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(Printed for the use of the Colonial Office.)

CONFIDENTIAL.

CANADA.

North American.

No. 121.

NFLD
JX
238
N63
A5
1887

FURTHER CORRESPONDENCE

RESPECTING THE

TERMINATION OF THE FISHERY ARTICLES

OF THE

TREATY OF WASHINGTON.

(In continuation of North American No. 118.)



COLONIAL OFFICE,
September, 1887.

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116	Ditto	Telegraphic	Feb. 24, 1887	Stating that Her Majesty's Government will communicate with the United States Government in general accordance with the views of Canadian ministers upon Mr. Bayard's proposals, but that they are of opinion that pending the completion of an <i>ad interim</i> arrangement, the best solution of present difficulties would be for both parties to revert for the present to the condition of things existing under the Treaty of Washington	146
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210	To Foreign Office..	Confidential	July 16, 1887	Transmitting copy of a letter from Sir Ambrose Shea, enclosing one from the United States Minister regarding the possibility of a separate arrangement between Newfoundland and the United States with regard to the Fisheries	262
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213	To Governor-General the Marquis of Lansdowne (Canada) and the Officer Administering the Government of Newfoundland	Telegraphic	July 26, 1887	Stating [to Newfoundland] that no separate action should be taken by Colonial Government in the direction of a Reciprocity Treaty with the United States without full previous communication with Her Majesty's Government [Transmitting to Governor-General of Canada a copy of this telegram] ..	263
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CANADA.

FURTHER CORRESPONDENCE respecting the Termination of the Fishery Articles of the Treaty of Washington.

17,973.

No. 1.

Foreign Office to Colonial Office.

FOREIGN OFFICE.

October 4th, 1886.

SIR,

I am directed by the Earl of Iddesleigh to transmit to you, to be laid before Mr. Secretary Stanhope, a copy of a despatch from Her Majesty's Minister at Washington, enclosing a copy of a note from the United States Secretary of State calling attention to an alleged refusal of the Collector of Customs at Port Mulgrave, Nova Scotia, to allow the Master of the United States fishing vessel "Mollie Adams" to purchase barrels to hold a supply of water for the return voyage; and I am to request that a report on the subject may be obtained from the Dominion Government.

I am, &c.,

(Signed) J. PAUNCEFOTE.

The Under-Secretary of State,
Colonial Office.

Enclosure 1 in No. 1.

WASHINGTON,

September 11th, 1886.

Treaty. No. 82.

MY LORD,

I have the honour to transmit herewith a copy of a note from the Secretary of State, dated the 10th inst., calling attention to the case of an American fishing vessel the "Mollie Adams" on account of the alleged refusal of the Collector of Customs at Port Mulgrave, Nova Scotia, to allow the Master of the "Mollie Adams" to purchase barrels to hold a supply of water for the return voyage.

I have, &c.,

(Signed) L. S. S. WEST.

The Earl of Iddesleigh,
&c., &c., &c.

Enclosure 2 in No. 1.

WASHINGTON,

September 10th, 1886.

SIR,

It is my duty to ask you to bring to the attention of Her Britannic Majesty's Government the treatment lately experienced by an American fishing vessel the "Mollie Adams" of Gloucester, Mass., at the hands of the Collector of Customs at Port Mulgrave, in the Strait of Canso, Nova Scotia.

By the sworn statement of Solomon Jacobs, master of the schooner "Mollie Adams," it appears that on the 31st ult., whilst on his homeward voyage, laden with fish from the fishing banks, he was compelled to put into Port Mulgrave to obtain water, and duly made report and entry at the Custom House. The water tank of the vessel having been burst in his voyage by heavy weather, he asked permission of the Collector to purchase

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2 or 3 barrels to hold a supply of water for his crew on their homeward voyage of about 500 miles.

The application was refused, and his vessel threatened with seizure if barrels were purchased. In consequence, the vessel was compelled to put to sea with an insufficient supply of water, and in trying to make some other port wherein to obtain water, a severe gale was encountered which swept away his deck load of fish and destroyed 2 seine boats.

This inhospitable, indeed inhuman, conduct on the part of the Customs' officer in question should be severely reprimanded, and for the infraction of Treaty rights and commercial privileges, compensation equivalent to the injuries sustained will be claimed from Her Majesty's Government.

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

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

18,054.

No. 2.

Foreign Office to Colonial Office.

FOREIGN OFFICE,
October 5th, 1886.

SIR,

With reference to your letter of the 28th August last,* I am directed by the Secretary of State for Foreign Affairs to transmit to you, to be laid before Mr. Secretary Stanhope for his information a copy of a despatch from Her Majesty's Minister at Washington, enclosing a copy of a note which he has addressed to the United States' Secretary of State relative to the steps taken in consequence of Mr. Bayard's protest against the action of the authorities of Bonne Bay and the Magdalen Islands in regard to United States' fishing vessels.

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

The Under-Secretary of State,
Colonial Office.

Enclosure in No. 2.

No. 83. Treaty.

WASHINGTON,
September 17th, 1886.

MY LORD,

With reference to your Lordship's despatch No. 49 of this series, of the 4th inst., I have the honour to enclose to your Lordship herewith copy of a note which I have addressed to the Secretary of State showing the steps which have been taken in consequence of the protest of the United States Government against the action of the authorities at Bonne Bay, Newfoundland, and Port Amherst, Magdalen Islands, in regard to United States' fishing vessels.

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

The Earl of Iddesleigh,
&c., &c., &c.

BRITISH LEGATION,
WASHINGTON,
September 17th, 1886.

With reference to your note of the 30th of July last, calling attention to alleged infractions of the Convention of 1818 by the authorities at Bonne Bay, Newfoundland,

* No. 161 in North American No. 118.

and at Port Amherst, Magdalen Islands, I have now received instructions from Her Majesty's Secretary of State for Foreign Affairs to inform you of the steps which have been taken in the matter in consequence of the protest of the United States Government.

On the arrival of your note in London Her Majesty's Secretary of State for the Colonies telegraphed to the Officers Administering the Governments of Canada and Newfoundland, calling attention to the cases and explaining that, under the Treaty of 1818, United States' fishermen have the right to fish off the coasts of the Magdalen Islands and off certain coasts of Newfoundland, and stating that it was presumed that the Customs officials in those places had not been instructed in the same way as on other parts of the coast.

On the 25th ult. the Governments of Canada and Newfoundland were further instructed by despatch from the Colonial Office to make full reports on the subject of the complaints in question, and it was recommended that special instructions should be issued to the authorities at those places where the inshore fishery has been granted by the Convention of 1818 to United States' fishermen, calling their attention to the provisions of that Convention, and warning them that no action contrary thereto may be taken in regard to United States' vessels.

I may add that information has been received that the warning notices referred to by you were discontinued at the beginning of August.

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

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

18,055.

No. 3.

Foreign Office to Colonial Office.

FOREIGN OFFICE,
October 5th, 1886.

SIR,

I am directed by the Earl of Iddesleigh to transmit to you, for the information of Mr. Secretary Stanhope, a copy of a despatch from Her Majesty's Minister at Washington, reporting a conversation with the United States' Secretary of State on the Fisheries question.

In laying this letter before Mr. Stanhope, I am to request that you will state that Lord Iddesleigh would be glad to be favoured as soon as possible with a reply to the letter from this Department of the 27th ultimo,* on the subject of Mr. Phelps' note of the 11th ultimo.

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

The Under-Secretary of State,
Colonial Office.

Enclosure in No. 3.

Treaty No. 84.

WASHINGTON,
September 18th, 1886.

MY LORD,

At an interview which I had yesterday with the Secretary of State he proceeded to argue the Fisheries question very much in the same way as the United States' Minister in London appears to have done, as reported in your Lordship's despatch, No. 41 of this series, of the 10th ultimo. He laid more stress, however, upon what he considered the commercial aspect of the question, as constituting a cogent reason against the enforcement of the provisions of the Treaty of 1818 on the part of the Imperial Government. He regretted the action of the Senate in refusing to adopt the President's suggestion

* No. 185 in North American No. 118.

for the appointment of a Commission, but said that he thought he saw a way of arriving at a settlement, and was awaiting your Lordship's reply to a communication which Mr. Phelps had been instructed to make.

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

The Earl of Iddesleigh,
&c., &c., &c.

17,553.

No. 4.

*The Right Hon. Edward Stanhope, M.P., to Administrator Lord
A. G. Russell, C.B.*

TELEGRAPHIC.

October 5th. When may I expect answer my despatch No. 195,* "Rattler"?

18,056.

No. 5.

Foreign Office to Colonial Office.

FOREIGN OFFICE,
October 5th, 1886.

SIR,

With reference to my letter of the 9th August last,† I am directed by the Secretary of State for Foreign Affairs to transmit to you, to be laid before Mr. Secretary Stanhope, a copy of a despatch from Her Majesty's Minister at Washington, reporting that the United States' Senate Committee for investigating the Fisheries Question will leave shortly for Canada.

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

The Under-Secretary of State,
Colonial Office.

Enclosure in No. 5.

WASHINGTON,
September 19th, 1886.

MY LORD,

With reference to Mr. Hardinge's despatch, No. 73 of this series, of the 26th of July last, I have the honour to inform your Lordship that the Senate Committee, composed of Senators Edmunds, Frye, Saulsbury, Morgan, and George to investigate the Fisheries Question between Canada and the United States will, it is said, leave shortly for the Dominion in order to prepare the report for the next Session of Congress in December.

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

The Earl of Iddesleigh,
&c., &c., &c.

* No. 164 in North American No. 118.

† No. 142 in North American No. 118.

17,973.

No. 6.

The Right Hon. Edward Stanhope, M.P., to Administrator Lord A. G. Russell, C.B.

No. 218.

DOWNING STREET,

October 6th, 1886.

MY LORD,

I have the honour to transmit to your Lordship herewith a copy of a letter* from the Foreign Office enclosing copy of a despatch from Her Majesty's Minister at Washington, with a note from the Secretary of State of the United States, calling attention to the alleged refusal of the Collector of Customs at Port Mulgrave, N.S., to allow the master of the United States fishing vessel "Mollie Adams" to purchase barrels to hold a supply of water for the return voyage.

I have to request that you will obtain from your Government an early report in reference to this case.

I have, &c.,
(Signed) EDWARD STANHOPE.

The Officer Administering the Government.

18,080.

No. 7.

Foreign Office to Colonial Office.

FOREIGN OFFICE,

October 6, 1886.

SIR,

I am directed by the Earl of Iddesleigh to transmit to you, to be laid before Mr. Secretary Stanhope, a copy of a despatch from Her Majesty's Minister at Washington, enclosing a copy of a note from the United States' Secretary of State, calling attention to the case of the United States' fishing schooner "Crittenden," which it is alleged put into Steep Creek, in the Straits of Canso, for water and was threatened with seizure in consequence; and I am to request that a report on the subject may be obtained from the Dominion Government as soon as possible.

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

The Under-Secretary of State,
Colonial Office.

Enclosure in No. 7.

Treaty. No. 86.

WASHINGTON,

September 24, 1886.

MY LORD,

I have the honour to enclose to your Lordship herewith copy of a further note which I have received from the Secretary of State, bringing to my attention the case of the American fishing schooner "Crittenden," which he alleges put into Steep Creek, in the Straits of Canso, for water, and which was threatened with seizure in consequence.

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

The Earl of Iddesleigh,
&c., &c., &c.

WASHINGTON,

September 23, 1886.

SIR,

I have the honour to bring to your attention an instance which has been brought to my knowledge of an alleged denial of one of the rights guaranteed by the Convention of 1818 in the case of an American fishing vessel.

Captain Joseph E. Graham, of the fishing schooner "A. R. Crittenden," of Gloucester, Mass., states under oath that, on or about the 21st of July last, on a return trip from the open sea fishing grounds to his home port, and while passing through the Straits of Canso, he stopped at Steep Creek for water. The Customs' officer at that place told him that if he took in water his vessel would be seized; whereupon he sailed without obtaining the needed supply, and was obliged to put his men on short allowance of water during the passage homeward.

I have the honour to ask that Her Britannic Majesty's Government cause investigation to be made of the reported action of the Customs' officer at Steep Creek, and, if the facts be as stated, that he be promptly rebuked for his unlawful and inhumane conduct in denying to a vessel of a friendly nation a general privilege which is not only held sacred under the maritime law of nations, but which is expressly confirmed to the fishermen of the United States throughout the Atlantic coasts of British North America by the 1st Article of the Convention of 1818.

It does not appear that the "A. R. Crittenden" suffered other damage by this alleged inhospitable treatment, but, reserving that point, the incident affords an illustration of the vexatious spirit in which the officers of the Dominion of Canada appear to seek to penalize and oppress those fishing vessels of the United States lawfully engaged in fishing, which from any cause are brought within their reach.

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

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

17,552.

No. 8.

Colonial Office to Foreign Office.

DOWNING STREET,
October 7th, 1886.

SIR,

I am directed by Mr. Secretary Stanhope to acknowledge the receipt of your letter of the 27th ult.,* enclosing a copy of a note from the United States' Minister at this Court relative to the North American Fisheries Question, together with a copy of a minute thereon by Sir Julian Pauncefote.

Mr. Stanhope desires me to state that he cannot undertake to give a definite expression of opinion upon the courses of action proposed in Sir Julian Pauncefote's minute before consulting the Government of Canada, and that he will in the first place communicate with the Marquis of Lansdowne with the view of ascertaining his Lordship's opinion on the subject.

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

The Under-Secretary of State,
Foreign Office.

18,181.

No. 9.

Governor Sir G. W. Des Vœux, K.C.M.G. (Newfoundland) to the Right Hon. Edward Stanhope, M.P. (Received October 8th, 1886).

GOVERNMENT HOUSE, NEWFOUNDLAND,
29th September, 1886.

Confidential.

SIR,

My Government are anxious to know whether it is in your contemplation to appoint a Commissioner with local knowledge of Newfoundland in connection with the negotiations likely to take place in the coming winter with the Government of the United States on the subject of the North American fisheries.

* No 185 in North American No. 118.

2. I am inclined to think that beyond the anxiety to have Newfoundland interests specially represented in such negotiations, the Ministers have a desire to be relieved for a time from the presence of Sir Ambrose Shea. This gentleman has great political influence here, which they are apprehensive will be used against them if in his existing state of disappointment he is left unemployed in the Colony; he being supposed moreover to be inclined towards aggression owing to the recent amalgamation of religious parties having been brought about in his absence and without his concurrence.

3. I am disposed moreover to think, though of this I am less certain, that there is a growing opinion that the subsidy now paid to the Allan steamers for direct communication with England is more than the Colony can properly afford, with a rapidly declining revenue, and in the present depressed condition of industry and commerce, and that there would in consequence be a movement to put an end to the contract but for fear of the hostility of Sir A. Shea, whose firm (Shea and Co.) are deeply interested in it as the agents of the Allan Company.

4. But whether the sole cause is his unquestionable fitness for the position or not, I know that there is a strong desire that Sir Ambrose should be appointed Commissioner, and especially that the responsibility of his selection should be taken off the shoulders of the local ministry. If there were any difficulty on the score of expense I am disposed to think that they would propose a vote for it to the Colonial Legislature, rather than that he should not go at all, supposing that his appointment were suggested by you.

5. As I presume that there is a desire on your part to employ Sir A. Shea it has occurred to me that such an appointment might temporarily meet the difficulty of finding a suitable opening and thus be convenient to Her Majesty's as well as to the Colonial Governments.

6. When you have come to a decision on this subject I would respectfully suggest as likely to be agreeable to this Government that they should be made acquainted with it at the earliest moment by telegraph.

I have, &c.,
(Signed) G. WILLIAM DES VŒUX.

The Right Hon. Edward Stanhope, M.P.,
&c., &c., &c.

18,276.

No. 10.

Administrator Lord A. G. Russell, C.B., to the Right Hon. Edward Stanhope, M.P.
(Received October 11th, 1886.)

No. 31.

HALIFAX, NOVA SCOTIA,
September 21st, 1886.

SIR,

I have the honour to enclose herewith, for your information, copy of a Circular No. 373 of the Canadian Customs, in relation to the coasting trade of the Dominion.

2. I understand that a General Regulation dealing with this subject is now in course of preparation by the Department of Customs for confirmation by my Privy Council. I shall take care that a copy of this document is forwarded for your information whenever it is available.

I have, &c.,
(Signed) A. G. RUSSELL, General.

The Right Hon. Edward Stanhope,
&c., &c., &c.,
Colonial Office.

Enclosure in No. 10.

CUSTOMS DEPARTMENT, OTTAWA,
August 14th, 1886.

Circular No. 373.

SIR,

Numerous seizures have been recently made by Officers of the Special Agent's Branch of this Department, which, with other evidence in the possession of the Depart-

ment, goes to show that great laxity exists on the part of Collectors and other Customs Officers, in connection with traffic going on in small open boats and fishing vessels between Canadian and foreign ports.

I am directed by the Hon. the Minister of Customs to call your attention to certain requirements of the Customs Law and Regulations bearing upon this subject, and to enjoin upon you the necessity for greater vigilance and a stricter enforcing of the law than you have apparently been in the habit of insisting upon.

Section 38 of the Customs Act declares that it shall not be lawful, unless otherwise authorised by the Governor in Council, to import goods, wares or merchandise from any port or place out of Canada in any vessel which has not been duly registered and has not a certificate of registry on board.

Sections 141 to 150 relating to the exportation of goods require that any vessel outward bound shall deliver to the Collector a proper entry and report of all goods on board, and prohibits officers giving clearances until such report and entry has been made, and fixes penalties for non-observance of these requirements.

Section 37 gives authority to the Governor in Council to make regulations respecting coasting voyages. These regulations you will find embodied in an Order in Council bearing date the 17th of April, 1883; they declare what shall be considered a coasting trade, and what vessels only can be allowed to conduct such trade, viz.: Only British registered vessels and boats wholly owned by British subjects, and such other boats and vessels as may be owned by the subjects of countries included in any treaty with Great Britain, by which the coasting trade is mutually conceded.

As there is no reciprocal coasting trade existing between Great Britain and the United States, United States' vessels cannot be allowed to in any manner participate in such trade.

Coasters are not permitted to go on a foreign voyage without reporting in the same manner as would be required from all vessels not coasters.

Foreign vessels or boats must not be allowed to go from place to place in Canadian waters for the purpose of making up or seeking a cargo, as such a course would be in violation of the coasting regulations.

The Collector of a port may assign to such vessels a landing berth at any one place within the limits of his jurisdiction, but must not allow vessels to go from place to place in order to fill up or take in her cargo.

No permits are to be given under any circumstances, by Customs Officers, under cover of which, or under pretext of which, any law or regulation can be evaded.

Stringent means must be taken to confine all small or unregistered vessels within the strict limits allowed by law and regulations.

Vessels or boats of any kind or class, although of Canadian build, or owned by Canadians, which have been entered as personal property, or otherwise, and on which duty has been paid in any foreign port, must be considered strictly as foreign boats, and excluded from any rights that might attach to them had they not been so entered, as such entry changes their nationality as much so as if they had been formally registered.

In order to insure the better protection of the revenue, it is absolutely necessary that these instructions receive your closest attention, and that all vessels irrespective of their nationality be required to observe the same.

I have, &c.,
(Signed) W. G. PARMELEE,
Assistant Commissioner.

Collector of Customs
Port of _____

18,277.

No. 11.

Administrator Lord A. G. Russell, C.B., to the Right Hon. Edward Stanhope, M.P.
(Received October 11th, 1886.)

No. 32.

HALIFAX, NOVA SCOTIA,
September 21st, 1886.

SIR,

I have the honour to enclose herewith a certified copy of a minute of my Privy Council embodying a report of the Minister of Customs for the Dominion in relation to

the alleged improper treatment of the United States' fishing schooner "Rattler," in being required to report to the Collector of Customs at Shelburne, Nova Scotia, when seeking that harbour for shelter.

2. The reply of the Collector to the enquiries addressed to him in respect to this matter is appended to the Minister's report, and in it the facts of the case as set forth in my telegram of the 14th instant* are given.

3. I have communicated your despatch No. 195, of the 1st instant,† forwarding Mr. Bayard's protest concerning this case, to my Ministers, and requested to be furnished with a report thereon, which I shall forward for your information as soon as it has been received.

I have, &c.,
(Signed) A. G. RUSSELL, General.

The Right Hon. Edward Stanhope,
&c., &c., &c.,
Colonial Office.

Enclosure in No. 11.

Certified Copy of a Report of a Committee of the Honourable the Privy Council for Canada, approved by His Excellency the Administrator of the Government in Council on the 16th September, 1886.

The Committee of the Council have had before them a cablegram from the Right Honourable the Secretary of State for the Colonies, dated 1st September, 1886, as follows:—

"Report should be made as to treatment United States' fishing boat "Rattler," "alleged compelled report customs when seeking Shelburne Harbor. Despatch follows "by mail."

The Minister of Customs, to whom the cablegram was referred for immediate report, caused a telegram to be forwarded to the Collector of Customs at Shelburne to the effect that it was "stated that United States' fishing boat "Rattler," compelled report "Customs when seeking Shelburne Harbor, what were circumstances, answer by telegram, and report in full by mail," and he submits the report, dated 6th September instant, from Mr. Attwood, the Collector of Customs at Shelburne.

The Committee advise that your Excellency be moved to cable a copy of the report above-mentioned for the information of the Right Honorable the Secretary of State for the Colonies.

JOHN J. MCGEE,
Clerk, Privy Council.

CUSTOM HOUSE, SHELBURNE,
September 6th, 1886.

SIR,

I have to acknowledge receipt of your telegram of 4th instant, relative to schooner "Rattler;" and I wired an answer this morning as requested. On the morning of the 4th ultimo chief officer of "Terror," accompanied by Captain A. F. Cunningham called at this office. Captain Cunningham reported his vessel inwards as follows, viz:—Schooner "Rattler," of Gloucester, 93 tons register, 16 men from Fishing Bank, with 465 bbls. mackerel, came in for shelter. I was afterwards informed by the officer of cutter that they found the schooner the evening before at anchor off Sandy Point, five miles down the harbor; two men from cutter were put on board, and the master required to report at Customs in the morning. I was also informed that the master, Captain Cunningham, made an attempt to put to sea in the night, by hoisting sails, weighing anchor, &c., but was stopped by officers from cutter.

I am, &c.,
(Signed) W. W. ATTWOOD,
Collector.

The Commissioner of Customs,
Ottawa.

* No. 180 in North American No. 118.

† No. 164 in North American No. 118

18,285.

No. 12.

Administrator Lord A. G. Russell, C. B. to the Right Hon. Edward Stanhope, M.P.
(Received October 11th, 1886.)

Secret.

HALIFAX, NOVA SCOTIA,
September 25th, 1886.

SIR,

With reference to your despatch "Secret" of the 5th ultimo* transmitting a copy of a letter from the Foreign Office with a copy of a note from Mr. Bayard protesting against the action of Captain Kent, of the Dominion Cruiser "General Middleton," in refusing Stephen A. Balkam permission to buy fish from Canadians. I have the honour to forward herewith a copy of an approved report of a Committee of the Privy Council embodying a report by my Minister of Marine and Fisheries on the subject.

I have &c.,
(Signed) A. G. RUSSELL, General.

The Right Hon. Edward Stanhope,
&c., &c., &c.

Enclosure in No. 12.

Certified copy of a report of a Committee of the Honourable the Privy Council for Canada, approved by His Excellency the Administrator of the Government in Council on the 21st September, 1886.

The Committee of the Privy Council have had under their consideration a despatch, dated 5th August, 1886, from the Right Honourable the Secretary of State for the Colonies, transmitting a copy of a letter from the Foreign Office with a copy of a note from Mr. Bayard, and protesting against the action of Captain Kent, of the Dominion cruiser "General Middleton," in refusing Stephen A. Balkam permission to buy fish from Canadians.

The Minister of Marine and Fisheries to whom the Despatch and enclosures were referred, submits the following report from the first officer of the "General Middleton":—

"Halifax, August 25th, 1886.

"I have the honor to state that when boarding several boats in St. Andrew's Bay, I asked Stephen R. Balkam if the boat he was in was American? He replied that he thought she was. I informed him that if she was American he could not take fish from the weirs on the English side without a permit from the Collector of Customs at St. Andrew's or West Isles.

"He asked permission to take the fish from the weirs in Kelly's Cove without a permit. I declined to accede to his request.

"Mr. Balkam went around the Point in his boat, and after accosting several others I met him again, evidently trying to evade my instructions. I told him that he must not take the fish without permission from the Customs. He left for the American shore, and I returned to the 'Middleton.'

"Mr. Stephen R. Balkam I have known for some years. He formerly belonged to St. Andrews, but is now living in Eastport. His business is to carry sardines from the English side to Eastport for canning purposes."

The Minister is of opinion, in view of the above, that in warning Mr. Balkam that if his boat belonged to the United States he could not take herring from the weirs without first having reported at the Custom House, Mr. Kent acted within the scope of the law and his instructions.

The Committee respectfully advise that your Excellency be moved to transmit a copy of this Minute to the Right Honourable the Secretary of State for the Colonies, as requested in his despatch of the 5th August last.

(Signed) JOHN J. MCGEE,
Clerk, Privy Council, Canada.

17,552.

No. 13.

*Colonial Office to the Most Hon. the Marquis of Lansdowne, G.C.M.G.*DOWNING STREET,
October 12th, 1886.

MY LORD,

I am directed by Mr. Secretary Stanhope to transmit to you a copy of a letter* from the Foreign Office and of its enclosures, and to acquaint you that Mr. Stanhope will be much obliged if you will be good enough to consider these papers and favour him with your opinion upon the proposals contained in Sir Julian Pauncefote's minute.

A copy of the Law Officers' opinion† referred to in that minute is also enclosed for your Lordship's information.

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

The Marquis of Lansdowne.

18,080.

No. 14.

The Right Hon. Edward Stanhope, M.P., to Administrator Lord A. G. Russell, C.B.

Secret.

DOWNING STREET,
October 12th, 1886.

MY LORD,

I have the honour to transmit to you for communication to your Government a copy of a letter‡ with its enclosures from the Foreign Office relative to the case of the United States' fishing vessel "Crittenden," and I request that you will move your Ministers to furnish me with an immediate report on the subject.

I have, &c.,
(Signed) EDWARD STANHOPE.

The Officer Administering the Government.

18,532.

No. 15.

The Most Hon. the Marquis of Lansdowne, G.C.M.G., to Colonial Office.

Confidential.

NOTE ON SIR J. PAUNCEFOTE'S MINUTE, dated September 20th, 1886.§

It may be as well that I should place upon paper the substance of the observations which I offered during my conversation with Sir Julian Pauncefote and Mr. Bramston at the Foreign Office yesterday.

The argument contained in Sir J. Pauncefote's minute is, I think, an unanswerable rejoinder to Mr. Phelps' letter of September 11th. Some of the points dealt with by Sir Julian have been further elaborated by the Canadian Minister of Justice in an exhaustive report which must now be on its way to England.

In regard to the suggestions made by Sir Julian for the future conduct of the negotiations, I would make the following remarks.

It is stated by Sir Julian that he is unable to see "why the instructions of 1870 which were thought sufficient for the substantial protection of British rights, should not be held sufficient for that purpose in 1886," and he explains that "those instructions were not based on the exaction of our strict rights under the treaty, but only on securing the substantial rights of the Colonial fishermen."

The Canadian Government will, I have no doubt, take exception to the statement that a relaxation of the restrictions under which American fishermen are excluded from the bays and harbours of the Dominion, except for the four purposes specified under the Convention of 1818, was in 1870, or is now consistent with the "substantial pro-

* No. 185 in North American No. 118.

† Enclosure in No. 150 in North American No. 118.

‡ No. 7.

§ Enclosure 2 in No. 185 in North American No. 118.

“tection of British rights.” Our view of the Convention of 1818 has been throughout that it was intended, not only to describe the limits within which the exclusive right of fishing should belong to British fishermen, but also to afford to these a general measure of protection by preventing their competitors in the fishing industry from making use of Canadian ports as a basis of operations from which to prosecute their business under exceptionally favourable conditions. It was for this reason that the framers of the Convention insisted upon prohibiting American fishing vessels from entering Canadian waters under any circumstances except those in which their exclusion would have distinctly involved a breach of the laws of humanity. The despatches which I have addressed to the Colonial Office will, I think, be found to contain strong testimony to the substantial value to our fishermen of the retention of the full privileges conferred upon them by the Convention.

Sir Julian Pauncefote points out that “what has angered the Americans is, that “instead of reverting to the state of things established by the instructions of 1870, the “Canadian authorities [immediately] on the abrogation of the fishery articles of the “Treaty of Washington, insisted on exacting the British Treaty rights of 1818 to their “fullest extent.” In my copy of the minute the word “immediately” is, I observe, struck out.

Upon this I would observe that the circumstances which were present during the interval between the expiration of the reciprocity treaty of 1854, and those present at this moment differ widely. When the instructions of 1870 were issued, negotiations between Great Britain and the United States were in active progress. Proposals had been made for the appointment of a commission which would have dealt with the limits of our territorial waters, with the regulations necessary for securing to the fishermen of the United States access to our bays and harbours for purposes authorized by treaty, and with the further questions of penalties and procedure.

These negotiations were superseded by those which arose out of the Alabama difficulty, out of which the Washington arbitration arose. During the whole interval the parties concerned were never without the prospect of a solution. On the other hand it is not too much to say that at the present moment the action of the United States has been such as to afford no indication whatever of their desire to arrive at a reasonable understanding with regard to the matters in dispute. That the fault does not lie with the Government of the Dominion is apparent from the fact, that, as soon as it became evident that the fishery clauses of the Treaty of Washington would be allowed to terminate, the Canadian Government consented to allow American fishermen to use the territorial waters of the Dominion during the greater part of the season of 1885, after their treaty right so to use them had come to an end, with the object of facilitating the conclusion of a new agreement. The proposal made by the President for the appointment of a Commission was, however, negatived by Congress, and since that time, in spite of the notorious readiness of the Dominion Government to arrive at a reasonable understanding with its neighbours, no substantial offer of any kind has been made on the part of the United States. It appears on the contrary that even if Mr. Bayard and Mr. Phelps were to come forward with a proposition satisfactory to themselves and to Canada, that proposition would be negatived by the Senate, whose policy it has been to take the conduct of the matter as far as possible out of the hands of the Executive and into its own. This is I presume what Mr. Phelps means when he says that “various “reasons not within its” (his Government’s) “control now concur to make the present “time inopportune for that purpose, and greatly to diminish the hope of a favourable “result.”

It would, I cannot help thinking, in the face of these facts, be a tactical mistake to abandon even temporarily any of the rights secured to us by the convention of 1818. Experience has shewn that such temporary concessions are invariably made use of by the Government of the United States in order to shew that the rights upon which we refrained from insisting, had no existence.

I am strengthened in the view that a concession would be inopportune at the present time, by the fact that the fishing season of 1885 may be said to have virtually come to an end—for the next few months it is not likely that there will be further seizures or any addition to the tension created by disputes on the spot.

Congress will meet in December, it will then be for the United States Government to ascertain how far it is likely to receive the countenance of the Senate in negotiating for a reasonable settlement.

The Canadian Government is, as has been repeatedly stated, willing to arrive at such a settlement, in regard either to fish and fishing, or to commercial intercourse generally.

Failing such a settlement it would probably be desirable that steps should be taken to determine accurately the limits of our territorial waters.

In the meantime it is important that Her Majesty's Government should make it clear that if that of the United States is not disposed to arrive at any neighbourly arrangement with Canada, the latter will be supported by the Imperial authorities in insisting upon its treaty rights. I would strongly urge in this view that Her Majesty should be without further delay advised to give Her assent to the reserved "Fisheries Act Amendment Act." As the fishing season is at an end, the new penalties introduced under this Act could not be enforced until the season of 1887, when, if no arrangement has been arrived at in the meanwhile, they will certainly be indispensable in order to render the laws of the Dominion effectual for the purpose of enforcing the rights secured to it by convention. I would also suggest that no time should be lost in making known to the Dominion Government that it may depend upon the co-operation of the Imperial fleet should the present state of things still be in existence next summer. Her Majesty's ships supported the action of the Dominion Government before the Reciprocity Treaty of 1854, and again after its expiration. It should be borne in mind that during the former period several United States' fishing vessels were seized and condemned for offences against the Treaty of 1818, other than the offence of fishing within the three miles limit, such offences, *e.g.*, as buying bait, selling goods, and obtaining supplies in Canadian bays and harbours.

The withdrawal of the support of the fleet is regarded with serious concern. The tenour of the instructions to be given by the Admiralty will no doubt require consideration. Subject to this the earliest possible announcement of the intentions of Her Majesty's Government would be desirable.

L.
15.10.86.

18,056.

No. 16.

The Right Hon. Edward Stanhope, M.P., to Administrator Lord A. G. Russell, C.B.

No. 223.

DOWNING STREET,
October 15th, 1886.

MY LORD,

With reference to previous correspondence relative to the North American Fisheries Question, I have the honour to transmit to you, for the information of your Government, a copy of a letter,* with its enclosure, from the Foreign Office on the subject.

I have, &c.,
(Signed) EDWARD STANHOPE.

The Officer Administering the
Government.

18,277.

No. 17.

Colonial Office to Foreign Office.

DOWNING STREET,
October 15th, 1886.

SIR,

With reference to the letter from this Department of the 18th ult.,† relating to the alleged unfriendly treatment of the United States' fishing schooner "Rattler" in Shelburne Harbour, I am directed by Mr. Secretary Stanhope to transmit to you, herewith, a copy of a despatch‡ from the Officer Administering the Government of Canada, enclosing a copy of a Minute of his Privy Council, with its enclosure, upon the subject.

I am to state that the despatch from the Secretary of State referred to in the papers now sent, viz., No. 195 of the 1st of September, was that in which your letter of the 26th of August last§ was communicated to the Officer Administering the Govern-

* No. 5. † Not printed (L.F.). ‡ No. 11. § No. 164 in North American No. 118.

ment of Canada, and that shortly after the receipt of your letter of the 27th of September, viz.,* on the 5th instant, a telegram was sent to the Officer Administering the Government, asking him when an answer to that despatch might be expected.

No reply has yet been received.

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

The Under-Secretary of State,
Foreign Office.

18,054.

No. 18.

The Right Hon. Edward Stanhope, M.P., to Administrator Lord A. G. Russell, C.B.

TELEGRAPHIC.

October 16. When may answer be expected to secret despatch of 25th August,†
Magdalen Islands?

18,276.

No. 19.

Colonial Office to Foreign Office.

DOWNING STREET,
October 19th, 1886.

SIR,

I am directed by Mr. Secretary Stanhope to transmit to you for the information of the Earl of Iddesleigh a copy of a despatch‡ from the Officer Administering the Government of Canada forwarding a copy of a Customs Circular in relation to the coasting trade of the Dominion.

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

The Under-Secretary of State,
Foreign Office.

18,181.

No. 20.

*The Right Hon. Edward Stanhope, M.P., to Governor Sir G. W. Des Vœux, K.C.M.G.
(Newfoundland.)*

DOWNING STREET,
October 21st, 1886.

Confidential.

SIR,

I have the honour to acknowledge the receipt of your despatch marked confidential of the 29th ult.,§ relating to the question of possible negotiations with the Government of the United States on the subject of the North American Fisheries.

In the event of a Commission being appointed on the Fisheries question you may rest assured that the interests of Newfoundland will not be overlooked, but I am unable to say anything more definite upon the subject at the present time.

I have, &c.,
(Signed) EDWARD STANHOPE.

Sir G. W. Des Vœux.

* No. 186 in North American No. 118.
‡ No. 10.

† No. 156 in North American No. 118.
§ No. 9.

17,552.

No. 21.

*Colonial Office to Foreign Office.*DOWNING STREET,
October 22nd, 1886.

SIR,

With reference to the letter from this Department of the 7th inst,* relative to Mr. Phelps' note of the 11th September and to the minute of Sir Julian Pauncefote thereon, I am directed by Mr. Secretary Stanhope to state for the information of the Earl of Iddesleigh that he has since had an opportunity of discussing the subject with the Marquis of Lansdowne; and that his Lordship thinks that matters will not be advanced by simply inviting the opinion of the Canadian Government upon the proposal contained in the last paragraphs of the minute.

Mr. Stanhope apprehends that he would be met by the Canadian argument that at the time of the arrangement of 1818 the abandonment by the United States' Government of any claim to the transshipment of fish or the obtaining of bait or other supplies by their fishing vessels in colonial waters was part of the consideration given for the admission of United States' fishermen to the other benefits secured to them by the Treaty. That owing to the greater distance of the American ports from the fishing grounds the above privileges would have been of great value to the fishermen from the States, and if conceded, would have deprived the Canadian fishermen of the advantage over their foreign competitors which they possess in the geographical position of their own harbours as bases of supply for revictualling or procuring a further supply of bait, or for disposing of their cargoes preparatory to another cruise, and that to admit the Americans now to these privileges would amount to giving up without any corresponding concession on the part of the Government of the United States what are very substantial rights of the Colonial fishermen.

I am to remind you that such an argument derives force from the fact noticed in Sir Julian Pauncefote's minute, of the British Commissioners of 1818 having rejected the proposal to add "*the right of procuring bait*" to the four objects for which exception is made in the Treaty.

With regard to the observation of Sir Julian Pauncefote that there is no reason why the instructions of 1870 should not be deemed sufficient in 1886, it should be borne in mind that in 1870 negotiations were in progress which resulted in the Treaty of Washington, and that the Canadians in view of the probability of such an arrangement being come to might then have been willing to consent to the instructions of 1870, by which they waived a portion of their strict rights, while at the present time they would be making the same concession without equivalent, for no definite benefit has been offered to them, nor does Mr. Phelps' present proposal make any positive offer, nor is the United States Government in a position to make any offer which Congress can be relied on to confirm; the fact that the fishing season of 1886 will have come to a close before any proposal of the kind suggested by Sir J. Pauncefote can be made to the United States' Government is, in Mr. Stanhope's opinion, an additional reason for regarding as inopportune any surrender of the Treaty rights of the Dominion. No further seizures are, he understands, apprehended by the Canadian Government, and there is therefore no prospect of an aggravation of the present difficulty by further local disputes of the kind which it is sought to avoid by means of an *ad interim* construction such as that contemplated by Sir Julian Pauncefote.

Mr. Stanhope, therefore, would suggest to Lord Iddesleigh that, before consulting the Canadian Government upon the present proposal, it would be better to invite the American Government to obtain from Congress, which is about to meet, the powers which would be necessary to enable them to make to Her Majesty's Government some definite proposal which might be submitted to that of the Dominion as a basis for the negotiation of a mutually advantageous arrangement. The prospect of such a negotiation would not, in Mr. Stanhope's opinion, be improved by the gratuitous surrender at the present moment of rights secured to Canada by treaty, and successfully insisted upon at different periods of her history. Such a surrender without an equivalent, or the prospect of an equivalent, would, he has no doubt, be earnestly deprecated by the Government of the Dominion.

I am, &c.,

(Signed) JOHN BRAMSTON.

The Under-Secretary of State,
Foreign Office.

P.S.—I am to take this opportunity of pointing out, with reference to the third page of Sir Julian Pauncefote's minute, that the 10-mile limit across bays was reduced to 6 miles in the British instructions of 1870, and the Canadian instructions of 1871.

76. Secret.

No. 22.

Governor Sir G. W. Des Vœux, K.C.M.G. (Newfoundland), to the Right Hon. Edward Stanhope, M.P. (Received October 23rd, 1886.)

TELEGRAPHIC.

My Ministers wish you informed that Sir Ambrose Shea is being sent to England as Commissioner on the Bait Bill and fishery matters generally. Expected arrive 18th November.

18,285.

No. 23.

Colonial Office to Foreign Office.

DOWNING STREET,
October 25th, 1886.

SIR,

With reference to your letter of the 2nd of August last,* enclosing copy of a despatch from Her Majesty's Chargé d'Affaires at Washington, with a note from Mr. Bayard, protesting against the alleged action of Captain Kent, of the Dominion cruiser "General Middleton," in refusing Stephen A. Balkam permission to buy fish from Canadians, I am directed by Mr. Secretary Stanhope to transmit to you, to be laid before the Earl of Iddesleigh, a copy of a despatch from the Officer Administering the Government of Canada, with its enclosure upon the subject.

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

The Under-Secretary of State,
Foreign Office.

17,552.

No. 24

Colonial Office to Foreign Office.

DOWNING STREET,
October 25th, 1886.

Confidential.

SIR,

With reference to the letter from this department of the 22nd instant,† respecting the North American Fisheries question, I am directed by Mr. Secretary Stanhope to transmit to you for the information of the Earl of Iddesleigh, a memorandum§ by the Marquis of Lansdowne on the subject.

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

The Under-Secretary of State,
Foreign Office.

77. Secret.

No. 25.

The Right Hon. Edward Stanhope, M.P., to Administrator Lord A. G. Russell, C.B.

TELEGRAPHIC.

November 2nd. Deliver following to Governor-General on arrival. In the meantime keep secret for your personal information only.—Cabinet have agreed to allow Fishery Bill, but intention of Her Majesty's Government must be kept absolutely secret

* No. 136 in North American No. 118.

† No. 12.

‡ No. 21.

§ No. 15.

by Governor-General and his Ministers until the Order in Council specially confirming the reserved Bill is received. Send properly authenticated transcript of Bill by early opportunity.

The question of cruizers will be discussed by Cabinet again next week.

19,960.

No. 26.

Governor Sir G. W. Des Vœux, K.C.M.G. (Newfoundland) to the Right Hon.
Edward Stanhope, M.P. (Received November 4th, 1886).

GOVERNMENT HOUSE, NEWFOUNDLAND,
October 27th, 1886.

No. 113.

SIR,

I had the honour to inform you on Saturday last by cable that Sir A. Shea is about to proceed to England, having been appointed Commissioner on behalf of this colony, for the purpose of more fully impressing upon Her Majesty's Government the views of this Government with reference to the Bill for regulating the sale of bait-fishes lately reserved by me for the signification of Her Majesty's pleasure.

2. As I have already informed you on more than one occasion, my Government regard the sanction of the Bill referred to as of vital importance to the interests of this Colony, and they now appoint a Commissioner to represent them on this subject in order to signify emphatically the continuance of this feeling and with a view to secure as far as possible against failure in their object by the supply of the fullest information on all points which may be material to the consideration of the question by Her Majesty's Government.

3. While this is the primary object of Sir A. Shea's appointment, it is believed that his ability and local experience may also possibly be useful to Her Majesty's Government with reference to other pending questions connected with the fisheries of North America; and I may mention, that if, as reported, Her Majesty's Government is considering the negotiation of a treaty with the United States on this subject, it is of great importance to this Colony that its interest should have special representations as apart from those of Canada.

4. On a former occasion when the Treaty of Washington was being negotiated, the peculiar interests of Newfoundland were, I am informed, not considered, and after its conclusion this Colony merely had the option of accepting or rejecting it *en bloc* though its articles were considered merely with reference to Canada, with which our interests are not wholly identical.

5. In order to show that the cases of Canada and Newfoundland, while "on all fours" in most respects, are not so in all, I may mention two points of difference by way of illustration, it being probable that there are others: 1st. The codfish, which forms the principal export of this Colony, does not, like codfish and mackerel of Canada enter into competition with the similar products of American industry, as, being cured dry, it is sent principally to markets which the more perishable American and Canadian fish could not reach; and 2ndly. There is an industry here, the seal fishery, which Canada does not possess, and which, in any treaty intended to have reference to this Colony, would therefore require special consideration.

6. In the Treaty of Washington no special provision was made in respect of the seal industry of Newfoundland; and in consequence the authorities of the United States' Customs during the whole time that the treaty was in force compelled the payment of duty upon our seal oil as being the product of an animal which is not a fish.

