's Government that this year the cod fishery and lobster catching have already commenced.

7. In these circumstances and bearing in mind their obligations to the French Government and the decision of the Supreme Court of the Colony against the powers of the naval officers to secure observance of the treaties or of the *modus vivendi* for 1891, Her Majesty's Government are confirmed by your present letter in the opinion, that the Imperial Bill must be so far advanced that in case of any unfortunate failure on the part of the Colonial Legislature to pass the necessary legislation, it may be rapidly proceeded with through its remaining stages and become law.

8. The terms of the Act which the Colonial Legislature are now desired to pass, would be simple, and there need be no delay in framing or passing it.

9. As regards the further proposals made in your letter, Her Majesty's Government desire me to state that the arbitration upon the sole question now to be submitted to the Commission cannot be abandoned, but they are willing to give an assurance that no further questions shall be submitted to the arbitrators without full consultation with the Colonial Government, and that the opinion of the Colonial Government will not be disregarded in the absence of pressing considerations affecting the interests of the Empire.

10. They will also carefully consider the question whether compensation should properly be given to those persons whose property may be disturbed by the award of

the arbitrators, although they see no grounds for admitting any liability on the part of the Imperial Government to pay such compensation.

11. Her Majesty's Government still entertain a hope that the Colonial Government will assent to the proposal that the Colony should be represented by a delegate at the approaching arbitration, and they heartily join in the hope expressed by you, that the relations between France and Newfoundland may speedily be placed upon a more satisfactory basis. They cannot, however, pass without notice, the sentence in which it is said that "the claims of the French are being unduly pressed for the purpose apparently " of affecting the policy of Great Britain in other parts of the world." There is no foundation whatever for the suggestion contained in these words.

I am, &c.,

The Newfoundland Delegates.

(Signed) EDWARD WINGFIELD.

No. 10.

THE NEWFOUNDLAND DELEGATES to COLONIAL OFFICE.

Hotel Métropole, London,

May 6, 1891.

MY LORD,

WE beg to acknowledge the receipt of your Lordship's letter of Monday's date, in reply to our communication of the 1st instant,* and to express our disappointment that the proposals made by us have not been accepted.

(1.) Your Lordship says that "Her Majesty's Government regret to observe that " the proposals now presented differ in form from those made on your behalf at the " bar of the House of Lords." In paragraph 3 you also say that "Her Majesty's " Government were under the impression that you clearly understood that the " Colonial Act, while providing for the execution of the *modus vivendi* for 1891, was " also to secure permanently both the execution of the award of the Arbitration " Commission on the lobster question, and the fulfilment of the treaties and " declarations." From these two quotations we gather that it was because Her Majesty's Government understood our proposition, that the Legislature would immediately pass an Act, to mean a permanent Act, and it is because you have now ascertained that we meant a temporary Act only that you charge us with a departure from our proposal. We are at a loss to understand how Her Majesty's Government could have so completely misunderstood our original statement. Its precise words were: "The Newfoundland Legislature to pass immediately an Act authorising the " execution for *this year* of the *modus vivendi*, the award of the Arbitration Commission " on the Lobster question, and the treaties and declarations under instructions from " Her Majesty in Council." The words, "for this year," clearly apply, and were so intended, to the award of the Arbitration Commission, and the treaties and declarations, as well as to the *modus vivendi*, and to make our offer plainer, if possible, we went on to say, "*The temporary legislation which we have proposed to procure the " enactment of would be immediately adopted by the Legislature of the Colony, and " present needs thereby amply met. The details of a permanent and thoroughly " satisfactory measure could be arranged and enacted without delay.*" We submit that in view of this unequivocal language, Her Majesty's Government and not we are responsible for the misunderstanding.

(2.) There are other reasons which make the misimpression of Her Majesty's Government more inexplicable. How could it have been supposed that we would offer to procure the enactment in a permanent form of legislation validating the very abuses of which we complained? How could it be supposed, for instance, that we proposed *permanent* legislation to enforce the award of a partial arbitration to which the Colony had objected from the outset, without any provision for indemnity against its results; or that we would propose a permanent measure conferring power upon naval officers to try and to punish people without the aid of a judicial tribunal. That offer was intended to afford Her Majesty's Government ample powers during the discussion of the terms of a permanent measure of a more equitable kind than the temporary Act.

* Nos. 8 and 9.