7. This omission was presumably due to the fact that the negotiators of the treaty were without advice from any representative of Newfoundland; and my Government are naturally anxious that the interests in their charge should not suffer again from a similar cause.

8. Sir A. Shea is so well known to your department that it is unnecessary for me to refer to his merits and capabilities.

I have, &c.,

(Signed) G. WILLIAM DES VŒUX.

The Right Hon. Edward Stanhope, M.P.,

&c., &c., &c.

20,019.

No. 27.

*Foreign Office to Colonial Office.*FOREIGN OFFICE,
November 4th, 1886.

SIR,

I am directed by the Earl of Iddesleigh to transmit to you to be laid before Mr. Secretary Stanhope, a copy of a despatch from Her Majesty's Minister at Washington, containing a protest from Mr. Bayard against the action of the Customs' officials at Arichat in the case of the American fishing vessel "Pearl Nelson," and I am to request that the Canadian Government may be asked to furnish a report on the subject.

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

Enclosure in No. 27.

WASHINGTON,
October 21st, 1886.

Treaty, No. 91.

MY LORD,

In connection with my preceding despatch, I have the honour to enclose to your Lordship herewith copy of a further note which I have received from the Secretary of State, together with copy of the document which accompanied it, drawing the attention of Her Majesty's Government to the case, as therein set forth, of the United States' fishing vessel "Pearl Nelson," which, it is alleged, has been subjected to treatment by the Customs' officials at Arichat, Nova Scotia, inconsistent with the national law of ordinary amity and hospitality, and also plainly violative of treaty rights under the Convention of 1818 between Great Britain and the United States.

I have, &c.,
(Signed) L. S. S. WEST.The Earl of Iddesleigh,
&c., &c., &c.WASHINGTON,
October 20th, 1886.

SIR,

Permit me to ask you to draw the attention of your Government to the case set forth in the enclosed affidavit of Murdoch Kemp, master of the American fishing vessel "Pearl Nelson," of Provincetown, Mass., which has been subjected to treatment by the Customs' officials at Arichat, Nova Scotia, inconsistent with the international law of ordinary amity and hospitality, and also plainly violative of treaty rights under the Convention of 1818, between Great Britain and the United States.

The vessel in question was compelled by stress of weather to seek shelter in the harbour of Arichat, Nova Scotia, and arrived late at night when the Custom House was closed. Before the Custom House was opened the next day the Captain went there, and after waiting over an hour, the Collector arrived and the usual inward report was made and permission asked to land the clothing of a sailor lost overboard, whose family resided in that vicinity.

He was then informed that his vessel was seized for allowing his crew to go ashore the night before, *before reporting at the Custom House.*

The cruel irony of this was apparent when the Collector knew such report was impossible and that the landing of the crew was usual and customary, and that no charge of smuggling had been suggested or was possible under the circumstances.

To compel the payment of a fine, or a "deposit" of \$200, which is practically the same in its results, was harsh and unwarranted, and was adding a price and a penalty to the privilege of *shelter* guaranteed to American fishermen by treaty.

This vessel was a fishing vessel, and although seeking to exercise no commercial privileges was compelled to pay commercial fees, such as are applicable to trading vessels; but at the same time was not allowed commercial privileges.

I beg you will lose no time in representing the wrong inflicted upon an unoffending citizen of the United States, and procure the adoption of such orders as will restore the money so compelled to be deposited.

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

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

SCHOONER, "PEARL NELSON,"
DISTRICT OF MASSACHUSETTS, U.S.A.

I, Murdoch Kemp, of Provincetown, in Massachusetts, a citizen of the United States, on my oath do say: That I was master and part owner of the schooner, "Pearl Nelson," a vessel of the United States, duly licensed———, 1886, for the fisheries and holding a permit to touch and trade during the existence of said licence.

I further say that the crew of the said vessel were shipped on wages at Provincetown and Boston for a fishing voyage to the Grand Banks and return to Provincetown for discharge. Said schooner with licence and permit as aforesaid sailed May 29th, 1886, from Provincetown, and on her passage home touched at Arichat, Cape Breton, driven in there by stress of weather. Sailed by the wind from Bank Quero, and blowing fresh, a heavy sea running and foggy, made Point Michaux, nine miles from Arichat. The vessel was deep, her dorys floated on deck in her lee waist, wind being about west. I concluded to make a harbour, and wait for better weather and wind.

I anchored the vessel in Arichat Harbour at 11 p.m. September 7th, 1886.

I had lost a man on the Grand Banks, named James Sampson, who belonged to Arichat, and I wanted to land his effects if the Customs' officers would allow me to. Some of my crew belonged in that neighbourhood. William Batino, my cook, and nine others of my crew took boats off the deck and went ashore without asking my permission. I saw them, but had never known that was any objection. I had been in this and other British and American ports frequently, and witnessed the landing from my own and other vessels' crews, but never before heard such landing was illegal or improper. These men took nothing with them from the vessel nor carried away anything but the clothes they wore.

From the time I left Provincetown I had been into no port anywhere. Next morning, after my arrival in Arichat, at 8½ o'clock I went ashore to enter at the Custom House, and found it closed. I called at 9 o'clock and it was not open. I went again at 10 o'clock, and found the Collector opening the office door. I made the regular inward report to him and requested permission to land the clothes of James Sampson, who had been lost from my vessel on the Grand Banks.

He told me he had sent a man for me. After I got there this man came in the office and was holding my papers, and told the man to go back and take charge of the vessel. I asked him why he held my papers. He replied he seized her because I had allowed my men to go ashore before reporting at the Custom House; that all he could tell me was, he said, he would telegraph to Ottawa, and find out what to do with me, and he did telegraph immediately. About five o'clock p.m. the Collector received an answer and told me to deposit \$200 and the vessel would be released. The Collector would not allow me to land this dead man's clothes until after I had paid the \$200 fine. I gave the clothes to the shop keeper to be given to Sampson's widow or friends. I came out of Arichat about 11 a.m. on the 8th of September, 1886, having bought there one bushel of potatoes with the Collector's permit, and arrived (at) Provincetown, September 14th, 1886.

I sailed from Arichat with all my crew on board, and had not at any time intended to leave any of my crew at that port. They were hired men, shipped to be discharged on return at Provincetown, and on our arrival there were all paid off and discharged.

Some of the crew that went ashore at Arichat returned aboard as early as seven o'clock, and all were aboard about the time the vessel was seized. I gave them no money there and had none myself.

I further say I did not enter Arichat with any intention of violating any law of the Dominion of Canada, nor for any business, but solely because of the stress of weather that had driven me there. It was mere kindness only that prompted me to offer to land Sampson's clothes there where his friends could get them. There was no profit to the vessel, crew, or myself expected in so doing or attempted to be gained in entering the

Port of Arichat other than shelter from the stress of weather we had been under from Quero Bank. If any revenue law of Canada was violated by my vessel or by myself, the same was done through ignorance and inadvertance, and not with any intention to defraud the revenue or offend the law.

(Signed) MURDOCH KEMP.

Personally appeared before me Murdoch Kemp, at Provincetown, State of Massachusetts, U.S.A., this 27th day of September, 1886, who subscribed and made oath to the foregoing.



(Signed) JAMES GIFFORD,
Notary Public.

20,020.

No. 28.

Foreign Office to Colonial Office.

FOREIGN OFFICE,
November 4th, 1886.

SIR,

I am directed by the Earl of Iddesleigh to transmit to you a copy of a despatch from Her Majesty's Minister at Washington (enclosing a note from Mr. Bayard) remonstrating against the action of the Canadian authorities in detaining the United States' fishing vessel "Everitt Steele," which is alleged to have entered Shelburne Harbour for shelter, water, and repairs.

I am to request that you will move Mr. Secretary Stanhope to ask for an immediate report from the Canadian Government upon the circumstances of this case; and I am to suggest that the opportunity might perhaps be taken to urge upon the Dominion Government the great importance of issuing stringent instructions to all officials connected with the fisheries to the effect that great care should be taken not to interfere with the privileges expressly reserved to American fishermen under Article I of the Convention of 1818.

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

The Under-Secretary of State,
Colonial Office.

Enclosure in No. 28.

Treaty. No. 90.

WASHINGTON,
October 20th, 1886,

MY LORD,

I have the honour to enclose to your Lordship herewith copy of note which I have received from the Secretary of State bringing to the notice of Her Majesty's Government the case of the United States' fishing vessel "Everitt Steele," which is alleged to have entered the port of Shelburne, Nova Scotia, for shelter, water, and repairs, and to have been detained by the Captain of the Canadian cruiser "Terror."

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

The Earl of Iddesleigh,
&c., &c., &c.

WASHINGTON,
October 19th, 1886.

SIR,

The "Everitt Steele," a fishing vessel of Gloucester, Mass., in the U.S., of which Charles E. Forbes, an American citizen, was master, was about to enter on the 10th

September, 1886, the harbour of Shelburne, Nova Scotia, to procure water, and for shelter during repairs. She was hailed when entering the harbour by the Canadian cutter "Terror," by whose Captain, Quigley, her papers were taken and retained. Captain Forbes, on arriving off the town, anchored and went with Captain Quigley to the Custom House, who asked him whether he reported whenever he had come in. Captain Forbes answered that he had reported always with the exception of a visit on the 25th of March, when he was driven into the lower harbour for shelter by a storm, and where he remained only eight hours. The Collector did not consider that this made the vessel liable, but Captain Quigley refused to discharge her, said he would keep her until he heard from Ottawa, put her in charge of policemen, and detained her until the next day, when, at noon, she was discharged by the Collector. But a calm having come on she could not get to sea, and by the delay her bait was spoiled and the expected profits of her trip lost.

It is scarcely necessary for me to remind you, in presenting this case to the consideration of your Government, that when the north-eastern coast of America was wrested from France, in a large measure by the valour and enterprise of New England fishermen, they enjoyed, in common with other British subjects, the control of the fisheries with which that coast was enriched; and that by the Treaty of Peace of 1783, which, as was said by an eminent English Judge, when treating an analogous question, was a Treaty of "Separation," this right was expressly affirmed.

It is true that by the Treaty of 1818 the United States renounced a portion of its rights in these fisheries, retaining, however, the old prerogatives of visiting the bays and harbours of the British north-eastern possessions for the purpose of obtaining wood, water, and shelter, and for objects incidental to those other rights of territoriality so retained and confirmed. What is the nature of these incidental prerogatives it is not, in considering this case, necessary to discuss. It is enough to say that Captain Forbes entered the harbour of Shelburne to obtain shelter and water; and that he had as much right to be there, under the Treaty of 1818, confirming in this respect the ancient privileges of American fishermen on these coasts, as he would have had on the high seas, carrying on, under shelter of the flag of the United States, legitimate commerce. The Government which you so honourably represent has, with its usual candour and magnanimity conceded that when a merchant vessel of the United States is stopped in time of peace by a British cruiser on the groundless suspicion of being a slave trader, damages are to be paid to this Government, not merely to redress the injuries suffered, but as an apology for the insult offered to the flag of the United States. But the case now presented to you is a much stronger one than that of a seizure on the high seas of a ship unjustly suspected of being a slaver. When a vessel is seized on the high seas on such a suspicion its seizure is not on waters where its rights, based on prior and continuous ownership, are guaranteed by the sovereign making the seizure. If in such case the property of the owners is injured it is, however wrongful the act, a case of rare occurrence on seas comparatively unfrequented, with consequences not very far reaching; and if a blow is struck at a system of which such vessel is unjustly supposed to be a part, such system is one which the civilised world execrates. But seizures of the character of that which I now present to you have no such features. They are made in waters not only conquered and owned by American fishermen, but for the very purpose for which they were being used by Captain Forbes guaranteed to them by two successive treaties between the United States and Great Britain. These fishermen also, I may be permitted to remind you, were engaged in no nefarious trade. They pursue one of the most useful and meritorious of industries; they gather from the seas, without detriment to others, a food which is nutritious and cheap for the use of an immense population; they belong to a stock of men which contributed before the revolution most essentially to British victories on the North-Eastern Atlantic; and it may not be out of place to say they have shown since that revolution, when serving in the navy of the United States, that they have lost none of their ancient valour, hardihood, and devotion to their flag.

The indemnity which the United States has claimed, and which Great Britain has conceded, for the visitation and search of isolated merchantmen seized on remote African seas on unfounded suspicion of being slavers, it cannot do otherwise now than claim, with a gravity which the importance of the case demands, for its fishermen seized on waters in which they have as much right to traverse for shelter as have the vessels by which they are molested. This shelter, it is important to observe, they will as a class be debarred from if annoyances such as I now submit to you are permitted to be inflicted on them by minor officials of the British provinces.

Fishermen, as you are aware, have been considered, from the usefulness of their

occupation, from their simplicity, from the perils to which they are exposed, and from the small quantity of provisions and protective implements they are able to carry with them, the wards of civilised nations; and it one of the peculiar glories of Great Britain that she has taken the position—a position now generally accepted—that even in time of war they are not to be the subjects of capture by hostile cruisers. Yet, in defiance of this immunity thus generously awarded by humanity and the laws of nations, the very shelter which they own in these seas, and which is ratified to them by two successive treaties, is to be denied to them, not, I am confident, by the act of the wise, humane, and magnanimous Government you represent, but by deputies of deputies permitted to pursue, not uninfluenced by local rivalry, these methods of annoyance in fishing waters which our fishermen have as much right to visit on lawful errands as those officials have themselves. For let it be remembered that by annoyances and expulsions such as these, the door of shelter is shut to American fishermen as a class.

If a single refusal of that shelter such as the present be sustained, it is a refusal of shelter to all fishermen pursuing their tasks on those inhospitable coasts. Fishermen have not funds enough, or outfit enough, nor, I may add, recklessness enough, to put into harbours where, perfect as is their title, they meet with such treatment as that suffered by Captain Forbes.

To sanction such treatment therefore is to sanction the refusal to the United States' fishermen as a body of that shelter to which they are entitled by ancient right, by the law of nations, and by solemn treaty. Nor is this all. That treaty is a part of a system of mutual concessions. As was stated by a most eminent English judge in the case of *Sutton v. Sutton* (1 v. R., 675), which I have already noticed, it was the principle of the Treaty of Peace, and of the treaties which followed between Great Britain and the United States that the "subjects of the two parts of the divided empire should, notwithstanding the separation, be protected in the mutual enjoyment" of the rights these treaties affirmed. If, as I cannot permit myself to believe, Great Britain should refuse to citizens of the United States the enjoyment of the plainest and most undeniable of these rights, the consequences would be so serious that they cannot be contemplated by this Government but with the gravest concern.

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

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

14,567.

No. 29.

The Right Hon. Edward Stanhope, M.P., to Governor-General the Most Hon. the Marquis of Lansdowne, G.C.M.G.

Secret.

DOWNING STREET,
November 4th, 1886.

MY LORD,

I have the honour to acknowledge the receipt of your despatch No. 238 of the 29th of July last* enclosing a copy of an approved report of your Privy Council in reference to the Bill recently passed by the Parliament of Canada and reserved by you for the signification of Her Majesty's pleasure, entitled "An Act further to amend the Act respecting fishing by foreign vessels."

Her Majesty's Government after having given their most attentive consideration to the question and to the views which have been urged by your Ministers, and having moreover, had the advantage of considering the representations which you have yourself made upon the subject during your recent visit to this country, have come to the conclusion that they would not be justified in advising Her Majesty to withhold Her assent from the Bill in question.

They will therefore be prepared to submit the Bill to Her Majesty for confirmation on receiving a transcript of it properly authenticated in the usual form.

I have, &c.,
(Signed) EDWARD STANHOPE.

The Marquis of Lansdowne,

14,567.

No. 30.

*Colonial Office to Foreign Office.*DOWNING STREET,
November 4th, 1886.

SIR,

With reference to the letter from this Department of the 16th of July last* and to previous correspondence respecting the Bill passed by the Parliament of Canada at its last Session, and reserved by the Governor-General of the Dominion for the signification of Her Majesty's pleasure, entitled "An Act further to amend the Act respecting fishing by foreign vessels," I am directed by Mr. Secretary Stanhope to transmit to you to be laid before the Earl of Iddesleigh, a copy of a despatch† upon the subject which was received in this department in August last, together with a copy of the reply‡ which has been returned to it.

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

14,567.

No. 31.

*Colonial Office to Foreign Office.*DOWNING STREET,
November 4th, 1886.

Confidential.

SIR,

With reference to my public letter of this day's date,§ I am directed to transmit to you, confidentially, for the information of the Earl of Iddesleigh, a copy of a telegram || which was sent in cypher to the Officer Administering the Government of Canada on the 2nd inst., communicating to him and to the Governor-General the decision arrived at by Her Majesty's Government in regard to the reserved Bill of the Legislature of Canada passed last session, entitled "An Act to amend the Act respecting fishing by foreign vessels."

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

20,020.

No. 32.

The Right Hon. Edward Stanhope, M.P., to Administrator Lord A. G. Russell, C.B.

TELEGRAPHIC.

6th November, 1886.—United States' Government protest against proceedings of Canadian authorities in case of "Pearl Nelson," and "Everett Steele," said to have put into Arichat and Shelburne respectively for purposes sanctioned by Convention. Particulars by post. Send Report as soon as possible.

* No. 107 in North American No. 118.
§ No. 30.† No. 144A in North American No. 118.
‡ No. 25.

‡ No. 29.

19,960.

No. 33.

*The Right Hon. Edward Stanhope, M.P., to Governor Sir G. W. Des Vœux, K. C. M. G.
(Newfoundland.)*

DOWNING STREET,
November 12th, 1886.

No. 47.

SIR,

I have received and have communicated to the Secretary of State for Foreign Affairs your despatch No. 113 of the 27th ult.,* in which you reported the approaching mission to this country of Sir Ambrose Shea on matters connected with the questions now pending relating to the fisheries of Canada and Newfoundland.

I have, &c.,

(Signed) EDWARD STANHOPE.

Sir G. W. Des Vœux.

20,379.

No. 34.

Foreign Office to Colonial Office.

FOREIGN OFFICE,
November 12th, 1886.

SIR,

I am directed by the Earl of Iddesleigh to transmit to you, to be laid before Mr. Secretary Stanhope a copy of a despatch from Her Majesty's Minister at Washington, enclosing a copy of a note from the United States Secretary of State requesting to be furnished with authentic information respecting the Canadian laws regulating the sale and exportation of fresh herring from Grand Manan Island.

Lord Iddesleigh would propose, with the concurrence of Mr. Stanhope, to instruct Sir L. West to telegraph to the Canadian Government to supply him with the desired information for communication to the United States Government.

I am, &c.,

(Signed) J. PAUNCEFOTE.

The Under-Secretary of State,
Colonial Office.

Enclosure in No. 34.

Treaty No. 92.

WASHINGTON,
October 28th, 1886.

MY LORD,

I have the honour to enclose to your Lordship herewith, copy of a note and enclosure which I have received from the Secretary of State, asking for information respecting the Canadian laws regulating the sale and exportation of fresh herring from Grand Manan Island.

I have communicated copy of this correspondence to the Administrator of the Government of the Dominion of Canada.

I have, &c.,

(Signed) L. S. S. WEST.

The Earl of Iddesleigh,
&c., &c., &c.

WASHINGTON,
October 27th, 1886.

SIR,

I enclose copies of two letters received at this Department from George Steele, President of the American Fishery Union at Gloucester, Mass.

The object of these letters is to obtain authentic information of the administration of Canadian laws regulating the sale and exportation of fresh herring from Grand Manan Island and its vicinity, a trade which, the writer avers, has been carried on almost exclusively in American vessels for many years.

By the statements of the letter of Mr. Steele, dated October 25th, it appears that although the vessels employed in this trade are duly registered in their home port as fishing vessels, yet that, so far as the proposed trade is concerned, they are not manned or equipped, nor in any way prepared for taking fish, but their use is confined to the carriage of fish as merchandise to ports in the United States, a commercial transaction *pur et simple*.

May I ask the favour of an early response to the enquiries propounded by Mr. Steele?

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

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

OFFICE OF GLOUCESTER MUTUAL FISHING INSURANCE CO.,
GLOUCESTER, MASS.,
October 18th, 1886.

SIR,

The season is approaching when American vessels have been accustomed to buy herring at the Grand Manan Island and vicinity, and bring them to Boston, Gloucester, New York, and Philadelphia.

The present position of the Dominion Government as to that trade concerns our interest greatly, and the fish trade desire to be informed whether that Government now considers the purchase of herring as open to American vessels, either when registered or licensed with permit to trade.

We do not wish to explore their power of seizing or detaining these vessels, or of inflicting fines; if they object to our vessels continuing in that business, we prefer to keep away from these shores until the Dominion Government is better advised.

I apply to you for this information, which our merchants need, because I know of no other mode of obtaining it in a reliable shape.

I am, &c.,
(Signed) GEO. STEELE,
President American Fishery Union.

Hon. T. F. Bayard,
&c., &c., &c.

P.S.—This trade in winter herring has been carried on in our vessels almost exclusively for many years, and fifty or a hundred cargoes come in annually during the fall, winter, and spring.

They are largely consumed as food, and to some extent used as bait in our winter fishing to George's and the banks.

It is very rare for a British vessel to bring herring to our ports.

OFFICE OF GLOUCESTER MUTUAL FISHING INSURANCE CO.,
GLOUCESTER, MASS.,
October 25th, 1886.

SIR,

I have the pleasure to acknowledge the receipt of your letter dated October 20th.

My original enquiry referred both to vessels under license and to those sailing under a register. Your letter satisfies the enquiry as to those licensed for the fisheries.

We still desire to be informed as to whether vessels under registry of the United States will be allowed to enter at Grand Manan and other ports, and load and export herring to the United States.

Such vessels will be manned by a sailing crew on wages, and not by a fishing

complement of sharemen; nor will they carry the fishing gear which such vessels use, when fishing under a fishing licence.

The fishing interests, I assure you, appreciate the courtesy of your offer to procure this information reasonably for them.

I am, &c.,
(Signed) GEO. STEELE.

Hon. T. F. Bayard,
&c., &c., &c.

19,960.

No. 35.

Colonial Office to Foreign Office.

DOWNING STREET,
November 13th, 1886.

SIR,

I am directed by Mr. Secretary Stanhope to transmit to you herewith, for the information of the Earl of Iddesleigh, a copy of a despatch* from the Governor of Newfoundland reporting the approaching mission to this country of Sir Ambrose Shea on matters connected with the questions now pending relating to the fisheries of Canada and Newfoundland.

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

The Under-Secretary of State,
Foreign Office.

20,379.

No. 36.

Colonial Office to Foreign Office.

DOWNING STREET,
November 13th, 1886.

SIR,

I am directed by Mr. Secretary Stanhope to acknowledge the receipt of your letter of the 12th instant,† enclosing copy of a despatch from Her Majesty's Minister at Washington with a note from the United States' Secretary of State, requesting to be furnished with authentic information respecting the Canadian laws regulating the sale and exportation of fresh herring from Grand Manan Island.

Mr. Stanhope desires me to request that you will inform the Earl of Iddesleigh that he concurs in his Lordship's proposal to instruct Mr. West to telegraph to the Governor-General of Canada, requesting that the Canadian Government will supply him with the desired information for communication to the United States Government.

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

The Under-Secretary of State,
Foreign Office.

20,395.

No. 37.

Administrator Lord A. G. Russell, C.B., to the Right Hon. Edward Stanhope, M.P.
(Received November 13th, 1886.)

No. 66.

HALIFAX, NOVA SCOTIA,
27th October, 1886.

SIR,

I have the honour to transmit herewith a copy of an approved Minute of the Privy Council of Canada expressing the regret of my Government at the action of the Captain of the Canadian cutter "Terror," in lowering the United States' flag from the

* No. 26.

† No. 34.

United States' fishing schooner, "Marion Grimes," of Gloucester, Massachusetts, while that vessel was under detention at Shelburne, Nova Scotia, by the Collector of Customs at that port, for an infraction of the Customs Regulations.

I have communicated a copy of this Order in Council to Her Majesty's Minister at Washington.

I have, &c.,
(Signed) A. G. RUSSELL, General.

The Right Honourable Edward Stanhope,
&c., &c., &c.

Enclosure in No. 37.

Certified copy of a Report of a Committee of the Honorable the Privy Council for Canada, approved by His Excellency the Administrator of the Government in Council on the 26th October, 1886.

On a report dated 14th October, 1886, from the Hon. Mackenzie Bowell, for the Minister of Marine and Fisheries, stating that on Monday, 11th October instant, the United States' fishing schooner "Marion Grimes," of Gloucester, Mass., was under detention at Shelburne, Nova Scotia, by the Collector of Customs at that port, for an infraction of the Customs Regulations, that while so detained and under the surveillance of the Canadian Government cutter "Terror," the Captain of the "Marion Grimes," hoisted the United States' flag.

The Minister further states that it appears that Captain Quigley, of the "Terror," considered such act as an intimation that there was an intention to rescue the vessel, and requested Captain Laundry to take the flag down. This request was complied with; an hour later, however, the flag was again hoisted and on Captain Laundry being asked if his vessel had been released, and replying that she had not, Captain Quigley again requested that the flag be lowered. This was refused, when Captain Quigley himself lowered the flag, acting under the belief that while the "Marion Grimes" was in possession of the Customs authorities, and until her case had been adjudicated upon, the vessel had no right to fly the United States' flag.

The Minister regrets that he should have acted with undue zeal, although Captain Quigley may have been technically within his right while the vessel was in the custody of the law.

The Committee advise that your Excellency be moved to forward a copy of this Minute, if approved, to the Right Honourable the Secretary of State for the Colonies, and to Her Majesty's Minister at Washington, expressing the regret of the Canadian Government at the occurrence.

All which is respectfully submitted for your Excellency's approval.

(Signed) JOHN J. MCGEE,
Clerk, Privy Council, Canada.

20,400.

No. 38.

Administrator Lord A. G. Russell, C.B., to the Right Hon. Edward Stanhope, M.P.
(Received November 13th, 1886).

HALIFAX, NOVA SCOTIA;
29th October, 1886.

No. 71.

SIR,

I have the honour to forward herewith a copy of an approved Minute of the Privy Council of Canada, furnishing the report asked for in your despatch No. 195 of the 1st September last,* respecting the alleged unfriendly treatment of the United States' fishing schooner "Rattler" in being required to report to the Collector of Customs at Shelburne, Nova Scotia, when seeking that harbour for shelter.

I beg also to draw your attention to the statement of the Captain of the "Terror,"

appended to the above Order in Council, which gives the facts concerning the cases of the "Shiloh" and "Julia Ellen," a report as to which was requested in your despatch No. 203 of the 9th ultimo*.

I have, &c.,
(Signed) A. G. RUSSELL, General.

The Right Hon. Edward Stanhope,
&c., &c., &c.

Enclosure in No. 38.

Certified Copy of a Report of a Committee of the Honorable the Privy Council for Canada, approved by His Excellency the Administrator of the Government in Council on the 28th day of October, 1886.

The Committee of the Privy Council have had their attention called by a cablegram from the Right Honourable Mr. Stanhope as to when he may expect answer to Despatch No. 195, "Rattler."

The Honourable Mr. Bowell, for the Minister of Marine and Fisheries, to whom the papers were referred, submits for the information of his Excellency in Council, that having considered the statements, copies of which are annexed, of Captain Quigley, of the Government cutter "Terror," and of the Collector of Customs at Shelburne, with reference to the subject matter of the despatch, he is of opinion that these officers only performed their respective duties in the case of the "Rattler," and that no just grounds exist for the complaint put forward in Mr. Bayard's despatch of a violation of that hospitality which all civilised nations prescribe, or of a gross infraction of Treaty stipulations.

The Minister states that it does not appear at all certain from the statements submitted that this vessel put into Shelburne for a harbour in consequence of stress of weather. It does, however, appear that immediately upon the "Rattler" coming into port Captain Quigley sent his chief officer to inform the Captain of the "Rattler" that before sailing he must report his vessel at the Custom House, and left on board the "Rattler" a guard of two men to see that no supplies were landed or taken on board or men allowed to leave the vessel during her stay in Shelburne Harbour. That at midnight the guard fired a shot as a signal to the cruizer, and the first officer at once again proceeded to the "Rattler" and found the sails being hoisted and the anchor weighed preparatory to leaving port. The Captain being informed he must comply with the Customs regulations and report his vessel, headed her up the harbour. That on the way up she became becalmed when the first officer of the "Terror" took the Captain of the "Rattler" in his boat and rowed him to the town, where the Collector of Customs received his report at the unusual hour of 6 A.M. rather than detain him, and the Captain with his vessel proceeded to sea.

The Minister observes that under section 25 of the Customs Act every vessel entering a port in Canada, is required to immediately report at the Customs, and the strict enforcement of this regulation as regards United States' fishing vessels has become a necessity in view of the illegal trade transactions carried on by the United States' fishing vessels when entering Canadian ports under pretext of their Treaty privileges.

That under these circumstances a compliance with the Customs Act, involving only the report of a vessel, cannot be held to be a hardship or an unfriendly proceeding.

The Minister submits, in view of the repeated groundless complaints of being harshly treated that have been made during the present season by Captains of United States' fishing vessels, and in almost every instance traceable to a refusal or neglect to observe the Customs regulations, which, it is proper to state, are enforced upon other vessels as well as those of the United States, herewith, a letter written by Captain Blake of the United States' fishing schooner "Andrew Burnham," which appeared in the "Boston (Mass.) Herald," of the 7th instant, and also the editorial comment thereon, made in a subsequent issue of the paper referred to.

The Minister believes that the statements made by Captain Blake are strictly accurate, and as applied to other vessels, are substantiated by the weekly board-

ing reports received by the Fisheries' Department from the different Captains engaged in the Fisheries Protection Service; he, the Minister, therefore respectfully submits that the reflections of Mr. Secretary Bayard, characterising the treatment extended to the Captain of the "Rattler" as unwarrantable and unfriendly is not merited in view of the facts as stated by Captain Quigley and Collector Attwood.

The Committee concur in the report of the Acting Minister of Marine and Fisheries, and advise that your Excellency be moved to transmit a copy of this Minute, if approved, to the Right Honourable Her Majesty's Principal Secretary of State for the Colonies.

All which is respectfully submitted for your Excellency's approval.

(Signed) JOHN J. MCGEE,
Clerk, Privy Council.

The "Montreal Gazette," 13th October, 1886.

A FISHERMAN'S TALE.

What a Boston Skipper says of his Experience in Canadian Waters.

The following letter which appears in the *Boston Herald* conveys a different impression to many statements that have appeared on the subject:—

So much has been written and printed about the experiences of American fishermen in Canadian waters, and the indignities put on them, I wish you would open your columns and give your readers an insight into the other side of the story. I sailed from Boston for North Bay on June 16, not knowing just what the cutters would do or how the law would be interpreted. I neared the coast with fear and anxiety. The first land sighted was Whitehead, and immediately cries came from aloft: "Cutter in sight, ahead!" I rushed to the deck, found the vessel, which proved to be the "Howlet," commanded by Captain Lowry, nearing us rapidly. At time of sighting the cutter we were standing in shore. She hoisted her flags to let us know what she was, and we immediately "about ship" and put to sea to get out of her way, for fear we might be placed on the prize list of the captures. We finally headed up for Port Mulgrave in Canso, expecting to receive rough usage from the authorities, but to our surprise found Collector Murray a perfect gentleman, willing to assist me as far as he could without encroaching on the Canadian laws. From there we put in at Port Hawkesbury and boarded the cutter "Conrad" and asked the captain for instructions in regard to the three mile limit, and what privileges, if any, we had. I was answered, in a courteous and hearty way, that he did not have them aboard, but would go ashore in a few moments and get me a printed copy of the regulations, which he did, and assured us that if we followed them we would be unmolested; that he was there to see that the law was not violated, but not to cause unnecessary annoyance. After receiving instructions from the Captain, thanks to him, I went to the Custom House and entered my vessel, paying twenty-five cents. I found a very pleasant gentleman in the Collector, who did all in his power to relieve my mind and make us comfortable. Souris was our next port of landing, where we also reported and were well treated. From there we went to Malpeque, where we found another gentleman in the Collector. We met the cutter "Howlet" at Cassumpece, and had several interviews with her commander, Captain Lowry, whom I found a quiet, just, and gentlemanly officer. My vessel was one of the fleet ordered out of harbour by him. At that time it was as good a fish day as one would ask for, and

THE INSTRUCTIONS WERE PLAIN

that at such times we had no right to remain in harbour. At no time is there much water to spare on the bar, and it is a common occurrence for vessels to ground in going in or out, and that some did touch was due to ignorance of the channel or carelessness on the part of captains. At the time the order was issued the weather was fair, but before all the fleet could work out through the channel, one of the sudden changes in weather, so much to be dreaded on such a coast, came, and the cutter rescinded the order

and the fleet returned. It has been printed in a Boston paper that, owing to being forced to sea by the cutter's orders in bad weather my schooner, the "Andrew Burnham," fouled two Englishmen and narrowly escaped serious damage. If true, it would look like a hardship. It was simply this: In getting under weigh, in a small and crowded apace, finding I would not have room, I dropped our starboard anchor. That not holding, we let go the other, and it brought us up all right; not much in this to point to as an outrage or danger from stress of weather. I believe Captain Lowry to be a man who would carry out all the requirements of the Canadian laws, but I saw nothing in my experience in those waters that could be considered as being arbitrary, or taking a mean advantage of his official authority to annoy any one. Captain Lowry has been a master of vessels for twenty-five years, is a man of high reputation as a seaman, and as good a judge of whether the weather is favourable for a vessel to go to sea as any man who walks a deck, and when he ordered the fleet to sea, he went himself, and I know he would not order a vessel to leave harbour if there was any danger of loss of life or property. We reported at Cassumpece, and were treated the same as at all other ports we touched at. If our vessels would attend to reporting at the Custom House, the same as they do in our ports, no trouble would be met with.

IF WE HAD "FREE FISH"

it would give the Canadians some recompense for what our fishermen want, viz., the right to go anywhere and everywhere, use their harbours, ship men, get provisions, land and mend our nets, buy salt and barrels, and ship our catch home by rail or steamer without expense or annoyance the same as we have heretofore.

If we had had that privilege this year, myself and vessel would have been \$5,000 better off this season, and all the fishermen in the bay would have been in the same boat with me. I do not say that I am too honest not to fish within the three-mile limit, nor do I believe there is a vessel in the fleet who would not, if the cutter was out of sight. I made two trips to the bay, both of which were very successful, and I lived up to the requirements of the law as well as I knew how, and did not find them obnoxious, or to interfere with my success, and everywhere I went I was courteously treated by the officials—especially so by both the cutters. Should it be a bay year next season, I hope to meet them again. Those who openly preached that they would go where they pleased, do what they wanted to in spite of law or cutters, shipped men, smuggled, or openly fished inside of the limit, and indulged in the satisfaction of damning the cutter, the captain, the government, and everything else when they knew they could do it with impunity, and that the men they were talking to could not resent it by word or blow, were looked after sharp and were not extended the courtesy that was shown so many of us.

In the interest of fair play, I could not help writing you and asking you to give this to your readers, if not taking up too much of your valuable space.

Very respectfully,

(Signed) NATHAN F. BLAKE, Captain,
Schooner "Andrew Burnham," of Boston.

Boston, October 6, 1886.

Extract from the "Boston Herald," dated the 9th October, 1886.

A Fishing Captain's Experience.

The letter of Captain Nathan F. Blake, of the fishing schooner "Andrew Burnham" of this city, which we published on Wednesday, would apparently indicate that the Canadian officials have not been disposed to push the requirements of their law quite as vigorously as some of our fishermen have maintained. Captain Blake says he has experienced not the least trouble in his intercourse with the Canadian officials, but that as he treated them courteously, they, on their side, have reciprocated in like terms. There is, undoubtedly, a great deal of bitterness felt on both sides,

and probably this bitterness has led both parties to be ungracious in their own conduct, and to exaggerate the wrongs they have endured—hardships frequently due to an unwillingness to observe the requirements of the law as these are now laid down. If all American fishing Captains exhibited the same courtesy and moderation that Captain Blake has shown, we imagine that there would be very little trouble in arriving at an equitable and pleasing understanding with Canada.

SHELBURNE,

September 30th, 1886.

SIR,

I beg to acknowledge the receipt of your letter of the 27th instant, requesting the circumstances connected with the boarding of the vessels "Rattler," "Julia and Ellen," and "Shilo."

In the case of the "Rattler," she came into Shelburne Harbour on the evening of the 4th of August, at 6 o'clock. She being at some distance from where I was anchored, and it being too rough to send my boat so far, I fired a musket signal for her to round to, which she did, and come to an anchor alongside of my vessel.

I then sent the chief officer to board her; he reported she put in for shelter. The Captain was then told by the chief officer to report his vessel before he sailed, and that he must not let his men on shore, and that he would leave two men, who are always armed, on board, to see that he did not otherwise break the law.

About midnight the Captain hoisted his sails to leave port, thereby evading the Customs law requiring him to report (for which I refer you to section 25 of the Customs Act), and disregarding my instructions.

The watchmen fired a signal calling my attention to his act, when I sent the chief officer to tell him he must lower his sails and report his vessel in the morning, otherwise he would likely have his vessel detained. He did so and sailed up in company with the chief officer at 4 o'clock A.M. On the way it fell calm and the vessel anchored. The chief officer, with my boat's crew, rowed him up to the Custom House, where he reported at 6 A.M., and returned, passing out to sea at 8 A.M. The Captain was only asked to report his vessel, as all others do, but was not disposed to do so.

In the case of the "Julia and Ellen," she came into the Harbour of Liverpool, on the 9th August, about 5 P.M. Being some distance from me, I fired a blank musket shot to round her to. When she anchored I boarded her, and the Captain reported that he came in for water. I told him to report his vessel in the morning, as it was then after Customs' hours, and that he must not let his men ashore, and that I would leave two men on his vessel to see that my instructions were carried out, and to see that he did not otherwise break the law.

In the morning at 8 o'clock, I called for the Captain to go to the Custom House, and told him his men could go on and take water while he was reporting, so that he would be all ready to sail when he returned, which they did, and he sailed at noon.

In the case of the "Shilo," she came into the harbour about 6 P.M. on the 9th of August at Liverpool, and a signal was fired in her case the same as the others.

When she anchored I boarded her, and the Captain reported she was in for water. I told him it was then too late to report at the Customs till morning, and that he must not allow his crew on shore; also that I would leave two men on board to see that he did not otherwise break the law, and that my instructions were carried out.

In the morning I called for the Captain, when taking the "Julia and Ellen's" Captain ashore. When there I told him, as I did the other, that his men could go on taking water while he was reporting, so that he could sail when he returned and not be delayed. This they did not do.

I have reason to know that it was not water this vessel came in for, as several of the crew lived there, and it was for the purpose of letting his men ashore, and not for taking water, that he put in.

He afterwards emptied six barrels of water, stating that they were sour, and fooled all day filling them, delaying the time that he might get his crew on shore.

I refused to allow his crew on shore for any other purpose than to take water, after completing which, the weather being fine, I ordered him to sea in the evening.

The signals that were fired were not intended to make them come to quickly, but as a signal for them to either round to or show their ensign.

After the "Shilo" sailed, the Harbour Master informed me that she landed two

men at the mouth of the harbour, seven miles down, before she reported, and th evening she sailed she called after dark and picked them up.

In many cases it is an understood thing between the captains and crews to let the men ashore and then make out they have deserted. In all cases where a vessel puts in for shelter, the Captain reports and the rest of his crew are not allowed ashore, as the vessel only put in for the privilege of shelter, and for no other purpose.

When she puts in for water, after reporting, the Captain is allowed to take his boats, and the men he requires to procure water and the rest remain on board, after which he is ordered to sea. When in for repairs he is allowed all the privileges he requires after reporting, and when ready is ordered to sea.

In all cases, except when in for repairs, I place men on board to see that the law is not violated, as many of those vessels put into the harbour and make taking water and seeking shelter an excuse either to get men or land them, or to allow them a chance to see their friends, or to get goods ashore if the vessel is on her way from American ports to the fishing grounds, and have landed men here and at other ports on this coast in my absence. In one case in this port a vessel, finding I was in the harbour, let men take a boat and land, she going on her way home to the States. That is why I put men on these vessels to keep them from breaking the law under cover of night.

I might remark here that the Collector of Customs at Liverpool informed me that the "Shilo," on her previous voyage, remained in port five days after being ordered out, delaying for the purpose of letting the men be with their friends.

Now that they are not allowed all the privileges they once enjoyed it is an outrage on my part.

These are the facts connected with those vessels, which I reported to Captain Scott while in Halifax some time ago.

I treat all courteously but firmly, and find no trouble with any but a few who wish to evade the law.

I am, &c.,
(Signed) THOMAS QUIGLEY,
Government Cruiser "Terror."

Major John Tilton,
Deputy Minister of Fisheries.

CUSTOM HOUSE, SHELBURNE,
September 6th, 1886.

SIR,

I have to acknowledge receipt of your telegram of 4th inst., relative to schooner "Rattler" and I wired an answer this morning as requested.

On the morning of 4th ultimo, chief officer of "Terror" accompanied by Captain A. F. Cunningham called at this office. Captain Cunningham reported his vessel inwards as follows, viz. :—Schooner "Rattler" of Gloucester, 93 tons register, 16 men, from fishing banks, with 465 bbls. mackerel, came in for shelter.

I was afterwards informed by the officer of cutter that they found the schooner the evening before at anchor off Sandy Point, five miles down the harbour. Two men from cutter were put on board, and the master required to report at Customs in the morning.

I was also informed that the master, Captain Cunningham, made an attempt to put to sea in the night, by hoisting sails, weighing anchor, &c., but was stopped by officer from cutter.

I am, &c.,
(Signed) W. H. ATTWOOD,
Collector.

The Commissioner of Customs,
Ottawa.

20,423.

No. 39.

Administrator Lord A. G. Russell, C.B., to the Right Hon. Edward Stanhope, M.P.
(Received November 13th, 1886.)

Secret.

HALIFAX, NOVA SCOTIA,
October 30th, 1886

SIR,

With reference to your telegraphic message of the 22nd August, and to your despatch of the 25th August,* marked Secret, transmitting a copy of a despatch from Her Majesty's Chergé d'Affaires at Washington with a note from Mr. Bayard complaining of the action of the Customs officer at Magdalen Islands with reference to the American fishing schooner "Mascotte," I have the honour to forward herewith a copy of an approved Minute of the Privy Council of Canada, embodying a report of the Minister of Marine and Fisheries on the subject.

I have, &c.,
(Signed) A. G. RUSSELL,
General.

The Right Hon. Edward Stanhope,
&c., &c., &c.

Enclosure in No. 39.

Certified copy of a report of a Committee of the Honorable the Privy Council, approved by his Excellency the Administrator of the Government in Council for Canada on the 30th day of October, 1886.

The Committee of the Privy Council have had under consideration a telegram or the 22nd August, and a despatch of the 25th August last, from the Right Honorable the Secretary of State for the Colonies, transmitting copy of a letter from Her Majesty's Minister at Washington, enclosing a note from Mr. Secretary Bayard, complaining of the action of the Customs Officer at Magdalen Islands with reference to the American fishing schooner "Mascotte."

The Minister of Marine and Fisheries to whom the correspondence was referred observes that Mr. Bayard in his note to the British Minister at Washington, says:—

"I am also in possession of the affidavit of Alex. T. Vachem, Master of the "American fishing schooner "Mascotte" who entered Port Amherst, Magdalen Islands, "and was there threatened by the Customs official with seizure of his vessel if he "attempted to obtain bait for fishing or take a pilot."

And from a report of the Customs officer at Magdalen Islands a copy of which, so far as it relates to the case in point, is hereto annexed, it appears that no grounds exist for the complaint made by the Master of the "Mascotte."

The Minister states that Capt. Vachem was served with a printed copy of the "warning" and was in addition informed by the Collector that under the Treaty of 1818, he had no right to buy bait or to ship men. He was not forbidden to take fish, but on the contrary, the Collector pointed out to him on the chart the places in which, by the Convention of 1818, he, as a United States' fisherman, had the right to inshore fishing, and one of the places so pointed out to him was the Magdalen Islands.

Notwithstanding the "warning" and the personal explanation of the Collector it appears that Capt. Vachem did go up the country and attempt to hire men, and upon his return informed the Collector that he could not get any. For this, clearly an illegal act, he was not interfered with by the Collector.

The Minister further observes that the Convention of 1818, while it grants to United States' fishermen the right of fishing in common with British subjects on the shores of the Magdalen Islands, does not confer upon them privileges of trading or of shipping men, and it was against possible acts of the latter kind, and not against fishing in shore, or seeking the rights of hospitality guaranteed under the treaty that Capt. Vachem was warned by the Collector.

With reference to the remarks of the Colonial Secretary that "Her Majesty's Government would recommend that special instructions should be issued to the

“authorities at the places where the inshore fishery has been granted by the Convention of 1818, to the United States’ fishermen, calling their attention to the provisions of that convention, and warning them that no action contrary thereto may be taken in regard to United States’ fishing vessels,” the Minister states that the circular instructions issued to Collectors of Customs, recite the articles of the Convention of 1818, which grant to United States’ fishermen the right to take fish upon the shores of the Magdalen Islands and of certain parts of the coasts of Labrador and Newfoundland which instructions the Collector in question had received and the import of which his report shows him to be familiar with.

In addition to this the Commander of the Fishery Protection Steamer “La Canadienne” was ordered to visit Magdalen Islands and explain fully to Collectors there the extent of their powers.

The Minister in view of these instructions, printed and oral, does not deem it necessary to send further special orders.

The Committee, concurring in the foregoing report, advise that your Excellency be moved to transmit a copy hereof, if approved, to the Right Honorable the Secretary of State for the Colonies.

All which is respectfully submitted for your Excellency’s approval.

(Signed) JOHN J. MCGEE,
Clerk, Privy Council for Canada.

CUSTOMS HOUSE, MAGDALEN ISLANDS,
August 28th, 1886.

SIR,

I beg to acknowledge the receipt of your telegram respecting Captain of the schooner “Mascotte’s” report in reference to my having threatened him with seizure.

I replied on receipt:—“Mascotte” information incorrect. Particulars per mail Tuesday.

PARTICULARS.

On arrival of the Captain, I served him a “Warning;” personally informed him he could not buy or ship men.

I say this to all American fishermen. He tried, however, to hire, went up the country to hire, but could not hire a man.

I saw him and men go up, and on his return he told me he could not hire. I did not oppose him. He intended halibutting at Seven Islands, Dominion. I found this out since. I deny having said I would seize him, if he obtained bait, himself or crew. I did not use the term, but it suits the Captain or owners to use it, as it serves their meaning to make the report good.

I particularly showed him where, on the chart, he had the right to fish inshore, to wit:—At the Magdalen Islands, Cape Ray, &c., as per Treaty in my hands then.

I think I was very lenient with him and all American fishermen calling here, knowing their privileges.

I treated him so gentlemanly that I am surprised to hear he made the above inaccurate report to you.

Yours, &c.,
(Signed) J. B. F. PAINCHAUD,
Collector of Customs.

20,400.

No. 40.

Colonial Office to Foreign Office.

DOWNING STREET,
November 17th, 1886.

SIR,

With reference to the letters* relating to the cases of the United States’ fishing vessels “Rattler,” “Julia Ellen,” and “Shilo,” I am directed by Mr. Secretary Stanhope

* Nos. 159, 173, and 186 in North American No. 118 and No. 17 in this paper]

to transmit to you, to be laid before the Earl of Iddesleigh, a copy of a despatch* from the Governor-General of Canada enclosing reports from the authorities of the Dominion in reference to these cases.

The Under-Secretary of State,
Foreign Office.

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

20,423.

No. 41.

Colonial Office to Foreign Office.

Confidential.

DOWNING STREET,
November 19th, 1886.

SIR,

With reference to the correspondence respecting the action of the Customs Officer at Magdalen Islands in the case of the United States' fishing vessel "Mascotte," I am directed by Mr. Secretary Stanhope to transmit to you, to be laid before the Earl of Iddesleigh, a copy of a despatch† with its enclosure from the Officer Administering the Government of Canada on the subject.

I am to point out that the concluding paragraph of Sir L. West's note to Mr. Bayard of the 17th September should have referred to the case of Newfoundland only.

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

The Under-Secretary of State,
Foreign Office.

21,156.

No. 42.

Governor-General the Most Hon. the Marquis of Lansdowne, G.C.M.G., to the Right Hon. Edward Stanhope M.P. (Received November 22nd, 1886.)

GOVERNMENT HOUSE, OTTAWA,
November 9th, 1886.

Confidential.

SIR,

In accordance with the request contained in your cypher telegram of the 2nd instant,‡ I have the honour to forward herewith a certified copy of the Bill entitled "An Act further to amend the Act respecting Fishing by Foreign vessels," which was passed by the Parliament of Canada last session.

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

The Right Hon. Edward Stanhope,
&c., &c., &c.

Enclosure in No. 42.

Office of the Clerk of the Parliaments.

I, Edouard Joseph Langevin, Clerk of the Parliaments, Custodian of the Statutes of the Legislatures of the late Provinces of Upper and Lower Canada, of the late Province of Canada and of the Parliament of Canada, certify the subjoined to be a true copy of the Original Act passed by the Parliament of Canada in the Session thereof held in the forty-ninth year of Her Majesty's Reign, and reserved by the Governor-

General on Wednesday, the second day of June, one thousand eight hundred and eighty-six, for the signification of Her Majesty's pleasure thereon.

Given under my Hand and Seal, at the City of Ottawa, Canada, on the third day of November, one thousand eight hundred and eighty-six.

EDOUARD J. LANGEVIN,
Clerk of the Parliaments.

An Act further to amend the Act respecting Fishing by Foreign Vessels.

WHEREAS it is expedient for the more effectual protection of the inshore fisheries of Canada against intrusion by foreigners, to further amend the Act intituled "*An Act respecting Fishing by Foreign Vessels*," passed in the thirty-first year of Her Majesty's reign, and chaptered sixty-one: Therefore Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada enacts as follows:—

1. The section substituted by the first section of the Act thirty-third Victoria, chapter fifteen, intituled "*An Act to Amend the Act respecting Fishing by Foreign Vessels*," for the third section of the hereinbefore recited Act, is hereby repealed, and the following section substituted in lieu thereof:

"3. Any one of the officers or persons hereinbefore mentioned may bring any ship, vessel or boat, being within any harbor in Canada, or hovering in British waters within three marine miles of any of the coasts, bays, creeks or harbors in Canada, into port, and search her cargo, and may also examine the master upon oath touching the cargo and voyage; and if the master or person in command does not truly answer the questions put to him in such examination, he shall incur a penalty of four hundred dollars; and if such ship, vessel or boat is foreign, or not navigated according to the laws of the United Kingdom or of Canada, and (a) has been found fishing or preparing to fish, or to have been fishing in British waters within three marine miles of any of the coasts, bays, creeks or harbors of Canada, not included within the above mentioned limits, without a license, or after the expiration of the term named in the last license granted to such ship, vessel or boat, under the first section of this Act, or (b) has entered such waters for any purpose not permitted by treaty or convention, or by any law of the United Kingdom or of Canada for the time being in force, such ship, vessel or boat and the tackle, rigging, apparel, furniture, stores and cargo thereof shall be forfeited."

2. The Acts mentioned in the schedule hereto are hereby repealed.

3. This Act shall be construed as one with the said "*Act respecting Fishing by Foreign Vessels*" and the amendments thereto.

SCHEDULE.

ACTS OF THE LEGISLATURE OF THE PROVINCE OF NOVA SCOTIA.

Year, Reign, and Chapter.	Title of Act.	Extent of Repeal.
Revised Statutes, 3rd Series, c. 94	Of the Coast and Deep Sea Fisheries	The whole.
29 Vic. (1866) c. 35	An Act to amend Chapter 94 of the Revised Statutes "Of the Coast and Deep Sea Fisheries"	The whole.

ACT OF THE LEGISLATURE OF THE PROVINCE OF NEW BRUNSWICK.

16 Vic. (1853) c. 69	An Act relating to the Coast Fisheries and for the prevention of illicit trade	The whole.
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21,155.

No. 43.

Governor-General the Most Hon. the Marquis of Lansdowne, G.C.M.G., to the Right Hon. Edward Stanhope, M.P. (Received November 22nd, 1886).

Confidential.

GOVERNMENT HOUSE, OTTAWA,
November 9th, 1886.

SIR,

With reference to Earl Granville's confidential despatch of the 24th June last* respecting the fisheries question and enclosing copies of two letters from the Foreign Office and one from the United States' Minister in London, addressed to the Secretary of State for Foreign Affairs, I have the honour to transmit herewith a copy of an approved Minute of the Privy Council of Canada concurring in a report of the Minister of Justice dealing with the points raised by Mr. Phelps in his note of the 2nd June last, on the subject of the seizure of the United States' fishing vessel "David J. Adams" near Digby, Nova Scotia.

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

The Right Hon. Edward Stanhope.
&c., &c., &c.

Enclosure in No. 43.

Certified copy of a report of a Committee of the Honourable the Privy Council for Canada, approved by His Excellency the Administrator of the Government in Council on the 2nd November, 1886.

The Committee of the Privy Council have had under consideration a despatch (confidential) dated 24th June, 1886, from the Right Honourable the Secretary of State for the Colonies respecting the fisheries question and enclosing copies of letters on the subject from the Foreign Office to the Colonial Office, and of one from Mr. Phelps to the Secretary of State for Foreign Affairs.

The Minister of Justice to whom the despatch and enclosures were referred, submits a report thereon herewith.

The Committee concur in the said report and advise that your Excellency be moved to transmit a copy thereof if approved, to the Right Honourable the Secretary of State for the Colonies.

All which is submitted for your Excellency's approval.

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

To his Excellency the Administrator of the Government in Council.

DEPARTMENT OF JUSTICE, OTTAWA,
July 22nd, 1886.

With reference to the confidential despatch of the 24th June last, from the Secretary of State for the Colonies to your Excellency respecting the Fisheries Question, and enclosing copies of letters on the subject from the Foreign Office to the Colonial Office, and of one from Mr. Phelps to the Secretary of State for Foreign Affairs, the undersigned has the honour to report as follows:—

The letter of Mr. Phelps seems designed to present to Earl Rosebery the case of the "David J. Adams" the fishing vessel seized a short time ago near Digby, in the province of Nova Scotia.

Mr. Phelps intimates that he has received from his Government a copy of the report of the Consul-General of the United States at Halifax, giving full details and depositions relating to the seizure, and that that report and the evidence annexed to it,

* No. 77 in North American No. 118.

appear fully to sustain the points which he had submitted to Earl Rosebery at an interview which he had had a short time before the date of his letter.

The report of the Consul-General, and the depositions referred to, seem not to have been presented to Earl Rosebery, and their contents can only be inferred from the statements made in Mr. Phelps' letter.

These statements appear to be based on the assertions made by the persons interested in the vessel by way of defence against the complaint under which she was seized, but cannot be regarded as presenting a full or accurate representation of the case. The undersigned submits the facts in regard to this vessel as they are alleged by those on whose testimony the Government of Canada can rely to sustain the seizure and detention.

THE OFFENCE

(As to the Treaty and Fishery Laws).

The "David J. Adams" was a United States' fishing vessel. Whether, as alleged in her behalf, her occupation was deep-sea fishing or not, and whether, as suggested, she had not been engaged, nor was intended to be engaged, in fishing in any limit proscribed by the Treaty of 1818 or not, are questions which do not, in the opinion of the undersigned, affect the validity of the seizure, and of the proceedings subsequent thereto, for reasons which will be hereafter stated, but in so far as they may be deemed material to the defence they are questions of fact, which remain to be proved in the Vice-Admiralty Court at Halifax, in which the proceedings for the vessel's condemnation are pending, and in respect of which proof is now being taken, and inasmuch as the trial has not been concluded (much less a decision reached), it is perhaps premature for Mr. Phelps to claim the restoration of the vessel, and to assert a right to damages for her detention, on the assumption of the supposed facts before referred to.

It is alleged in the evidence on behalf of the prosecution that the "David J. Adams," being a United States' fishing vessel, on the morning of the 5th of May, 1886, was in what is called the "Annapolis Basin," which is a harbour on the north-west coast of Nova Scotia. She was several miles within the Basin, and the excuse suggested (that the captain and crew may have been there through a misapprehension as to the locality) by the words of Mr. Phelps' letter, "Digby is a small fishing settlement, and its harbour not defined," is unworthy of much consideration.

Digby is not a fishing settlement, although some of the people on the neighbouring shores engage in fishing. It is a town with a population of about two thousand persons. Its harbour is formed by the Annapolis Basin, which is a large inlet of the Bay of Fundy, and the entrance to it consists of a narrow strait marked by conspicuous headlands, which are little more than a mile apart. The entrance is called "Digby Gut," and for all purposes connected with this enquiry, the harbour is one of the best defined in America.

The "David J. Adams" was, on the morning of the 5th day of May, 1886, as has already been stated, several miles within the Gut. She was not there for the purpose of "shelter," or "repairs," nor to "purchase wood," nor to obtain water. She remained there during the 5th and the 6th May, 1886; she was lying at anchor about half a mile from the shore, at a locality called "Clement's West."

On the morning of the 6th of May, 1886, the captain made application to the owners of a fishing weir near where he was laying for bait, and purchased four and a half barrels of that article. He also purchased and took on board about two tons of ice. While waiting at anchor for these purposes the name of the vessel's "hailing place" was kept covered by canvas, and this concealment continued while she afterwards sailed down past Digby.

One of the crew represented to the persons attending the weir that the vessel belonged to the neighbouring province of New Brunswick. The captain told the owner of the weir, when the Treaty was spoken of by the latter, that the vessel was under British register. The captain said he would wait until the next morning to get more bait from the catch in the weir which was expected that day. At daybreak, however, on the morning of the 7th of May, 1886, the Government steamer "Lansdowne" arrived off Digby, and the "David J. Adams" got under way, without waiting to take in the additional supply of bait, and sailed down the Basin towards the Gut.

Before she had passed Digby she was boarded by the first officer of the "Lansdowne," and to him the captain made the following statement, that he had come to that

place to see his people, as he had formerly belonged there, that he had no fresh bait on board, and that he was from the "Banks," and bound for Eastport, Maine.

The officer of the "Lansdowne" told him he had no business there, and asked him if he knew the law. His reply was "Yes."

A few hours afterwards, and while the "David J. Adams" was still inside the Gut, the officer of the "Lansdowne," ascertaining that the statements of the captain were untrue, and that bait had been purchased by him within the harbour on the previous day, returned to the "David J. Adams," charged the captain with the offence, and received for his reply the assertion that the charge was false, and that the person who gave the information was a "liar."

The officer looked into the hold of the vessel and found the herring which had been purchased the day before, and which, of course, was perfectly fresh, but the captain declared that this "bait" was ten days old.

The officer of the "Lansdowne" returned to his ship, reported the facts and went again to the "Adams" accompanied by another officer, who also looked at the bait. Both returned to the "Lansdowne," and then conveyed to the "Adams" the direction that she should come to Digby and anchor near the "Lansdowne." This was, in fact, the seizure.

These are the circumstances by which the seizure was, in the opinion of Mr. Phelps, "much aggravated," and which make it seem very apparent to him that the seizure "was not made for the purpose of enforcing any right or redressing any wrong."

The fact that the seizure was preceded by visitations and searches was due to the statements of the master, and the reluctance of the officers of the "Lansdowne" to enforce the law until they had ascertained to a demonstration that the offence had been committed, and that the captain's statements were untrue.

THE OFFENCE

(As to Customs Laws).

The "David J. Adams," as already stated, was in harbour upwards of forty-eight hours, and when seized, was proceeding to sea without having been reported at any Customs House. Her business was not such as to make it her interest to attract the attention of the Canadian authorities, and it is not difficult, therefore, to conjecture the reason why she was not so reported, or to see that the reason put forward, that Digby is but "a small fishing settlement, and its harbour not defined," is a disingenuous one. In going to the weir to purchase bait the vessel passed the Customs House at Digby, almost within hailing distance. When at the weir she was within one or two miles of another Customs House (at Clementsport), and within about fifteen miles of another (at Annapolis). The master has not asserted that he did not know the law on this subject, as it is established that he knew the law in relation to the restriction on foreign fishing vessels.

The provisions of the Customs Act of Canada on this subject are not essentially different from those of his own country. The captain and crew were ashore, during the 5th and 6th of May, 1886. The following provisions of the Customs Act of Canada apply:—

"The master of every vessel coming from any port or place out of Canada, or coastwise, and entering any port in Canada, whether laden or in ballast, shall go without delay, when such vessel is anchored or moored, to the Custom House for the port or place of entry where he arrives, and there make a report in writing to the Collector or other proper officer of the arrival and voyage of such vessel, stating her name, country, and tonnage, the port of registry, the name of the master, the country of the owners, the number and names of the passengers, if any, the number of the crew, and whether the vessel is laden or in ballast, and, if laden, the marks and numbers of every package and parcel of goods on board, and where the same was laden, and the particulars of any goods stowed loose, and where and to whom consigned, and where any and what goods, if any, have been laden or unladen, or bulk has been broken, during the voyage, what part of the cargo, and the number and names of the passengers which are intended to be landed at that port, and what and whom at any other port in Canada, and what part of the cargo, if any, is intended to be exported in the same vessel, and what surplus stores remain on board

as far as any of such particulars are or can be known to him.”—46 Vic., cap. 12, sec. 25.

“The master shall at the time of making his report, if required by the Officer of Customs, produce to him the bills of lading of the cargo, or true copies thereof, and shall make and subscribe an affidavit referring to his report, and declaring that all the statements made in the report are true, and shall further answer all such questions concerning the vessel and cargo, and the crew, and the voyage, as are demanded of him by such officer, and shall, if required, make the substance of any such answer part of his report.”—46 Vic., cap. 12, sec. 28.

“If any goods are unladen from any vessel before such report is made, or if the master fails to make such report, or makes an untrue report, or does not truly answer the questions demanded of him, as provided in the next preceding section, he shall incur a penalty of four hundred dollars, and the vessel may be detained until such penalty is paid.” 46 Vic. cap. 12, sec. 28.

Proceedings following the Seizure.

These have been made the subject of complaint by Mr. Phelps, although the explanations which were given in the previous memorandum of the undersigned (in reference to the letters of Mr. Bayard to Her Majesty's Minister at Washington), and in the report on the same subject of the Minister of Marine and Fisheries, laid before his Excellency the Governor-General on the 14th June ultimo, coupled with a disavowal, by the Canadian Government, of any intention that the proceedings in such cases should be unnecessarily harsh or pursued in a punitive spirit, might have been expected to be sufficient. After the seizure was made, the Commander of the “Lansdowne” took the “David J. Adams” across the Bay of Fundy to Saint John, a distance of about forty miles. He appears to have had the impression that, as his duties would not permit him to remain at Digby, the vessel would not be secure from rescue, which has in several cases occurred after the seizure of fishing vessels. He believed she would be more secure in the harbour of St. John, and that the legal proceedings, which in due course would follow, could be taken there. He was immediately directed, however, to return with the vessel to Digby, as it seemed more in order, and more in compliance with the statutes relating to the subject, that she should be detained in the place of seizure, and that the legal proceedings should be taken in the Vice-Admiralty Court of the Province where the offence was committed. It does not seem to be claimed by the United States authorities that any damage to the vessel, or that any injury or inconvenience to any one concerned was occasioned by this removal to Saint John, and by her return to Digby, occupying as they did but a few hours, and yet this circumstance seems to be relied on as “aggravating the seizure” and as depriving it of the character of a seizure made “to enforce a right or to redress a wrong.”

Another ground of complaint is that in Digby, “the paper alleged to be the legal precept for the capture and detention of the vessel was nailed to her mast in such a manner as to prevent its contents being read” and that “the request of the captain, and of the United States' Consul-General, to be allowed to detach the writ from the mast, for the purpose of learning its contents, was positively refused by the provincial official in charge, that the United States' Consul-General was not able to learn from the Commander of the “Lansdowne” the nature of the complaint against the vessel, and that his respectful application to that effect was fruitless.”

1. As to the position of the paper on the mast. It is not a fact that it was nailed to the vessel's mast “in such a manner as to prevent its contents being read.” It was nailed there for the purpose of being read, and could have been read.

2. As to the refusal to allow it to be detached, such refusal was not intended as a discourtesy, but was legitimate and proper. The paper purported to be, and was, a copy of the writ of summons and warrant, which were then in the Registry of the Vice-Admiralty Court at Halifax. It was attached to the mast by the officer of the Court, in accordance with the rules and procedure of that Court. The purposes for which it was so attached did not admit of any consent for its removal.

3. As to the desire of the captain and of the United States' Consul-General to ascertain the contents of the paper, the original was in the Registry of the Court, accessible to every person, and the Registry is within eighty yards of the Consul-General's Office; all the reasons for the seizure and detention were made however, to the captain, days before the paper arrived to be placed on the mast, and, before the Consul-General arrived at Digby; these reasons were not only matters of public

notoriety, but had been published in the newspapers of the province, and in hundreds of other newspapers, circulating throughout Canada and the United States. The captain and the Consul-General did not need, therefore, to take the paper from the mast, in order to learn the causes of the seizure and detention.

4. As to the application of the Consul-General having been fruitless, the fact has transpired that he had reported the seizure, and its causes, to his Government, before the application was made. It has been already explained in the previous memorandum of the undersigned, and in the report of the Minister of Marine and Fisheries, that the application was for a specific statement of the charges and that it was made to an officer who had neither the legal acquirements nor the authority to state them in a more specific form than that in which he had already stated them. The Commander of the "Lansdowne" requested the Consul-General to make his request to the Minister of Marine and Fisheries, and, if he had done so, the specific statement which he had desired could have been furnished in an hour. It is hoped that the explanation already made, and the precautions which have been taken against even the appearance of discourtesy in the future, will, on consideration, be found to be satisfactory.

Incidents of the Customs' Seizure.

Mr. Phelps presents the following views with respect to the claim that the "David J. Adams" besides violating the treaty and the statutes relating to "fishing by foreign vessels" is liable to be detained for the penalty under the Customs law.

1. That this claim indicates the consciousness that the vessel could not be forfeited for the offence against the Treaty and Fishing Laws. This supposition is groundless. It is by no means uncommon in legal proceedings, both in Canada and the United States, for such proceedings to be based on more than one charge, although any one of the charges would in itself, if sustained, be sufficient for the purpose of the complainant. The success of this litigation, like that of all litigation, must depend not merely on the rights of the parties but on the proof which may be adduced as to a right having been infringed. In this instance it appears from Mr. Phelps' letter that the facts which are to be made the subject of proof are evidently in dispute, and the Government of Canada could, with propriety, assert both its claims, so that both of them should not be lost by any miscarriage of justice in regard to one of them. This was likewise the proper course to be taken, in view of the fact that an appeal might at any time be made to the Government by the owners of the "David J. Adams" for remission of the forfeiture incurred in respect of the fishery laws. The following is a section of the Canadian statute relating to fishing by foreign vessels:—

"In cases of seizure under this Act, the Governor in Council may direct a stay of proceedings, and in cases of condemnation, may relieve from the penalty in whole or in part, and on such terms as are deemed right." 31 Vic., cap. 61, section 19.

It seemed necessary and proper to make at once any claim founded on infraction of the Customs laws, in view of the possible termination of the proceedings by executive interference under this enactment. It would surely not be expected that the Government of Canada should wait until the termination of the proceedings under the Fishery Acts, before asserting its claim to the penalty under the Customs Act. The owners of the offending vessel and all concerned were entitled to know as soon as they could be made aware what the claims of the Government were in relation to the vessel, and they might fairly urge that any which were not disclosed were waived.

2. Mr. Phelps remarks that this charge is "not the one on which the vessel was seized" and "was an afterthought." The vessel was seized by the commander of the "Lansdowne" for a violation of the fishery laws before the Customs authorities had any knowledge that such a vessel had entered into the port, or had attempted to leave it, and the commander was not aware at that time whether the "David J. Adams" had made proper entry or not. A few hours afterwards, however, the Collector of Customs at Digby ascertained the facts, and on the facts being made known to the head of his department at Ottawa, was immediately instructed to take such steps as might be necessary to assert the claim for the penalty which had been incurred. The Collector did so.

3. Mr. Phelps asserts that the charge of breach of the Customs law is not the one which must now be principally relied on for condemnation. It is true that condemnation does not necessarily follow. The penalty prescribed is a forfeiture of \$400¹⁰⁰, on payment of which the owners are entitled to the release of the vessel. If Mr. Phelps means by

the expression just quoted, that the Customs offence cannot be relied on in respect to the penalty claimed, and that the vessel cannot be detained until that penalty is paid, it can only be said that in this contention the Canadian Government does not concur. Section 39 of the Customs Act, before quoted, is explicit on that point.

4. It is also urged that the offence was, at most, "only an accidental and clearly technical breach of a Custom House regulation, by which no harm was intended and from which no harm came, and would in ordinary cases be easily condoned by an apology and perhaps payment of costs." What has already been said under the heading "the Offence (as to Customs' laws)" presents the contention opposed to the offence being considered as "accidental." The master of the "David J. Adams" showed by his language and conduct that what he did he did with design, and with the knowledge that he was violating the laws of the country. He could not have complied with the Customs law without frustrating the purposes for which he had gone into port.

As to the breach being a "technical" one, it must be remembered that with thousands of miles of coast indented, as the coasts of Canada are, by hundreds of harbours and inlets, it is impossible to enforce the fishery law without a strict enforcement of the Customs laws. This difficulty was not unforeseen by the framers of the Treaty of 1818, who provided that the fishermen should be "under such restrictions as might be necessary to prevent their taking, drying, or curing fish . . . or in any other manner whatever *abusing the privileges reserved to them.*" No naval force which could be equipped by the Dominion, would of itself be sufficient for the enforcement of the fishery laws.

Foreign fishing vessels are allowed by the treaty to enter the harbours and inlets of Canada, but they are allowed to do so only for specified purposes. In order to confine them to those purposes it is necessary to insist on the observance of the customs laws, which are enforced by officers all along the coast. A strict enforcement of the customs laws, and one consistent with the Treaty, would require that, even when coming into port for the purposes for which such vessels are allowed to enter our waters, a report should be made at the Customs House, but this has not been insisted on in all cases, when the customs laws are enforced against those who enter for other than legitimate purposes, and who choose to violate both the fishery laws and customs laws, the Government is far within its right, and should not be asked to accept an apology and payment of costs. It may be observed here, as affecting Mr. Phelps' demands for restoration and damages that the apology and costs have never been tendered, and that Mr. Phelps seems to be of opinion that they are not called for.

5. Mr. Phelps is informed by the Consul-General at Halifax that it is "conceded by the Customs authorities there that foreign fishing vessels have for 40 years been accustomed to go in and out of the bay at pleasure, and have never been required to send ashore and report when they had no business with the port and made no landing, and that no seizure had ever before been made or claim against them for so doing." Nothing of this kind is or could be conceded by the customs authorities there or elsewhere in Canada.

The bay referred to, the Annapolis Basin, is like all the other harbours of Canada, except that it is unusually well defined and land-locked and furnished with customs houses. Neither there nor anywhere else, have foreign fishing vessels been accustomed to go in and out at pleasure without reporting. If they had been so permitted the fishery laws could not have been enforced, and there would have been no protection against illicit trading. While the Reciprocity Treaty of 1854, and the fishery clauses of the Washington Treaty were in force, the Convention of 1818 being, of course, suspended, considerable laxity was allowed to the United States' fishing vessels, much greater than the terms of those Treaties entitled them to, but the Consul-General is greatly mistaken when he supposes that at other times the Customs laws were not enforced and that seizures of foreign fishing vessels were not made for omitting to report. Abundant evidence on this point can be had.

In 1839 Mr. Vail, the acting Secretary of State (United States) reported that most of the seizures (which then were considered numerous), were for alleged violation of the customs laws (Papers relating to the Treaty of Washington, vol. 6, p. 283, Washington Edition). From a letter of the United States' Consul at Charlottetown, dated August 19th, 1870, to the United States' Consul-General at Montréal, it appears that it was the practice of the United States' fishermen at that time to make regular entry at the port to which they resorted. The Consul said, "Here the fishermen enter and clear, and take out permits to land their mackerel from the Collector, and as their mackerel is a free article in this island, there can be no illicit trade."

In the year 1870, two United States' fishing vessels, the "H. W. Lewis," and the "Granada," were seized on like charges in Canadian waters.

What Mr. Phelps styles "a Custom House regulation" is an Act of the Parliament of Canada, and has for many years been in force in all the provinces of the Dominion. It is one which the Government cannot at all alter or repeal, and which its officers are not at liberty to disregard.

6. It is suggested, though not asserted, in the letter of Mr. Phelps, that the penalty cannot reasonably be insisted on, because a new rule has been suddenly adopted, without notice. The rule, as before observed, is not a new one, nor is its enforcement a novelty. As the Government of the United States choose to put an end to the arrangement under which the fishermen of that country were accustomed to frequent Canadian waters with so much freedom, the obligation of giving notice to those fishermen that their rights were thereafter, by the action of their own Government, to be greatly restricted, and that they must not infringe the laws of Canada, was surely a duty incumbent on the Government of the United States, rather than on that of Canada. This point cannot be better expressed than in the language reported to have been recently used by Mr. Bayard, the United States' Secretary of State, in his reply to the owners of the "George Cushing," a vessel recently seized on a similar charge:—"You are well aware that questions are now pending between this Government and that of Great Britain in relation to the justification of the rights of American fishing vessels in the territorial waters of British North America, and we shall relax no effort to arrive at a satisfactory solution of the difficulty. In the meantime it is the duty and manifest interest of all American citizens entering Canadian jurisdiction to ascertain and obey the laws and regulations there in force. For all unlawful depredations of property or commercial rights this Government will expect to procure redress and compensation for the innocent sufferers."

Interpretation of the Treaty.

Mr. Phelps, after commenting in the language already quoted from his letter on the claim for the Customs penalty, treats, as the only question, whether the vessel is to be forfeited for purchasing bait to be used in lawful fishing. In following his argument on this point, it should be borne in mind, as already stated, that in so far as the fact of the bait having been intended to be used in lawful fishing is material to the case, that is a fact which is not admitted. It is one in respect of which the burden of proof is on the owners of the vessel, and it is one on which the owners of the vessel have not yet obtained an adjudication by the tribunal before which the case has gone.

Mr. Phelps admits "that if the language of the Treaty of 1818 is to be interpreted literally, rather than according to its spirit and plain intent a vessel engaged in fishing would be prohibited from entering a Canadian port for any purpose whatever, except to obtain wood or water, or to repair damages, or to seek shelter."

It is claimed on the part of the Government of Canada that this is not only the language of the Treaty of 1818, but "its spirit and plain intent." To establish this contention, it should be sufficient to point to the clear, unambiguous words of the Treaty. To those clear and unambiguous words Mr. Phelps seeks to attach a hidden meaning by suggesting that certain "preposterous consequences" might ensue from giving them their ordinary construction. He says that with such a construction a vessel might be forfeited for entering a port "to post a letter, to send a telegram, to buy a newspaper, to obtain a physician in case of illness, or a surgeon in case of accident, to land or bring off a passenger, or even to lend assistance to the inhabitants, &c."

There are probably few treaties or statutes, the literal enforcement of which might not in certain circumstances, produce consequences worthy of being described as preposterous.

At most, this argument can only suggest that, in regard to this Treaty, as in regard to every enactment, its enforcement should not be insisted on where accidental hardships or "preposterous consequences" are likely to ensue. Equity, and a natural sense of justice, would doubtless lead the Government with which the Treaty was made, to abstain from its rigid enforcement for inadvertent offences, although the right so to enforce it might be beyond question. It is for this reason that, inasmuch as the enforcement of this Treaty, to some extent, devolves on the Government of Canada, the Parliament of the Dominion has in one of the sections already quoted of the statute

relating to fishing by foreign vessels (31 Vic., cap. 61, s. 19) entrusted the executive with power to mitigate the severity of those provisions when an appeal to executive interference can be justified. In relation to every law of a penal character the same power for the same purpose is vested in the executive. Mr. Phelps will find it difficult, however, to discover any authority among the jurists of his own country or of Great Britain, or among the writers on international law, for the position that, against the plain words of a treaty or statute an interpretation is to be sought which will obviate all chances of hardship and render unnecessary the exercise of the executive power before mentioned.

It might fairly be urged against his argument that the Convention of 1818 is less open to an attempt to change its plain meaning than even a statute would be. The latter is a declaration of its will by the supreme authority of the State, the former was a compact deliberately and solemnly made by two parties each of whom expressed what he was willing to concede, and by what terms it was willing to be bound. If the purposes for which the United States desired that their fishing vessels should have the right to enter British American waters included other than those expressed, their desire cannot avail them now, nor be a pretext for a special interpretation after they assented to the words "and for no other purpose whatever." If it was "preposterous" that their fishermen should be precluded from entering provincial waters "to post a letter" or for any other of the purposes which Mr. Phelps mentions, they would probably never have assented to a treaty framed as this was. Having done so they cannot now urge that their language was "preposterous" and that its effect must be destroyed by resort to "interpretation."

But that which Mr. Phelps calls "literal interpretation" is by no means so preposterous as he suggests, when the purpose and object of the treaty come to be considered. While it was not desired to interfere with ordinary commercial intercourse between the people of the two countries the deliberate and declared purpose existed on the part of Great Britain, and the willingness existed on the part of the United States, to secure absolutely and free from the possibility of encroachment, the fisheries of the British possessions in America to the people of those possessions, excepting as to certain localities, in respect of which special provisions were made. To effect this it was merely necessary that there should be a joint declaration of the right which was to be established, but that means should be taken to preserve that right. For this purpose a distinction was necessarily drawn between United States' vessels engaged in commerce and those engaged in fishing. While the former had free access to our coasts the latter were placed under a strict prohibition,

The purpose was to prevent the fisheries from being poached on, and to preserve them to "the subjects of His Britannic Majesty in North America, not only for the pursuit of fishing within the waters adjacent to the coast (which can under the law of nations be done by any country), but as a basis of supplies for the pursuit of fishing in the deep sea. For this purpose it was necessary to keep out foreign fishing vessels, excepting in cases of dire necessity, no matter under what pretext they might desire to come in. The fisheries could not be preserved to our people if every one of the United States' fishing vessels that were accustomed to swarm along our coasts could claim the right to enter our harbours "to post a letter, or send a telegram, or buy a newspaper, to obtain a physician in case of illness, or a surgeon in case of accident, to land or bring off a passenger, or even to lend assistance to the inhabitants in fire, flood, or pestilence," or to "buy medicine" or to "purchase a new rope." The slightest acquaintance with the negotiations which led to the Treaty of 1818, and with the state of the Fishery Question preceding it, induces the belief that if the United States negotiators had suggested these as purposes for which their vessels should be allowed to enter our waters, the proposal would have been rejected as "preposterous" to quote Mr. Phelps' own words. But Mr. Phelps appears to have overlooked an important part of the case when he suggested that it is a "preposterous" construction of the Treaty, which would lead to the purchase of bait being prohibited. So far from such a construction being against "its spirit and plain intent" no other meaning would accord with that spirit and intent. If we adopt one of the methods contended for by Mr. Phelps of arriving at the true meaning of the Treaty, namely, having reference to the "attending circumstances" &c., we find that so far from its being considered by the framers of the Treaty that a prohibition of the right to obtain bait would be a "preposterous" and an extreme instance, a proposition was made by the United States negotiators that the proviso should read thus: "Provided however, that American fishermen shall be permitted to enter such bays and harbours for the purposes only of obtaining shelter, wood, water,

and bait," and the insertion of the word "bait" was resisted by the British negotiators and struck out. After this, how can it be contended that any rule of interpretation would be sound which would give to United States fishermen the very permission which was sought for on their behalf during the negotiations, successfully resisted by the British representatives, and deliberately rejected by the framers of the Convention.

It is a well known fact that the negotiations preceding the Treaty had reference very largely to the deep sea fisheries, and that the right to purchase bait in the harbours of the British possessions for the deep sea fishing was one which the United States' fishermen were intentionally excluded from. Referring to the difficulties which subsequently arose from an enforcement of the Treaty, an American author says:—

"It will be seen that most of those difficulties arose from a change in the character of the fisheries; cod being caught on the banks, were seldom pursued within the three mile limit, and yet it was to cod, and perhaps halibut, that all the early negotiations had referred.

"The mackerel fishing had now sprung up in the Gulf of St. Lawrence, and had proved extremely profitable. This was at that time an inshore fishery" ("Schuyler's American Diplomacy," page 411).

In further amplification of this argument the undersigned would refer to the views set forth in the memorandum before mentioned in the letters of Mr. Bayard in May last, and to those presented in the report of the Minister of Marine and Fisheries, approved on the 14th June ultimo.

While believing, however, that Mr. Phelps cannot, by resort to any such matters, successfully establish a different construction for the Treaty from that which its words present, the undersigned submits that Mr. Phelps is mistaken as to the right to resort to any matters outside the Treaty itself to modify its plain words. Mr. Phelps expresses his contention thus: "It seems to me clear that the Treaty may be considered in accordance with those ordinary and well settled rules, applicable to all written instruments, which without such salutary assistance must constantly fail of their purpose. By these rules the letter often gives way to the intent, or rather is only used to ascertain the intent, and the whole document will be taken together and will be considered in connection with the attending circumstances, the situation of the parties, and the object in view, and thus the literal meaning of an isolated clause is often shown not to be the meaning really understood or intended." It may be readily admitted that such rules of interpretation exist, but when are they to be applied? Only when interpretation is necessary—when the words are plain in their ordinary meaning the task of interpretation does not begin. Vattel says in reference to the "Interpretation of Treaties":—

"The first general maxim of interpretation is, *that it is not allowable to interpret what has no need of interpretation.* When the deed is worded in clear and precise terms, when its meaning is evident and leads to no absurd conclusion, there can be no reason for refusing to admit the meaning which such deed naturally presents. To go elsewhere in search of conjectures in order to restrict or extend it, is but an attempt to elude it.

"Those cavillers who dispute the sense of a clear and determinate article, are accustomed to seek their frivolous subterfuges in the pretended intentions and views which they attribute to its author. It would be very often dangerous to enter with them into the discussion of these supposed views that are pointed out in the piece itself. The following rule is better calculated to foil such cavillers, and will at once cut short all chicanery: *If he who could and ought to have explained himself clearly and fully has not done it, it is the worse for him;* he cannot be allowed to introduce subsequent restrictions which he has not expressed. This is a maxim of the Roman Law, "*Pactionem obscuram iis nocere in quorum fuit potestate legem apertius conscribere.*" The equity of this rule is glaringly obvious and its necessity is not less evident" ("Vattel's Interpretation of Treaties," Lib. II, chap. 17).

Sedgewick, the American writer on the "Construction of Statutes" (and treaties are constructed [construed?] by much the same rules as statutes), says, at page 194:—"The rule is, as we shall constantly see, cardinal and universal, but if the statute is plain and unambiguous, there is no room for construction or interpretation. The Legislature has spoken; their interpretation is free from doubt, and their will must be obeyed. It may be proper," it has been said in Kentucky, "in giving a construction to a statute, to look to the effects and consequences, when its provisions are ambiguous or the legislative intention is doubtful. But when the law is clear and explicit, and its provisions are susceptible of but one interpretation, if evil can only be avoided by a change of the law itself, to be effected by legislative and not judicial action." "So too" it is said by the Supreme

Court of the United States, "where a law is plain and unambiguous, whether it be expressed in general or limited terms, the Legislature should be intended to mean what they have plainly expressed, and consequently no room is left for construction."

At the tribunal of arbitration at Geneva, held under the Washington Treaty in 1872, a similar question arose. Counsel for Her Majesty's Government presented a supplemental argument in which the ordinary rules for the interpretation of treaties were invoked. Mr. Evarts, one of the Counsel for the United States, and afterwards Secretary of State, made a supplemental reply in which the following passage occurs: At the close of the special argument we find a general presentation of canons for the construction of treaties, and some general observations as to the light or the controlling reason under which these rules of the Treaty should be construed. These suggestions may be briefly dismissed. It certainly would be a very great reproach to these nations which had deliberately fixed upon three propositions as expressive of the law of nations, in their judgment, for the purposes of this trial, that a resort to general instructions, for the purpose of interpretation, was necessary. Eleven canons of interpretation drawn from Vattel are presented in order, and then several of them as the case suits, are applied as valuable in elucidating this or that point of the rules. But the learned Counsel has omitted to bring to your notice the first and most general rule of Vattel, which being once understood would, as we think, dispense with any consideration of these subordinate canons which Vattel has introduced to be used only in case his first general rule does not apply. This first proposition is that "*it is not allowable to interpret what has no need of interpretation*" (Washington Treaty Papers, vol. iii., p. 446-7).

In a letter of Mr. Hamilton Fish to the United States Minister in England on the same subject, dated April 16th, 1872, the following view was set forth: "Further than this it appears to me that the principles of English and American law (and they are substantially the same) regarding the construction of statutes and treaties, and of written instruments generally, would preclude the seeking of evidence of intent outside the instrument itself. It might be a painful trial on which to enter in seeking the opinions and recollections of parties, to bring into conflict the differing expectations of those who were engaged in the negotiation of an instrument" (Washington Treaty Papers, vol. ii, page 473.)

But even at this barrier the difficulty in following Mr. Phelps' argument, by which he seeks to reach the interpretation he desires, does not end. After taking a view of the treaty which all authorities thus forbid, he says: "Thus regarded it appears to me clear that the words 'for no other purpose whatever,' as employed in the treaty, mean for no other purpose inconsistent with the provisions of the Treaty."

Taken in that sense the words would leave no meaning, for no other purpose would be consistent with the Treaty, excepting those mentioned. He proceeds "or prejudicial to the interests of the provinces or their inhabitants." If the United States authorities are the judges as to what is prejudicial to those interests, the Treaty will have very little value; if the provinces are to be the judges, it is most prejudicial to their interests that United States' fishermen should be permitted to come into their harbours on any pretext, and it is fatal to their fishery interests that these fishermen with whom they have to compete at such a disadvantage in the markets of the United States, should be allowed to enter for supplies and bait, even for the pursuit of the deep sea fisheries. Before concluding his remarks on this subject, the undersigned would refer to a passage in the answer on behalf of the United States to the case of Her Majesty's Government as presented to the Halifax Fisheries Commission in 1877: "The various incidental and reciprocal advantages of the Treaty, such as the privileges of traffic, purchasing bait and other supplies, are not the subject of compensation because the Treaty of Washington confers no such rights on the inhabitants of the United States, *who now enjoy them merely by sufferance, and who can at any time be deprived of them by the enforcement of existing laws or the re-enactment of former oppressive Statutes.*"

Mr. Phelps has made a lengthy citation from the Imperial Act, 59 George III, cap. 38, for the purpose of establishing:—

1st. That the penalty of forfeiture was not incurred by any entry into British ports, unless accompanied by fishing, or preparing to fish, within the prohibited limits.

2nd. That it was not the intention of Parliament, or its understanding of the Treaty, that any other entry should be regarded as an infraction of the provisions of that Act.

As regards the latter point, it seems to be effectually disposed of by the quotation

which Mr. Phelps has made. The Act permits fishermen of the United States to enter into the bays or harbours of His Britannic Majesty's Dominions in America for the purposes named in the Treaty, "and for no other purpose whatever," and, after enacting the penalty of forfeiture in regard to certain offences, provides a penalty of £200 sterling against any person otherwise offending against the Act. It cannot, therefore, be successfully contended that Parliament intended to permit entry into the British American waters for the purchase of bait, or for any other than the purposes specified in the Treaty.