(3.) In paragraph 4 of your Lordship's letter you say, "Her Majesty's Government at the same time recognised the objections raised by you against continuing powers to the naval officers to act *on land*." We are unaware of any reason which Her Majesty's Government now have or have ever had for assuming that we confined our objections to the powers exercised by naval officers upon land merely; nor, so far as we can ascertain, did Her Majesty's Government so limit their recognition of our proposals when they were replied to in the House of Lords on the 27th ultimo. The judicial powers exercised by the naval officers over our fishermen and their boats, vessels, and implements of trade within the territorial waters, are as oppressive and objectionable as the powers they have had upon land, and we could never consent to a permanent measure which continued our fellow colonists upon the waters or on the land in a state of subjection to the arbitrary decisions and actions of naval officers. In our letter of the 1st instant we explained at considerable length the principles of the permanent Bill which we wished to have enacted, to take the place of the temporary Act, but Her Majesty's Government have not yet expressed their opinion of these propositions. It would perhaps tend materially to a solution of present difficulties if Her Majesty's Government were to convey that opinion to us, admitting the principle our propositions involved.

(4.) With reference to paragraph 5 of your Lordship's letter, we beg to say that we did not propose that the Bill now before the House of Lords should not be further proceeded with as a condition precedent to *any* action by the Legislature of the Colony, nor do we think our words bear the interpretation put upon them in your letter, or by Lord Salisbury and your Lordship when speaking in the House of Lords on Monday. Lord Salisbury then said, "The delegates want the Bill to be dropped altogether. That is a condition precedent to their doing anything themselves." We have never proposed that the Bill now before the Lords should be "dropped" as a condition precedent. Our proposition was, "If the Bill be not further proceeded with * * * we will with all possible speed procure the enactment by the Colonial Legislature of a measure giving power to Her Majesty in Council during the current year to enforce in the same manner as heretofore Her rules and regulations, &c.," and in the next paragraph we added that "If a temporary Act is to supersede the Bill now before Parliament Her Majesty's Government, &c., &c." Clearly then we did not make the dropping of the present Bill a condition precedent to *any* action by the Legislature, as Lord Salisbury remarked, but said, on the contrary, that the present Bill would be superseded by an *Act* of the Legislature: a Bill, that is, which had passed through all its stages and been assented to by the Governor. By asking that the Bill be not further proceeded with, and in such an event offering to do certain things, we were only asking in effect that the present Bill should be deferred long enough to permit the enactment of a local measure, and if this were not enacted in due time Her Majesty's Government would have ample opportunity to proceed with their Bill.

(5.) We regret to observe that Her Majesty's Government have not responded to our desire to be reassured that no arbitration or arrangement for modifying the rights of the Colony, as distinct from an arbitration for defining what those rights are, will be entered into without the consent of the Colony. In the House of Lords, on Monday, your Lordship made use of language which makes the reassurance all the more necessary. You then said: "If Imperial interests required it, the Government might now make such permanent arrangements without the consent of the Colony, though such a step would not be taken without some grave and weighty reasons of an Imperial character." Undoubtedly Her Majesty's Government have *power* to make such arrangements; but it is a power which could not be exercised without violating the pledge so solemnly given in 1857, when the Colony was assured in the most emphatic language that its rights would not be ceded or exchanged without the consent of the Colony. Probably your omission to reassure us upon this point was inadvertent, and in order to elicit a reply we beg to draw your Lordship's attention to the following extract from our letter of the 1st instant,† and to respectfully ask for a reply: "So far our remarks have applied solely to an arbitration which we understand to be limited to a judicial interpretation of the meaning of the treaties and declarations. Arbitrations or arrangements to provide a way of modifying or abrogating those treaties and declarations would, of course, be upon an entirely different footing, and concerning such arbitrations or arrangements we desire from Her Majesty's Government a reassurance, that the rights at present enjoyed by the community of Newfoundland are not to be ceded or exchanged without their assent, and that the

“ constitutional mode of submitting measures for that assent is by laying them before the Colonial Legislature.”

(6.) We note the assurance of Her Majesty's Government that “ there is no foundation whatever ” for the suggestion made by us that “ the claims of the French “ are being unduly pressed for the purpose apparently of affecting the policy of Great “ Britain in other parts of the world,” and can only say that if France has no such motive, her conduct in insisting upon strained interpretations of her treaty rights in Newfoundland, contrary to their spirit and to the changes wrought by time, after those rights have lost all or nearly all intrinsic value to her, and exist only as an incubus upon a British Colony, is of an exceedingly unfriendly character, and not at all in consonance with the spirit of the age. French rights in Newfoundland have been rendered almost wholly valueless to France in consequence of the changes which have taken place within a few years, and these rights prevent the development of the resources of the Colony in a most material degree, and if the conduct of the French is not explainable upon the hypothesis put forward by us, it is the more to be deprecated.