As to the first point, it is to be observed that the penalty of forfeiture was expressly pronounced as applicable to the offence of fishing or preparing to fish. It may be that forfeiture is incurred by other illegal entry, contrary to the Treaty, and contrary to the Statute. It may also be contended that preparing, within the prohibited limits, to fish in any place is the offence at which the penalty is aimed, or it may be that the preparing within these waters to fish, is evidence of preparing to fish within the prohibited waters, under the Imperial Statute, and especially under the Canadian Statute, which places the burden of proof on the defendant.

The undersigned does not propose at this time to enter into any elaborate argument to show the grounds on which the penalty of forfeiture is available, because that question is one which is more suitable for determination by the Courts, to whose decision it has been referred, in the very case under consideration.

The decision in the case of the "David J. Adams" will be soon pronounced, and as the Government of Canada will be bound by the ultimate judgment of competent authority on this question, and cannot be expected to acquiesce in the view of the United States Government, without such a judgment any argument of the case in diplomatic form would be premature and futile.

In order, however, to show that Mr. Phelps is in error when he assumes that the practical construction hitherto given to the Treaty is in accordance with his views, it is as well to state that in the year 1815, the commander of one of Her Majesty's ships of war seized four United States' fishing vessels (see Sabine on Fisheries), and again in 1817, the Imperial Government acted on the view that they had the right to seize foreign vessels encroaching on the fishing grounds. Instructions were issued by Great Britain to seize foreign vessels fishing or at anchor in any of the harbours or creeks in the British North American Possessions, or within their maritime jurisdiction, and send them to Halifax for adjudication. Several vessels were seized and information was fully communicated to the Government of the United States. This, it will be remembered, was not only before the Treaty, but before the Imperial Act above referred to.

The following were the words of the Admiralty Instructions then issued: "On your meeting with any foreign vessels, fishing or at anchor in any of the harbours or creeks in His Majesty's North American Provinces, or within our maritime jurisdiction, you will seize and send such vessel so trespassing to Halifax for adjudication, unless it should clearly appear that they have been obliged to put in there in consequence of distress, acquainting me with the cause of such seizure, and every other particular to enable me to give all information to the Lords Commissioners of the Admiralty."

Under these instructions eleven or twelve American fishing vessels were seized in Nova Scotia on June 8th, 1817, in consequence of their frequenting some of the harbours of that province.

In 1818, the fishing vessels "Nabby" and "Washington" were seized and condemned for entering and harbouring in British American waters.

In 1839, the "Java," "Independence," "Magnolia," and "Hart," were seized and confiscated, the principal charge being that they were within British American waters without legal cause.

In 1840, the "Papineau" and "Mary" were seized and sold for purchasing bait.

In the spring of 1819, a United States' fishing vessel named the "Charles" was seized and condemned in the Vice-Admiralty Court in New Brunswick for having resorted to a harbour of that province, after warning, and without necessity.

In the year 1871, the United States' fishing vessel "J. H. Nickerson" was seized for having purchased bait within three marine miles of Nova Scotian shore, and condemned by the judgment of Sir William Young, Chief Justice of Nova Scotia, and Judge of the Court of Vice-Admiralty. The following is a passage from his judgment.

"The vessel went in, not to obtain water or men, as the allegation says, but to purchase or procure bait (which, as I take it, is a preparing to fish), and it was con-

tended that they had a right to do so, and that no forfeiture accrued on such entering. The answer is, that if a privilege to enter our harbours for bait was to be conceded to American fishermen it ought to have been in the Treaty, and it is too important a matter to have been accidentally overlooked. We know indeed from the state papers that it was not overlooked, that it was suggested and declined. But the Court, as I have already intimated, does not insist upon that as a reason for its judgment. What may be fairly and justly insisted on is, that beyond the four purposes specified in the Treaty, shelter, repairs, water and wood, here is another purpose or claim not specified, while the Treaty itself declares that no such other purpose shall be received to justify an entry. It appears to me an inevitable conclusion that the 'J. H. Nickerson' in entering the Bay of Ingonish for the purpose of procuring bait, while there became liable to forfeiture, and upon the true construction of the Treaty and Acts of Parliament was legally seized." (*Vide* Halifax Com., Vol. III, p. 3398, Washington Edition).

In view of these seizures and of this decision it is difficult to understand the following passages in the letter of Mr. Phelps. "The practical construction given to the Treaty, down to the present time, has been in entire accord with the conclusions thus deduced from the Act of Parliament. The British Government has repeatedly refused to allow interference with American fishing vessels, unless for illegal fishing, and has given explicit orders to the contrary."

"Judicial authority upon the question is to the same effect. That the purchase of bait by American fishermen in the provincial ports has been a common practice is well known, but in no case, so far as I can ascertain, has a seizure of an American vessel ever been enforced on the ground of the purchase of bait or of any other supplies. On the hearing before the Halifax Fishery Commission in 1877-78, this question was discussed and no case could be produced of any such condemnation. Vessels shown to have been condemned were in all cases adjudged guilty, either of fishing or preparing to fish within the prohibited limits."

Although Mr. Phelps is under the impression that "in the hearing before the Halifax Fishery Commission in 1877 this question was discussed and no case could be produced of any such condemnation," the fact appears in the records of that Commission, as published by the Government of the United States, that on a discussion which there arose, the instances above mentioned were nearly all cited, and the judgment of Sir William Young in the case of the "J. H. Nickerson" was presented in full, and it now appears among the papers of that Commission (see Vol. III, Documents and Proceedings of Halifax Commission, page 3398, Washington Edition). The decision in the case of the "J. H. Nickerson" was subsequent to that in the case of the "White Fawn" mentioned, to the exclusion of all the other cases referred to, by Mr. Phelps. Whether that decision should be reaffirmed or not is a question more suitable for judicial determination than for discussion here.

Right of the Dominion Parliament to make Fishery Enactments.

Mr. Phelps deems it unnecessary to point out that it is not in the power of the Canadian Parliament to alter or enlarge the provisions of the Act of the Imperial Parliament, or to give to the Treaty either a construction or a legal effect not warranted by that Act.

No attempt has ever been made by the Parliament of Canada, or by that of any of the Provinces, to give a "construction" to the Treaty, but the undersigned submits that the right of the Parliament of Canada, with the Royal Assent given in the manner provided in the constitution, to pass an Act on this subject to give that Treaty effect, or to protect the people of Canada from the infringement of the Treaty provisions, is clear beyond question. An Act of that Parliament duly passed, according to constitutional forms, has as much the force of law in Canada, and binds as fully offenders who may come within its jurisdiction, as any Act of the Imperial Parliament.

The efforts made on the part of the Government of the United States to deny and refute the validity of Colonial statutes on this subject have been continued for many years, and in every instance have been set at naught by the Imperial authorities and by the Judicial tribunals.

In May, 1870, this vain contention was completely abandoned; a circular was issued by the Treasury Department at Washington, in which circular the persons to whom it was sent were authorised and directed to inform all masters of fishing vessels that the

authorities of the Dominion of Canada had resolved to terminate the system of granting fishing licenses to foreign vessels.

The circular proceeds to state the terms of the Treaty of 1818 in order that United States' fishermen might be informed of the limitation thereby placed on their privileges. It proceeds further to set out at large the Canadian Act of 1868, relating to fishing by foreign vessels, which has been hereinbefore referred to.

The fishermen of the United States were by that circular expressly warned of the nature of the Canadian Statute, which it is now once more pretended is without force, but no intimation was given to those fishermen that these provisions were nugatory and would be resisted by the United States Government. Lest there should be any misapprehension on that subject, however, on June 9th of the same year, less than a month after that circular, another circular was issued from the same Department stating again the terms of the Treaty of 1818, and then containing the following paragraph: "Fishermen of United States are bound to respect the British laws for the regulation and preservation of the fisheries to the same extent to which they are applicable to British and Canadian fishermen." The same circular noticing the change made in the Canadian Fishery Act of 1868 by the amendment of 1870 makes this observation, "It will be observed that the warning formerly given is not required under the amended Act, but that vessels trespassing are liable to seizure without such warning."

THE CANADIAN STATUTE OF 1866.

Mr. Phelps is again under an erroneous impression with regard to the Statute introduced at the last session of the Dominion Parliament.

He is informed that "since the seizure" the Canadian authorities have pressed, or are pressing, through the Canadian Parliament, in much haste, an Act which is designed, for the first time in the history of the Legislature, under this Treaty, to make the facts upon which the American vessels have been seized illegal, and to authorise proceedings against them therefor.

The following observations are appropriate in relation to this passage of Mr. Phelps' letter:—

1. The Act which he refers to was not passed with haste. It was passed through the two Houses in the usual manner, and with the observance of all the usual forms. Its passage occupied probably more time than was occupied in the passage through the Congress of the United States of a measure which possesses much the same character, and which will be referred to hereafter.

2. The Act has no bearing on the seizures referred to.

3. It does not make any act illegal which was legal before, but declares what penalty attaches to the offences which were already prohibited. It may be observed in reference to the charges of "undue haste," and of "legislating for the first time in the history of the legislation under the Treaty," that before the Statute referred to had become law the United States Congress passed a Statute containing the following section:—

"That whenever any foreign country whose vessels have been placed on the same footing in the ports of United States as American vessels (the coastwise trade excepted) shall deny to any vessels of the United States any of the commercial privileges accorded to national vessels in the harbors, ports, or waters of such foreign country, the President, on receiving satisfactory information of the continuance of such discriminations against any vessels of the United States is hereby authorised to issue his proclamation, excluding, on and after such time as he may indicate, from the exercise of such commercial privileges in the ports of the United States as are denied to American vessels in the ports of each foreign country, all vessels of such foreign country of a similar character to the vessels of the United States thus discriminated against, and suspending such concessions previously granted to the vessels of such country; and on and after the date named in such proclamation for it to take effect, if the master, officer, or agent of any vessel of such foreign country excluded by said proclamation from the exercise of any commercial privileges shall do any act prohibited by said proclamation in the ports, harbors, or waters of the United States for or on account of such vessel, such vessel and its rigging, tackle, furniture, and boats and all the goods on board, shall be liable to seizure and to forfeiture to the United States; and any person opposing any officer of the United States in the enforcement of this Act, or aiding and abetting any other person in such opposition, shall forfeit eight hundred dollars and shall be

guilty of a misdemeanour, and, upon conviction shall be liable to imprisonment for a term not exceeding two years."—Sec. 17 of Act No. 85 of Congress 1886.

This enactment has all the features of hostility which Mr. Phelps has stigmatised as "unprecedented in the history of legislation under the Treaty."

Enforcement of the Acts without Notice.

Mr. Phelps insists upon what he regards as "obvious grounds of reason and justice and upon common principles of comity," that "previous notice should have been given" of the new "stringent restrictions it was intended to enforce."

It has already been shown that no new restrictions have been attempted. The case of the "David J. Adams" is proceeding under the Statutes which have been enforced during the whole time when the Treaty had operation.

It is true that for a short time prior to the Treaty of Washington and when expectations existed of such a Treaty being arrived at, the instructions of 1870, which are cited by Mr. Phelps, were issued by the Imperial authorities. It is likewise true that under these instructions the rights of Her Majesty's subjects in Canada were not insisted on in their entirety. These instructions were obviously applicable to the particular time at which and the particular circumstances under which they were issued by Her Majesty's Government.

But it is obviously unfair to invoke them now under wholly different circumstances as establishing a "practical construction" of the Treaty, or as affording any ground for claiming that the indulgence which they extended should be perpetual.

The fishery clauses of the Treaty of Washington were annulled by a notice from the Government of the United States, and, as has already been urged, it would seem to have been the duty of that Government, rather than of the Government of Canada to have warned its own people of the consequences which must ensue. This was done in 1870, by the circulars from the Treasury Department at Washington, and might well have been done at this time.

Mr. Phelps has been pleased to stigmatise "the action of the Canadian authority in seizing and still detaining the "David J. Adams" as not only unfriendly and discourteous but altogether unwarrantable."

He proceeds to state that that vessel "had violated no existing law," although his letter cites the statute which she had directly and plainly violated; and he states that she "had incurred no penalty, that any known statute imposed"; while he has directed [quoted?] at large the words which inflict a penalty for the violation of that statute. He declares it seems impossible for him to escape the conclusion that "this and similar seizures were made by the Canadian authorities for the deliberate purpose of harassing and embarrassing the American fishing vessels in the pursuit of their lawful employment," and that the injury "is very much aggravated by the motives which appear to have prompted it."

He professes to have found the real source of the difficulty in the "irritation that has taken place among a portion of the Canadian people, on account of the termination by the United States' Government, of the Washington Treaty," and in a desire to drive the United States "by harassing and annoying their fishermen into the adoption of a new Treaty, by which Canadian fish shall be admitted free," and he declares that "this scheme is likely to prove as mistaken in policy as it is unjustifiable in principle."

He might, perhaps, have more accurately stated the real source of the difficulty, had he suggested that the United States' authorities have long endeavoured, and are still endeavouring, to obtain that which by their solemn Treaty they deliberately renounced, and to deprive the Canadian people of that which by Treaty the Canadian people lawfully acquired.

The people of the British North American Provinces ever since the year 1818 (with the exception of those periods in which the Reciprocity Treaty, and the Fishery Clauses of the Washington Treaty prevailed), have, at enormous expense, and with great difficulty, been protecting their fisheries against encroachments by fishermen of the United States, carried on under every form and pretext, and aided by such denunciations as Mr. Phelps has thought proper to reproduce on this occasion. They value no less now than they formerly did the rights which were secured to them by the Treaty, and they are still indisposed to yield those rights, either to individual aggression or official demands.

The course of the Canadian Government since the rescision of the Fishery Clauses

of the Washington Treaty, has been such as hardly to merit the aspersions which Mr. Phelps has used. In order to avoid irritation and to meet a desire which the Government represented by Mr. Phelps professed to entertain for the settlement of all questions which could re-awaken controversy, they cancelled for six months after the expiration of those clauses all the benefits which the United States' fishermen had enjoyed under them, although, during that interval, the Government of the United States enforced against Canadian fishermen the laws which those Fishery Clauses had suspended.

Mr. Bayard, the United States' Secretary of State, has made some recognition of these facts in a letter which he is reported to have written recently to the owners of the "David J. Adams." He says:—

"More than one year ago I sought to protect our citizens engaged in fishing, from results which might attend any possible misunderstanding between the Governments of Great Britain and the United States, as to the measure of their mutual rights and privileges in the territorial waters of British North America. After the termination of the Fishery Articles of the Treaty of Washington, in June last, it seemed to me then, and seems to me now, very hard that differences of opinion between the two Governments should cause loss to honest citizens, whose line of obedience might be thus rendered vague and uncertain, and their property be brought into jeopardy. Influenced by this feeling, I procured a temporary arrangement which secured our fishermen full enjoyment of all Canadian fisheries, free from molestation, during a period which would permit discussion of a just international settlement of the whole Fishery Question, but other counsels prevailed, and my efforts further to protect fishermen from such trouble as you now suffer were unavailing."

At the end of the interval of six months the United States' authorities concluded to refrain from any attempt to negotiate for larger fishery rights for their people, and they have continued to enforce their Custom laws against the fishermen and people of Canada.

The least they could have been expected to do under these circumstances was to leave to the people of Canada the full and unquestioned enjoyment of the rights secured to them by Treaty. The Government of Canada has simply insisted upon those rights and has presented to the legal tribunals its claim to have them enforced.

The insinuations of ulterior motives, the imputations of unfriendly dispositions, and the singularly inaccurate representation of all the leading features of the questions under discussion, may, it has been assumed, be passed by with little more comment. They are hardly likely to induce Her Majesty's Government to sacrifice the rights which they have heretofore helped our people to protect, and they are too familiar to awaken indignation or surprise.

The undersigned respectfully recommends that the substance of this memorandum, if approved, be forwarded to the Secretary of State for the Colonies, for the information of Her Majesty's Government.

(Signed) JNO. S. D. THOMPSON,
Minister of Justice.

Ottawa, 22nd July, 1886.

25,020.

No. 44.

The Right Hon. Edward Stanhope M.P., to Governor-General the Most Hon. the Marquis of Lansdowne, G.C.M.G.

No. 244.

DOWNING STREET,
November 22nd, 1886.

MY LORD,

With reference to my telegram of the 6th inst.,* I have the honour to transmit to you for communication to your Government, copies of two letters† from the Foreign Office with their enclosures respecting the alleged proceedings of the Canadian authorities in the case of the United States' fishing vessels "Pearl Nelson" and "Everitt Steele."

I shall no doubt be favoured shortly with the report on the subject requested in my telegram.

I have, &c.,
(Signed) EDWARD STANHOPE.

The Marquis of Lansdowne.

20,020.

No. 45.

*Colonial Office to Foreign Office.*DOWNING STREET,
November 23rd, 1886.

SIR,

With reference to your letters of the 4th instant* respecting the alleged proceedings of the Canadian authorities in the case of the United States' fishing vessels "Pearl Nelson" and "Everitt Steele," I am directed by the Secretary of State for the Colonies to transmit to you for the information of the Earl of Iddesleigh, a copy of a telegram† which he addressed to the Governor-General of Canada requesting a report on the subject.

Copies of your letters, with enclosures, will be duly forwarded to Lord Lansdowne by the next mail.

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

21,156.

No. 46.

*Colonial Office to Foreign Office.*DOWNING STREET,
November 25th, 1886.

SIR,

With reference to the letter from this Department of the 4th instant,‡ I am directed by Mr. Secretary Stanhope to transmit to you, to be laid before the Earl of Iddesleigh a copy of a despatch§ from the Governor-General of Canada forwarding an authenticated copy of the Reserved Act passed by the Dominion Parliament, entitled "An Act further to Amend the Act respecting Fishing by Foreign Vessels."

I am to add that this Act will be submitted for the Queen's Assent at the next Council.

I am, &c.,
(Signed) ROBERT G. W. HERBERT.The Under-Secretary of State,
Foreign Office.

79a. Secret.

No. 47.

The Right Hon. Edward Stanhope, M.P., to Governor-General the Marquis of Lansdowne, G.C.M.G.

TELEGRAPHIC.

November 26th. Admiralty have agreed to give due support by presence of cruiser, if no agreement with United States before next fishing season. Instructions under consideration.

21,155.

No. 48.

*Colonial Office to Foreign Office.*DOWNING STREET,
1st December, 1886.

Confidential.

SIR,

With reference to previous correspondence respecting the seizure of the "David J. Adams," and to the general question of the North American fisheries, I am directed by

* Nos. 27 and 28.

† No. 32.

‡ No. 30.

§ No. 42.

Mr. Secretary Stanhope to transmit to you to be laid before the Earl of Iddeleigh, a copy of a despatch* from the Governor-General of Canada, forwarding a report on the subject by the Dominion Minister of Justice.

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

The Under Secretary of State,
Foreign Office.

21,854.

No. 49.

Colonial Office to Foreign Office.

DOWNING STREET,
1st December, 1886.

SIR,

With reference to the letter from this Department of the 25th ultimo,† I am directed by Mr. Secretary Stanhope to transmit to you, for the information of the Earl of Iddeleigh, a copy of an Order of Her Majesty in Council‡ assenting to the Reserved Bill of the Legislature of Canada, entitled "An Act further to Amend the Act respecting Fishing by Foreign Vessels."

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

The Under-Secretary of State,
Foreign Office.

21,854.

No. 50.

The Right Hon. Edward Stanhope, M.P., to Governor-General the Most Hon. the Marquis of Lansdowne, G.C.M.G.

No. 260.

DOWNING STREET,
December 2nd, 1886.

MY LORD,

With reference to your despatch of the 9th ultimo,§ I have the honour to transmit to you, for communication to your Lordship's Government, the enclosed Order of Her Majesty in Council of the 26th ultimo, assenting to a Reserved Bill of the Legislature of Canada, entitled "An Act further to Amend the Act respecting Fishing by Foreign Vessels."

I have, &c.,
(Signed) EDWARD STANHOPE.

The Marquis of Lansdowne.

Enclosure in No. 50.

At the Court at Windsor, the 26th day of November, 1886.

PRESENT,

The QUEEN'S Most Excellent Majesty,
Lord President, Viscount Cross,
Earl of Rosslyn, Lord Stanley of Preston.

WHEREAS by an Act passed in the 30th year of Her Majesty's Reign, entitled "An Act for the Union of Canada, Nova Scotia, and New Brunswick and the Government thereof and for purposes connected therewith," it is amongst other thing enacted that a Bill reserved for the signification of The Queen's pleasure shall not have any

* No. 43.

† No. 46.

‡ Enclosure in No. 50.

§ No. 42.

force unless and until within two years from the date on which it was presented to the Governor-General for The Queen's Assent, the Governor-General signifies by Speech or Message to each of the Houses of the Parliament or by Proclamation that it has received the Assent of the Queen in Council.

And whereas on the 2nd day of June 1886 the Governor-General of Canada reserved a certain Bill passed by the Senate and House of Commons of Canada entitled "An Act" further to amend the Act respecting Fishing by Foreign Vessels" for the signification of Her Majesty's pleasure thereon. And whereas the said Bill so reserved as aforesaid has been laid before Her Majesty in Council, and it is expedient that the said Bill should be assented to by Her Majesty.

Now therefore, Her Majesty in pursuance of the said Act and in exercise of the powers thereby reserved to Her Majesty as aforesaid, doth by this present Order by and with the advice of Her Majesty's Privy Council declare Her assent to the said Bill.

And the Right Honourable Edward Stanhope, one of Her Majesty's Principal Secretaries of State, is to give the necessary directions herein accordingly.

C. L. PEEL.

21,944.

No. 51.

Foreign Office to Colonial Office.

FOREIGN OFFICE,
December 3rd, 1886.

SIR,

With reference to your letters of the 22nd and 25th October,* I am directed by the Secretary of State for Foreign Affairs to transmit to you, to be laid before Mr. Secretary Stanhope, a copy of a note which his Lordship has addressed to the United States' Minister at this Court in reply to his note of the 11th of September last, relative to the North American Fisheries question.

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

The Under-Secretary of State,
Colonial Office.

Enclosure in No. 51.

The Earl of Iddesleigh to Mr. Phelps.

FOREIGN OFFICE,
November 30th, 1886.

SIR,

I have given my careful consideration to the contents of the note of the 11th September last which you were good enough to address to me in reply to mine of the 1st of the same month on the subject of the North American fisheries.

The question, as you are aware, has for some time past engaged the serious attention of Her Majesty's Government, and the notes which have been addressed to you in relation to it, both by my predecessor and by myself, have amply evinced the earnest desire of Her Majesty's Government to arrive at some equitable settlement of the controversy. It is, therefore, with feelings of disappointment that they do not find in your note under reply any indication of a wish on the part of your Government to enter upon negotiations based on the principle of mutual concessions, but rather a suggestion that some *ad interim* construction of the terms of the existing Treaty should, if possible, be reached, which might for the present remove the chance of disputes; in fact, that Her Majesty's Government, in order to allay the differences which have arisen, should temporarily abandon the exercise of the treaty rights which they claim, and which they conceive to be indisputable. For Her Majesty's Government are unable to perceive any ambiguity in the terms of Article I of the Convention of 1818; nor have they as yet been informed in what respects the construction placed upon that instrument by the Government of the United States differs from their own.

* Nos. 21 and 24.

They would, therefore, be glad to learn, in the first place, whether the Government of the United States contest that, by Article I of the Convention, United States' fishermen are prohibited from entering British North American bays or harbours on those parts of the coast referred to in the second part of the Article in question for any purposes save those of *shelter, repairing damages, purchasing wood and obtaining water.*

Before proceeding to make some observations upon the other points dealt with in your note, I have the honour to state that I do not propose in the present communication to refer to the cases of the schooners "Thomas F. Bayard," and "Mascot," to which you allude.

The privileges manifestly secured to United States' fishermen by the Convention of 1818 in Newfoundland, Labrador, and the Magdalen Islands are not contested by Her Majesty's Government, who, whilst determined to uphold the rights of Her Majesty's North American subjects as defined in the Convention, are no less anxious and resolved to maintain in their full integrity the facilities for prosecuting the fishing industry on certain limited portions of the coast which are expressly granted to citizens of the United States. The communications on the subject of these two schooners which I have requested Her Majesty's Minister at Washington to address to Mr. Bayard cannot, I think, have failed to afford to your Government satisfactory assurances in this respect.

Reverting now to your note under reply, I beg to offer the following observations on its contents:—

In the first place, you take exception to my predecessor having declined to discuss the case of the "David J. Adams," on the ground that it was still *sub judice*, and you state that your Government are unable to accede to the proposition contained in my note of the 1st September last, to the effect that "it is clearly right, according to practice and precedent, that such diplomatic action should be suspended pending the completion of the judicial inquiry."

In regard to this point, it is to be remembered that there are three questions calling for investigation in the case of the "David J. Adams":—

1. What were the acts committed which led to the seizure of the vessel?
2. Was her seizure for such acts warranted by any existing laws?
3. If so, are those laws in derogation of the Treaty rights of the United States?

It is evident that the first two questions must be the subject of inquiry before the third can be profitably discussed, and that those two questions can only be satisfactorily disposed of by a judicial inquiry. Far from claiming that the United States' Government would be bound by the construction which the British Tribunals might place on the Treaty, I stated in my note of the 1st September that if that decision should be adverse to the views of your Government, it would not preclude further discussion between the two Governments and the adjustment of the question by diplomatic action.

I may further remark that the very proposition advanced in my note of the 1st September last, and to which exception is taken in your reply, has, on a previous occasion, been distinctly asserted by the Government of the United States under precisely similar circumstances, that is to say, in 1870, in relation to the seizure of American fishing vessels in Canadian waters, for alleged violation of the Convention of 1818.

In a despatch of the 29th October, 1870, to Mr. W. A. Dart, United States' Consul-General at Montreal (which is printed at p. 431 of the volume for that year of the Foreign Relations of the United States, and which formed part of the correspondence referred to by Mr. Bayard in his note to Sir L. West of the 20th May last), Mr. Fish expressed himself as follows:—

"It is the duty of the owners of the vessels to defend their interests before the Courts at their own expense, and without special assistance from the Government at this stage of affairs. It is for those Tribunals to construe the Statutes under which they act. If the construction they adopt shall appear to be in contravention of our Treaties with Great Britain, or to be (which cannot be anticipated) plainly erroneous in a case admitting of no reasonable doubt, it will then become the duty of the Government—a duty which it will not be slow to discharge—to avail itself of all necessary means for obtaining redress."

Her Majesty's Government, therefore, still adhere to their view, that any diplomatic discussion as to the legality of the seizure of the "David J. Adams" would be premature until the case has been judicially decided.

It is further stated in your note that "the absence of any Statute authorising proceedings or providing a penalty against American fishing-vessels for purchasing bait or supplies in a Canadian port to be used in lawful fishing" affords "the most satisfactory evidence that up to the time of the present controversy no such construction has been given to the Treaty by the British or by the Colonial Parliament as is now sought to be maintained."

Her Majesty's Government are quite unable to accede to this view, and I must express my regret that no reply has yet been received from your Government to the arguments on this and all the other points in controversy which are contained in the able and elaborate Report (as you courteously describe it) of the Canadian Minister of Marine and Fisheries, of which my predecessor communicated to you a copy.

In that Report reference is made to the argument of Mr. Bayard, drawn from the fact that the proposal of the British negotiators of the Convention of 1818, to the effect that American fishing-vessels should carry no merchandise, was rejected by the American negotiators; and it is shown that the above proposal had no application to American vessels resorting to the Canadian coasts, but only to those exercising the right of inshore fishing and of landing for the drying and curing of fish on parts of the coasts of Newfoundland and Labrador. The Report, on the other hand, shows that the United States' negotiators proposed that the right of "procuring bait" should be added to the enumeration of the four objects for which the United States' fishing-vessels might be allowed to enter Canadian waters; and that such proposal was rejected by the British negotiators, thus showing that there could be no doubt in the minds of either party at the time that the "procuring of bait" was prohibited by the terms of the Article.

The Report, moreover, recalls the important fact that the United States' Government admitted, in the case submitted by them before the Halifax Commission in 1877, that neither the Convention of 1818 nor the Treaty of Washington conferred any right or privilege of trading on American fishermen; that the "various incidental and reciprocal advantages of the Treaty, such as the privileges of traffic, purchasing bait, and other supplies, are not the subject of compensation, because the Treaty of Washington confers no such rights on the inhabitants of the United States, who now enjoy them merely by sufferance, and who can at any time be deprived of them."

This view was confirmed by the ruling of the Commissioners.

Whilst I have felt myself bound to place the preceding observations before you, in reply to the arguments contained in your note, I beg leave to say that Her Majesty's Government would willingly have left such points of technical detail and construction for the consideration of a Commission properly constituted to examine them, as well as to suggest a means for either modifying their application, or substituting for them some new arrangement of a mutually satisfactory nature.

I gather, however, from your note that, in the opinion of your Government, although a revision of Treaty stipulations on the basis of mutual concessions was desired by the United States before the present disputes arose, yet the present time is inopportune for various reasons, among which you mention the irritation created in the United States by the belief that the action of the Canadian Government has had for its object to force a new Treaty on your Government.

Her Majesty's Government learn with much regret that such an impression should prevail, for every effort has been made by the Canadian Government to promote a friendly negotiation, and to obviate the differences which have now arisen. Indeed, it is hardly necessary to remind you that, for six months following the denunciation by your Government of the Fishery Articles of the Treaty of Washington, the North American fisheries were thrown open to citizens of the United States without any equivalent, in the expectation that the American Government would show their willingness to treat the question in a similar spirit of amity and good-will.

Her Majesty's Government cannot but express a hope that the whole correspondence may be laid immediately before Congress, as they believe that its perusal would influence public opinion in the United States in favour of negotiating, before the commencement of the next fishing season, an arrangement based on mutual concessions, and which would therefore (to use the language of your note) "consist with the dignity, the interests, and the friendly relations of the two countries."

Her Majesty's Government cannot conceive that negotiations commenced with such an object and in such a spirit could fail to be successful; and they trust, therefore, that your Government will endeavour to obtain from Congress, which is about to assemble, the necessary powers to enable them to make to Her Majesty's Government some definite proposals for the negotiation of a mutually advantageous arrangement.

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

22,208.

*Foreign Office to Colonial Office.*FOREIGN OFFICE,
December 8th, 1886.

SIR,

I am directed by the Earl of Iddesleigh to transmit to you copy of a despatch from Her Majesty's Minister at Washington enclosing notes which he has received from Mr. Bayard protesting against the conduct of the Dominion authorities in their dealings with the United States' fishing vessels "Laura Sayward" and "Jennie Seaverns"; and I am to request that Mr. Secretary Stanhope will procure a report on these cases from the Canadian Government with a view to its communication to the Government of the United States.

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

The Under-Secretary of State,
Colonial Office.

Enclosure in No. 52.

WASHINGTON,
November 12th, 1886.

Treaty No. 96.

MY LORD,

I have the honour to enclose to your Lordship herewith, copy of a note which I have received from the Secretary of State, together with copies of the statements accompanying it, describing the inhospitable and inhuman conduct of the Collector of the port of Shelburne, Nova Scotia, and the conduct of Captain Quigley, commanding the Canadian cruiser "Terror" in their dealings with the American fishing vessels "Laura Sayward" and "Jennie Seaverns."

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

The Earl of Iddesleigh, G.C.B.,
&c., &c., &c.

DEPARTMENT OF STATE, WASHINGTON,
November 11th, 1886.

SIR,

I have the honour to enclose herewith copies of the statements with affidavits from Captain Medeo Rose, master of the schooner "Laura Sayward" of Gloucester, Mass., and of Captain Joseph Tupper, master of the schooner "Jennie Seaverns," also of Gloucester, forwarded to me by the Collector of the port of Gloucester, under date of 5th instant.

The first impressively describes the inhospitable and inhuman conduct of the Collector of the port of Shelburne, Nova Scotia, in refusing to allow Captain Rose to buy sufficient food for himself and crew to take them home, besides unnecessarily retaining his papers and thus preventing him with a wholly inadequate supply of provisions, from proceeding on his voyage.

The second complaint is of Captain Quigley, commanding the Canadian cruiser "Terror" in not only preventing Captain Tupper from landing to visit his relatives in Liverpool, Nova Scotia, but even forbidding his relatives from coming on board his vessel to see him, and likewise placing a guard on board of her to ensure that result.

While I need not comment further than I have done already in previous notes on the unjust and unwarrantable acts of the Dominion officials of late towards our fishermen, of which the instances now presented are but repetitions, I must notice the new phase of Captain Quigley's abuse of authority in actually making Captain Tupper a prisoner on board of his own vessel, and in preventing his relatives, whom he states he had not seen for many years, from meeting him.

Such conduct, apart from all its legal and international aspects, is wholly unworthy of any one entrusted with the execution of a public duty, and inconsistent with the national reputation for humanity and courtesy of an officer in Her Majesty's service.

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

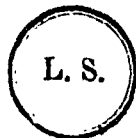
The Hon. Sir L. S. West, K.C.M.G.,
&c. &c., &c.

I, Medeo Rose, master of schooner "Laura Sayward," of Gloucester, being duly sworn, do depose and say, that on Saturday, October 2, being then on Western Bank on a fishing trip, and being short of provisions, we hove up our anchor and started for home. The wind was blowing almost a gale from the north-west, and being almost dead ahead we made slow progress on our voyage home. On Tuesday, October 5, we made Shelburne, Nova Scotia, and arrived in that harbour about 8 p.m. on that day, short of provisions, water, and oil to burn. On Wednesday I sailed for the inner harbour of Shelburne, arriving at the town about 4 p.m. On going ashore I found the Custom House closed, and hunted up the Collector and entered my vessel, and asked permission from him to buy 7 lbs. sugar, 3 lbs. coffee, $\frac{1}{2}$ to 1 bushel of potatoes, and 2 lbs. of butter, or lard, or pork, and oil enough to last us home, and was refused. I stated to him my situation, short of provisions, and a voyage of 250 miles before me, and pleaded with him for this slight privilege, but it was of no avail. I then visited the American Consul and asked his assistance, and found him powerless to aid me in this matter. The Collector of Customs held my papers until the next morning, although I asked for them as soon as I found I could not buy any provisions, say about $1\frac{1}{2}$ hours after I entered, but he refused to give them to me until the next morning. Immediately on receiving my papers on Thursday morning, I started for home, arriving on Sunday. I think the treatment I received harsh and cruel, driving myself and crew to sea with a scant supply of provisions, we having but little flour and water, and liable to be buffeted about for days before reaching home.

(Signed) MEDEO ROSE.

Mass., Essex, S.S.,
October 13th, 1886.

Personally appeared Medeo Rose, and made oath to the truth of the above statement.



Before me,
(Signed) AARON PARSONS, N.P.

I, Joseph Tupper, master of schooner "Jennie Seaverns," of Gloucester, being duly sworn, do depose and say, that on Thursday, October 28th, while on my passage home from a fishing trip, the wind blowing a gale from south-east, and a heavy sea running, I was obliged to enter the harbour of Liverpool, Nova Scotia, for shelter. Immediately on coming to anchor was boarded by Captain Quigley of Canadian cruiser "Terror," who ordered me to go on shore at once and enter at the Custom House, to which I replied that such was my intention.

He gave me permission to take two men in the boat with me, but they must remain in the boat and not step on shore. I asked Captain Quigley if I could, after entering, visit some of my relations who resided in Liverpool, and whom I had not seen for many years. This privilege was denied me. After entering, having returned to my vessel, some of my relatives came off to see me. When Captain Quigley saw their boat alongside of my vessel, he sent an officer and boat's crew, who ordered them away, and at sundown he placed an armed guard on board our vessel, who remained on board all night, and was taken off just before we sailed in the morning.

I complied with the Canadian laws, and had no intention or desire to violate them in any way; but to be made a prisoner on board my own vessel, and treated like a suspicious character, grates harshly upon the feelings of an American seaman, and I

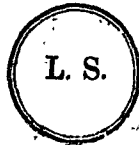
protest against such treatment, and respectfully ask from my own Government protection from such unjust, unfriendly, and arbitrary treatment.

(Signed) JOSEPH TUPPER.

Mass., Essex, S.S.,
November 4th, 1886.

Personally appeared Joseph Tupper and made oath to the truth of the above statement

Before me



(Signed) AARON PARSONS,
N.P.

22,209.

No. 53.

Foreign Office to Colonial Office.

FOREIGN OFFICE,
December 9th, 1886.

SIR,

I am directed by the Earl of Iddesleigh to transmit to you, to be laid before Mr. Secretary Stanhope, copy of a note from the United States' Minister at this Court enclosing an outline for an *ad interim* arrangement between the two Governments on the subject of the North American fisheries, accompanied by a despatch from Mr. Bayard containing some observations thereon.

I am to suggest that the views of the Governments of Canada and Newfoundland with regard to this proposal should be obtained with the least possible delay in order that Her Majesty's Government may be able to consider at an early date what reply should be made to Mr. Phelps' communication.

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

The Under-Secretary of State,
Colonial Office.

Enclosure in No. 53.

UNITED STATES LEGATION,
December 3rd, 1886.

MY LORD,

I have the honour to acknowledge the receipt of your note of 30th November, on the subject of the Canadian fisheries, and to say that I shall at an early day submit to your Lordship some considerations in reply.

Meanwhile, I have the honour to transmit, in pursuance of the desire expressed by your Lordship in conversation on the 30th November, a copy of an outline for a proposed *ad interim* arrangement between the two Governments on this subject which has been proposed by the Secretary of State of the United States.

And I likewise transmit, in connection with it, a copy of the instruction from the Secretary of State which accompanied it, and which I am authorised to submit to your Lordship.

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

The Earl of Iddesleigh,
&c., &c., &c.

Proposal for Settlement of all Questions in Dispute in Relation to the Fisheries on the North-eastern Coasts of British North America.

Whereas, in the 1st Article of the Convention between the United States and Great Britain, concluded and signed in London on the 20th of October, 1818, it was agreed between the high contracting parties "that the inhabitants of the said United States shall have for ever, in common with the subjects of His Britannic Majesty, the liberty to take fish of every kind on that part of the southern coast of Newfoundland which extends from Cape Ray to the Rameau Islands, on the western and northern coast of Newfoundland, from the said Cape Ray to the Quirpon Islands, on the shores of the Magdalen Islands, and also on the coasts, bays, harbors, and creeks, from Mount Joly on the southern coast of Labrador, to and through the Straits of Belleisle; and thence northwardly indefinitely along the coast, without prejudice, however, to any of the exclusive rights of the Hudson's Bay Company: and that the American fishermen shall also have liberty for ever to dry and cure fish in any of the unsettled bays, harbors, and creeks of the southern part of the coast of Newfoundland, here above described, and of the coast of Labrador; but so soon as the same or any portion thereof, shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such portion so settled without previous agreement for such purpose with the inhabitants, proprietors, or possessors of the ground;" and was declared that "the United States hereby renounce for ever any liberty heretofore enjoyed or claimed by the inhabitants thereof to take, dry, or cure fish on or within three marine miles of any of the coasts, bays, creeks, or harbors of His Britannic Majesty's dominions in America not included within the above-mentioned limits; Provided, however, That the American fishermen shall be admitted to enter such bays or harbors for the purpose of shelter, and of repairing damages therein, of purchasing wood, and obtaining water, and for no other purpose whatever. But they shall be under such restrictions as may be necessary to prevent their taking, drying, or curing fish therein, or in any other manner whatever abusing the privileges hereby reserved to them;" and whereas differences have arisen in regard to the extent of the above-mentioned renunciation, the Governments of the United States and Her Majesty the Queen of Great Britain, being equally desirous of avoiding further misunderstanding, agree to appoint a mixed commission for the following purposes, namely:

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

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

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

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

ARTICLE II.

Pending a definitive arrangement on the subject, Her Britannic Majesty's Government agree to instruct the proper colonial and other British officers to abstain from seizing or molesting fishing vessels of the United States unless they are found within

three marine miles of any of the coasts, bays, creeks, and harbors of Her Britannic Majesty's dominions in America, there fishing, or to have been fishing, or preparing to fish within those limits, not included within the limits within which, under the treaty of 1818, the fishermen of the United States continue to retain a common right of fishery with Her Britannic Majesty's subjects.

ARTICLE III.

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

ARTICLE IV.

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

ARTICLE V.

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

ARTICLE VI.

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

Mr. Bayard to Mr. Phelps.

No. 459.

DEPARTMENT OF STATE, WASHINGTON,
November 15th, 1886.

SIR,
The season for taking mackerel has now closed, and I understand the marine police force of the territorial waters in North British America has been withdrawn, so that no further occasion for the administration of a strained and vexatious construction

of the Convention of 1818, between the United States and Great Britain, is likely for several months at least.

During this period of comparative serenity, I earnestly hope that such measures will be adopted by those charged with the administration of the respective Governments, as will prevent the renewal of the proceedings witnessed during the past fishing season in the ports and harbors of Nova Scotia, and at other points in the maritime Provinces of the Dominion, by which citizens of the United States, engaged in open-sea fishing were subjected to much unjust and unfriendly treatment by the local authorities in those regions, and thereby not only suffered serious loss in their legitimate pursuit, but, by the fear of annoyance, which was conveyed to others likewise employed, the general business of open-sea fishing by citizens of the United States was importantly injured.

My instructions to you during the period of these occurrences have from time to time set forth their regrettable character, and they have also been brought promptly to the notice of the representative of Her Majesty's Government at this Capital.

These representations, candidly and fully made, have not produced those results of checking the unwarranted interference (frequently accompanied by rudeness and an unnecessary demonstration of force) with the rights of our fishermen guaranteed by express treaty stipulations, and secured to them—as I confidently believe—by the public commercial laws and regulations of the two countries, and which are demanded by the laws of hospitality, to which all friendly civilised nations owe allegiance. Again I beg that you will invite Her Majesty's Counsellors gravely to consider the necessity of preventing the repetition of conduct on the part of the Canadian officials which may endanger the peace of two kindred and friendly nations.

To this end, and to ensure to the inhabitants of the Dominion the efficient protection of the exclusive rights to their inshore fisheries, as provided by the Convention of 1818, as well as to prevent any abuse of the privileges reserved and guaranteed by that instrument for ever to the citizens of the United States engaged in fishing,—and responding to the suggestion made to you by the Earl of Iddeleigh in the month of September last that a *modus vivendi* should be agreed upon between the two countries to prevent encroachment by American fishermen upon the Canadian inshore fisheries, and equally to secure them from all molestation when exercising only their just and ancient rights,—I now enclose the draught of a memorandum which you may propose to Lord Iddeleigh, and which, I trust, will be found to contain a satisfactory basis for the solution of existing difficulties and assist in securing an assured, just, honorable, and, therefore, mutually satisfactory settlement of the long vexed question of the North Atlantic fisheries.

I am encouraged in the expectation that the propositions embodied in the memorandum referred to will be acceptable to Her Majesty's Government, because, in the month of April, 1866, Mr. Seward, then Secretary of State, sent forward to Mr. Adams, at that time United States' Minister in London, the draught of a protocol which in substance coincides with the first article of the proposal now sent to you, as you will see by reference to Vol. i of the United States' Diplomatic Correspondence for 1866, page 98 *et seq.*

I find that, in a published instruction to Sir F. Bruce, then Her Majesty's Minister in the United States, under date of May 11th, 1866, the Earl of Clarendon, at that time Her Majesty's Secretary of State for Foreign Affairs, approved them, but declined to accept the final proposition of Mr. Seward's protocol, which is not contained in the memorandum now forwarded.

Your attention is drawn to the great value of these three propositions, as containing a well-defined and practical interpretation of Article I of the Convention of 1818, the enforcement of which co-operatively by the two Governments, it may reasonably be hoped, will efficiently remove those causes of irritation of which variant constructions hitherto have been so unhappily fruitful.

In proposing the adoption of a width of ten miles at the mouth as a proper definition of the bays, in which, except on certain specified coasts, the fishermen of the United States are not to take fish, I have followed the example furnished by France and Great Britain in their Convention signed at Paris on the 2nd of August, 1839. This definition was referred to and approved by Mr. Bates, the Umpire of the Commission under the Treaty of 1853, in the case of the United States' fishing schooner "Washington," and has since been notably approved and adopted in the Convention signed at the Hague in 1882, and subsequently ratified, in relation to fishing in the North Sea, between Germany, Belgium, Denmark, France, Great Britain, and the Netherlands.

The present memorandum also contains provisions for the usual commercial facilities allowed everywhere for the promotion of legitimate trade, and nowhere more fully than in British ports and under the commercial policies of that nation. Such facilities cannot with any show of reason be denied to American fishing vessels when plying their vocations in deep-sea fishing grounds in the localities open to them equally with other nationalities. The Convention of 1818 inhibits the "taking, drying or curing fish" by American fishermen in certain waters and on certain coasts, and when these objects are effected, the inhibitory features are exhausted. Everything that may presumably guard against an infraction of these provisions will be recognised and obeyed by the Government of the United States, but should not be pressed beyond its natural force.

By its very terms and necessary intendment, the same treaty recognises the continuance permanently of the accustomed rights of American fishermen, in those places not embraced in the renunciation of the treaty, to prosecute the business as freely as did their forefathers.

No construction of the Convention of 1818 that strikes at or impedes the open sea fishing by citizens of the United States can be accepted, nor should a treaty of friendship be tortured into a means of such offence, nor should such an end be accomplished by indirection. Therefore, by causing the same port regulations and commercial rights to be applied to vessels engaged therein as are enforced relative to other trading craft, we propose to prevent a ban from being put upon the lawful and regular business of open sea fishing.

Arrangements now exist between the Governments of Great Britain and France, and Great Britain and Germany, for the submission in the first instance of all cases of seizure to the joint examination and decision of two discreet and able commanding officers of the Navy of the respective countries, whose vessels are to be sent on duty to cruise in the waters to be guarded against encroachment. Copies of these agreements are herewith enclosed for reference. The additional feature of an Umpire in case of a difference in opinion, is borrowed from the terms of Article 1 of the Treaty of June 5, 1854, between the United States and Great Britain.

This same Treaty of 1854 contains in its first article provision for a joint Commission for marking the fishing limits, and is therefore a precedent for the present proposition.

The season of 1886 for inshore fishing on the Canadian coasts has come to an end,—and assuredly no lack of vigilance or promptitude in making seizures can be ascribed to the vessels of the Marine Police of the Dominion. The record of their operations discloses but a single American vessel found violating the inhibitions of the Convention of 1818, by fishing within three marine miles of the coast. The numerous seizures made have been of vessels quietly at anchor in established ports of entry, under charges which, up to this day, have not been particularized sufficiently to allow of an intelligent defence. Not one has been condemned after trial and hearing, but many have been fined without hearing or judgment, for technical violations of alleged commercial regulations, although all commercial privileges have been simultaneously denied to them. In no instance has any resistance been offered to Canadian authority, even when exercised with useless and irritating provocation.

It is trusted that the agreement now proposed may be readily accepted by Her Majesty's Ministry.

Should the Earl of Iddesleigh express a desire to possess the text of this despatch, in view of its intimate relation to the subject matter of the Memorandum and as evidencing the sincere and cordial disposition which prompts this proposal, you will give his Lordship a copy.

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

Edward J. Phelps, Esq.,
&c., &c., &c.

Enclosures :

1. Memorandum of draught proposals.
2. Arrangement of Nov. 14, 1885, between France and Great Britain (*with other papers*).
3. Convention for regulating the Police of the North Sea Fisheries, signed at the Hague, May 6, 1882.

22,381.

No. 54.

*Foreign Office to Colonial Office.*FOREIGN OFFICE,
December 11th, 1886.

SIR,

I am directed by the Earl of Iddesleigh to transmit to you a copy of a note from the United States' Minister at this Court, asking that the solicitors retained for the defence in the case of the "David J. Adams" may be supplied with a full report of the charges made against that vessel; and I am to request that you will suggest to Mr. Secretary Stanhope, that enquiry should be made by telegraph whether the Canadian Government feel themselves able to comply with this request, and, if not, that they should be requested to state the grounds on which it is refused.

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

The Under-Secretary of State,
Colonial Office.

Enclosure in No. 54.

LONDON,
December 2nd, 1886.

MY LORD,

Referring to the conversation I had the honour to hold with your Lordship, on the 30th November, relative to the request of my Government that the owners of the "David J. Adams" may be furnished with a copy of the original reports stating the charges on which that vessel was seized by the Canadian authorities I desire now to place before you in writing the grounds upon which this request is preferred.

It will be in the recollection of your Lordship from the previous correspondence relative to the case of the "Adams" that the vessel was first taken possession of for the alleged offence of having purchased a small quantity of bait within the port of Digby, in Nova Scotia, to be used in lawful fishing. That later on a further charge was made against the vessel of a violation of some Custom House regulation, which it is not claimed, so far as I can learn, was ever before insisted on in a similar case. I think I have made it clear in my note of the 2nd of June last, addressed to Lord Rosebery, then Foreign Secretary, that no Act of the English or of the Canadian Parliament existed at the time of this seizure which legally justified it on the ground of the purchase of bait, even if such an Act would have been authorised by the Treaty of 1818. And it is a natural and strong inference, as I have in that communication pointed out, that the charge of violation of Custom House regulations was an after-thought, brought forward in order to sustain proceedings commenced on a different charge and found untenable.

In the suit that is now going on in the Admiralty Court at Halifax for the purpose of condemning the vessel, still further charges have been added. And the Government of Canada seek to avail themselves of a clause in the Act of the Canadian Parliament of May 22nd, 1868, which is in these words, "In case a dispute arises as to whether any seizure has or has not been legally made, or as to whether the person seizing was or was not authorised to seize under this Act . . . the burden of proving the illegality of the seizure shall be on the owner or claimant."

I cannot quote this provision without saying that it is, in my judgment, in violation of the principles of natural justice, as well as of those of the common law. That a man should be charged by police or executive officers with the commission of an offence and then be condemned upon trial unless he can prove himself to be innocent is a proposition that is incompatible with the fundamental ideas upon which the administration of justice proceeds. But it is sought in the present case to carry the proposition much further. And to hold that the party inculpated must not only prove himself innocent of the offence on which his vessel was seized, but also of all other charges upon which it might have been seized, that may be afterwards brought forward and set up at the trial.

Conceiving that if the clause I have quoted from the Act of 1868 can have effect (if allowed any effect at all) only upon the charge on which the vessel was originally seized, and that seizure for one offence cannot be regarded as *prima facie* evidence of guilt of another, the counsel for the owner of the vessel have applied to the prosecuting officers to be furnished with a copy of the reports made to the Government of Canada, in connection with the seizure of the vessel, either by Captain Scott, the seizing officer, or by the Collector of Customs at Digby, in order that it might be known to the defendant and be shown on trial what the charges are on which the seizure was grounded, and which the defendant is required to disprove: This most reasonable request has been refused by the prosecuting officers.

Under these circumstances, I am instructed by my Government to request of Her Majesty's Government that the solicitors for the owners of the "David J. Adams," in the suit pending in Halifax may be furnished, for the purposes of the trial thereof, with copies of the reports above mentioned. And I beg to remind your Lordship that there is no time to be lost in giving the proper direction, if it is to be in season for the trial, which, as I am informed, is being pressed.

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

The Earl of Iddesleigh,
&c., &c., &c.

22,209.

No. 55.

Colonial Office to Foreign Office.

DOWNING STREET,

11th December, 1886.

SIR,

I am directed by Mr. Secretary Stanhope to acknowledge the receipt of your letter of the 9th instant,* forwarding a copy of a note from the United States' Minister, with a draft of an *ad interim* arrangement between the two Governments on the subject of the North American Fisheries.

I am to state that Mr. Stanhope considers that it would be desirable, in order to save time, to instruct Sir L. West by telegraph to obtain a copy of the proposed arrangement from the Department of State at Washington, and to forward it to the Governor-General of Canada. It would also be convenient if the draft were accompanied by a copy of Mr. Bayard's despatch to Mr. Phelps of the 15th November. should the United States' Government have no objection to the communication of that despatch to Canada.

If this is done Mr. Stanhope will telegraph to the Marquis of Lansdowne informing him that he will receive these documents from Washington and requesting him to obtain and forward, by the earliest opportunity, a report from his Ministers upon the United States' proposals.

Mr. Stanhope does not consider that at the present juncture and pending an expression of Canadian views, there would be advantage in taking the opinion of the Newfoundland Government on the subject.

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

The Under Secretary of State,
Foreign Office.

22,235.

No. 56.

Governor-General the Most Hon. the Marquis of Lansdowne, G.C.M.G., to the Right Hon. Edward Stanhope, M.P. (Received December 12th, 1886.)

GOVERNMENT HOUSE, OTTAWA,
29th November, 1886.

No. 282.

SIR,

With reference to your telegraphic message of the 6th instant,† asking to be furnished with a report in the case of the "Pearl Nelson" and "Everitt Steele," I have

* No. 53.

† No. 32.

the honour to transmit herewith a copy of an approved Minute of the Privy Council of Canada, embodying a report of my Minister of Marine and Fisheries to which is appended a copy of the correspondence which has passed between the Commissioner of Customs for Canada and the United States' Consul-General at Halifax relating to the case of the American schooner "Pearl Nelson."

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

The Right Hon. Edward Stanhope,
&c., &c., &c.

Enclosure in No. 56.

Certified copy of a Report of Committee of the Honourable the Privy Council for Canada approved by his Excellency the Governor-General in Council on the 18th November, 1886.

The Committee of the Privy Council are in receipt of a telegram from the Right Honourable the Secretary of State for the Colonies in the words "United States' Government protest against proceedings of Canadian authorities in case of 'Pearl Nelson' and 'Everitt Steele' said to have put into Arichat and Shelburne respectively for purposes sanctioned by Convention. Particulars by post, send report soon as possible."

The Minister of Marine and Fisheries to whom the telegram was referred submits a copy of a letter addressed by the Commissioner of Customs for Canada to the Consul-General of the United States at Halifax, and also a copy of Mr. Phelan's reply thereto.

The Minister submits that it is clear from Captain Kempt's affidavit that he was guilty of an infraction of the Customs regulations in allowing men to land from his vessel before she had been reported, and the Minister of Customs having favourably considered Captain Kempt's representations as to his ignorance of the customs regulation, requiring that vessels should be reported before landing either men or cargo therefrom, has remitted the the fine of 200 $\frac{1}{100}$ which had been imposed in the case of the American schooner "Pearl Nelson."

The Minister further submits that it would appear from the Collector of Customs' report that his remark that "he would seize the vessel" had reference solely to her violation of the customs law and that no evidence is given of any desire or intention of denying to the Captain of the "Pearl Nelson" any Treaty privileges he was entitled to enjoy.

The Committee concurring in the above respectfully recommend that your Excellency be moved to transmit a copy of this minute if approved to the Right Honourable the Secretary of State for the Colonies.

All which is respectfully submitted for your Excellency's approval.

(Signed) JOHN J. MCGEE,
Clerk, Privy Council, Canada.

M. H. Phelan, Esq., Consul-General of the United States, Halifax, N.S.

OTTAWA,

October 22nd, 1886.

SIR,

I have the honour to acknowledge the receipt of your letter of the 11th instant, re seizure of the American schooner "Pearl Nelson," for an infraction of the Customs Laws, &c.

The Commissioner of Customs report in connection with this matter, which has been approved by the Minister of Customs' reads as follows:—

"The undersigned, having examined this case, has come to the conclusion that the captain of the vessel did violate the provisions of sections 25 and 180 of the Customs Act, 1883, by landing a number of his crew before going to the Customs House to report. That his plea of having come into port solely from 'stress of weather' is inconsistent with the circumstances, and is denied by the Collector of Customs, who reports that 'the night was one of the finest and most moderate experienced there this

summer,' and that 'his crew were landed only in the morning.' That even if the 'stress of weather' plea was sustained by facts, it would not exempt him from the legal requirement of reporting his vessel before 'breaking bulk' or landing his crew, and it is evident that there was nothing to hinder his reporting, as the crew appear to have had no difficulty in handling the vessel's boats. That it was very easy for the crew, or any of them, to have taken valuable contraband goods ashore on their persons, in the absence of any Customs Officer at the landing-place. Inasmuch, however, as there is no charge of actual smuggling preferred against the vessel, the undersigned respectfully recommends that the deposit of \$200 be refunded, deducting therefrom any expenses incurred."

(Signed) J. JOHNSON.

I trust the above may be considered a satisfactory answer to your letter referred to.

(Signed) I have, &c.,
W. G. PARMELEE,
Assistant Commissioner.

W. G. Parmelee, Esq., Assistant Commissioner, Ottawa.

UNITED STATES CONSULATE GENERAL, HALIFAX,
November 2nd, 1886.

SIR,

I have the honour to acknowledge the receipt of your communication of the 22nd ult., concerning the action of the Customs Department of Canada in the case of the American schooner "Pearl Nelson" and to say I was much pleased at the decision arrived at in that case. I have informed the Government of the United States that the fine in the case referred to was ordered to be refunded.

I have also to say, that the Department of State, in acknowledging the receipt of a dispatch from me, setting forth that you had placed all the papers in the cases of the American schooners "Crittenden" and "Holbrook" in my hands for perusal, said "the attention of Mr. Parmelee in referring the matter to you is appreciated. It shows a proper spirit."

I trust the Department of Customs will pass on the other cases as soon as possible.

I have, &c.,
(Signed) M. H. PHELAN,
Consul-General.

22,236.

No. 57.

Governor-General the Most Hon. the Marquis of Lansdowne, G.C.M.G., to the Right Hon. Edward Stanhope, M.P. (Received December 12th, 1886.)

GOVERNMENT HOUSE, OTTAWA,
November 29th, 1886.

No. 283.

SIR,

I have the honour to transmit herewith a copy of an approved minute of the Privy Council of Canada furnishing the report asked for in your telegraphic message of the 6th November,* with reference to the detention of the American schooner "Everitt Steele" at Shelburne, Nova Scotia, for an infraction of the Customs regulations of the Dominion.

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

The Right Hon. Edward Stanhope,
&c., &c., &c.

Enclosure in No. 57.

Certified copy of a Report of a Committee of the Honourable the Privy Council for Canada approved by his Excellency the Governor-General in Council on the 18th November, 1886.

The Committee of the Privy Council are in receipt of a telegram from the Right Honourable the Secretary of State for the Colonies in the words "United States' Government protest against proceedings of Canadian authorities in case of 'Pearl Nelson' and Everitt Steele' said to have put into Arichat and Shelburne respectively for purposes sanctioned by Convention. Particulars by post, send report soon as possible."

The Minister of Marine and Fisheries to whom the telegram was referred submits that the schooner "Everitt Steele," appears from the report of the Collector of Customs at Shelburne, to have been at that port on the 25th of March last, and sailed without reporting. On her return to Shelburne in September she was detained by the Collector of Customs, for an infraction of the Customs Law.

The captain having assured the Collector that he had been misled by the Deputy Harbor Master, who informed him his vessel could remain in port for twenty-four hours without entering, and that he had no intention of violating the Customs Regulations. This statement was reported to the Minister of Customs at Ottawa, when the vessel was at once allowed to proceed to sea, and that no evidence is given of any desire or intention of denying to the Captain of the "Everitt Steele" any treaty privileges he was entitled to enjoy.

The Committee concurring in the above respectfully recommend that your Excellency be moved to transmit a copy of this minute, if approved, to the Right Honourable the Secretary of State for the Colonies.

All which is respectfully submitted for your Excellency's approval.

(Signed) JOHN J. MCGEE,
Clerk, Privy Council.

22,863.

No. 58.

Governor-General the Most Hon. the Marquis of Lansdowne, G.C.M.G., to the Right Hon. Edward Stanhope, M.P. (Received December 12th, 1886.)

GOVERNMENT HOUSE, OTTAWA,
December 4th, 1886.

No. 286.

SIR,

In reply to your despatch of the 12th October last* marked "Secret," transmitting a copy of a letter, with its enclosures, from the Foreign Office requesting to be furnished with a report in the case of the United States' fishing vessel "Crittenden" I have the honour to forward herewith a copy of an approved minute of the Privy Council of Canada embodying a report of my Minister of Marine and Fisheries, to which is appended a statement of the Custom's Officer at Steep Creek on the subject.

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

The Right Honourable Edward Stanhope,
&c., &c., &c.

Enclosure in No. 58.

Certified copy of a Report of a Committee of the Honourable the Privy Council approved by his Excellency the Governor-General in Council on the 16th November, 1886.

The Committee of the Privy Council have had under consideration a despatch dated 12th October, 1886, from the Secretary of State for the Colonies, transmitting a copy of a letter from Mr. Bayard, United States Secretary of State, to the British Minister at Washington calling attention to an alleged denial of the rights guaranteed

by the Convention of 1818, in the case of the American fishing schooner "A. R. Crittenden" by the Customs' Officer at Steep Creek, in the Straits of Canso, N.S.

The Minister of Marine and Fisheries, to whom the despatch and enclosure were referred, submits a statement of the Customs' Officer at Steep Creek, and observes that the Captain of the "Crittenden" violated the Customs' Laws by neglecting to enter his vessel as requested by the Customs' Officer and in landing and shipping a man, clearly exceeded any Treaty provision he was entitled to avail himself of.

It would appear that the remark made by the Customs' Officer "that he would seize the vessel" had reference solely to the captain's violation of the Customs' Regulations, and the Minister submits cannot be construed into a denial of any Treaty privilege the master was entitled to enjoy.

The Committee concurring in the above, respectfully recommend that your Excellency be moved to inform the Right Honourable the Secretary of State for the Colonies in the sense of the Report of the Minister of Marine and Fisheries.

All which is respectfully submitted for your Excellency's approval.

(Signed) JOHN J. MCGEE,
Clerk, Privy Council.

STEEP CREEK,

1st November, 1886.

SIR,

Yours of the 28th of October came to hand to-day, and in reply can state to you that part of the crew of the schooner "Crittenden," came on shore at Steep Creek, and landed their barrels and filled them with water. I went direct to the men who were filling the barrels and told them to come and enter before taking wood and water, they said they would not enter or make any report. I told them that I would seize the schooner "Crittenden," for violating the Customs' Laws, they said they would risk that as the schooner was now out of the way, about three miles from my station down the Strait, and it was impossible for me to board the vessel. They also landed a man the same day with his effects, and on their return from Gloucester to the Bay of St. Lawrence, they shipped a man. Was looking out for the vessel but could not catch her. I reported the case to the Collector of Customs at Port Hawkesbury, and on the schooner "Crittenden's" return from the Bay St. Lawrence, she was seized, and Collector Bourinot got the affidavits of the captain of the said schooner and also of some of the crew, which he stated to the Department. I was in the office at the time when Collector Bourinot received a telegram from the Department to release the schooner "Crittenden" on the deposit of four hundred dollars.

I am, &c.,
(Signed) JAMES H. CARR,
pro Collector.

The Deputy Minister of Fisheries,
Ottawa.

22,645.

No. 59.

Foreign Office to Colonial Office.

FOREIGN OFFICE,

December 14th, 1886.

SIR,

In reply to your letter of the 9th instant,* I am directed by the Earl of Iddesleigh to request you to inform Mr. Secretary Stanhope that his Lordship does not see any objection to the communication confidentially of his note of the 30th ultimo to Mr. Phelps on the subject of the North American Fisheries to the Governments of Canada or Newfoundland, and also to Sir Charles Tupper.

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

The Under-Secretary of State,
Colonial Office.

* Not printed.

22,718.

No. 60.

*Foreign Office to Colonial Office.*FOREIGN OFFICE,
December 15th, 1886.

SIR,

With reference to my letter of the 4th of October,* I am directed by the Earl of Iddesleigh to transmit to you, to be laid before Mr. Secretary Stanhope, a copy of a despatch from Her Majesty's Minister at Washington enclosing copy of a further note from the United States' Secretary of State protesting against the action of the Canadian authorities with regard to the United States' fishing schooner "Mollie Adams."

I am to request that the Dominion Government may be asked to furnish a report as soon as possible upon the allegations now made by the master of the United States' vessel, as well as the previous note from Mr. Bayard on the subject enclosed in my letter of the 4th of October last.*

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

The Under-Secretary of State,
Colonial Office.

Enclosure in No. 60.

Treaty No. 99.

WASHINGTON,
December 2nd, 1886.

MY LORD,

I have the honour to enclose to your Lordship herewith a further note which I have received from the Secretary of State complaining in the usual strong terms of the conduct of the Canadian authorities in the case of the American fishing schooner "Molly Adams," the captain of which vessel states in a letter to the Secretary of State, copy of which is enclosed, that he had 17 men on board whom he had rescued from the British schooner "Neskilita" of Lockport (Nova Scotia).

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

The Earl of Iddesleigh,
&c., &c., &c.

DEPARTMENT OF STATE, WASHINGTON,
December 1st, 1886.

SIR,

As possessing an additional and very disagreeable bearing upon the general subject of the harsh treatment of American fishing vessels during the late season by the local authorities of the maritime provinces of Her Majesty's Dominion of Canada, I have the honour to send you herewith a copy of a letter addressed to me under date of the 12th ultimo, by Captain Solomon Jacobs, Master of the American fishing schooner "Molly Adams" of Gloucester, Massachusetts. You will share, I doubt not, the regret I feel at such churlish and inhospitable treatment of a vessel which had freely and with great loss and inconvenience, rendered such essential service to the suffering and imperilled crew of a Nova Scotia vessel. But for his generous act, Captain Jacobs would have had no occasion to put into Malpeque, or, subsequently when short of provisions, into Port Medway. As his narrative shows, the local authorities of Malpeque treated him with coldness and rudeness, making no provision to receive the Nova Scotian crew he had saved from such imminent danger, even causing him to incur a pecuniary burden in completion of his humane rescue, and even treating the landing of the property so saved from the wreck of the Nova Scotian vessel on her own shores as not lawful for an American fishing vessel "within the 3 mile limit."

The treatment of Captain Jacobs at Port Medway is a fitting sequel to that received by him at Malpeque. Having undergone 14 days detention in the latter port

and having shared his purse and slender stock of provisions with the men he had rescued, he put to sea, when his supplies falling short by reason of his charitable action, he asked leave to purchase at Port Medway "half a barrel of flour, or enough provisions to take his vessel and crew home." With full knowledge of the cause of Captain Jacobs' dearth of provisions, even this the collector at Port Medway absolutely refused, and threatened Captain Jacobs with the seizure of his vessel "if he bought anything whatever." The urgent need of supplies in which Captain Jacobs stood is shown by the fact that although the run with favourable weather from Port Medway to his home port, Gloucester, Massachusetts, only occupied 3 days, his crew were on half rations for two days and without food for one day of that time. It is painful to conjecture what might have been their distress had the "Molly Adams" encountered storms or head winds.

I am confident that Her Majesty's Government, than which none has more generously fulfilled the obligations of the unwritten code of seafaring humanity, will hasten to rebuke the treatment of Captain Jacobs at the hands of the local authorities of Nova Scotia, by exhibiting gratitude for his act in saving seventeen of their own people from death, and tendering him compensation for the delays and expenses he has undergone through the breaking up of his legitimate fishing venture.

The closing part of Captain Jacobs' letter may serve to show the irresponsible and different treatment he was subjected to in the several ports he visited, where the only common feature seems to have been a surly hostility. At Port Hood for instance, Captain Jacobs being sick, his brother landed and reported in his stead, and, after paying the regular fee, was told that his report was a nullity, and that the vessel would be liable to penalty for unauthorised landing of her crew, unless her captain reported in person; which, although ill, he was compelled to do, and the fee was thereupon levied a second time. This is a small matter, measured by the amount of the fee, but it is surely discreditable, and has a tendency which cannot be too much deplored.

In my late correspondence, I have treated of the necessary and logical results of permitting so irritating and unfriendly a course of action, and I will not, therefore, now enlarge on this subject.

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

Sir Lionel S. West, K.C.M.G.,
&c., &c., &c.

GLOUCESTER,
November 12th, 1886.

SIR,

I would most respectfully ask your attention to the following facts, as showing the spirit and manner of the application of law on the part of the officials of the Dominion of Canada.

On or about the 26th September, when off Malpeque, Prince Edward Island, I fell in with the British schooner "Neskilita," of Lockport, Nova Scotia, which had run on Malpeque Bar, in making the harbour. It was blowing very heavy, sea running high. The crew was taken off by my vessel about 12 o'clock at night. There were seventeen men in all. We took care of them and fed them for three days. The "Neskilita" became a total wreck. We saved some of the material.

The cutter "Critic," Captain McClennan, one of the Canadian cruisers, was lying in the harbour of Malpeque. The captain boarded my vessel, and I reported to him the facts of the wreck and the condition of the men. They had saved a portion of their clothing. He neither offered to care for the wrecked crew, to feed them, or to give them any assistance whatever. Having some of the wrecked material on board, I asked the captain of the cutter for permission to land it. He referred me to the local collector.

I went to the collector, and he referred me back to the captain of the cutter. As the cutter had gone out the captain of the "Neskilita" assumed the responsibility and took the things ashore. The captain of the cutter told me that I could put the saved material on board a Nova Scotia vessel, if I went outside of the three miles limit to do it.

I endeavoured to get some of the people on shore to take the wrecked crew, but no one would do it unless I would be responsible for their board. Finally I gave the crew \$60, enough to pay their passage home on the cars, and also gave them provisions to last during their journey. Malpeque is a barred harbour, and it is only in smooth

water that it is safe to go out over the bar, and my vessel drawing 14 feet of water, and there was only 14 feet of water on the bar, it was impossible for me to go out. By being detained in port in disposing of this wrecked crew, I lost over ten days of valuable time before I could get out to fish, and during that time the fleet took large quantities of mackerel.

Having to feed so many on my vessel left me short of provisions, and in a short time afterwards I put into Port Medway and stated the circumstances, and asked permission to buy half a barrel of flour, or enough provisions to take my vessel and crew home.

This was absolutely refused, and the collector *threatened* me that if I bought anything whatever he would seize my vessel. I was obliged to leave without obtaining, and came home in three days, on short rations, a distance of 300 miles. The wind and weather being favourable we had a good passage, but yet we were without provisions for one day before we arrived home. I wish to state most emphatically that the officials differ in their construction of our rights. Fees are different in every port, and as there is no standard of right fixed by our own Government, the fishermen are at the mercy of a class of officials hostile to them and their business, and with but little knowledge of law or its application. For instance at Souries, Prince Edward Island, 15 cents is charged for reporting; at Port Mulgrave, Nova Scotia, 50 cents is charged. At Port Hood, I being sick, my brother went to the Custom House to report. The official charged him 25 cents, and told him that unless the captain reported in person the report was invalid; that men from the vessel would not be allowed ashore unless the captain reported. In the afternoon of the same day I was able to go to the office, and was charged 25 cents for my report, making 50 cents.

In the matter of anchorage, fees, &c., at Port Mulgrave, Nova Scotia, I paid \$1.50 cents; at Malpeque, \$1; at Sydney \$1.17 cents. At some ports we have to pay anchorage fees every time we go in, as at Halifax. At others twice for the season. Now I would most respectfully state that the official service throughout is actuated apparently from a principle of annoyance wherever and whenever it can be so applied. That there is only harmony of action in this regard alone, and that local laws and regulations are enforced against us without regard to any rights we may have under treaty.

That the effect to this enforcement is not to promote but to interfere and to limit by unjust pains, fees, and penalties, the right of shelter, obtaining wood and water, and making of repairs guaranteed by Treaty of 1818; that instead of the restriction contemplated the local laws make a technical obligation that is without their province or power, and enforce penalties that should never be admitted or allowed by our Government.

And I would pray that in the case recited, and many others that can be shown if required, we may be protected from local laws and their enforcement that abridge our rights, and have never received the sanction of the two great contracting powers in the construction and agreement of the Treaty of 1818.

I have, &c.,
(Signed) SOLOMON JACOBS.

NORTH SYDNEY, C.B.,
October 13th, 1886.

“Molly Adams,” 117 tons, Captain Jacobs, to Harbour Commissioners.
To amount of harbour dues $1\frac{17}{100}$ dollars.

Received payment,
(Signed) M. J. THUAN.

Dominion of Canada Harbour Dues.

MALPEQUE, P.E.I., 1886.

Received from Solomon Jacobs, master of the schooner “Molly Adams,” from 117 tons register, the sum of $1\frac{17}{100}$ dollars, being harbour dues at this port.

(Signed) EDWARD LARKINS,
Harbour Master.

Dominion of Canada Harbour Dues.

PORT MULGRAVE, N.S.,
August 30th, 1886.

Received from Solomon Jacobs, master of the schooner "Mollie Adams" from North Bay, 117 tons register, the sum of \$1.50 cents, being harbour dues at this port.



(Signed) DUNCAN C. GILLIES,
Harbour Master.

22,381.

No. 61.

Colonial Office to Foreign Office.

DOWNING STREET,
December 15th, 1886.

SIR,

I am directed by Mr. Secretary Stanhope to acknowledge the receipt of your letter of the 11th instant,* enclosing a copy of a note from the United States' Minister at this Court asking that the solicitor for the defence in the case of the "David J. Adams" may be supplied with a full report of the charges made against that vessel.

Before making any representation to the Canadian Government upon this subject the Secretary of State would point out that Mr. Phelps' request is that the necessary directions may be given for supplying to the solicitors for the owners of the "David J. Adams" copies of certain official reports made in May last by the Canadian officers to their official superiors, and would be glad to learn whether the question has presented itself to Lord Iddesleigh from the point of view from which it strikes Mr. Stanhope, viz., that the United States Government are inviting Her Majesty's Government to intervene in the conduct of this litigation, and by the pressure of its executive authority to endeavour to induce the Canadian Government to furnish the other litigant with documents which, seemingly under the advice of counsel, it has already refused to give.

Assuming that the facts respecting the charge of violating the customs laws are as alleged by Mr. Phelps they can probably be elicited at the trial by ordinary methods of examination, while if elicited they would not as it appears to Mr. Stanhope necessarily save the vessel from the sentence of the Court, whatever grounds they might furnish for the Government not enforcing a forfeiture if pronounced.

I am also to point out that Mr. Phelps does not identify, and apparently has not been supplied with, a copy of the Canadian Act of 1868, upon which he mainly founds his present request. It is, in point of fact, the Statute cap. 61 of that year, providing for the issue of licenses to foreign fishing vessels, and for the forfeiture of vessels fishing without a license, a statute which, so far as relates to the issue of licenses, has, as Lord Iddesleigh is aware, been inoperative since 1870. The section No. 10 which appears to Mr. Phelps to be in violation of the principles of natural justice is habitually found in laws against smuggling, and in the present case appears to be based upon the common sense rule of law that a man who pleads that he holds a license or other similar document, shall be put to the proof of his plea and required to produce the document. The suggestion that the section quoted by Mr. Phelps will be applied to seizures not "under the Act" needs no answer, and may be left to the Court to deal with should occasion arise.

Unless the counsel for the vessel have not been furnished with the report of the Minister of Marine and Fishery approved by the Canadian Privy Council on the 14th June 1886, and transmitted to the Foreign Office from this Department on the 29th of June they will have learnt that from a date immediately after the seizure "there was not the slightest difficulty in the United States' Consul-General and those interested in the vessel obtaining the fullest information," and that "apart from the general knowledge of the offences which it was claimed the master had committed, and which

* No. 54.

† No. 87 in North American No. 118.

was furnished at the time of the seizure, the most technical and precise details were readily obtainable at the Registry of the Court and from the Solicitors for the Crown."

On reference to the Marquis of Lansdowne's despatch No. 156 of the 17th of May, 1886,* transmitted to the Foreign Office on the 4th of June, it will be seen that before the 17th of May the United States' Government must have learnt the nature of the charges brought against the "David J. Adams," and that they included "violation of the Customs Act, 1883." The same information is contained in the report of the Minister of Marine and Fisheries above cited.

With these passages before him, Mr. Stanhope finds a difficulty in believing that the Counsel for the vessel are not fully aware of the charges which they will have to meet although they have not obtained the particular report to which Mr. Phelps alludes.

Under these circumstances Mr. Stanhope is doubtful whether there would be advantage in telegraphing the proposed inquiry to the Canadian Government. If Lord Iddesleigh, after considering this letter, still thinks it important that the request should be preferred, he would ask to be supplied with the text of the message which Lord Iddesleigh desires should be sent.

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

The Under-Secretary of State.
Foreign Office.

22,718.

No. 62.

The Right Hon. Edward Stanhope, M.P., to Governor-General the Most Hon. the Marquis of Lansdowne, G.C.M.G.

DOWNING STREET,
December 16th, 1886.

No. 272.

MY LORD,

With reference to my despatch No. 218, of the 6th October,† I have the honour to transmit to you a copy of a letter‡ with its enclosures from the Foreign Office relative to the case of the United States' fishing vessel "Mollie Adams."

I request that you will obtain from your Government and forward to me as soon as possible a report on the circumstances of the case.

I have, &c.,
(Signed) EDWARD STANHOPE.

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

22,809.

No. 63.

Foreign Office to Colonial Office.

FOREIGN OFFICE,
December 16th, 1886.

SIR,

I am directed by the Earl of Iddesleigh to transmit to you a copy of a note from the United States' Minister at this Court calling attention to the detention of the "Marion Grimes" at Shelburne, Nova Scotia, and requesting the withdrawal of Captain Quigley, of the Canadian cruiser "Terror."

I am to request that you will move Mr. Secretary Stanhope to call for a full report from the Canadian Government upon the circumstances alleged; and I am in the meanwhile to enclose a copy of the reply which Lord Iddesleigh has addressed to Mr. Phelps.

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

The Under-Secretary of State,
Colonial Office.

* No. 26 in North American No. 118.

† No. 6.

‡ No. 60.

Enclosure in No. 63.

UNITED STATES' LEGATION, LONDON,
November 27th, 1886.

MY LORD,

I have the honour to transmit herewith, a copy of an instruction, under date of November 6th, 1886, received by me from the Secretary of State of the United States, relative to the case of the United States' fishing vessel the "Marion Grimes."

The subject is so fully presented in this document, a copy of which I am authorised by the Secretary to place in the hands of your Lordship, that I can add nothing to what is therein set forth, except to request your Lordship's early attention to the case, which appears to be a very flagrant violation of the rights secured to American fishermen under the Treaty of 1818.

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

The Earl of Iddesleigh,
 &c., &c., &c.

Mr. Bayard to Mr. Phelps.

No. 452.

DEPARTMENT OF STATE, WASHINGTON,
November 6th, 1886.

SIR,

On October 7, 1886, the United States' fishing vessel, the "Marion Grimes," of Gloucester, Massachusetts, Alexander Landry, a citizen of the United States, being her captain, arrived shortly before midnight, under stress of weather, at the outer harbor of Shelburne, Nova Scotia. The night was stormy, with a strong head-wind against her, and her sole object was temporary shelter. She remained at the spot where she anchored, which was about seven miles from the port of Shelburne, no one leaving her, until six o'clock the next morning, when she hoisted sail in order to put to sea. She had scarcely started, however, before she was arrested and boarded by a boat's crew from the Canadian cruiser "Terror." Captain Landry was compelled to proceed to Shelburne, about seven miles distant, to report to the collector. When the report was made Captain Landry was informed that he was fined four hundred dollars for not reporting on the previous night. He answered that the custom-house was not open during the time that he was in the outer harbor. He further insisted that it was obvious from the storm that caused him to take shelter in that harbor, from the shortness of his stay, and from the circumstances that his equipments were exclusively for deep sea fishing, and that he had made no effort whatever to approach the shore, that his object was exclusively to find shelter. The fine, however, being imposed principally through the urgency of Captain Quigley, commanding the "Terror," Captain Landry was informed that he was to be detained at the port of Shelburne, until a deposit to meet the fine was made. He consulted Mr. White, the United States' Consular Agent at Shelburne, who at once telegraphed the facts to Mr. Phelan, United States' Consul-General at Halifax, it being of great importance to Captain Landry, and to those interested in his venture, that he should proceed on his voyage at once. Mr. Phelan then telegraphed to the Assistant Commissioner of Customs at Ottawa, that it was impossible for Captain Landry to have reported while he was in the outer harbor on the 8th instant, and asking that the deposit required to release the vessel be reduced. He was told in reply that the Minister declined to reduce the deposit, but that it might be made at Halifax. Mr. Phelan at once deposited at Halifax the four hundred dollars, and telegraphed to Captain Landry that he was at liberty to go to sea. On the evening of October 11th Mr. Phelan received a telegram from Captain Landry, who had already been kept four days in the port, stating that "the custom-house officers and Captain Quigley" refused to let him go to sea. Mr. Phelan the next morning called on the collector at Halifax to ascertain if an order had issued to release the vessel, and was informed that the order had been given, "but that the collector and captain of the cruiser refused to obey it for the reason that the captain of the seized vessel hoisted the American flag while she was in custody of Canadian officials." Mr. Phelan at once telegraphed this state of facts to the Assistant Commissioner at Ottawa, and received in reply, under date of August 12th, the announcement that "collector has been instructed to release the 'Grimes' from customs seizure. This department has

nothing to do with other charges." On the same day a dispatch from the Commissioner of Customs at Ottawa was sent to the Collector of Customs at Halifax reciting the order to release the "Grimes," and saying "this [the customs] department has nothing to do with other charges. It is Department of Marine."

The facts as to the flag were as follows :

On October 11th the "Marion Grimes," being then under arrest by order of local officials for not immediately reporting at the custom-house, hoisted the American flag. Captain Quigley, who, representing, as appeared, not the revenue, but the marine department of the Canadian administration, was, with his "cruiser," keeping guard over the vessel, ordered the flag to be hauled down. This order was obeyed; but about an hour afterwards the flag was again hoisted, whereupon Captain Quigley boarded the vessel with an armed crew and lowered the flag himself. The vessel was finally released under orders of the Customs Department, being compelled to pay eight dollars costs in addition to the deposit of four hundred dollars above specified.

The seriousness of the damage inflicted on Captain Landry and those interested in his venture will be understood when it is considered that he had a crew of twelve men, with full supplies of bait, which his detention spoiled.

You will at once see that the grievances I have narrated fall under two distinct heads. The first concerns the boarding by Captain Quigley of the "Marion Grimes" on the morning of October 5th, and compelling her to go to the town of Shelburne, there subjecting her to a fine of four hundred dollars for visiting the port without reporting, and detaining her there arbitrarily four days, a portion of which time was after a deposit to meet the fine had been made.

This particular wrong I now proceed to consider with none the less gravity, because other outrages of the same class have been perpetrated by Captain Quigley. On August 18th last I had occasion, as you will see by the annexed papers, to bring to the notice of the British Minister at this Capital several instances of aggression on the part of Captain Quigley on our fishing vessels. On October 19, 1886, I had also to bring to the British Minister's notice the fact that Captain Quigley had, on September the 10th, arbitrarily arrested the "Everett Steele," a United States' fishing vessel, at the outer port of Shelburne. To these notes I have received no reply. Copies are transmitted, with the accompanying papers, to you in connection with the present instruction so that the cases, as part of a class, can be presented by you to Her Majesty's Government.

Were there no treaty relations whatever between the United States and Great Britain,—were the United States fishermen without any other right to visit those coasts than are possessed by the fishing craft of any foreign country simply as such, the arrest and boarding of the "Grimes," as above detailed, followed by forcing her into the port of Shelburne, there subjecting her to fine for not reporting, and detaining her until her bait and ice were spoiled, are wrongs which I am sure Her Majesty's Government will be prompt to redress. No governments have been more earnest and resolute in insisting that vessels driven by stress of weather into foreign harbors should not be subject to port exactions than the Governments of Great Britain and the United States. So far has this solicitude been carried that both governments, from motives of humanity, as well as of interest as leading maritime powers, have adopted many measures by which foreigners as well as citizens or subjects arriving within their territorial waters may be protected from the perils of the sea. For this purpose not merely light-houses and light-ships are placed by us at points of danger, but an elaborate life-saving service, well equipped with men, boats, and appliances for relief, studs our seaboard in order to render aid to vessels in distress, without regard to their nationality. Other benevolent organizations are sanctioned by Government which bestow rewards on those who hazard their lives in the protection of life and property in vessels seeking in our waters refuge from storms. Acting in this spirit the Government of the United States has been zealous, not merely in opening its ports freely, without charges to vessels seeking them in storm, but in insisting that its own vessels, seeking foreign ports under such circumstances, and exclusively for such shelter, are not under the law of nations subject to custom-house exactions. "In cases of vessels carried into British ports by violence or stress of weather," said Mr. Webster in instructions to Mr. Everett, June 28, 1842, "we insist that there shall be no interference from the land with the relation or personal condition of those on board, according to the laws of their own country; that vessels under such circumstances shall enjoy the common laws of hospitality, subjected to no force, entitled to have their immediate wants and necessities relieved, and to pursue their voyage without molestation." In this case, that of the "Creole," Mr. Wheaton, in the *Revue Française et*

Etrangère (IX, 345), and Mr. Legaré (4 Op. At. Gen., 98), both eminent publicists, gave opinions that a vessel carried by stress of weather or forced into a foreign port is not subject to the law of such port; and this was sustained by Mr. Bates, the umpire of the commission to whom the claim was referred (Rep. Com. of 1853; 244, 245): "The municipal law of England [so he said] cannot authorize a magistrate to violate the law of nations by invading with an armed force the vessel of a friendly nation that has committed no offence, and forcibly dissolving the relations which, by the laws of his country, the captain is bound to preserve and enforce on board. These rights sanctioned by the law of nations, viz: The right to navigate the ocean and to seek shelter in case of distress or other unavoidable circumstances, and to retain over the ship, her cargo, and passengers, the law of her country, must be respected by all nations, for no independent nation would submit to their violation."

It is proper to state that Lord Ashburton who conducted the controversy in its diplomatic stage on the British side, did not deny as a general rule the propositions of Mr. Webster. He merely questioned the applicability of the rule to the case of the "Creole." Nor has the principle ever been doubted by either Her Majesty's Government or the Government of the United States; while, in cases of vessels driven by storm on inhospitable coasts, both Governments have asserted it, sometimes by extreme measures of redress, to secure indemnity for vessels suffering under such circumstances from port exactions, or from injuries inflicted from the shore.

It would be hard to conceive of anything more in conflict with the humane policy of Great Britain in this respect, as well as with the law of nations, than was the conduct of Captain Quigley towards the vessel in question, on the morning of October 8th.

In such coasts, at early dawn, after a stormy night, it is not unusual for boats, on errands of relief, to visit vessels which have been struggling with storm during the night. But in no such errand of mercy was Captain Quigley engaged. The "Marion Grimes," having found shelter during the night's storm, was about to depart on her voyage, losing no time while her bait was fresh and her ice lasted, when she was boarded by an armed crew, forced to go seven miles out of her way to the port, and was there, under pressure of Captain Quigley, against the opinion originally expressed of the collector, subjected to a fine of four hundred dollars with costs, and detained there, as I shall notice hereafter, until her voyage was substantially broken up. I am confident Her Majesty's Government will concur with me in the opinion that, as a question of international law, aside from treaty and other rights, the arrest and detention, under the circumstances, of Captain Landry and of his vessel were in violation of the law of nations as well as the law of humanity, and that on this ground alone the fine and the costs should be refunded and the parties suffering be indemnified for their losses thereby incurred.