(7.) Lord Salisbury and your Lordship, when speaking in the House of Lords on Monday, dwelt very strongly on the fact that the Colonial Legislature have not yet enacted any measure or shown any disposition to do so, and our power to fulfil our promises was doubted. The Legislature has not acted in the matter because we, to whom it has committed its interests, have not asked it to do so; and the reasons why we have not asked it to take action are (1) because we believed it would be more expeditious to have an Act passed after its terms had been agreed upon between Her Majesty's Government and us, than to pass, before such agreement, an Act which might not be satisfactory; and (2) because before the temporary Act is passed we desire certain assurances as to the character of the permanent Act which is to take its place. We have not asked Her Majesty's Government to *drop* their Bill in return for our promises, as Lord Salisbury indicated on Monday, but have requested that it should not be further proceeded with until we have had time to procure the enactment of a temporary measure. We only ask delay for this purpose, and if Her Majesty's Government will now accept the temporary Act referred to in our letter of the 1st instant, upon the terms there stated, we will at once procure its enactment by the Legislature, and if it be not enacted by the Legislature before the end of the Whitsuntide holidays Her Majesty's Government will have time to proceed with the present Bill.

We are, &c.,
(Signed) THE NEWFOUNDLAND DELEGATES.

No. 11.

COLONIAL OFFICE to THE NEWFOUNDLAND DELEGATES.

GENTLEMEN,

Downing Street, May 8, 1891.

I AM directed by the Secretary of State for the Colonies to acknowledge the receipt of your letter of the 6th instant,* from which, and especially from its concluding paragraph, his Lordship fears that he must conclude that you are not yet prepared to procure the passing by the Colonial Legislature of such an Act as would relieve Her Majesty's Government from the necessity of proceeding further with the Imperial Bill after it has passed the House of Lords.

As you were aware that Her Majesty's Government had formally undertaken to give full effect, not for one year only, but absolutely, to all the decisions of the arbitrators concerning the lobster fishery, and further, that it was necessary to make effective and not merely temporary provision for the due execution of the existing treaties and declarations, Her Majesty's Government did not hesitate to accept the words “ for this year ” in the first proposal in the speech at the Bar of the House of Lords as applying only to the *modus vivendi* for 1891, to which their application would naturally be limited, as this alone of the three matters which have to be provided for is of a temporary character; and they still fail to perceive how those words could properly be used in connexion with the permanent obligations of the Colony and of this country to France.

It will hardly be suggested that the French Government could be informed that Her Majesty's Government, having undertaken to give full effect to the arbitration, and having unexpectedly found their powers of carrying out the treaties and declarations imperfect, had decided that provision for the performance of their obligations should be made for the current year only, after which the present difficulties might recur.

In one respect only (putting aside the *modus vivendi* of 1891) could any part of the proposed Colonial legislation be considered temporary, that is to say, Her Majesty's Government were willing to agree that if the necessary powers to carry out the award of the arbitrators and the treaties and declarations were now secured in a Colonial Act, the question as to the respective jurisdictions of the Courts and naval officers should be considered at an early date, and if the terms of another Bill could be agreed upon, some provisions of the Colonial Act might hereafter be amended by further legislation. In this sense, and in this sense only, Her Majesty's Government were willing that the legislation should be of a temporary nature.

It is to be regretted that there should have been a misapprehension as to the nature and intention of your proposals; but, however such misapprehension may have arisen, Lord Knutsford would have thought that there could have been no misapprehension as to the meaning of the language in which Her Majesty's Government expressed their practical acceptance of the first proposal. The words were: "If by that time" (*i.e.* the second reading of the Bill in the House of Commons after Whitsuntide) "the Colonial Legislature has passed an Act which in the opinion of Her Majesty's Government sufficiently secures the observance and execution, first of the *modus vivendi* for 1891; secondly, of the decision of the arbitrators upon the lobster question; and thirdly, of the treaties and declarations, Her Majesty's Government will not go forward with this Bill." No temporary Act could be held sufficient to secure the two last objects.

Until the question whether there is to be such Colonial legislation as Her Majesty's Government can accept has been disposed of, Lord Knutsford does not think that there would be advantage in further discussing the other points referred to in your letter which have, moreover, been substantially dealt with in the correspondence and debates.

His Lordship trusts that he has clearly explained in what respects it is important, that the legislation now urgently required should be permanent in form, though subject to revision or repeal whenever an altered condition of affairs may render that course possible; and he trusts that you will yet be able to recommend to the Colonial Legislature the enactment of such a measure as may enable Her Majesty's Government, having regard to the obligations of which they cannot divest themselves, to withdraw the Bill which they introduced.

The Newfoundland Delegates.

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

No. 12.

THE NEWFOUNDLAND DELEGATES to LORD KNUTSFORD.

MY LORD,

Hotel Métropole, London,

May 13, 1891.