It is not irrelevant, on such an issue as the present, to enquire into the official position of Captain Quigley, "of the Canadian cruiser 'Terror.'" He was, as the term "Canadian cruiser" used by him enables us to conclude, not an officer in Her Majesty's distinctive service. He was not the commander of a revenue cutter, for the head of the customs' service of Canada disavowed him. Yet he was arresting and boarding in defiance of law, a vessel there seeking shelter, over-influencing the collector of the port into the imposition of a fine, hauling down with his own hand the flag of the United States, which was displayed over the vessel, and enforcing arbitrarily an additional period of detention after the deposit had been made, simply because the captain of the vessel refused to obey him by executing an order insulting to the flag which the vessel bore. If armed cruisers are employed in seizing, harassing, and humiliating storm-bound vessels of the United States on Canadian coasts, breaking up their voyages and mulcting them with fines and costs, it is important for reasons presently to be specified that this Government should be advised of the fact.

From Her Majesty's Government redress is asked. And that redress, as I shall have occasion to say hereafter, is, not merely the indemnification of the parties suffering by Captain Quigley's actions, but his withdrawal from the waters where the outrages I represent to you have been committed.

I have already said that the claims thus presented could be abundantly sustained by the law of nations, aside from treaty and other rights. But I am not willing to rest the case on the law of nations. It is essential that the issue between United States' fishing vessels and the cruiser "Terror" should be examined in all its bearings, and settled in regard not merely to the general law of nations, but to the particular rights of the parties aggrieved.

It is a fact that the fishing vessel "Marion Grimes" had as much right under the

special relations of Great Britain and the United States, to enter the harbor of Shelburne, as had the Canadian cruiser. The fact that the "Grimes" was liable to penalties for the abuse of such right of entrance does not disprove its existence. Captain Quigley is certainly liable to penalties for his misconduct on the occasion referred to. Captain Landry was not guilty of misconduct in entering and seeking to leave that harbor and had abused no privilege. But whether liable or no for subsequent abuse of the rights, I maintain that the right of free entrance into that port, to obtain shelter, and whatever is incident thereto, belonged as much to the American fishing vessel as to the Canadian cruiser.

The basis of this right is thus declared by an eminent jurist and statesman, Mr. R. R. Livingston, the first Secretary of State appointed by the Continental Congress, in instructions issued on January 7, 1782, to Dr. Franklin, then at Paris, entrusted by the United States with the negotiation of articles of peace with Great Britain. "The arguments on which the people of America found their claim to fish on the banks of Newfoundland arise, first, from their having once formed a part of the British Empire, in which state they always enjoyed, as fully as the people of Britain themselves, the right of fishing on those Banks. They have shared in all the wars for the extension of that right, and Britain could with no more justice have excluded them from the enjoyment of it (even supposing that one nation could possess it to the exclusion of another) while they formed a part of that empire, than they could exclude the people of London or Bristol. If so, the only inquiry is, how have we lost this right. If we were tenants in common with Great Britain while united with her, we still continue so, unless by our own act we have relinquished our title. Had we parted with mutual consent, we should doubtless have made partition of our common rights by treaty. But the oppressions of Great Britain forced us to a separation (which must be admitted, or we have no right to be independent); and it cannot certainly be contended that those oppressions abridged our rights, or gave new ones to Britain. Our rights then are not invalidated by this separation, more particularly as we have kept up our claim from the commencement of the war, and assigned the attempt of Great Britain to exclude us from the fisheries, as one of the causes of our recurring to arms."

As I had occasion to show in my note to the British Minister in the case of the "Everett Steele," of which a copy is hereto annexed, this "tenancy in common," held by citizens of the United States in the fisheries, they were to "continue to enjoy" under the preliminary articles of 1782 as well as under the treaty of peace of 1783; and this right, as a right of entrance in those waters, was reserved to them, though with certain limitations in its use, by the treaty of 1818. I might here content myself with noticing that the treaty of 1818, herein reciting a principle of the law of nations as well as ratifying a right previously possessed by fishermen of the United States, expressly recognizes the right of these fishermen to enter the "bays or harbors" of Her Majesty's Canadian dominions "for the purpose of shelter and of repairing damages therein." The extent of other recognitions of rights in the same clause need not here be discussed. At present it is sufficient to say that the placing an armed cruiser at the mouth of a harbor in which United States' fishing vessels are accustomed and are * entitled to seek shelter on their voyages, such cruiser being authorized to arrest and board our fishing vessels seeking such shelter, is an infraction not merely of the law of nations, but of a solemn treaty stipulation. That, so far as concerns the fishermen so affected, its consequences are far reaching and destructive, it is not necessary here to argue. Fishing vessels only carry provisions enough for each particular voyage; if they are detained several days on their way to the fishing banks, the venture is broken up. The arrest and detention of one or two, operates upon all. They cannot as a class, with their limited capital and resources afford to run risks so ruinous. Hence rather than subject themselves to even the chances of suffering the wrongs inflicted by Captain Quigley "of the Canadian cruiser 'Terror,'" on some of their associates, they might prefer to abandon their just claim to the shelter consecrated to them alike by humanity, ancient title, the law of nations, and by treaty, and face the gravest peril and the wildest seas in order to reach their fishing grounds. You will therefore represent to Her Majesty's Government that the placing Captain Quigley in the harbour of Shelburne to inflict wrongs and humiliation on United States' fishermen there seeking shelter, is, in connection with other methods of annoyance and injury, expelling United States' fishermen from waters, access to which, of great importance in the pursuit of their trade, is pledged to them by Great Britain, not merely as an ancient right, but as part of a system of international settlement.

It is impossible to consider such a state of things without grave anxiety. You can scarcely represent this too strongly to Her Majesty's Government.

It must be remembered, in considering this system, so imperilled, that the preliminaries to the article of 1782, afterwards adopted as the Treaty of 1783, were negotiated at Paris by Dr. Franklin, representing the United States, and Mr. Richard Oswald, representing Lord Shelburne, then Colonial Secretary, and afterwards, when the treaty was finally agreed on, Prime Minister. It must be remembered also that Lord Shelburne, while maintaining the rights of the colonies when assailed by Great Britain, was nevertheless unwilling that their independence should be recognised prior to the treaty of peace, as if it were a concession wrung from Great Britain by the exigencies of war. His position was that this recognition should form part of a treaty of partition by which, as is stated by the court in *Sutton v. Sutton*, 1 Rus. & M., 675, already noticed by me, the two great sections of the British empire agreed to separate, in their articles of separation recognising to each other's citizens or subjects certain territorial rights. Thus the continuance of the rights of the United States in the fisheries was recognized and guaranteed; and it was also declared that the navigation of the Mississippi, whose sources were, in the imperfect condition of geographical knowledge of that day, supposed to be in British territory, should be free and open to British subjects and to citizens of the United States. Both powers, also, agreed that there should be no further prosecutions or confiscations based on the war; and in this way were secured the titles to property held in one country by persons remaining loyal to the other. This was afterwards put in definite shape by the following article (Article X) of Jay's treaty.

"It is agreed that British subjects who now hold lands in the territories of the United States, and American citizens who now hold lands in the dominion of His Majesty, shall continue to hold them according to the nature and tenure of their respective estates and titles therein, and may grant, sell, or devise the same to whom they please, in like manner as if they were natives; and that neither they nor their heirs or assigns shall, so far as may respect the said lands and the legal remedies incident thereto, be regarded as aliens."

It was this article which the court in *Sutton v. Sutton*, above referred to, held to be one of the incidents of the "separation" of 1783, of perpetual obligation unless rescinded by the parties, and hence not abrogated by the war of 1812.

It is not, however, on the continuousness of the reciprocities recognised by the treaty of 1783, that I desire now to dwell. What I am anxious you should now impress upon the British government, is the fact that as the fishery clause in this treaty, a clause continued in the treaty of 1818, was a part of a system of reciprocal recognitions which are inter-dependent, the abrogation of this clause, not by consent, but by acts of violence and of insult such as those of the Canadian cruiser "Terror," would be fraught with consequences which I am sure could not be contemplated by the Governments of the United States and Great Britain without immediate action being taken to avert them. To the extent of the system thus assailed, I now direct attention.

When Lord Shelburne and Dr. Franklin negotiated the treaty of peace, the area on which its recognitions were to operate was limited. They covered, on the one hand, the fisheries; but the map of Canada in those days, as studied by Lord Shelburne, gives but a very imperfect idea of the territory near which the fisheries lay. Halifax was the only port of entry on the coast; the New England States were there and the other nine were provinces, but no organized governments to the west of them. It was on this area only, as well as on Great Britain, that the recognitions and guarantees of the treaty were at first to operate. Yet comparatively small as this field may now seem, it was to the preservation over it of certain reciprocal rights that the attention of the negotiators was mainly given. And the chief of these rights were: (1.) the fisheries, a common enjoyment in which by both parties took nothing from the property of either; and (2.) the preservation to the citizens or subjects of each country of title to property in the other.

Since Lord Shelburne's premiership this system of reciprocity and mutual convenience has progressed under the treaties of 1842 and 1846, so as to give to Her Majesty's subjects, as well as to citizens of the United States, the free use of the River Detroit, on both sides of the island Bois Blanc, and between that island and the American and Canadian shores, and all the several channels and passages between the various islands lying near the junction of the River St. Clair with the lake of that name. By the treaty of 1846, the principle of common border privileges was extended to the Pacific Ocean. The still existing commercial articles of the treaty of 1871, further amplified those mutual benefits, by embracing the use of the inland water ways of either country, and defining enlarged privileges of bonded transit by land and water

through the United States for the benefit of the inhabitants of the Dominion. And not only by treaties has the development of Her Majesty's American dominion, especially to the westward, been aided by the United States, but the vigorous contemporaneous growth under the enterprise and energy of citizens of the North-western States and Territories of the United States has been productive of almost equal advantages to the adjacent possessions of the British Crown; and the favoring legislation by Congress has created benefits in the way of railway facilities which, under the sanction of State laws, have been and are freely and beneficially enjoyed by the inhabitants of the Dominion and their Government.

Under this system of energetic and coöperative development the Coast of the Pacific has been reached by the trans-continental lines of railway within the territorial limits of the respective countries, and as I have stated, the United States being the pioneers in this remarkable progress, have been happily able to anticipate and incidentally to promote the subsequent success of their neighbors in British America.

It will be scarcely necessary for you to say to Lord Iddesleigh that the United States in thus aiding in the promotion of the prosperity, and in establishing the security of Her Majesty's Canadian dominions claims no particular credit. It was prompted, in thus opening its territory to Canadian use, and incidentally for Canadian growth, in large measure by the consciousness that such good offices are part of a system of mutual convenience and advantage, growing up under the treaties of peace, and assisted by the natural forces of friendly contiguity. Therefore it is that we witness with surprise and painful apprehension the United States fishermen hampered in their enjoyment of their undoubted rights in the fisheries.

The hospitalities of Canadian coasts and harbors, which are ours by ancient right, and which these treaties confirm, cost Canada nothing, and are productive of advantage to her people. Yet, in defiance of the most solemn obligations, in utter disregard of the facilities and assistances granted by the United States, and in a way especially irritating, a deliberate plan of annoyances and aggressions has been instituted and plainly exhibited during the last fishing season, a plan calculated to drive these fishermen from shores where, without injury to others, they prosecute their own legitimate and useful industry.

It is impossible not to see that if the unfriendly and unjust system, of which the cases now presented are part, is sustained by Her Majesty's Government, serious results will almost necessarily ensue, great as is the desire of this Government to maintain the relations of good neighborhood. Unless Her Majesty's Government shall effectually check these aggressions a general conviction on the part of the people of the United States may naturally be apprehended that, as treaty stipulations in behalf of our fishermen, based on their ancient rights, cease to be respected, the maintenance of the comprehensive system of mutual commercial accommodation between Canada and the United States could not reasonably be expected.

In contemplation of so unhappy and undesirable a condition of affairs I express the earnest hope that Her Majesty's Government will take immediate measures to avert its possibility.

With no other purpose than the 'preservation of peace and good will and the promotion of international amity, I ask you to represent to the statesmen charged with the administration of Her Majesty's Government the necessity of putting an end to the action of Canadian officials in excluding American fishermen from the enjoyment of their treaty rights in the harbors and waters of the maritime provinces of British North America.

The action of Captain Quigley in hauling down the flag of the United States from the "Marion Grimes" has naturally aroused much resentment in this country, and has been made the subject of somewhat excited popular comment; and it is wholly impossible to account for so extraordinary and unwarranted an exhibition of hostility and disrespect by that official. I must suppose that only his want of knowledge of what is due to international comity and propriety and overheated zeal as an officer of police could have permitted such action, but I am confident that, upon the facts being made known by you to Her Majesty's Government, it will at once be disavowed, a fitting rebuke be administered, and the possibility of a repetition of Captain Quigley's offence be prevented.

It seems hardly necessary to say that it is not until after condemnation by a prize court that the national flag of a vessel seized as a prize of war is hauled down by her captor. Under the 14th section of the 20th chapter of the Navy Regulations of the United States the rule in such cases is laid down as follows:—

“A neutral vessel, seized, is to wear the flag of her own country until she is adjudged to be a lawful prize by a competent court.”

But, *a fortiori*, is this principle to apply in cases of customs seizures, where fines only are imposed and where no belligerency whatever exists? In the port of New York, and other of the countless harbors of the United States, are merchant vessels to-day flying the British flag which from time to time are liable to penalties for violation of customs laws and regulations. But I have yet to learn that any official, assuming, directly or indirectly, to represent the Government of the United States, would under such circumstances order down or forcibly haul down the British flag from a vessel charged with such irregularity; and I now assert that if such act were committed, this Government, after being informed of it, would not wait for a complaint from Great Britain, but would at once promptly reprimand the parties concerned in such misconduct and would cause proper expression of regret to be made.

A scrupulous regard for international respect and courtesy should mark the intercourse of the officials of these two great and friendly nations, and anything savoring of the contrary should be unhesitatingly and emphatically rebuked. I cannot doubt that these views will find ready acquiescence from those charged with the administration of the Government of Great Britain.

You are at liberty to make Lord Iddesleigh acquainted with the contents of this letter, and, if desired, leave with him a copy.

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

Edward J. Phelps, Esq.,
&c., &c., &c.

ENCLOSURES.

Mr. Bayard to Mr. West, August 18th, 1886.
Mr. Bayard to Mr. West, October 19th, 1886.

Enclosure 2 in No. 63.

FOREIGN OFFICE,
December 16th, 1886.

SIR,

I have the honour to acknowledge the receipt of your note of the 27th ultimo relative to the case of the “Marion Grimes,” stated to have been fined and detained at Shelburne, Nova Scotia, in October last.

As other cases besides that of the “Marion Grimes” are alluded to in the documents forwarded with your note, it will be desirable to take each case separately, and to inform you shortly of the steps which Her Majesty’s Government have taken in regard to them.

In respect to the case of the “Marion Grimes,” I have already received through Her Majesty’s Secretary of State for the Colonies a copy of a despatch from the Dominion Government, in which they express their regret at the action taken by Captain Quigley in hauling down the United States’ flag. I have transmitted a copy of this despatch to Her Majesty’s Minister at Washington with instructions to communicate it to Mr. Bayard; and I beg leave now to inclose a copy of it for your information.

Her Majesty’s Government cannot doubt that, as respects the incident of the flag, the apology thus spontaneously tendered by the Canadian Government will be accepted by the United States’ Government in the friendly and conciliatory disposition in which it is offered; whilst, as regards the other statements concerning Captain Quigley’s conduct, Her Majesty’s Government do not at present feel themselves in a position to express any opinion.

The Dominion Government have been requested to furnish a full report on the various circumstances alleged, and, when this is received, I shall have the honour to address a further communication to you upon the subject.

As concerns the cases of the “Julia Ellen” and “Shiloh,” it will probably suffice to communicate to you the enclosed copies of reports from the Canadian Government relative to these two vessels.

These reports have already been sent to Her Majesty’s Minister at Washington for communication to Mr. Bayard.

The protest made by the United States' Government in the case of the "Everett Steele" was not received in this country until the 1st ultimo, and although the Canadian Government have been requested by telegraph to furnish a report upon the circumstances alleged, sufficient time has not yet elapsed to enable Her Majesty's Government to be in possession of the facts as reported by the Dominion Authorities.

Her Majesty's Government greatly regret that incidents of the description alluded to should occur, and they can only renew the assurance conveyed to you in my note of the 30th ultimo that whilst firmly resolved to uphold the undoubted Treaty rights of Her Majesty's North American subjects in regard to the fisheries, they will also maintain the equally undoubted right of United States' fishermen to obtain shelter in Canadian ports, under such restrictions as may be necessary to prevent their abusing the privileges reserved to them by treaty.

I notice that in Mr. Bayard's note to you of the 6th ult. concerning the case of the "Marion Grimes," and also in his note to Sir L. West of the 19th October last relative to the case of the "Everett Steele," an old discussion is revived which Her Majesty's Government had hoped was finally disposed of by the correspondence which took place on the subject in 1815 and 1816.

I allude to the argument that a right to the common enjoyment of the fisheries by Great Britain and the United States, after the separation of the latter from the mother country, was recognized by the Treaty of 1783, although the exercise of that right was made subject to certain restrictions.

I refer to this point merely to observe that the views of Her Majesty's Government in relation to it have not been modified in any way since the date of Lord Bathurst's note of the 30th of October, 1815, to Mr. John Quincey Adams.

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

E. J. Phelps, Esq.,
&c., &c., &c.

22,235.

No. 64.

Colonial Office to Foreign Office.

DOWNING STREET,
December 16th, 1886.

SIR,

With reference to your letters of the 4th, and to the reply from this department of the 23rd ult.,* respecting the United States' fishing vessels "Pearl Nelson" and "Everitt Steele," I am directed by Mr. Secretary Stanhope to transmit to you to be laid before the Earl of Iddesleigh copies of despatches with their enclosures† from the Governor-General of Canada on the subject.

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

The Under-Secretary of State,
Foreign Office.

22,208.

No. 65.

The Right Hon. Edward Stanhope, M.P., to Governor-General the Most Hon. the Marquis of Lansdowne, G.C.M.G.

No. 274.

DOWNING STREET,
16th December, 1886.

MY LORD,

I have the honour to transmit to your Lordship, for communication to your Government, a copy of a letter‡ from the Foreign Office with its enclosures, respecting the alleged improper conduct of authorities in the Dominion in dealing with the United

* Nos. 27, 28, and 45.

† Nos. 56 and 57.

‡ No. 52.

States fishing vessels "Laura Sayward" and "Jenny Seaverns," and I request that I may be furnished with a report on the subject for communication to the Government of the United States.

I have, &c.,
(Signed) EDWARD STANHOPE.

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

22,876.

No. 66.

Governor-General the Most Hon, the Marquis of Lansdowne, G.C.M.G., to the Right Hon. Edward Stanhope, M.P. (Received December 20th, 1886.)

No. 288.

GOVERNMENT HOUSE, OTTAWA,
December 7th, 1886.

SIR,

I have the honour to forward herewith, for your information, a copy of a despatch from Her Majesty's Minister at Washington transmitting a copy of a letter from the Secretary of State of the United States, with its enclosures, asking to be furnished with authentic information respecting Canadian laws regulating the sale and exportation of fresh herring from Grand Manan Island, together with a copy of my reply thereto.

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

The Right Hon. Edward Stanhope,
&c., &c., &c.

Enclosure 1 in No. 66.

Minister at Washington to Gen. Lord Russell.

No. 22.

WASHINGTON,
October 28th, 1886.

MY LORD,

I have the honour to enclose to your Lordship herewith copy of a note* which I have received from the Secretary of State together with copy of enclosure asking for authentic information respecting the Canadian laws regulating the sale and exportation of fresh herring from Grand Manan Island.

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

His Excellency Gen. Lord Alexander Russell,
&c., &c., &c.

Enclosure 2 in No. 66.

The Governor-General to the Minister at Washington.

OTTAWA,
December 3rd, 1886.

No. 81.

SIR,

With reference to your telegram of the 17th ultimo, calling attention to your despatch No. 22 of the 28th October last, transmitting a copy of a letter from the Secretary of State of the United States, with its enclosures, requesting to be furnished with authentic information respecting the Canadian laws regulating the sale and exportation of fresh herring from Grand Manan Island, I have the honour to forward herewith for communication to Mr. Bayard, a copy of an approved report of a Committee

* See Enclosure in No. 34.

of the Privy Council to which is appended a copy of the Customs Laws of Canada containing the desired information.

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

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

Certified copy of a Report of a Committee of the Honourable the Privy Council, approved by his Excellency the Governor-General in Council on the 24th November, 1886.

The Committee of the Privy Council having had their attention called by a telegram dated 18th November inst., from Her Majesty's Minister at Washington to his former despatch of the 28th October ultimo, enclosing a copy of a note from the Hon. Mr. Bayard and enclosures, asking for authentic information respecting the Canadian laws regulating the sale and exportation of fresh herring from Grand Manan Island.

The Minister of Marine and Fisheries to whom said despatch was referred for early report, states that any foreign vessel "not manned, nor equipped, nor in any way prepared for taking fish" has full liberty of commercial intercourse in Canadian ports upon the same conditions as are applicable to regularly registered foreign merchant vessels, nor is any restriction imposed upon any foreign vessel dealing in fish of any kind different from those imposed upon foreign merchant vessels dealing in other commercial commodities.

That the regulations under which foreign vessels may trade at Canadian ports are contained in the Customs' Law of Canada (a copy of which is herewith*) and which render it necessary among other things, that upon arrival at any Canadian port a vessel must at once enter inward at the Custom House and upon the completion of her loading clear outwards for her port of destination.

The Committee recommend that your Excellency be moved to transmit a copy of this minute together with a copy of the Customs laws as containing authentic information respecting Canadian laws regulating the sale and exportation of fresh herring to Her Majesty's Minister at Washington for the information of the Hon. Mr. Bayard, Secretary of State for the United States.

(Signed) JOHN J. MCGEE,
Clerk, Privy Council, Canada.

22,645.

No. 67.

The Right Hon. Edward Stanhope, M.P., to Governor-General the Most Hon. the Marquis of Lansdowne, G.C.M.G.

Secret.

DOWNING STREET,
December 21st, 1886.

MY LORD,

With reference to my predecessor's despatch of the 24th June,† respecting the North American Fisheries Question, I have the honour to transmit to you, for confidential communication to your Government, copies of letters‡ from the Foreign Office, enclosing copies of notes on the subject, which have been exchanged between the United States' Minister at this Court and the Secretary of State for Foreign Affairs.

I have, &c.,
(Signed) EDWARD STANHOPE.

The Marquis of Lansdowne.

* Not printed.

† Nos. 77 in North American No. 118.

‡ Nos. 118, 172, and 173 in North American No. 118, and No. 51 in this paper.

23,064.

No. 68.

*Foreign Office to Colonial Office.*FOREIGN OFFICE,
December 21st, 1886.

Confidential.

SIR,

In reply to your letter of the 11th instant,* I am directed by the Earl of Iddesleigh to transmit to you, to be laid before Mr. Secretary Stanhope, a copy of a telegram which his Lordship has addressed to Her Majesty's Minister at Washington, instructing him to send to Canada a copy of the proposed *ad interim* arrangement on the subject of the North American Fisheries, and I am to request that the Canadian Government may be asked to report thereon as proposed.

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

Enclosure in No. 68.

Telegram.

To Sir L. West, Washington.

December 21st, 1886, 6.15 p.m.

Fisheries.— Obtain from Secretary of State copies of his despatch to Phelps of 15th ultimo, containing proposed *ad interim* arrangement.

Send a copy direct to Governor-General of Canada if United States' Government have no objection, and report action.

23,130.

No. 69.

*Foreign Office to Colonial Office.*FOREIGN OFFICE,
December 23rd, 1886.

SIR,

In reply to your letter of the 15th instant,† I am directed by the Earl of Iddesleigh to request you to state to Mr. Secretary Stanhope that his Lordship is of opinion that the solicitors of the owners of the "David J. Adams" are not entitled to the documents they seek to procure, as otherwise they could obtain them by the ordinary process of the courts, and that under these circumstances it does not lie with Her Majesty's Government to interfere with the course of justice.

I am, however, to add that his Lordship considers it would be advisable to inform the Canadian Government of the application made by Mr. Phelps, and to enquire whether they concur in a reply being made thereto in the above sense, and whether they have any observations to offer before such reply is sent.

I am, &c.,
(Signed) P. W. CURRIE.The Under-Secretary of State,
Colonial Office.

* No. 55.

† No. 61.

23,131.

No. 70.

Foreign Office to Colonial Office.

Confidential.

FOREIGN OFFICE,
December 23rd, 1886.

SIR,

With reference to my letter of the 21st instant,* I am directed by the Secretary of State for Foreign Affairs to transmit to you, to be laid before Mr. Secretary Stanhope, a copy of a cypher telegram from Her Majesty's Minister at Washington, reporting that he has obtained and forwarded to the Governor-General of Canada a copy of Mr. Bayard's note of November 15th, relative to the proposed *ad interim* arrangement for the settlement of the North American Fisheries Question.

I am, &c.,
(Signed) P. W. CURRIE.The Under-Secretary of State,
Colonial Office.

Enclosure in No. 70.

Telegram from Sir L. West, dated Washington 22nd December, 1886. Received Foreign Office, 23rd December, 1886.

Your Lordship's telegram of yesterday. Fishery question. Copy of note of 15th November and proposal sent to Governor-General of Canada to-day.

23,130.

No. 71.

The Right Hon. Edward Stanhope, M.P., to Governor-General the Most Hon. the Marquis of Lansdowne, G.C.M.G.

TELEGRAPHIC.

December 24.—United States' Government request solicitors of "David J. Adams" may be given, for purposes of trial, copies of reports by Scott or Customs' officers in connection with seizure. Her Majesty's Government propose to answer to following effect:—Solicitors appear to be not entitled to documents desired, otherwise they would obtain all necessary papers by means of legal procedure. Under the circumstances it does not lie with Her Majesty's Government to interfere with course of justice.

Do you concur, or does your Government consider it desirable to offer observations before Her Majesty's Government answer?

21,155.

No. 72.

*Colonial Office to the High Commissioner for Canada.*DOWNING STREET,
24th December, 1886.

Confidential.

SIR,

With reference to previous correspondence respecting the seizure of the "David J. Adams," and to the general question of the North American Fisheries, I am directed by Mr. Secretary Stanhope to transmit to you for your confidential information a copy of a despatch† from the Governor-General of Canada forwarding a report on the subject by the Dominion Minister of Justice.

I am, &c.,
(Signed) JOHN BRAMSTON.The High Commissioner for Canada,
&c., &c., &c.

* No. 68

† No. 43.

22,718.

No. 73.

The Right Hon. Edward Stanhope, M.P., to Governor-General the Most Hon. the Marquis of Lansdowne, G.C.M.G.

Secret.

DOWNING STREET,
December 27th, 1886.

MY LORD,

With reference to my despatch No. 272 of the 16th instant*, relating to the case of the United States' fishing vessel "Mollie Adams," and referring to the general complaints made on the part of the United States Government of the treatment of American fishing vessels in Canadian Ports, I think it right to observe that whilst Her Majesty's Government do not assume the correctness of any allegations without first having obtained the explanations of the Dominion Government, they rely confidently upon your Ministers taking every care that Her Majesty's Government are not placed in a position of being obliged to defend any acts of questionable justice or propriety.

I have, &c.,
(Signed) EDWARD STANHOPE.

The Marquis of Lansdowne.

22,718.

No. 74.

Colonial Office to Foreign Office.

DOWNING STREET,
December 27th, 1886.

SIR,

With reference to your letter of the 15th instant,† relating to the case of the United States' fishing vessel "Mollie Adams," I am directed by Mr. Secretary Stanhope to transmit to you a copy of a despatch* which was addressed to the Governor-General of Canada upon the subject upon the following day.

I am also to enclose a copy of a further despatch§ which Mr. Stanhope has addressed to the Governor-General having reference to the general question of the treatment of United States' fishing vessels in Canadian ports.

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

The Under-Secretary of State,
Foreign Office.

23,064.

No. 75

The Right Hon. Edward Stanhope, M.P., to Governor-General the Most Hon. the Marquis of Lansdowne, G.C.M.G.

TELEGRAPHIC.

27th December, 1886.—You will shortly receive from Minister at Washington a despatch from Bayard to Phelps, of 15th November last,|| with proposal for settlement *ad interim* of Fisheries dispute. Ask your Government to report to Her Majesty's Government their views thereupon at earliest possible moment.

23,130.

No. 76.

*Colonial Office to Foreign Office.*DOWNING STREET,
December 27th, 1886.

SIR,

With reference to your letter of the 23rd instant,* and to previous correspondence respecting the case of the "David J. Adams," I am directed by the Secretary of State for the Colonies to transmit to you, for the information of the Earl of Iddesleigh, a copy of a telegram† which has been sent to the Governor-General of Canada on the subject.

I am, &c.,
(Signed) R. H. MEADE.The Under Secretary of State,
Foreign Office.

23,312.

No. 77.

Governor-General the Most Hon. the Marquis of Lansdowne, G.C.M.G., to the Right Hon. Edward Stanhope, M.P. (Received December 27th, 1886.)

TELEGRAPHIC.

Referring to your telegram of 24th December,† my Government concurs in answer suggested.

22,863.

No. 78.

*Colonial Office to Foreign Office.*DOWNING STREET,
28th December, 1886.

SIR,

With reference to your letter of the 6th October,§ respecting the case of the United States' fishing vessel "Crittenden," I am directed by Mr. Secretary Stanhope to transmit to you to be laid before the Earl of Iddesleigh a copy of a despatch|| with its enclosures, from the Governor-General of Canada on the subject.

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

23,490.

No. 79.

*Foreign Office to Colonial Office.*FOREIGN OFFICE,
December 28th, 1886.

SIR,

With reference to your letter of the 18th ultimo,¶ I am directed by the Secretary of State for Foreign Affairs to transmit to you, to be laid before Mr. Secretary Stanhope, a copy of a despatch from Her Majesty's Minister at Washington, enclosing a copy of a note from the United States' Secretary of State, expressing his satisfaction at the regret expressed by the Canadian Government with regard to the action taken against the "Marion Grimes."

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

* No. 69.

† No. 71.

§ No. 7.

|| No. 58.

¶ Not printed (L.F.).

Enclosure in No. 79.

Treaty No. 108.

WASHINGTON,
December 12th, 1886.

MY LORD,

With reference to your Lordship's Despatch No. 67 of this series of the 26th ultimo, I have the honour to enclose to your Lordship herewith, copy of a note which I have received from the Secretary of State acknowledging the receipt of the copy of a despatch from the Officer Administering the Government of Canada expressing the regret of the Dominion Government at the action of their authorities in the case of the American vessel "Marion Grimes."

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

The Earl of Iddesleigh, G.C.B.,
&c., &c., &c.

DEPARTMENT OF STATE, WASHINGTON,
December 11th, 1886.

SIR,

I have the honour to acknowledge your note of the 7th instant, with which you communicate, by the direction of the Earl of Iddesleigh, a copy of the report of a Committee of the Privy Council of Canada, approved October 26th last, wherein the regret of the Canadian Government is expressed for the action of Captain Quigley of the Canadian Government cruiser "Terror" in lowering the flag of the United States' fishing schooner "Marion Grimes" whilst under detention by the Customs authorities in the harbour of Shelburne, Nova Scotia, on October 11th last.

Before receiving this communication I had instructed the United States' Minister at London to make representation of this regrettable occurrence to Her Majesty's Minister for Foreign Affairs, and desire now to express my satisfaction at this voluntary action of the Canadian authorities, which, it seems, was taken in October last, but of which I had no intimation until your note of the 7th instant was received.

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

The Hon. Sir L. S. Sackville West,
&c., &c., &c.

83. Secret.

No. 80.

Governor-General the Most Hon. the Marquis of Lansdowne, G.C.M.G., to the Right Hon. Edward Stanhope, M.P. (Received December 28th, 1886.)

TELEGRAPHIC.

27th December. Proposal received for a settlement of fishery question from British Minister at Washington. Am I at liberty to communicate to him direct views of my Government?

23,312.

No. 81.

Colonial Office to Foreign Office.

DOWNING STREET,
December 29th, 1886.

SIR,

With reference to the letter from this department of the 27th instant* relating to the case of the United States' fishing vessel "David J. Adams," I am directed by Mr. Secretary Stanhope to transmit to you, to be laid before the Earl of Iddesleigh, a copy of a telegram† from the Governor-General of Canada, from which it appears that his

* No. 76

† No. 77.

Ministers concur in the answer proposed to be sent to the United States' Minister in reply to his note of the 2nd of December.

Mr. Stanhope would be glad to receive a copy of the communication upon the subject which Lord Iddesleigh may now send to Mr. Phelps.

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

The Under Secretary of State,
Foreign Office.

22,809.

No. 82.

The Right Hon. Edward Stanhope, M.P., to Governor-General the Most Hon. the Marquis of Lansdowne, G.C.M.G.

No. 283.

DOWNING STREET,
December 29th, 1886.

MY LORD,

With reference to Lord A. Russell's despatch No. 66 of the 27th of October,* respecting the case of the United States' fishing schooner "Marion Grimes." I have the honour to transmit to you for communication to your Lordship's Government a copy of a letter† from the Foreign Office with its enclosures on the subject.

I have to request that you will obtain from your Government a full report on the circumstances of this case.

I have, &c.,
(Signed) EDWARD STANHOPE.

The Marquis of Lansdowne.

PS.—I enclose for communication to your Lordship's Government a copy of a further letter‡ from the Foreign Office enclosing a note from the United States' Secretary of State in which he expresses his satisfaction at the regret expressed by the Canadian Government with regard to the action taken against the "Marion Grimes."

83. Secret.

No. 83.

The Right Hon. Edward Stanhope, M.P., to Governor-General the Most Hon. the Marquis of Lansdowne, G.C.M.G.

TELEGRAPHIC.

December 29th. Yours 27th,§ views of your Government on proposals for settlement fishery question should be communicated direct to Her Majesty's Government, not to West.

22,876.

No. 84.

Colonial Office to Foreign Office.

DOWNING STREET,
30th December, 1886.

SIR,

With reference to your letter of the 12th of November,|| and to the reply from this department of the following day, I am directed by Mr. Secretary Stanhope to transmit to you, for the information of the Earl of Iddesleigh, a copy of a despatch¶ from the Governor-General of Canada enclosing a letter addressed by Her Majesty's Minister at Washington to the Officer Administering the Government of the Dominion requesting

* No. 37.

† No. 63.

‡ No. 79.

§ No. 80.

|| Nos. 34 and 36.

¶ No. 66.

to be furnished with information in connection with Canadian Laws regulating the sale and exportation of fresh herring from Grand Manan Island, together with Lord Lansdowne's reply.

The enclosures to Sir Lionel West's despatch are not forwarded, being identical with the enclosures transmitted with his despatch to Lord Iddesleigh, No. 92, of the same date, a copy of which accompanied your letter under reference.

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

The Under Secretary of State,
Foreign Office.

23,064.

No. 85.

The Right Hon. Edward Stanhope, M.P., to Governor-General the Most Hon. the Marquis of Lansdowne, G.C.M.G.

Secret.

DOWNING STREET,
December 30th, 1886.

MY LORD,

I have the honour to transmit to you herewith, to be laid before your Government, a copy, received through the Foreign Office, of a note* from the United States' Minister at this Court enclosing an outline for an *ad interim* arrangement between the British and United States' Government on the subject of the North American Fisheries, accompanied by a despatch from Mr. Bayard containing some observations thereon.

On the receipt of these papers Her Majesty's Minister at Washington was desired by telegram to obtain copies of Mr. Bayard's despatch to Mr. Phelps of the 15th of November, and of the proposals for an arrangement, and he was desired, if the United States' Government had no objection, to transmit these copies direct to you.

In my telegram of the 27th December,† I requested you to obtain at the earliest possible moment from your Government their views on Mr. Bayard's proposals, and to report them to Her Majesty's Government.

I need now only add that Her Majesty's Government await with much interest the result of this reference to your Ministers.

I have, &c.,
(Signed) EDWARD STANHOPE.

The Marquis of Lansdowne.

23,628.

No. 86.

Governor-General the Most Hon. the Marquis of Lansdowne, G.C.M.G., to the Right Hon. Edward Stanhope, M.P. (Received December 31st, 1886).

GOVERNMENT HOUSE, OTTAWA,
December 20th, 1886.

No. 296.

SIR,

I had the honour of receiving your despatch, No. 244, of the 22nd of November,‡ in regard to the case of the "Everitt Steele," and "Pearl Nelson," recently detained at Shelburne and Arichat, Nova Scotia, for non-compliance with the Customs' Regulations of the Dominion.

2. The circumstances under which the conduct of these vessels attracted the attention of the Customs' authorities were set out in the Privy Council Orders of the 18th November, certified copies of which were forwarded to you under cover of my despatches, Nos. 282 and 283, of the 29th November.§

3. The information contained in these documents was obtained in order to comply with the request for a report on these two cases which you had addressed to me by telegram on a previous date. I have now carefully examined the fuller statements

* Enclosure in No. 53.

† No. 75.

‡ No. 44.

§ Nos. 56 and 57.

made by Mr. Bayard, both as to the facts and as to the considerations by which the conduct of the local officials should, in his opinion, have been governed. You will, I think, find on reference to the Privy Council Orders already before you, that the arguments advanced by Mr. Bayard have been sufficiently met by the observations of my Minister of Marine and Fisheries, whose reports are embodied in those Orders.

4. It is not disputed that the "Everitt Steele," was in Shelburne Harbour on the 25th March, and sailed thence without reporting. In consequence of this omission on the master's part his vessel was on her return to Shelburne in September detained by the collector. The master having explained that his presence in the harbour had been occasioned by stress of weather, and that his failure to report was inadvertent, and this explanation having been telegraphed to the Minister at Ottawa, the vessel was at once allowed to proceed to sea; her release took place at noon on the day following that of her detention.

5. In the case of the "Pearl Nelson," it is not denied that nine of her crew were landed in Arichat Harbour at a late hour on the evening of her arrival, and before the master had reported to the Custom House. It is obvious that if men were to be allowed to go on shore under such circumstances, without notification to the authorities, great facilities would be offered for landing contraband goods, and there can be no question that the master by permitting his men to land was guilty of a violation of Sections 25 and 180 of the Customs' Act. There seems to be reason to doubt his statement that he was driven into Arichat by stress of weather, but be this as it may, the fact of his having entered the harbour for a lawful purpose would not carry with it a right to evade the law to which all vessels frequenting Canadian ports are amenable. In this case as in that of the "Everitt Steele" already referred to, the statement of the master that his offence was due to inadvertence was accepted, and the fine imposed at once remitted.

6. I observe that in his despatch relating to the first of these cases Mr. Bayard insists with much earnestness upon the fact that certain "prerogatives" of access to the territorial waters of the Dominion were specially reserved under the Convention of 1818 to the fishermen of the United States, and that a vessel entering a Canadian harbour for any purpose coming within the terms of Article I of that Convention, has as much right to be in that harbour as she would have to be upon the high seas, and he proceeds to institute a comparison between the detention of the "Everitt Steele" and the wrongful seizure of a vessel on the high seas upon the suspicion of being engaged in the slave trade. Mr. Bayard further calls attention to the special consideration to which, from the circumstances of their profession, the fishermen of the United States are, in his opinion, entitled, and he dwells upon the extent of the injury which would result to them if they were debarred from the exercise of any of the rights assured to them by treaty or convention.

7. I observe also that in Sir Julian Pauncefote's letter enclosed in your despatch it is stated that the Secretary of State for Foreign Affairs wishes to urge upon the Dominion Government the great importance of issuing stringent instructions to its officials not to interfere with any of the privileges expressly reserved to United States' fishermen under Article I of the Convention of 1818.

8. I trust that the explanations which I have already been able to give in regard to the cases of these vessels will have satisfied you that the facts disclosed do not show any necessity for the issuing of instructions other than those already circulated to the local officials entrusted with the execution of the Customs' and Fishery Law.

9. There is certainly no desire on the part of my Government (nor I believe does the conduct of the local officials justify the assumption that such a desire exists) to curtail in any respect the privileges enjoyed by United States' fishermen in Canadian waters. It cannot on the other hand be contended that because these privileges exist and are admitted by the Government of the Dominion those who enjoy them are to be allowed immunity from the Regulations to which all vessels resorting to Canadian waters are, without exception, subjected under the Customs Act of 1883 and the different Statutes regulating the Fisheries of the Dominion.

10. In both of the cases under consideration there was a clear and undoubted violation of the law, and the local officials would have been culpable if they had omitted to notice it. That there was no animus on their part or on that of the Canadian Government is, I think, clearly proved by the promptitude with which the circumstances were investigated and the readiness shown to overlook the offence and to remit the penalty incurred as soon as proof was forthcoming that the offence had been unintentionally committed. In support of this view I would draw your attention to the letter [see enclosure to my despatch No. 282 of the 29th November]* of Mr. Phelan,

the Consul-General for the United States at Halifax, who has expressed his own satisfaction at the action of the authorities in the case of the "Pearl Nelson," and who also refers to a communication received by him from the Department of State in which it is stated that the conduct of the Assistant Commissioner of Customs in dealing with two other cases of a somewhat similar complexion "shows a proper spirit."

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

The Right Hon. Edward Stanhope,
&c., &c., &c.

22,645.

No. 87.

Colonial Office to the High Commissioner for Canada.

Confidential.

DOWNING STREET,
January 1st, 1887.

SIR,

With reference to previous correspondence respecting the North American Fisheries, I am directed by Mr. Secretary Stanhope to transmit to you for your confidential information copies of letters* from the Foreign Office enclosing copies of notes on the subject which have been exchanged between the United States' Minister at this Court and the Secretary of State for Foreign Affairs.

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

The High Commissioner for Canada.

83. Secret.

No. 88.

Colonial Office to Foreign Office.

DOWNING STREET,
January 5th, 1887.

SIR,

With reference to your letter of the 21st ultimo,† relating to the proposals made by the United States' Government for an *ad interim* arrangement on the subject of the North American fisheries, I am directed by Mr. Secretary Stanhope to transmit to you, for the information of the Earl of Iddesleigh, copies of a telegraphic correspondence‡ which has passed on the subject with the Governor-General of Canada, together with a copy of a despatch§ addressed to the Marquis of Lansdowne on the subject, dated the 30th ultimo.

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

The Under-Secretary of State,
Foreign Office.

291.

No. 89.

Foreign Office to Colonial Office.

FOREIGN OFFICE,
January 5th, 1887.

SIR,

I am directed by the Earl of Iddesleigh to transmit to you a copy of a despatch from Her Majesty's Minister at Washington relative to the proposed appointment of a Commission to collect sworn evidence in regard to the claims of United States' fishermen for losses alleged to have been inflicted upon them by British officials; and I am to request that you will state to Mr. Stanhope that his Lordship considers it might be

* Nos. 118, 172, and 173 in North American No. 118, and No. 51 in this paper.
† No. 68. ‡ Nos. 75, 77, and 81. § No. 85.

well to suggest to the Canadian Government the desirability of obtaining sworn evidence on their side in view of any claims which may eventually be preferred by the United States' Government in connection with the North American fisheries.

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

The Under-Secretary of State,
Colonial Office.

Enclosure in No. 89.

Treaty No. 111.

WASHINGTON,
December 18th, 1886.

MY LORD,

I have the honour to inform your Lordship that a Bill has been introduced into the House of Representatives, and referred to the Committee on Foreign Affairs, which provides that "the President be and is hereby authorised to appoint a Commission to proceed to such places in the United States or elsewhere as may be designated by the Secretary of State, to take testimony under oath or affirmation in relation to the losses and injuries inflicted since the 31st December, 1885, by British Authorities, Imperial or Colonial, upon citizens of the United States engaged in the fisheries on the north-east coasts of British North America—said Commission to have the same powers as a Commissioner of a Circuit Court."

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

The Earl of Iddesleigh, G.C.B.,
&c., &c., &c.

1,769.

No. 90.

Governor-General the Most Hon. the Marquis of Lansdowne, G.C.M.G., to the Right Hon. Edward Stanhope, M.P.

Confidential.

GOVERNMENT HOUSE, OTTAWA,
7th January, 1887.

SIR,

I had the honour to send to you to-day a telegraphic message in cypher of which the following is the substance :—

"With reference to my despatch confidential of December 28th,* Mr. Bayard's proposal in its present shape is one which my Government could not entertain. We are however prepared to accept in substance the position which is laid down in Lord Clarendon's despatch of May 11th, 1866 to Sir F. Bruce."

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

The Right Hon. Edward Stanhope.

23,628.

No. 91.

Colonial Office to Foreign Office.

DOWNING STREET,
January 8th, 1887.

SIR,

With reference to the letter from this Department of the 23rd of November last,† respecting the alleged proceedings of the Canadian authorities in the case of the United States' fishing vessels "Pearl Nelson" and "Everitt Steele," I am directed by Mr. Secretary Stanhope to transmit to you, to be laid before the Earl of Iddesleigh, a copy of a despatch‡ which was addressed to the Governor-General of Canada on the 22nd of November, together with a copy of the reply§ which has now been received from Lord Lansdowne.

* No. 92.

† No. 45.

‡ No. 44.

§ No. 86.

I am to state that copies of the Governor-General's previous despatches referred to in the one now sent, Nos. 282 and 283 of the 29th of November, were communicated to the Foreign Office in the letter from this Department of the 16th ultimo.*

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

The Under-Secretary of State,
Foreign Office.

646.

No. 92.

Governor-General the Most Hon. the Marquis of Lansdowne, G.C.M.G., to the Right Hon. Edward Stanhope, M.P. (Received January 11th, 1887.)

Confidential.

GOVERNMENT HOUSE, OTTAWA,
December 28th, 1886.

SIR,

I have the honour to inform you that I have received from Sir Lionel West a despatch dated the 22nd instant, enclosing copies of a letter from Mr. Bayard to Mr. Phelps dated November 15th, 1886, and of a memorandum, in which is contained the draft of a proposal by Mr. Bayard "for the settlement of all questions in dispute in relation to the fisheries on the north-eastern coasts of British North America." These papers, of which printed copies were sent to me, have no doubt been transmitted to you through the Foreign Office.

2. I have referred Mr. Bayard's letter and the memorandum to my advisers, and I shall as soon as possible lay before you the formal expression of their opinion upon the subject. As, however, many members of my Government are absent from their offices at this season of the year, and as some time must necessarily elapse before Mr. Bayard's proposal can be reviewed at length, it is as well that I should without further loss of time make you aware of some of the objections to which it is open, and which will, I have no doubt whatever, be made to it.

3. I would, before going further, observe that I have read with satisfaction Mr. Bayard's expression of his hope that advantage will be taken of the period of "comparative serenity" which is likely to prevail during the next few months in order to arrive at an understanding which might put an end to any doubts which now exist with regard to the rights and privileges of United States' fishermen in Canadian waters.

4. I should, however, be slow to admit that the proceedings taken by the Canadian authorities during the past fishing season deserve to be characterised in the terms applied to them by Mr. Bayard. The reports which I have from time to time had the honour of sending to you have shown that the acts of interference which Mr. Bayard describes as involving the unjust and unfriendly treatment of citizens of the United States, were rendered necessary in consequence of the violation by them of the laws to which all vessels resorting to Canadian waters are, without exception, amenable.

5. My Government does not yield to that of the United States in its desire to reduce within the narrowest limits the occasions for interference with the fishermen of the latter Power, and should it prove to be the case that there is no prospect of the establishment of closer and mutually advantageous relations between the two countries either in respect of the fish trade and fishing, or of commercial intercourse generally, it will certainly be desirable that steps should be taken to determine beyond dispute the precise limits which divide the waters in which Canadian fishermen have the exclusive right of fishing from those in which that right is common to fishermen of all nations. A proposal for the appointment of a mixed Commission to which this duty should, subject to the concurrence of the Governments of the Powers interested, be entrusted, was, as Mr. Bayard points out, made in the year 1866 by the American Government, and formed the subject of negotiations which were eventually superseded by those which led to the Treaty of 1871, and to the appointment of the Halifax Commission, which, however, did not deal with the question of the limits of the territorial waters of Canada. If Mr. Bayard had simply reverted to the Adams-Clarendon Memorandum of 1866, omitting the concluding paragraph to which objection was taken at the time by Lord Clarendon, and which, as Mr. Bayard at page 2 of his letter points out, is not con-

tained in the Memorandum which he now submits, I should have regarded more hopefully than I do at this moment the prospect of an understanding being arrived at before another fishing season commences.

6. The first Article, however, of the Draft Proposal now submitted by Mr. Bayard while in other respects following closely the Adams-Clarendon Memorandum differs from that memorandum not only in the omission of the final paragraph of the latter, but also in that it adds (see Mr. Bayard's Draft, Article I, Sub-section I), the important stipulation that the bays and harbours from which American fishermen are in the future to be excluded, save for the purposes for which entrance into the bays and harbours is permitted by said Article, are hereby agreed to be taken to be such bays and harbours only as are ten or less than ten miles in width.

7. This reservation would involve the surrender of the exclusive right of fishing in bays which have hitherto been regarded as beyond all question within the territorial waters of Canada, such for instance as the right of fishing in the inner waters of the Bay des Chaleurs at points forty or fifty miles from its mouth, which, roughly speaking, may be said to be less than twenty miles wide at its opening.

8. I observe that Mr. Bayard in that part of his letter which refers to this suggestion has cited Conventions entered into by France and Great Britain in 1839, and subsequently by other European Powers, in support of his contention that there should be no exclusive right of fishing in bays measuring more than ten miles at their opening. It is, I think, obvious that local arrangements of this kind must be made with reference to the geographical peculiarities of the coast which they affect and to the local conditions under which the fishing industry is pursued in different parts of the world, and that it does not by any means follow that because the ten-mile limit is applicable upon portions of the coast of the continent of Europe it is therefore applicable under the peculiar circumstances, geographical and political, which are present in the case of the North American continent. A reference to the action of the United States' Government, and to the admissions made by their statesmen in regard to bays on the American coasts, will, I think, strengthen this view of the case. The award in regard to the Bay of Fundy, upon which Mr. Bayard also relies in this part of his argument was, I believe, justified mainly upon the ground that one of the headlands which formed this bay was in the Territory of the United States, and that it could not therefore be regarded as a Canadian bay.

9. The *ad interim* arrangement embodied in Article II of the memorandum prejudices in favour of the United States one of the most important of the points which have been in dispute by deciding adversely to Canada the construction which is to be placed upon Imperial and Canadian Statutes, the proper interpretation of which is at this moment the subject of litigation before the Canadian Courts. It is to be observed that this article might in the event of the failure of the two Governments to arrive at a definitive arrangement, a contingency which, considering the relations of the United States' Senate and the President, cannot be dismissed from our contemplation, remain in operation for an indefinite time greatly to the disadvantage of the people of this country.

10. The procedure suggested in Article III for the investigation on the spot of all cases of trespass by United States' fishing vessels appears to be open to criticism as capable of being used for the purpose of frustrating the ends of justice. I would submit that no case has yet been made out for depriving of their jurisdiction, particularly in those cases where the offence must, *ex hypothesi*, have been committed within the territorial waters of the Dominion, the properly constituted and trustworthy tribunals of this country, and substituting for them an irregularly composed Court of First Instance, such as that which would come into existence if this article were to be adopted.

11. Article IV prejudices in favour of the United States the important question which has arisen as to the commercial privileges to which United States' fishing vessels are entitled while in Canadian waters. My Government will, I have no doubt, insist upon the necessity of maintaining the distinction made by the Convention of 1818 between fishing vessels endeavouring to use Canadian bays and harbours as a basis of operations from which to prosecute their industry in competition with Canadian fishermen, and trading vessels resorting to such bays and harbours in the ordinary course of business.

12. The history of the negotiations which preceded the Convention of 1818, makes it perfectly clear that the purchase of bait was not one of the purposes for which it was intended that United States' fishing vessels should have a right of entering Canadian waters. It is, I observe, proposed by Mr. Bayard in the Article under consideration

that this point also should be decided in anticipation against the Dominion without further discussion.

13. Under Article V it is assumed that the seizures and detentions which have taken place during the past season in consequence of non-compliance by United States' fishermen with the Customs' Laws of Canada, have in all cases involved the violation of the Treaty of 1818, by the Canadian authorities, and we are accordingly invited, before submitting our case to examination by the proposed mixed Commission, to release all United States' fishing vessels now under seizure for a breach of our Customs' Laws, and to refund all fines exacted for such illegality. We are, in other words, before going into Court, to plead guilty to all the counts contained in this part of the indictment against us.

14. Indeed, if Mr. Bayard's proposal be considered as a whole it amounts to this, that the Government of the Dominion is to submit its conduct in the past and its rights in the future to the arbitrament of a Commission without any assurance whatever that the recommendations of that Commission are likely to be accepted by Congress; and that before the enquiry commences it is to place upon record the admission that it has been in the wrong upon all the most important points in the controversy. Such an admission would involve the public renunciation of substantial and valuable rights and privileges for all time without any sort of equivalent or compensation. Mr. Bayard can, I venture to think, scarcely expect that my Government should agree to so one-sided a proposal, or should make, without any return, concessions so damaging to the interests of this country or so injurious to its self-respect.

15. I trust that Her Majesty's Government will to the utmost of its ability discourage that of the United States from pressing the proposals in their present shape, and will avoid any action which might induce the belief that the offer embodied in them is one which deserves a favourable reception at the hands of the Government of the Dominion.

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

The Right Hon. Edward Stanhope,
&c., &c., &c.,
Downing Street.

838.

No. 93.

Foreign Office to Colonial Office.

FOREIGN OFFICE,
January 11th, 1887.

SIR,

With reference to your letter of the 29th ultimo,* I am directed by the Secretary of State for Foreign Affairs to transmit to you, to be laid before Mr. Secretary Stanhope, a copy of a note which has been addressed to the United States' Minister at this Court in reply to his note of the 2nd ultimo requesting that the owners of the "David J. Adams," may be furnished with copies of the original reports stating the charges on which that vessel was seized by the Canadian Authorities.

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

The Under-Secretary of State,
Colonial Office.

Enclosure in No. 93.

FOREIGN OFFICE,
January 11th, 1887.

SIR,

Her Majesty's Government have had under their consideration the request contained in your note of the 2nd ultimo, to the effect that the owners of the "David J. Adams" may be furnished with copies of the original reports stating the charges on which that vessel was seized by the Canadian Authorities; and I have now the honour

to state to you that if the owners of this vessel are legally entitled to be furnished with those reports, they can obtain them by the process of the Courts ; and there seems no ground for the interference of Her Majesty's Government with the ordinary course of justice.

As regards the means of obtaining information for the purposes of the defence, I would point out that in the Report of the Canadian Minister of Marine and Fishery, of which a copy was communicated to you on the 23rd July last, it is stated that from a date immediately after the seizure "there was not the slightest difficulty in the United States' Consul-General and those interested in the vessel obtaining the fullest information, and that apart from the general knowledge of the offences which it was claimed the master had committed, and which was furnished at the time of the seizure, the most technical and precise details were readily obtainable at the Registry of the Court, and from the Solicitors for the Crown."

With respect to the statement in your note that a clause in the Canadian Act of May 22nd, 1868, to the effect that "In case a dispute arises as to whether any seizure has or has not been legally made, or as to whether the person seizing was or was not authorised to seize under this Act, the burden of proving the illegality of the seizure shall be on the owner or claimant" is in violation of the principles of natural justice, as well as of those of common law, I have to observe that the statute referred to is cap. 61 of 1868 which provides for the issue of licences to foreign fishing vessels, and for the forfeiture of such vessels fishing without a licence, and that the provisions of Article 10, to which you take exception are commonly found in laws against smuggling, and are based on the rule of law that a man who pleads that he holds a licence or other similar document shall be put to the proof of his plea, and required to produce the document.

I beg leave to add that the provisions of that statute, so far they relate to the issue of licences, have been inoperative since the year 1870.

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

E. J. Phelps, Esq.,
&c., &c., &c.

646.

No. 94.

Colonial Office to Foreign Office.

Confidential.

DOWNING STREET,
January 18th, 1887.

SIR,

With reference to the letter from this Department of the 15th instant,* and to previous correspondence respecting the United States' proposals for an *ad interim* arrangement on the Fisheries Question, I am directed by Secretary Sir Henry Holland to transmit to you to be laid before the Marquis of Salisbury the decypher of a telegram, and a copy of a confidential despatch† from the Governor-General of Canada on the subject.

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

The Under-Secretary of State,
Foreign Office.

291.

No. 95.

*The Right Hon. Sir H. T. Holland, Bart., G.C.M.G., M.P., to Governor-General the
Most Hon. the Marquis of Lansdowne, G.C.M.G.*

Secret.

DOWNING STREET,
January 19th, 1887.

MY LORD,

I have the honour to transmit to you, for communication to your Government, a

copy of a letter* from the Foreign Office, enclosing a despatch from Her Majesty's Minister at Washington, from which it appears that a Bill has been introduced into the House of Representatives for the appointment of a Commission to collect sworn evidence upon the losses inflicted upon United States' fishermen by the action of British authorities.

Your Ministers will doubtless agree with Her Majesty's Government in thinking it desirable that the Canadian Government should take steps to collect similar evidence on their side, in case any formal demand for compensation should hereafter be advanced by the United States' Government.

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

The Marquis of Lansdowne,

291.

No. 96.

Colonial Office to Foreign Office.

DOWNING STREET,
January 19th, 1887.

SIR,

With reference to your letter of the 5th instant,* respecting the North American Fisheries Question, I am directed by Secretary Sir Henry Holland to transmit to you for the information of the Marquis of Salisbury a copy of a despatch† which he has addressed to the Governor-General of Canada on the subject.

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

The Under-Secretary of State,
Foreign Office.

1,464.

No. 97.

Foreign Office to Colonial Office.

FOREIGN OFFICE,
January 22nd, 1887.

SIR,

I am directed by the Marquis of Salisbury to acknowledge the receipt of your letter of the 18th instant,‡ enclosing copies of a despatch and a telegram from the Marquis of Lansdowne on the subject of the *ad interim* arrangement proposed by the United States' Government for the settlement of the North American Fisheries Question.

In, reply, I am to state that Lord Salisbury would be glad to receive, as soon as possible, the full report upon this proposal which Lord Lansdowne promises to send after consultation with his advisers; but that in the meanwhile his Lordship presumes that Sir Henry Holland will not think it desirable that any communication upon the subject should be made to the United States' Government.

I am to suggest that as the next fishing season will commence in about three months from the present date it may be desirable to telegraph to Canada urging the importance of receiving the report of the Dominion Government with the least possible delay.

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

The Under Secretary of State,
Colonial Office.

* No. 89.

† No. 95.

‡ No. 94.

838.

No. 98.

The Right Hon. Sir H. T. Holland, Bart., G.C.M.G., M.P., to Governor-General the Most Hon. the Marquis of Lansdowne, G.C.M.G.

No. 19.

DOWNING STREET,
January 24th, 1887.

MY LORD,

With reference to my predecessor's telegram of the 24th and to your reply of the 26th ultimo,* I have the honour to transmit to you for the information of your Government a copy of a letter† from the Foreign Office enclosing a note to the United States' Minister at this Court in reply to a request from his Government that the owners of the "David J. Adams" might be furnished with copies of certain documents relating to the case.

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

The Marquis of Lansdowne,

1,464.

No. 99.

The Right Hon. Sir H. T. Holland, Bart., G.C.M.G., M.P., to Governor-General the Most Hon. the Marquis of Lansdowne, G.C.M.G.

TELEGRAPHIC.

January 25th. Referring to your telegram 7th January,‡ of great importance that we should learn views of your Ministers as to proposals of United States.

1,707.

No. 100.

Governor-General the Most Hon. the Marquis of Lansdowne, G.C.M.G., to the Right Hon. Sir H. T. Holland, Bart., G.C.M.G., M.P. (Received January 27th, 1887).

TELEGRAPHIC.

26th January. Referring to your telegram of 25th January,§ Report on proposal of United States' Government will be sent home by mail 31st January. It is in accordance with my Confidential despatch of 28th December,|| and repeats accepted suggestions contained in my telegram of 7th January.¶ No objection to confidential communication of my confidential despatch of 28th December|| to United States Government as authoritative exposition of views of Canadian Government.

1,707.

No. 101.

Colonial Office to Foreign Office.

DOWNING STREET,
February 1st, 1887.

SIR,

With reference to your letter of the 22nd ultimo,** respecting the proposal of the United States' Government for a provisional arrangement upon the Fisheries question, I am directed by Secretary Sir Henry Holland to transmit to you to be laid before the Marquis of Salisbury a copy of a telegram†† from the Governor-General of Canada on the subject.

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

The Under-Secretary of State,
Foreign Office.

* Nos. 71 and 77. † No. 93.
¶ No. 90.

‡ No. 90.
** No. 97.

§ No. 99.
†† No. 100.

|| No. 92.

2,040.

No. 102.

*Foreign Office to Colonial Office.*FOREIGN OFFICE,
February 2nd, 1887.

SIR,

I am directed by the Secretary of State for Foreign Affairs to transmit to you, to be laid before Sir Henry Holland, for his information, a copy of a despatch with enclosures from Her Majesty's Minister at Washington, relative to a resolution introduced into and passed by the House of Representatives respecting the duties on fish.

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

The Under Secretary of State,
Colonial Office.

Enclosure in No. 102.

Treaty No. 3.

WASHINGTON,
January 15th, 1887.

MY LORD,

I have the honour to enclose to your Lordship herewith copies of a resolution introduced into and passed by the House of Representatives relative to the duties on fish. I also enclose copies of the reply* of the Secretary of the Treasury to the enquiries contained in it as well as copies of an article from the "New York Times," commenting thereupon.

"The vigorous language in which the Secretary denounces Canada's "reactionary fishery policy," will be found on pages 13 and 15, and is certainly not calculated to allay irritation.

The Dominion of Canada is said to exclude "brutally" American fishermen from Canadian ports, and its officers are accused of displaying "passionate spite" in the discharge of their duties.

With regard to the Reciprocity Treaty of 1854, Secretary Manning says (p. 13); "I can but think that if that Treaty of 1854 had remained in force till this day, the two peoples, divided by a boundary line which can only with difficulty be discerned from the Arctic Ocean to the Pacific, from the Pacific to Lake Superior, and from Lake Ontario to the Atlantic, would now be one people, at least for all purposes of production, trade, and business."

The abrogation of this Treaty, therefore, he considers unfortunate, but no mention is made of the fact that it was denounced by the United States' Government which has persistently refused to take any step in favour of its renewal, and that all the overtures of the Canadian Government to this end have been rejected. The terms "brutal" and "passionate spite" are nevertheless applied to a Government protecting its rights under a Treaty, the stipulations of which it has been forced to have recourse to by the United States' Government itself.

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

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

Extract from the "Congressional Record" of December 8th, 1886.

CONSTRUCTION OF TARIFF ACT OF 1883.

Mr. Belmont submitted the following resolution, which was read, and referred to the Committee on Foreign Affairs:

Resolved, That the Secretary of the Treasury be requested to inform this House what interpretation is now given by the Treasury Department to the tariff law of 1883, which, in one section, declares that "fish, fresh, for immediate consumption," shall be free of tax on arrival at our sea ports or lake ports, and in another section declares that "foreign caught fish, imported fresh, shall be taxed at the rate of 50 cents for each hundred pounds;" and also to transmit to the House copies of all official correspondence,

• Not printed.

opinions, and decisions bearing on the subject, together with a statement of the duties collected each year since 1865 on the several descriptions of fish caught in the lakes or the Canadian tributaries thereof; and also on the several descriptions caught in the North Atlantic or on the shores of the islands thereof.

(Passed December 14).

Extract from the "New York Times" of January 13th, 1887.

THE FISHERY DISPUTE.

The vigorous language in which Secretary Manning denounces Canada's reactionary fishery policy may well create a stir in London as well as in Ottawa. It is true that the views expressed by the State Department in the pending negotiations are the only ones of which the British Government is bound to take note. But when a Cabinet officer, replying, as the Secretary of the Treasury did on Monday, to a resolution of inquiry from the House of Representatives, officially describes the conduct of the Dominion authorities toward our fishermen as "brutal," and as characterised by "passionate spite," it is manifest that the dispute has been pushed to a serious stage.

The history of the controversy, as summarized by Mr. Manning, shows that during forty years, under the first six Presidents, our Government constantly sought greater liberty of access to British colonial ports than the old treaties allowed. At last, under Jackson, through reciprocal legislation of Parliament and Congress, the "mediæval barriers," as Secretary Manning styles them, by which the mother country had sought to hamper the trade of her colonies, were broken down. Fifteen years later, in 1845, England made another concession; while the next year came the great modern system of warehousing and transportation in bond by railway and steamboat. In 1849, 1850, and 1854, this system was extended by British legislation and our own; and now, after all this progress, the Dominion authorities retrograde, and, ignoring what has happened since the stage-coach and sailing-ship era, fix their eyes wholly on the treaty of 1818, and show "unworthy and petty spite against American deep-sea fishermen."

It is worth noting that Mr. Manning, in view of the enormous growth of trade between Canada and the United States under the mutual relaxations of commercial restrictions, holds to-day that if the old reciprocity treaty of 1854 had remained in force till now the two peoples "would now be one people, at least for all purposes of production, trade, and business." We are not sure that this view will be entirely approved by those New England fishermen who oppose reciprocity, past or present, in all forms. But they will at least appreciate the Secretary's declaration that at the present time, "while this department protects Canadian fishermen in the use of American ports, the Dominion of Canada brutally excludes American fishermen from Canadian ports." Mr. Manning finds no fault with Canada for the enforcement of her law placing every vessel arriving from a foreign port in the custody of a customs officer, since most nations, including our own, have the same regulation, which, indeed, is necessary to prevent smuggling. But what he denounces is that American deep-sea fishing vessels, provided with a touch-and-trade permit from American authorities, never intending to fish in her waters, and prepared to obey all her customs laws, are not allowed to visit her ports, buy supplies there, and enjoy commercial privileges, such as are extended to her fishing vessels in our harbours. The Secretary does not fail to mention the recent act of Congress empowering the President to suspend the commercial privileges of vessels of countries denying like privileges to our ships in their ports, although he does not indicate whether or not this power will be used. To the contention of the Canadians that they stand on the treaty of 1818, Mr. Manning replies that they are ignoring all that has happened since; while he expresses the hope that in the prosecution of violations of our customs law, our officers will never display "such passionate spite as has during the last summer been exhibited in the Dominion of Canada toward well meaning American fishermen."

Presumably Mr. Manning does not, in describing the treatment of our fishermen as "brutal," use this word in its ordinary sense, since, so far as we are aware, they have never complained of suffering personal violence; but they have resented the rigour with which port regulations, relaxed in their favour during fifteen years, have suddenly been revived against them, often with severe fines. Perhaps the most noticeable point made by the Secretary is that our Custom House permits "to touch and trade," issued to enrolled vessels for single voyages to enable them to take on merchandize in foreign ports precisely as if registered, is no modern device designed to evade the fishery treaty, but nearly a century old, having been enacted substantially in its present form

as long ago as 1793. The contention that the question of a vessel's status, sometimes entitling her to rank as a commercial ship, even if fitted up for fishing on the high seas, belongs to the nation which issues her papers is a fundamental point in the American case. The truth is that Canada's notion of forbidding certain of our vessels to visit her ports except when driven in by distress for the bare rights of hospitality, even though founded on treaty language employed nearly seventy years ago, is contrary to the spirit of this progressive age.

2,108.

No. 103.

Foreign Office to Colonial Office.

FOREIGN OFFICE,

February 3rd, 1887.

SIR,

With reference to my letter of the 5th ultimo,* I am directed by the Secretary of State for Foreign Affairs to transmit to you to be laid before Sir Henry Holland, a copy of a despatch from Her Majesty's Minister at Washington enclosing copies of the Bill, and report thereon, introduced into the House of Representatives for the appointment of a Commission to investigate losses and injuries inflicted on United States citizens engaged in North American Fisheries.

I am, &c.,

(Signed) J. PAUNCEFOTE.

The Under Secretary of State,
Colonial Office.

Enclosure in No. 103.

WASHINGTON,

January 21st, 1887.

Treaty No. 9.

MY LORD,

With reference to my despatch, No. 111, of this series, of the 18th ultimo, I have the honour to enclose to your Lordship herewith copies of the Bill and report thereon for the appointment of a commission to investigate losses and injuries inflicted on United States citizens engaged in the North American Fisheries.

I have, &c.,

(Signed) L. S. S. WEST.

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

49TH CONGRESS,
2D SESSION.**H. R. 10241.**

[Report No. 3648.]

IN THE HOUSE OF REPRESENTATIVES.

DECEMBER 17, 1886.

Read twice, referred to the Committee on Foreign Affairs, and ordered to be printed.

JANUARY 18, 1887.

Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. BELMONT introduced the following bill :

A BILL

For the appointment of a Commission to investigate concerning losses and injuries inflicted since December thirty-first, eighteen hundred and eighty-five, on United States citizens engaged in the North American fisheries.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress Assembled, That the President be, and is hereby, authorized to appoint a commissioner to proceed to such places in the United States or elsewhere as

may be designated by the Secretary of State, to take testimony, under oath or affirmation, in relation to the losses and injuries inflicted since the thirty-first of December, eighteen hundred and eighty-five, by British authorities, imperial or colonial, upon citizens of the United States engaged in the fisheries on the northeast coasts of British North America. Said commissioner shall everywhere have, in respect to the administration of oaths or affirmations and the taking of testimony, the same powers as a commissioner of a circuit court, and shall be paid the same fees as are prescribed for similar services of a commissioner of a circuit court, together with travelling expenses.

49TH CONGRESS, } HOUSE OF REPRESENTATIVES. { REPORT
2D Session, } { No. 3649.

NORTH AMERICAN FISHERIES.

JANUARY 18, 1887.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

MR. BELMONT, from the Committee on Foreign Affairs, submitted the following

REPORT :

[To accompany bill H. R. 10241.]

The Committee on Foreign Affairs, to which were referred the President's message of December 8th, 1886 (Ex. Doc. No. 19), and the reply of the Secretary of the Treasury, on January 10th, 1887 (Ex. Doc. No. 78), to the resolution of the House adopted on December 14th, 1886, and House bill 10,241, submits the following report :

Your Committee has not only given to those communications the very careful consideration which they deserve, but, during the last session of the House, made diligent inquiry into the whole subject of American fisheries. They were attended in the Committee-room by, among others, William Henry Trescot, Esq., and Charles Levi Woodbury, Esq., of Boston. Mr. Woodbury represented all, or a large majority of, New England owners of fishing vessels, and both of the gentlemen favored your Committee with valuable opinions on different phases of the important subject under consideration.

Your Committee is of the opinion that the rightful area of our "American fisheries" has been reduced, and the quantity of fish—fresh, dried, cured, or salted—landed in the United States free of duty has been diminished, by the conduct of local officers in Canada. That conduct has been not only in violation of treaty stipulations and of international comity, but during the fishing season just passed has been inhuman, as the message of the President clearly establishes.

THE TREATY OF 1783.

The treaty of peace defined, in 1783, the area of American fisheries which might in that portion of the world be prosecuted by American vessels. Its third article declares :

ARTICLE III.

It is agreed that the people of the United States shall *continue* to enjoy unmolested the RIGHT—

- (1) To take fish of every kind on the Grand Bank and all the other banks of Newfoundland;
 - (2) Also in the Gulf of Saint Lawrence;
 - (3) And at all other places, *in the sea*, where the inhabitants of both countries used at any time heretofore to fish. And also that the inhabitants of the United States shall have LIBERTY—
- (1) To take fish of every kind on such part of the *coast* of Newfoundland as British fishermen shall use (but not to dry or cure the same on that island);

(2) And also on the coasts, bays, and creeks of *all* other of His Britannic Majesty's dominions in America.

(3) And that the American fishermen shall have liberty to *dry* and *cure* fish in any of the unsettled bays, harbours, and creeks of Nova Scotia, Magdalen Islands, and Labrador, so long as the same shall remain unsettled; but so soon as the same, or either of them, shall be settled, it shall not be lawful for the said fishermen to *dry* or *cure* fish at such settlement without a previous agreement for that purpose with the inhabitants, proprietors, or possessors of the ground.

When that treaty of peace was signed the British Navigation Act of Charles II and other laws prevented trade in foreign vessels with the Anglo-American colonies. The corner-stone of that policy was a monopoly of colonial trade for British vessels. The American Colonies were founded in subservience to British commerce. A double monopoly was established by England—a monopoly of their whole import, which is all to be from England; a monopoly of their whole export, which is to be sent nowhere but to Great Britain. The colonies were to send all their products raw to England, and take everything from England in the last stage of manufacture. The treaty of peace did not stipulate for a change of that policy as between the United States and Canada, although the American Congress did, in April, 1776, sweep away, so far as it could, that monopoly system from the ports it controlled, abolish British Custom Houses, and put none in their stead, proclaim absolute free trade in the place of heavy restrictions, invite products from any place to come in friendly vessels, and authorise American products to be exported without tax.

After the thirteen States had acquired their independence, American vessels were not only excluded from the ports of the British colonies, but Canada, as a reward for its loyalty, received the exclusive privilege of supplying the British West Indies with timber and provisions, to the great injury of the latter, whose nearest ports were the American Gulf ports and South American ports.

It will be observed that this article, in continuing, confirming, and establishing the thirteen States and their inhabitants in the taking of fish on the banks, in the Gulf, and in the sea, uses the word "*rights*," but uses the word "*liberty*" in confirming to American fishermen the taking of fish on the coast, bays, and creeks of every part of the British dominions in America. The word "*rights*" is thus applied to fishing in the open sea, which by public law is common to all nations, and was intended to affirm that Great Britain did not claim to hold by treaty engagements, or in any other manner, an exclusive right of fishing therein. The word "*liberty*" is thus applied to taking fish, to drying and curing fish, on what was, anterior to the treaty, within the jurisdiction, or territorial waters, of Great Britain, but an exclusive right of taking fish therein was not hers. "*Liberty*," as thus used, implies a freedom from restraint or interference in fishing along the British coasts.

Canada, having been, by the aid of men of the New England colonies, conquered for the English in 1759, the conquest having been confirmed in 1763 by the Treaty of Paris, and the sovereignty of Newfoundland having been conceded to Great Britain by the peace of Utrecht in 1713, the American colonists, who bravely endured sacrifices in war to accomplish those results, shared therein as British subjects down to 1783, when, by treaty, England stipulated that the citizens of the "free, sovereign, and independent States" of America shall *continue* to share, and share alike, with British subjects in such coast fishing. Lord North having in 1775 proposed to the House of Commons to exclude the fishermen of New England from the Banks of Newfoundland, and to restrain them from a toil in which they excelled the world, the joint right to the fisheries became a vital part of the great American struggle. "God and nature," said Johnston, "have given that fishery to *New* England, and not to *Old*." Americans, Britons, and British Canadians became by the treaty partners in the fisheries. It created a "severitude of public law" in favour of American fishermen. ALL British "coasts, bays, and creeks" in America were thereby, as Secretary Manning so aptly says, made a part of our "American fisheries," to which our tariff laws, thereafter enacted, referred and attached, and so made the products thereof exempt from duty on entry at our ports.

THE TREATY OF GHENT.

Thus stood American rights and liberties of fishing on the high seas, and within the limits of British dominion in North America, down to the war of 1812, and to the Treaty of Peace negotiated at Ghent, which closed that war. Till then it was nowhere denied that American fishermen could fish on the high seas and on those coasts wherever British fishermen could fish. But during the negotiations at Ghent,

in 1814, the British negotiators declared that their Government "did not intend to grant to the United States gratuitously the privileges formerly granted by treaty to them of *fishing* within the limits of the British sovereignty, and of using the shores of the British territories for purposes connected with the British fisheries." In answer to this declaration the American negotiators said they were "not authorised to bring into discussion any of the rights or liberties which the United States have heretofore enjoyed in relation thereto."

England contended that the word "*right*" in the Treaty of 1783 was used as applicable to what the United States were to enjoy in virtue of a recognised independence, and the word "*liberty*" to what they were to enjoy as concessions strictly dependent on the existence of the treaty in full force, which concessions fell, as England asserted, on the declaration of war by the United States, and would not be revived excepting for an equivalent.

In the alarming condition of affairs, at home and abroad, in the autumn of 1814, our Government did finally authorise our negotiators at Ghent to agree to the *status quo ante bellum* as the basis of negotiation, provided only that our national independence was preserved. (See introductory notes by Hon. J. C. Bancroft Davis to "Treaties and Conventions," published by the Department of State in 1873, p. 1021.) The Treaty was signed on December 24, 1814. How different might have been its terms had there been procrastination till the news came of General Jackson's brilliant victory at New Orleans only fifteen days afterward, or till the escape of Napoleon from Elba only two months later.

THE TREATY OF 1818.

Within a short time after the close of the year 1814 England announced her purpose to exclude American fishermen from the "*liberty*" of fishing within one marine league of her shores in North America, and of drying and curing fish on the unsettled parts of those territories.

The announcement led up to the Treaty of 1818, whereby the "*liberty*" conceded in 1783 to belong to American fishermen was confined within narrower limits, and the area of American fisheries was greatly reduced as well as the quantity of American caught fish arriving, exempt from taxation, at our ports. That Treaty of 1818, and the misunderstanding under it, led up to the Marcy-Elgin Reciprocity Treaty of 1854, terminated in 1866, which covered by a new stipulation a part of the stipulations contained in the Treaty of 1818. Your Committee do not now express an opinion whether or not the termination of the Reciprocity Treaty of 1854 revived the superseded and dead stipulation of the Convention of 1818, contained in its renunciation sentences, which are the last sentences of the first article, for which stipulation in the Treaty of 1818 a new and positive stipulation was substituted and inserted in the Treaty of 1854, which last-named treaty might, in accordance with its terms, have been in force indefinitely.

The first article of the Treaty of 1818, which has been the cause of such unnumbered international differences and disputes is in these words:—

Whereas differences have arisen respecting the *liberty* claimed by the United States for the inhabitants thereof to take, dry, and cure fish on certain *coasts, bays, harbors, and creeks* of His Britannic Majesty's dominions in America, it is agreed between the high contracting parties that the inhabitants of the said United States shall have for ever, in common with the subjects of His Britannic Majesty, the liberty to take fish of every kind—

1. On that part of the southern coast of Newfoundland which extends from Cape Ray to the Rameau Islands, on the western and northern coasts of Newfoundland, from the said Cape Ray to the Quirpon Islands;

2. *On the shores of the Magdalen Islands;*

3. And also on the coasts, bays, harbors, and creeks from Mount Joly on the southern coast of Labrador, to and through the Straits of Belle Isle, and thence northwardly indefinitely along the coast, without prejudice, however, to any of the exclusive rights of the Hudson's Bay Company.

And that the American fishermen shall also have liberty for ever *to dry and cure fish* in any of the unsettled bays, harbors, and creeks of the southern part of the coast of Newfoundland, hereabove described, and of the coast of Labrador; but so soon as the same, or any portion thereof, shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such portion so settled without previous agreement for such purpose with the inhabitants, proprietors, or possessors of the ground.

And the United States hereby renounce for ever any *liberty* heretofore enjoyed or claimed by the inhabitants thereof to take, dry, or cure fish on or within three marine miles of any of the coasts, bays, creeks, or harbors of His Britannic Majesty's Dominions in America *not included within the above-mentioned limits:*

Provided, however, That the *American fishermen* shall be permitted to enter such bays or harbors (1) for the purpose of shelter and (2) of repairing damages therein; of (3) purchasing wood and (4) of obtaining water, and for no other purpose whatever. But they shall be under such restrictions as may be necessary to prevent their taking, drying, or curing fish therein, or in any other manner whatever abusing the privileges hereby reserved to them.

That article does not allude to, or attempt to interfere with, our rights in the open sea, on the banks, or in the Gulf, which were confirmed by the concession of the independence of the thirteen States. It refers only to the liberty claimed and recognised by the Treaty of 1783, "on certain coasts, bays, harbors, and creeks." It begins by a recital that differences have arisen respecting the "liberty" claimed by American fishermen *in those places*. It neither mentions nor alludes to any differences about fishing on the high seas. It stipulates that American fishermen may fish on certain specified coasts, bays, harbors, creeks, and shores, and may dry and cure fish on certain unsettled bays, harbors, and creeks, and especially dry and cure on the coasts of Newfoundland, which last the Treaty of 1783 did not embrace. The United States "renounces" any "liberty" to take, dry, or cure fish within three miles of any other coasts, bays, creeks, or harbors than those specified in the article, but the sentence of renunciation contains a stipulation that the American fishermen may enter "*such bays or harbors*" for four specified purposes, "and for no other purpose whatever," under such restrictions as may be *necessary* to prevent fishing, drying, or curing "*therein*."

Unless English words were in 1818 used in that article in an unusual sense, there is not a sentence or word therein that has reference to anything else than taking, drying, or curing fish, by American fishermen, on or within certain coasts, bays, creeks, or harbours therein described. No word or phrase mentioned alludes or refers to deep-sea fishing or ordinary commercial privileges. The restrictions refer only to fishing, or drying, or curing "in such bays or harbours."

It is to be assumed that when this Treaty of 1818 was signed, the British statutes of Charles II, in restraint of navigation, the rudiments of which are to be seen in 1650, and were aimed at Dutch trade with British sugar colonies, were, on the English side, rigorously enforced, so that no merchandise could be lawfully imported into Canadian ports excepting in English bottoms. The Treaty of 1818 was concluded on October 20th of that year, but ratifications were not exchanged till January 30th, 1819. Certainly on our side there was then in force legislative restriction on navigation almost as severe as was the English enactment after the restoration of Charles II. America had not then emerged from the era of the embargo, Berlin and Milan decrees, and the influences of the war of 1812. On April 18th, 1818, the President approved a law closing our ports after September 30th, 1818, against British vessels coming from a colony which, by the ordinary laws, is closed against American vessels. Touching at a port open to American vessels could not modify the restriction. Vessels and cargoes entering, or attempting to enter, in violation of the law, were forfeitable. And any English vessel that could lawfully enter our ports was compelled to give a bond, if laden outward with American products, not to land them in a British colony or territory from which American vessels were excluded. The presumption is that, quite independently of fishing rights and liberties, no American vessel was for long before and after 1818 permitted by English law to touch and trade in Canadian ports. How that system of exclusion was gradually broken down, not by treaty, but by concerted legislation, the Secretary of State and the Secretary of the Treasury have clearly exhibited in the communications referred to your committee.

Not till 1832 were American wheat and lumber permitted to go directly from American ports to the British West Indies and be entered there. In 1843 Canada was allowed to import American wheat, and then send it through the Saint Lawrence to the English market as native produce—an indirect open blow at the English corn laws. Canadian trade entered upon another stage of prosperity in 1846, when the restrictive navigation laws of England were again relaxed for her benefit, and in 1850, when Canada was quite relieved from the injurious influences of those laws; but yet Canada, at this late day, endeavors to return to those obsolete and condemned restraints on trade by excluding deep-sea American fishermen from her ports.

That a sovereign state has exclusive jurisdiction in its own territory, and over its own vessels on the high seas, is nowhere denied. Mr. Fish announced, as Secretary of State, in 1875, "we have always understood and asserted that, pursuant to public law, no nation can rightfully claim jurisdiction at sea beyond a marine league from the coast." No nation has asserted, independently of a treaty, an exclusive dominion over the sea surrounding its coast applicable to the *passing* ships of other nations. Why

should a vessel which, under stress of weather or necessities of navigation, casts anchor for a few hours in a bay be subjected to a larger or fuller foreign jurisdiction than a passing vessel, provided inshore fisheries are not thereby poached upon, or the revenue evaded, or safe navigation endangered, or crime attempted or committed? Why need a powerful State take any cognizance of such innocent and casual presence of a little body of foreign seamen? The treaties which have been made applicable thereto refer to neutrality in war and the exclusive right of fishing, thereby proving the general rule. There is no doubt a well-founded claim, based on *usage*, over an exclusive dominion of *some* narrow zone of the sea for *some* purposes, but those purposes are carefully restricted, among other things, to navigation, rules of the road, lighthouses, quarantine, pilotage, anchorage, revenue, or local fisheries. By the treaties of 1783 and 1818 there is a zone of the Canadian and Newfoundland coasts open and free to American fishermen.

That dispute was settled, and a new contract entered into by the reciprocity treaty of 1854, which stipulated:

ARTICLE 1. It is agreed by the high contracting parties that *in addition to the liberty secured to the United States fishermen by the above-mentioned convention of October 20th, 1818*, of taking, curing, and drying fish on certain coasts of British North American colonies therein defined, the inhabitants of the United States shall have, in common with the subjects of Her Britannic Majesty, the liberty to take fish of every kind, except shell fish, on the sea-coasts and shores, and in the bays, harbours, and creeks of Canada, New Brunswick, Nova Scotia, Prince Edward Island, and of the several islands thereunto adjacent (and, by another article, Newfoundland), without being restricted to any distance from shore, with permission to land upon the coasts and shores of those colonies and the islands thereof, and also upon the Magdalen Islands, for the purpose of drying their nets and curing their fish; provided that, in so doing, they do not interfere with the rights of private property, or with British fishermen in the peaceable use of any part of the same coast in their occupancy for the same purpose. It is understood that the above-mentioned liberty applies solely to the sea-fishery, and that the salmon and shad fisheries and all fisheries in rivers and the mouths of rivers are hereby reserved exclusively for British fishermen.

Similar provision was made in Article II, with like exception, for the admission of British subjects to take fish on a part of the sea-coasts and shores of the United States.

The United States purchased the fishery provisions of this treaty, and exemption from certain restrictions in the Treaty of 1818, by stipulations that certain enumerated articles of the growth and produce of the British colonies of Canada, New Brunswick, Nova Scotia, Prince Edward Island, and Newfoundland should be admitted at our ports free of duty.

They were the incidents of a larger question, namely, the terms of commercial intercourse between the United States and the British colonies in North America.

It is not contended anywhere, by anybody, that the stipulations in the Treaty of Peace of 1783, by which the sovereignty and independence of the thirteen States were acknowledged, their boundaries fixed, their right established to navigate the high seas and to fish therein, fell by the war of 1812. Nor is it pretended that the war of 1812 grew out of the exercise of fishing rights under the Treaty of 1783, so as that whatever stipulations therein were intended to be permanent, to bind during war, and to survive war, were extinguished by the war. Even if it be conceded that the "liberty to Americans," in the Treaty of 1783, to catch or cure and dry fish on the coast of Newfoundland, and "on the coasts, bays, and creeks of all other of Her Britannic Majesty's dominions in America," could, on a declaration of war by the United States, have been annulled by England, they were not at any time expressly annulled. If they could have been suspended by the will of England, they were not expressly suspended. If they were suspended by the fact of war, if they were like temporary commercial engagements, or like postal treaties, there was nothing in the facts of the war of 1812 to prevent them from recommencing their operations automatically with the peace. Nothing in the relations of the two Governments was inconsistent with their survival. Mr. Dana, in his note on Wheaton (page 353), has stated the rule thus:

If a war arises from a cause independent of the treaty, the survival of any clause in the treaty must depend upon its nature and the circumstances under which it was made.

The question of amendment or survival of the Treaty of 1783, as to certain specified parts of the British Coast in America, was, however, by the treaty of 1818, made of no practical consequence (so long as that treaty endured) by the renunciation signed by the United States.