WE have the honour to acknowledge the receipt of your Lordship's communication of the 8th instant:—*

(1.) It is still impossible for us to comprehend how Her Majesty's Government could have understood the words "for this year" in our original proposal, to apply to the *modus vivendi* for 1891 only, and not to the award of the lobster arbitration and the treaties and declarations. As the *modus vivendi* itself is expressly limited "for the fishery season of 1891," it would have been mere surplusage for us to have said that an Act to enforce it must be for this year only. Your Lordship argues that because the obligations of the Empire are permanent the Bill which we proposed to have enacted immediately must also have been intended to be permanent. That would be true if that Act were the only one proposed, but our suggestion was that the principle of a permanent Act should also be admitted, and a pledge given that its details would at once be discussed and arranged so that it might be enacted in due

* No. 11.

time to replace the temporary Act. It is not to be presumed, we suppose, that future sessions would find Parliament less sensible than it now is of the necessity of enforcing regard for the Empire's obligations, and therefore no doubt need be felt that if the proposed permanent Act had not been agreed upon and enacted, when Parliament next assembled it would enact the necessary legislation to continue the enforcement of the treaties and declarations. In order that the obligations of the Empire to the French may be carried out, it cannot be necessary to enforce them in a manner both harsh and unjust to the Colony, and contrary to the well settled principles upon which British law is administered, provided the same end can be attained by some better means. The question which Newfoundland raises is not, "Shall treaty obligations be fulfilled," but shall they be enforced in a manner which inflicts unnecessary hardship upon our fellow colonists; and the point at issue is only obscured by arguing as though the measure now before the House of Lords must either be enacted by Parliament, or a similar one by the Legislature of the Colony, or the Empire's obligations abandoned.

(2.) With your Lordship we deeply regret that Her Majesty's Government should have misapprehended the nature and intention of our proposal. In the despatch from your Lordship now before us, as well as in that bearing date the 4th instant,* you refer to our proposal as "the first proposal in the speech at the bar of the House of Lords." The only proposal we have ever made was not first made, as your Lordship will remember, to the House of Lords, but was contained in a letter sent by us to Lord Salisbury, after an interview with him and your Lordship; and our statement at the bar of the House of Lords was merely to the effect that we had made such proposal to Her Majesty's Government. On the very eve of the making of our address at the bar of the Lords, the Right Honourable the Prime Minister sent a reply in which he declared "it is not possible for us now *under any circumstances* to withdraw the Bill " which has been introduced into Parliament." Having regard to the fact (1) that our proposal was for several days before Her Majesty's Government, and rejected, (2) that after being repeated at the bar of the Lords and several days given for consideration, it was accepted, and (3) that the meaning of the proposal was not questioned during all that time, we apprehend that we were fully justified in regarding the declarations of Her Majesty's Government in the House of Lords as applying only to that temporary measure which our language unequivocally pointed to as a preliminary enactment.

(3.) We note with regret your Lordship's declaration that Her Majesty's Government will accept nothing but a permanent Bill similar to the Bill now before the House of Lords. Such a Bill we could not recommend the enactment of to the Legislature of the Colony, for by such an enactment the Legislature would merely be casting upon the Colony the duty of obeying a law at once odious and unjust, and tainted with a harshness wholly indefensible under the circumstances. If our fellow colonists must submit to coercion, it must be the coercion of a power they cannot control, and not to that of a Legislature every member of which is deeply sensible of the oppressive character of the measure which Her Majesty's Government now appears to regard as indispensable. Laws framed upon British principles our fellow colonists would be bound in conscience to obey, but laws framed in disregard of those principles, after the Colony has proven its willingness to abide by laws enforced in the ordinary manner, will not be considered binding upon their consciences, nor be capable of enforcement. If Her Majesty's Government would have regard to the extent of the coast line to be guarded (almost 700 miles) they would appreciate the fact that almost any law enacted in the Colonial Legislature would more efficiently guarantee good order than the strictest and harshest measure which the British Parliament could enact.

(4.) The course which Her Majesty's Government has deemed it wise to adopt has already had most serious results in the Colony. Before the second reading of the Bill in the House of Lords we urged that it should be deferred, but our request was refused. Before the Bill was committed, we again urged that further progress be deferred, and again our request was refused. The knowledge of these repeated refusals has so excited public feeling in the Colony that conciliatory action has been greatly imperilled. The proposal which we have made, and which when made it would have been possible to procure the adoption of by the Legislature without great friction, if it had been promptly and frankly accepted, has only been approved of after the most earnest requests by us. Those requests *have* been complied with, however, and we have the honour to enclose herewith a copy of a resolution adopted on Saturday night last by both Houses of the Legislature. This confirmation of our proposal conclusively

proves how unfounded were the doubts expressed by Her Majesty's Government as to our ability to procure the fulfilment of our promises, and should remove that ground of objection to the adoption of our proposal.

We have, &c.,
(Signed) THE NEWFOUNDLAND DELEGATES.

Enclosure in No. 12.

The following is the resolution adopted by both branches of the Legislature:—

Resolved—That this Legislature will adopt such legislation as may be necessary to carry into effect the proposals made to the Imperial Government and Parliament by the Delegates.