THE CANADIAN CONTENTION.

The legal effect of the first article of the treaty of 1818 may be sketched in outline in this wise :

All the British coast, shores, bays, harbors, and creeks in America were, by that article, separated into two portions, which were bounded, defined, and identified. The two may be marked, respectively, as A and B. In the sixth volume of "*Papers Relating to the Treaty of Washington*," published by the Department of State in 1874, is a map of New Brunswick, Nova Scotia, Newfoundland, and Prince Edward Island, colored in a way to plainly exhibit these two portions. In all that portion marked A it was agreed that the inhabitants of the United States shall have for ever, in common with British subjects, the *liberty* to take fish of every kind; but as to the portion marked B, the United States renounced for ever any liberty theretofore enjoyed or claimed to take, dry, or cure any fish. It was stipulated nevertheless, that "the American fishermen shall be permitted to enter" the portion marked B for the purpose of shelter, repairing damages, purchasing wood, obtaining water, and, "for no other purpose whatever."

The entire article referred to inshore *fishing*. No right and no liberty whatever, that might concern deep-sea fishermen, did the United States, by the treaty of 1818, renounce.

This obvious intent and purpose of the article is confirmed by the last words of the section, which declares: "But they" (the American fishermen) "shall be under such restrictions as may be necessary to prevent their taking, drying, or curing fish therein" (in portion B) "or in any other manner abusing the privileges hereby reserved to them." The "restrictions" to be imposed upon the American fishermen, while in portion B, are expressly limited, not to such as concern navigation or revenue, but to such as were specifically renounced, namely, to such as "may be *necessary* to prevent their taking, drying, or curing fish therein, or in any other manner whatever abusing the privileges hereby reserved to them" *in order to take, dry, or cure fish therein*.

Was it not clearly the intention of the negotiators of this treaty that the character of these restrictions should be agreed upon by the parties to the treaty? Is it reasonable to assume that the American negotiators intended that the Canadian provinces, or even the British Government should have the exclusive power to prescribe "restrictions" which might entirely destroy the value of any unrenounced right and liberty theretofore claimed and enjoyed, or of any conceded "privileges" thereby reserved to American fishermen in portion B?

These preliminary explanations will assist to measure the force and bearing upon American deep-sea fishermen of the interpretation put upon the treaty by the Canadian Dominion during the last summer.

The following extracts are taken from the message of the President to Congress of the 8th ultimo.

WHAT CANADA HAS SAID.

On June 5, 1886, the Canadian Minister of Marine and Fisheries declared :

It appears the "*Jennie and Julia*" is a vessel of about 14 tons register, that she was to all intents and purposes a fishing vessel, and, at the time of her entry into the port of Digby, had fishing gear and apparatus on board, and that the collector fully satisfied himself of these facts. According to the master's declaration, she was there to purchase fresh herring only, and wished to get them direct from the weir fishermen. The collector, upon his conviction that she was a fishing vessel, *and, as such, debarred by the treaty of 1818 from entering Canadian ports for the purposes of trade*, therefore, in the exercise of his plain duty, warned her off.

The treaty of 1818 is explicit in its terms, and by it United States fishing vessels are allowed to enter Canadian ports for shelter, repairs, wood and water, and "for no other purpose whatever."

The undersigned is of the opinion that it cannot be successfully contended that a *bona-fide* fishing vessel can, by simply declaring her intention of purchasing fresh fish for other than baiting purposes, evade the provisions of the treaty of 1818, and obtain privileges not contemplated thereby. If that were admitted, the provision of the treaty which excludes United States fishing vessels for all purposes but the four above mentioned would be rendered null and void, and the whole United States fishing fleet be at once lifted out of the category of fishing vessels, and allowed the free use of Canadian ports for baiting, obtaining supplies, and transshipping cargoes.

It appears to the undersigned that the question as to whether a vessel is a fishing-vessel or a legitimate trader or merchant vessel is one of fact, and to be decided by the character of the vessel and the nature of her outfit, and that the class to which she belongs is not to be determined by the simple declaration of her master that he is not at any given time acting in the character of a fisherman.

At the same time the undersigned begs again to observe that Canada has no desire to interrupt the long-established and legitimate commercial intercourse with the United States, but rather to encourage and maintain it, and that Canadian ports are at present open to the whole merchant navy of the United States on the same liberal conditions as heretofore accorded.

On June 7, 1886, the Canadian Governor-General advised the Minister of Foreign Affairs at London :

No attempt has been made either by the authorities intrusted with the enforcement of the existing law or by the Parliament of the Dominion to interfere with vessels engaged in *bona-fide* commercial transactions upon the coast of the Dominion. The two vessels which have been seized are both of them, beyond all question, fishing vessels, and not traders, and therefore liable, subject to the finding of the courts, to any penalties imposed by law for the enforcement of the Convention of 1818 on parties violating the terms of that Convention.

On June 14, 1886, a committee of the Privy Council of Canada put forth the following opinions and conclusions, which were approved by the Governor-General :

It is not, however, the case that the Convention of 1818 affected only the inshore fisheries of the British provinces ; it was framed with the object of affording a complete and exclusive definition of the rights and liberties which the fishermen of the United States were thenceforward to enjoy in following their vocation, so far as those rights could be affected by facilities for access to the shores or waters of the British provinces, or for intercourse with their people. It is therefore no undue expansion of the scope of that convention to interpret strictly those of its provisions by which such access is denied, except to vessels requiring it for the purposes specifically described.

Such an undue expansion would, upon the other hand, certainly take place if, under cover of its provisions or of any agreement relating to general commercial intercourse which may have since been made, permission were accorded to United States fishermen to resort habitually to the harbors of the Dominion, not for the sake of seeking safety for their vessels or of avoiding risk to human life, but in order to use those harbors as a general base of operations from which to prosecute and organize with greater advantage to themselves the industry in which they are engaged.

It was in order to guard against such an abuse of the provisions of the treaty that amongst them was included the stipulation that not only should the inshore fisheries be reserved to British fishermen, but that the United States should renounce the right of their fishermen to enter the bays or harbors, excepting for the four specified purposes, which do not include the purchase of bait or other appliances, whether intended for the deep-sea fisheries or not.

The undersigned, therefore, cannot concur in Mr. Bayard's contention that "to prevent the purchase of bait, or any other supply needed for deep-sea fishing, would be to expand the convention to objects wholly beyond the purview, scope, and intent of the treaty, and to give to it an effect never contemplated."

Mr. Bayard suggests that the possession by a fishing vessel of a permit to "touch and trade" should give to her a right to enter Canadian ports for other than the purposes named in the treaty, or in other words, should give her perfect immunity from its provisions. This would amount to a practical repeal of the treaty, because it would enable a United States Collector of Customs, by issuing a license originally only intended for purposes of domestic customs regulation, to give exemption from the treaty to every United States fishing vessel. The observation that similar vessels under the British flag have the right to enter the ports of the United States for the purchase of supplies loses its force when it is remembered that the Convention of 1818 contained no restriction on British vessels and no renunciation of any privileges in regard to them.

On August 14th, 1886, the Minister of Marine and Fisheries said :

There seems no doubt, therefore, that the "Novelty" was in character and in purpose a fishing vessel, and as such comes under the provisions of the Treaty of 1818, which allows United States fishing vessels to enter Canadian ports "for the purpose of shelter and repairing damages therein, and of purchasing wood and of obtaining water, and for no other purpose whatever."

The object of the captain was to obtain supplies for the prosecution of his fishing, and to transship his cargoes of fish at a Canadian port, both of which are contrary to the letter and spirit of the Convention of 1818.

On October 30th, 1886, a Committee of the Canadian Privy Council contended, and the Administrator of the Government in Council upheld the contention—

That the Convention of 1818, while it grants to United States fishermen the right of fishing in common with British subjects on the shores of the Magdalen Islands, does not confer upon them privileges of trading or of shipping men, and it was against possible acts of the latter kind, and not against fishing inshore, or seeking the rights of hospitality guaranteed under the Treaty that Captain Vachem [McEachern] was warned by the Collector.

On November 24th, 1886, a Committee of the Canadian Privy Council declared, and the Governor-General approved the declaration :

The Minister of Marine and Fisheries, to whom said dispatch was referred for early report, states that any foreign vessel, "not manned nor equipped, nor in any way prepared for taking fish," has full liberty of commercial intercourse in Canadian ports upon the same conditions as are applicable to regularly registered foreign merchant vessels ; nor is any restriction imposed upon any foreign vessels

dealing in fish of any kind different from those imposed upon foreign merchant vessels dealing in other commercial commodities.

That the regulations under which foreign vessels may *trade* at Canadian ports are contained in the Customs laws of Canada (a copy of which is herewith), and which render it necessary, among other things, that upon arrival at any Canadian port a vessel must at once enter inward at the Custom House, and upon the completion of her loading, clear outwards for her port of destination.

AMERICAN FISHERMEN ARE NOT OUTCASTS.

The foregoing contention, set up not merely by the Canadian Privy Council, but by the Governor-General of the Dominion of Canada sweeps into the meshes of Canadian legislation to enforce the First Article of the Treaty of 1818, every deep-sea fisherman, in his relation to Canadian ports, no matter on what sea or ocean, Atlantic or Pacific, he may have pursued, or may intend to pursue, his industry. That contention places all American deep-sea fishermen entitled to wear the flag of the Union at the masthead of their boats or vessels, be they little or big, under much the same ban in respect to the hospitality of Canadian ports as they would be if pirates, or slave traders, or filibusters, or other enemies of the human race. "She was a *fishing vessel*," says, on June 5th, 1886, the Canadian Minister of Marine and Fisheries, and therefore "debarred by the Treaty of 1818 from entering Canada for the purposes of trade." "The two vessels which have been seized are, both of them, beyond all question *fishing vessels*, and not traders," says the Governor-General of the Dominion of Canada to Lord Granville on June 7th, 1886, "and therefore liable, subject to the finding of the courts, to any penalties imposed by law for the enforcement of the Convention of 1818." "We cannot concur in Mr. Bayard's contention," said the Canadian Privy Council on June 14th, 1886, that "to prevent the purchase of bait or any other supply needed for deep-sea fishing, would be to expand the Convention to objects wholly beyond the purview, scope, and intent of the treaty, and give to it an effect never contemplated." "American deep-sea fishermen cannot," said the Canadian Minister of Marine and Fisheries, on October 14th, 1886, "obtain supplies for the prosecution of his fishing, and to transship his cargoes of fish at a Canadian port," because both "are contrary to the letter and spirit of the Convention of 1818." "The Convention of 1818," said a Committee of the Canadian Privy Council, on October 30th, 1886, "does not confer upon United States' *fishermen* 'privileges of trading or of shipping men' in Canadian ports." And, finally, a Committee of the Canadian Privy Council declared, in effect, on November 24th, 1886, that an American vessel, *manned, equipped, and prepared for taking fish*, has not the liberty of commercial intercourse in Canadian ports, such as are applicable to other regularly registered foreign merchant vessels.

Such an interpretation of the present legal effect of the First Article of the Treaty of 1818 is, in the opinion of your Committee, so preposterous, in view of concerted laws of comity and good neighbourhood enacted by the two countries, that, had it not been formally put forth by the Dominion of Canada, [it] would not deserve serious consideration by intelligent persons. If all the stipulations of 1818 restraining American fishermen are now in full force (which may well be doubted), your Committee concedes that American fishermen have no more liberty to take fish or to dry or cure fish in what has been described as portion B, than a British fisherman has to take fish in the inner harbour of New York, and to dry or cure fish in the City Hall park of that city. But the liberty of an American fisherman to take, dry, and cure fish in portion A, in common with British subjects, is as complete and absolute as is the right of citizens of New York to fish in the waters of the Hudson River. The Treaty of 1818 furnishes no more excuse for the exclusion of a deep-sea fisherman from the port of Halifax, or any other open port of the Dominion of Canada, than for the exclusion by the Secretary of the Treasury of a deep-sea fisherman from entering the port of New York according to the forms of law, and for the ordinary purposes of trade and commerce. The exclusion, if made, must be justified, if at all, for other reasons than any yet given by Canada.

Keeping in mind the words of the Third Article of the Treaty of Peace in 1783, which not only acknowledged the *right* of the united American colonies to fish in the open sea as freely as to navigate the open sea, but also acknowledged and stipulated for the *liberty* to "take fish of every kind" on coasts, bays, and creeks of *all* of his Britannic Majesty's dominions in America, it will be discerned that this contention of the Privy Council of Canada makes of the renunciation by the United States in 1818 of the liberty theretofore enjoyed or claimed by American fishermen within three miles of certain carefully defined coasts, bays, creeks, or harbors, not merely a renunciation of

specific local liberty, but a forsaking, a relinquishment, a surrender, an abandonment by the United States of other rights held up to 1818.

CERTAIN CANADIAN COASTS ARE SUBSERVIENT TO AMERICAN FISHERMEN.

The treaty of 1783 diminished and impaired, and was intended to diminish and impair, British sovereignty over the remaining British Colonies of North America. The United States had conquered full and complete dominion over the right of fishing in the jurisdictional waters of each of the thirteen United States, but the British colonies did not emerge from the negotiation of the treaty of peace with similar dominion over the fisheries on the shores and coasts of the thirteen recognized States. British fishermen cannot fish on the coasts of Massachusetts, but American fishermen can fish on certain shores and coasts of the Dominion of Canada and of Newfoundland. Apart from fishing and the incidents of fishing, it is conceded that the British Government has exclusive control, as against the United States, of the customary and usual rights of navigation in the jurisdictional waters of the British Colonies. What we claim for ourselves, under the rules of public law, and apart from treaties, we concede to others. Rights of *navigation* are ordinarily separate from rights of *fishing*. The Commonwealth of Massachusetts may control the right and liberty of *fishing* on her coast, as against any power other than the Government of Washington, but the right of navigation of the jurisdictional waters of Massachusetts is always subject to the control of the United States. The *use* of waters in respect to navigation is easily distinguishable from the *fruit* of waters in respect to fishing or fish. The United States have, so far as the British North American Colonies, and all the world, are concerned, the right of navigating and fishing on the high seas, and in addition the right of *fishing* in certain British territorial and jurisdictional waters. That right of fishing, either inshore or offshore, should carry with it the natural and necessary navigating incidents of the right.

It may be conceded that, apart from the right of American fishermen to take fish of all kinds within certain clearly defined British waters, American deep-sea fishermen have no greater rights, by treaty or public law, in British ports, than British fishermen have in American ports, so far as concerns revenue, police, maritime tolls or taxes, pilotage, lighthouses, quarantine, and all matters of ceremonial. But the contention of the Privy Council of Canada is that if a vessel bearing the registry, or enrollment, or licence of the Treasury Department (which alone makes her an American vessel) be licensed, equipped, and under contract with her seamen as an American fisherman on the open sea, she thereby comes under the ban of the Treaty of 1818, and is thereby abandoned by the nation whose flag is at her mast-head, and is by the treaty excluded from an entrance into a Canadian or Newfoundland port, excepting for one of the objects enumerated in that treaty. Canadian ports are closed to her as to an outcast. An American or a Canadian fishing vessel on the high seas, and lawfully wearing the flag of its country should be, if permitted by its own Government to touch and trade, entitled to the same rights of navigation and the same treatment in a foreign port as any trading vessel.

CANADIAN INHUMANITY.

If the Privy Council and the Governor-General of the Canadian Dominion excluded all American vessels from all rights of touching or trading in Canadian ports, excepting to obtain shelter, repairs, wood, or water, the contention would be logical and more tolerable; but to every American vessel other than a fishing vessel, be the fisherman big or little—a schooner, a sloop, a ship, or a steamer of large tonnage—Canadian ports seem to be wide open. If, however, she be an American fishing vessel on the high seas, she cannot go into a Canadian bay even to bury those of her dead who in life may have been British subjects with a domicile in Canada and a residence on the land near the bay, and may have expressed a wish not to be committed to the sea, but to be lain at rest by their kindred on the spot which gave them birth.

The Treaty of 1818 gave rights of fishing independent of general commercial rights, although it may be said that, as to shelter, repairs, wood, and water, the treaty did give to fishermen certain commercial rights, or rather a few rights of humanity. The treaty did not restrain the granting or the exercising of commercial rights. The right, if it be a right, of an American to buy anything in Canada does not come of the inshore fishing treaty of 1818. Your Committee are not aware of any Canadian or

Newfoundland law which, having been approved by the British Crown, forbids a British subject to there sell ice, or bait, or anything else, to an American, or to trade with him. If there be such a law, then non-intercourse has to that extent been proclaimed against our countrymen.

CANADIAN VIOLATIONS OF TREATIES.

The contention of your Committee is that the Treaty of 1818 covers differences and disputes about the liberty of American fishermen to take, dry, and cure fish on certain British North American coasts, bays, harbors, and creeks. The Privy Council of Canada, at the bottom of page 32 (Ex. Doc. No. 19, Forty-ninth Congress, second session), concedes the correctness of this contention. They say :

The *sole* purpose of the Convention of 1818 was to establish and define the rights of citizens of the two countries in relation to the *fisheries* on the British North American coast.

The treaty is limited to coast fishing, drying, or curing. On certain defined portions of the coast "American fishermen" may fish, but elsewhere on the coast they may not fish, and yet those coast "American fishermen" may, nevertheless, and for certain purposes, enter the bays and harbours in which they cannot fish, under restrictions—to prevent them from doing what? "Taking, drying, or curing fish *therein*?"

Your Committee contend that the term "American fishermen," as used in the Treaty of 1818, means the "American fishermen" of and under that treaty. The rule *noscitur a sociis*, as understood and applied by judges and lawyers in England and America, limits and defines the term. They have a treaty right to enter "such bays and harbors" and to *remain* there, subject, and subject only, to such restrictions "as may be *necessary* to prevent their taking, drying, or curing fish therein." The restrictions can only apply to the prevention of such *fishing* in those bays or harbors. Whatever concerns or is preparation for fishing elsewhere is not thereby to be prevented. It is true that, by the Treaty of 1818, we have stipulated that our fishermen "shall be under such restrictions as may be necessary to *prevent* their taking, drying, or curing fish *therein*," but the treaty says nothing of "preparing to fish" somewhere else. A fair presentation of the opinions of the Vice-Admiralty Court of Canada, in regard to the meaning of the Canadian phrase "preparing to fish"—which is a stranger to the Treaty of 1818—can be seen in Dr. Wharton's "International Law Digest," Vol. III, § 304.

If it be said that our view of the treaty is strict, severe, and rigid as against Canadian statutes and officials, your committee answer that when Canada proposes and endeavors to use a treaty to arrest and fine American fishermen, seize and confiscate American vessels for the benefit of Canadian seizers, the Government of the United States is entitled to stand on such an interpretation. But even if the treaty of 1818 covers (which it does not) every American fisherman entering a Canadian harbor, on whatever sea or ocean he may cast a line or draw a seine, the Canadian statutes do not preserve and enforce the treaty. They destroy it, so far as the privileges are concerned that are given to American fishermen by the treaty.

First of all in order of time and authority is the imperial legislation at London in 1819 to enforce the treaty of the previous year. After forbidding every one, excepting British subjects and American citizens (who could do so within defined limits), to fish, dry, or cure fish anywhere within three miles of British coasts in America, that law of 1819 punishes by forfeiture any offending vessel, and all the articles on board. Then comes this :

That if any person or persons, upon requisition made by the governor of Newfoundland, or the person exercising the office of governor, or by any governor or person exercising the office of governor, in any other parts of His Majesty's dominions in America, as aforesaid, or by any officer or officers acting under such governor or person exercising the office of governor, in the execution of any orders or instructions from His Majesty in Council, shall refuse to depart from such bays or harbors; or if any person or persons shall refuse or neglect to conform to any regulations or directions which shall be made or given for the execution of any of the purposes of this act, every such person so refusing or otherwise offending against this act shall forfeit the sum of £200, to be recovered, &c.

It will be seen that not forfeiture, but a fine to be recovered by a suit, is inflicted for refusing or neglecting to depart on notice. The statutes of Canada are not, as the Canadian Privy Council asserted (p. 32), "expressed in almost the same language" as the foregoing imperial statute.

The Prince Edward's [Island] Enactment of 1844 gives the key-note of Canadian enactments. It declares :

Whereas by the Convention (made between his late Majesty King George the Third and the United States of America, signed at London, on the twentieth day of October, in the year of our Lord one thousand eight hundred and eighteen,) and the statute (made and passed in the Parliament of Great Britain in the fifty-ninth year of the reign of his late Majesty King George the Third,) all foreign ships, vessels, or boats, or any ship, vessel, or boat, other than such as shall be navigated according to the laws of the United Kingdom of Great Britain and Ireland, found fishing, or to have been fishing, or preparing to fish, within certain distances of any coast, bays, creeks, or harbors whatever, in any part of His Majesty's dominions in America not included within the limits specified in the first article of the said convention, are liable to seizure; and whereas the United States did by the said convention, renounce for ever any liberty enjoyed or claimed by the inhabitants thereof to take, dry, or cure fish on or within the above-mentioned limits: *Provided, however,* That the American fishermen be admitted to enter such bays or harbors for the purpose of shelter and of repairing damages therein, of purchasing wood, and of obtaining water, and for no other purposes whatever, but under such restrictions as might be necessary to prevent their taking, drying, or curing fish therein, or in any other manner whatever abusing the privileges thereby reserved to them; and whereas no rules or regulations have been made for such purpose, and the interests of the inhabitants of this island are materially impaired; and whereas the said act does not designate the persons who are to make such seizure as aforesaid, and it frequently happens that persons found within the distances of the coasts aforesaid, infringing the articles of the convention aforesaid, and the enactments of the statute aforesaid, on being taken possession of, profess to have come within said limits for the purpose of shelter and repairing damages therein, or to purchase wood and obtain water, by which the law is evaded, and the vessels and cargoes escape confiscation, although the cargoes may be evidently intended to be smuggled into this island, and the fishery carried on contrary to the said convention and statute.

The Canadian enactment of 1868 came next, the second and third sections of which say:

2. Any commissioned officer of Her Majesty's navy serving on board of any vessel of Her Majesty's navy cruising and being in the waters of Canada for purpose of affording protection to Her Majesty's subjects engaged in the fisheries, or any commissioned officer of Her Majesty's navy, fishery officer, or stipendiary magistrate on board of any vessel belonging to or in the service of the Government of Canada and employed in the service of protecting the fisheries, or any officer of the customs of Canada, sheriff, magistrate, or other person duly commissioned for that purpose, may go on board of any ship, vessel, or boat within any harbor in Canada, or hovering (in British waters) within three marine miles of any of the coasts, bays, creeks, or harbors in Canada, and stay on board so long as she may remain within such place or distance.

3. If such ship, vessel, or boat be bound elsewhere, and shall continue within such harbor or so hovering for twenty-four hours after the master shall have been required to depart, any one of such officers or persons as are above-mentioned may bring such ship, vessel, or boat into port and search her cargo, and may also examine the master upon oath touching the cargo and voyage; and if the master or person in command shall not truly answer the questions put to him in such examination, he shall forfeit \$400; and if such ship, vessel, or boat be foreign, or not navigated according to the laws of the United Kingdom or of Canada, and have been found fishing, or preparing to fish, or to have been fishing (in British waters) within three marine miles of any of the coasts, bays, creeks, or harbors of Canada, not included within the above-mentioned limits, without a license, or after the expiration of the period named in the last license granted to such ship, vessel, or boat under the first section of this act, such ship, vessel, or boat, and the tackle, rigging, apparel, furniture, stores, and cargo thereof shall be forfeited.

The treaty stipulates that the fishermen shall be under "necessary restrictions" to prevent the doing of the things forbidden by the treaty, but what may be "necessary" to prevent the prohibited fishing is a political and diplomatic question for the two signatory Governments to decide. The treaty permits American fishermen to enter and remain for—

1. "Shelter," which includes a refuge from fogs, winds, storms, and whatever may imperil fishing.

2. "Repairing damages," which includes every damage to fishing boat or fishing gear.

3. "Purchasing wood."

4. "Obtaining water."

Conceding that Canada can place an officer on every arriving fisherman as soon as found, the treaty does not even then authorise a twenty-four hour limit with the result of forfeiture. Nor does the treaty authorise forfeiture for "preparing to fish."

The customs circular issued at Ottawa on May 7, 1886, and called a "Warning," recited the first article of the Treaty of 1818, together with the two sections of the law of 1868 just quoted, and adds:

Having reference to the above, you are requested to furnish any foreign vessels, boats, or fishermen found within three marine miles of the shore, within your district, with a printed copy of the warning inclosed herewith.

If any fishing vessel or boat of the United States is found fishing, or to have been fishing, or preparing to fish, or, if hovering within the three mile limit, does not depart within twenty-four hours *after receiving such warning*, you will please place an officer on board of such vessel, and at once telegraph the facts to the fisheries department at Ottawa, and await instructions.

J. JOHNSON,
Commissioner of Customs.

To the COLLECTOR OF CUSTOMS at —.

Thus, twenty-four hours after finding the American fisherman is made the limit.

Not satisfied with the severity of this legislation of 1868, the Canadian Dominion, in 1870, and while preliminary negotiations for the Joint High Commission and the Treaty of Washington were in progress, amended it so as to enable seizures of our vessels to be made on sight, and without any warning or any notice to depart. The following is a text of the enactment of 1870 :

(33 Victoria, chap. 15.)

AN ACT to Amend the Act respecting fishing by foreign vessels. Assented to, 12th May, 1870.

Whereas it is expedient, for the more effectual protection of the inshore fisheries of Canada against intrusion by foreigners, to amend the Act entitled "An Act respecting Fishing by Foreign Vessels," passed in the thirty-first year of Her Majesty's reign: Therefore Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

1. The third section of the above-cited Act shall be, and is hereby, repealed, and the following section is enacted in its stead:

"3. Any one of such officers or persons as are above mentioned may bring any ship, vessel, or boat being within any harbor in Canada, or hovering (in British waters) within three marine miles of any of the coasts, bays, creeks, or harbors in Canada, into port and search her cargo, and may also examine the master upon oath touching the cargo and voyage; and if the master or person in command shall not truly answer the questions put to him in such examination he shall forfeit \$400; and if such ship, vessel or boat be foreign, or not navigated according to the laws of the United Kingdom or of Canada, and have been found fishing or preparing to fish, or to have been fishing (in British waters) within three marine miles of any of the coasts, bays, creeks, or harbors of Canada, not included within the above-mentioned limits, without a license, or after the expiration of the period named in the last license granted to such ship, vessel, or boat, under the first section of this Act, such ship, vessel or boat, and the tackle, rigging, apparel, furniture, stores, and cargo thereof shall be forfeited."

2. This Act shall not be construed as one with the said Act "respecting fishing by foreign vessels."

But this is not all. Canadian officials endeavored, during the last summer, in the fury of their malevolence, to forfeit American vessels for acts [for] which, if committed, their own laws had not inflicted punishment. In the libel of information against the Ella M. Doughty is this article, among other allegations of fishing, preparing to fish, being found having fished, and fishing, drying, and curing in the bay and harbor of St. Anne's:

Between the 10th and 17th days of May, 1886, the said Warren A. Doughty, the master of the said ship or vessel Ella M. Doughty, and the officers and crew of the said ship or vessel, Ella M. Doughty, did, in and with the said ship or vessel Ella M. Doughty, enter into the bay and harbor of St. Anne's aforesaid within three marine miles of the shore of said bay and harbor of St. Anne's, and within three miles of the coasts, bays, creeks, and harbors of those portions of the Dominions in America of His said late Majesty King George the Third, being now the Dominions in America of Her Majesty Queen Victoria, not included in the limits specified and defined in the said first article of the said Convention and set out and recited in the first paragraph hereof, *for the purpose of procuring bait*, that is to say, herrings, wherewith to fish, *and ice for the preservation on board said vessel of bait to be used in fishing*, and of fresh fish to be fished for, taken, and caught by and upon the said vessel and by the master, officers, and crew thereof, and *did procure such bait* wherewith to fish, and *such ice* for the purposes aforesaid, and did so enter for other purposes than for the purpose of shelter or repairing damages, or of purchasing wood, or of obtaining water, contrary to the provisions of the said Convention, and of the said several Acts, and the said vessel Ella M. Doughty and her cargo were thereupon seized within three marine miles of the coast or shores of the said bay and harbor of St. Anne's by Donald McAuley and Lauchlin G. Campbell, officers of the customs of Canada, as being liable to forfeiture for the breach or violation of the said Convention and of the said several Acts.

Your Committee has been unable to find a Canadian Statute which, at the date of the alleged offence, punished those acts by forfeiture of the offending vessel. None is averred. The article quoted from the Ella M. Doughty libel does not set forth where the fishing was to be done, for which bait and ice were bought, whether on the ocean, or elsewhere, outside of Canadian jurisdiction. The laws of 1868 and 1870 denounce only fishing or preparing to fish "*in British waters*," which must be, of course, under the treaty, the prohibited and not permitted British waters.

Thus stood Canadian legislation at the beginning of the summer fishing season which has recently come to an end. There was no Canadian or other law, at the end of forty-eight years from the date of the treaty, inflicting forfeiture of the vessel and the cargo on board excepting on proof of the offence of fishing or having been found to have fished, or preparing to fish, on the prohibited coasts. But Canadian officials wished to forfeit the vessels and cargoes of American deep-sea fishermen exercising the liberty "to touch and trade," and send fish by railway, or vessel, to our own markets. What could be done? Nothing less than a new law could avail them, and it was enacted in these words :

(49 Victoria, chap. 114.)

AN ACT further to Amend the Act respecting Fishing by Foreign Vessels.

(Reserved by the Governor-General on Wednesday, 2nd June, 1886, for the signification of the Queen's pleasure thereon. Royal Assent given by Her Majesty in Council, on the 26th day of November, 1886. Proclamation thereof made on the 24th day of December, 1886.)

Whereas it is expedient for the more effectual protection of the inshore fisheries of Canada against intrusion by foreigners, to further amend the Act intituled "An Act respecting Fishing by Foreign Vessels," passed in the thirty-first year of Her Majesty's reign, and chaptered 61 :

Therefore Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows :

1. The section substituted by the first section of the Act thirty-third Victoria, chapter 151, intituled "An Act to Amend the Act respecting Fishing by Foreign Vessels," for the third section of the hereinbefore recited Act, is hereby repealed, and the following section substituted in lieu thereof :

"3. Any one of the officers or persons hereinbefore mentioned may bring any ship, vessel, or boat, being within any harbor of Canada, or hovering in British waters within three marine miles of any of the coasts, bays, creeks, or harbors in Canada, into port and search her cargo, and may also examine the master upon oath touching the cargo and voyage ; and if the master or person in command does not truly answer the questions put to him in such examination, he shall incur a penalty of \$400.00 ; and if such ship, vessel, or boat is foreign, or not navigated according to the laws of the United Kingdom or of Canada, and (A) has been found fishing, or preparing to fish, or to have been fishing in British waters within three marine miles of any of the coasts, bays, creeks, or harbors of Canada, not included within the above-mentioned limits, without a license, or after the expiration of the term named in the last license granted to such ship, vessel, or boat under the first section of this act, or (B) *has entered such waters for any purpose not permitted by treaty or convention, or by any law of the United Kingdom or of Canada for the time being in force, such ship, vessel, or boat, and the tackle, rigging, apparel, furniture, stores, and cargo thereof shall be forfeited.*"

2. The Acts mentioned in the schedule hereto are hereby repealed.

3. This Act shall be construed as one with the said "*Act respecting Fishing by Foreign Vessels,*" and the amendments thereto.

SCHEDULE.

Acts of the Legislature of the Province of Nova Scotia.

Year, reign, and chapter.	Title of Act.	Extent of repeal.
Revised Statutes, 3d series, c. 94	Of the coast and deep-sea fisheries	The whole.
29 Vic. (1866), c. 35 ..	An act to amend chapter 94 of the Revised Statutes, " <i>Of the coast and deep-sea fisheries</i> "	The whole.

Act of the Legislature of the Province of New Brunswick.

16 Vic. (1853), c. 69 ..	An act relating to the coast fisheries and for the prevention of illicit trade	The whole.
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By comparing the foregoing with the law of 1870 the object will, in the italicized portion of the former, be clearly discovered, which is to deter deep-sea American fishermen from entering Canadian ports which are as open to all trading vessels as American ports are to Canadian vessels of every sort.

Forfeiture is to be inflicted for an entry for any purpose, excepting shelter, repairs, wood, or water. Even to get coal for a fishing vessel propelled by steam is condemned. What the purpose may be for which seizure is to be made may or may not be disclosed by the seizer. The statute does not require it. The libel, or complaint, filed in court may not disclose it. The averment may be merely a general one that the vessel entered for a purpose forbidden by treaty or statute. The owner must file a claim and answer, or his property will be condemned by default. He must, among strangers, give security for costs, or his claim will be dismissed. Worse than that, the Statute of 1868 declares that, if the owner questions the legality of the seizure, the burden of proof shall be on him. How can he meet a general averment and prove a negative of what is not definitely averred, and of every conceivable purpose of entry? None but the captain may be able to testify to the motive, and what will happen if he, after the seizure, shall die or be absent? The owner will be helpless to contend with the greed of informers or seizers, for the law of 1871 distributes the possible plunder thus:

6. All goods, vessels, and boats, and the tackle, rigging, apparel, furniture, stores, and cargo condemned as forfeited under this Act, shall be sold by public auction, by direction of the officer having the custody thereof, under the provisions of the next preceding section of this Act, and under regulations to be from time to time made by the Governor in Council; and the proceeds of every such sale shall be subject to the control of the Minister of Marine and Fisheries, who shall first pay therefrom all necessary costs and expenses of custody and sale, and the Governor in Council may from time to time apportion three-fourths or less of the net remainder among the officers and crew of any Queen's ship or Canadian Government vessel, from on board of which the seizure was made, as he may think right, reserving for the Government and paying over to the receiver-general at least one-fourth of such net remainder to form part of the consolidated revenue of Canada.

CONCLUSIONS.

The Treaties of 1783 and 1818 were made with the British Crown. With that Crown alone can restrictions, regulations, penalties, and measures be concerted by the United States to enforce and guard their stipulations. With the Dominion of Canada the Government at Washington is not called, or required, or to be expected, either to deliberate or debate, any more than is the British Crown with a separate member of our Union. It is not to be supposed that a local colonial court will, on the trial of a suit for forfeiture begun under an imperial or a colonial statute, hear or decide an issue with the Treaty of 1818, or rules of international law, or those statutes. Nor will those courts award damages for seizures in violation of the treaty, if made on "probable cause" by the seizers to believe that the statutes had been violated. Nor can the United States appeal to colonial courts for redress against the possible conduct of those courts under influences of local passion or prejudice.

It plainly appears to your Committee from the foregoing considerations that, by the Treaty of Peace in 1783, American citizens became partners with British subjects in all the coast fisheries in North America remaining to Great Britain; that the Treaty of Ghent, which closed the war of 1812, not having referred to the stipulations of the Treaty of Peace in any way affecting the fisheries, Great Britain thereupon urged and obtained in 1818 a diminution of American liberty to take fish on certain well-defined portions of the British coast in North America; that in 1819 there was enacted by Parliament, sitting in London, a law in execution of that treaty which punished by forfeiture of vessel and cargo a preparation to fish, and only by a fine a refusal or neglect to depart on a warning or notice so to do; that in 1844 the island of Prince Edward enacted a law in punishment of what it assumed to be a violation of the Treaty of 1818, which went far beyond the imperial statute of 1819; that in 1868 the Canadian Senate and House of Commons prescribed additional proceedings and penalties not warranted by the treaty, which were in 1870 made more severe and unwarranted, and that in 1886, nearly half a century after signing the treaty, an offence, entirely new in legislation, was denounced in most general terms and punished by confiscation of everything seized.

THE BRITISH CROWN PROCLAIMS NON-INTERCOURSE.

A very serious feature of this last-named legislation is that it has been approved by the British Crown, and it proclaims non-intercourse in Canada with American fishing vessels for general purposes of trade. To that alarming feature your Committee has given careful consideration, and is unanimously of opinion that if, and so long as, non

intercourse with American fishing vessels shall be thus maintained in the ports or bays of the Dominion of Canada or Newfoundland, a non-intercourse should be immediately begun and maintained in our own ports against Canadian vessels. Those vessels, whether trading or fishing, have, within the meaning of the seventeenth section of the law of Congress of June 19th, 1886, "been placed on the same footing" in our ports as our own vessels clearing or entering "foreign." Canadian vessels are British vessels. The British Crown has denied to American fishing vessels commercial privileges accorded to other national vessels in Canadian ports. The motive and purpose of such denial have been openly and plainly avowed by Canada to be, first, the punishment of such vessels because the United States levies a duty on Canadian fish not "fresh for immediate consumption," such as the Government levies on all such fish not the product of American fisheries and imported from any foreign place whatever; and, secondly, to coerce the United States to exempt such Canadian fish from all customs duties, and to enter into other new reciprocal customs relations with the Canadian Dominion and Newfoundland. It is a policy of threat and coercion, which, in the opinion of your Committee, should be instantly and summarily dealt with. The circumstances will warrant and require, in the opinion of your Committee, not only non-intercourse with Canadian vessels bringing Canadian or Newfoundland fish to our ports, but an exclusion of such fish from entry at our ports, whether brought by railway cars or by any other vehicle or means. It is difficult to believe that Canada having within the last twenty years so severely burdened herself with taxation by the construction of railways and bridges to bring about easy communication with Detroit, Chicago, Saint Paul, and the whole West of our country, as well as with New York and Boston, will now deliberately and offensively enter upon and pursue a policy toward our fishermen which, if persisted in, can but end, either in a suspension of commercial intercourse, by land and sea, between her and ourselves, or in consequences even more grave.

A LAW TO MAKE A PERPETUAL RECORD OF THE FACTS.

And, furthermore, in regard to seizures of American vessels made during the summer which has just passed, inasmuch as a true record of the facts under which the seizures were made may be lost, by death of the victims, or by wanderings of a class so migratory as seamen, or by other casualties, and inasmuch as Congress may see fit to compensate American fishermen for the injuries wantonly inflicted on them by the rude hand of tyrannical Canadian officials, there having been no adequate American force at hand for their protection, your Committee advise the enactment of the following:—

BILL for the appointment of a Commission to investigate concerning losses and injuries inflicted since December thirty-first, eighteen hundred and eighty-five, on United States citizens engaged in the North American fisheries.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President be, and is hereby, authorised to appoint a Commissioner to proceed to such places in the United States or elsewhere as may be designated by the Secretary of State, to take testimony, under oath or affirmation, in relation to the losses and injuries inflicted since the thirty-first of December, eighteen hundred and eighty-five, by British authorities, imperial or colonial, upon citizens of the United States engaged in the fisheries on the north-east coasts of British North America. Said Commissioner shall everywhere have, in respect to the administration of oaths or affirmations and the taking of testimony, the same powers as a Commissioner of a circuit court, and shall be paid the same fees as are prescribed for similar services of a Commissioner of a Circuit Court together with travelling expenses.

2,530.

No. 104.

*Foreign Office to Colonial Office.*FOREIGN OFFICE,
February 7th, 1887.

Confidential.

SIR,

I am directed by the Marquis of Salisbury to transmit to you a copy of a note from the United States' Minister at this court, containing observations on the Earl of Iddesleigh's note of the 30th of November last on the subject of the North American Fisheries.

I am to state that, with Sir Henry Holland's concurrence, his Lordship would propose to reply that Her Majesty's Government expect in a few days to be in possession of the Canadian report on the proposals contained in Mr. Phelps' note of the 3rd December last, and that immediately on its receipt the views of Her Majesty's Government on the suggested "ad interim" arrangement shall be communicated to him.

With reference to your letter of the 1st instant,* I am to enquire whether Sir Henry Holland considers it expedient to ascertain whether the Newfoundland Government concur in the suggestion which apparently will be made in the Canadian report, to the effect that an arrangement on the bases of the Clarendon-Bruce despatch of May 11, 1866, should be proposed to the United States Government.

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

The Under-Secretary of State,
Colonial Office.

Enclosure in No. 104.

Mr. Phelps to the Marquis of Salisbury.—(Received January 29.)

LEGATION OF THE UNITED STATES, LONDON,
January 26, 1887.

MY LORD,

Various circumstances have rendered inconvenient an earlier reply to Lord Iddesleigh's note of the 30th November, on the subject of the North American fisheries. And the termination of the fishing season has postponed the more immediate necessity of the discussion. But it seems now very important that before the commencement of another season a distinct understanding should be reached between the United States' Government and that of Her Majesty, relative to the course to be pursued by the Canadian authorities toward American vessels.

It is not without surprise that I have read Lord Iddesleigh's remark in the note above mentioned, referring to the Treaty of 1818, that Her Majesty's Government "have not as yet been informed in what respect the construction placed upon that instrument by the Government of the United States differs from their own." Had his Lordship perused more attentively my note to his predecessor in office, Lord Rosebery, under date of the 2nd June, 1886, to which reference was made in my note to Lord Iddesleigh of the 11th September, 1886, I think he could not have failed to apprehend distinctly the construction of that Treaty for which the United States' Government contends, and the reasons and arguments upon which it is founded. I have again respectfully to refer your Lordship to my note to Lord Rosebery of the 2nd June, 1886, for a very full and, I hope, clear, exposition of the ground taken by the United States' Government on that point. It is unnecessary to repeat it, and I am unable to add to it.

In reply to the observations in my note to Lord Iddesleigh of the 11th September, 1886, on the point whether such discussion should be suspended in these cases until the result of the judicial proceedings in respect to them should be made known, a proposition to which, as I stated in that note, the United States' Government is unable to accede, his Lordship cites in support of it some language of Mr. Fish,

when Secretary of State of the United States, addressed to the United States' Consul-General at Montreal, in May 1870. From the view then expressed by Mr. Fish the United States' Government has neither disposition nor occasion to dissent. But it cannot regard it as in any way applicable to the present case.

It is true, beyond question, that when a private vessel is seized for an alleged infraction of the laws of the country in which the seizure takes place, and the fact of the infraction or the exact legal construction of the local Statute claimed to be transgressed is in dispute, and is in process of determination by the proper Tribunal, the Government to which the vessel belongs will not usually interfere in advance of such determination, and before acquiring the information on which it depends. And especially when it is not yet informed whether the conduct of the officer making the seizure will not be repudiated by the Government under which he acts, so that interference will be unnecessary. This is all, in effect, that was said by Mr. Fish on that occasion. In language immediately following that quoted by Lord Iddesleigh, he remarks as follows (*italics being mine*):—

“The present embarrassment is, that while we have *reports* of several seizures upon grounds, *as stated by the interested parties*, which *seem to be* in contravention of international law and special Treaties relating to the fisheries, these *alleged* causes of seizure are regarded as pretensions of over-zealous officers of the British navy and the colonial vessels, which will, as we hope and are bound in courtesy to expect, be repudiated by the Courts before which our vessels are to be brought for adjudication.”

But, in the present case, the facts constituting the alleged infraction by the vessel seized are not in dispute, except some circumstances of alleged aggravation not material to the validity of the seizure. The original ground of the seizure was the purchase by the master of the vessel of a small quantity of bait, from an inhabitant of Nova Scotia, to be used in lawful fishing. This purchase is not denied by the owners of the vessel. And the United States' Government insists, *first*, that such an act is not in violation of the Treaty of 1818; and, *second*, that no then existing Statute in Great Britain or Canada authorised any proceedings against the vessel for such an act, even if it could be regarded as in violation of the terms of the Treaty. And no such Statute has been as yet produced. In respect to the charge subsequently brought against the “Adams,” and upon which many other vessels have been seized, that of a technical violation of the Customs Act in omitting to report at the custom-house, though having no business at the port (and in some instances where the vessel seized was not within several miles of the landing), the United States' Government claim, while not admitting that the omission to report was even a technical transgression of the Act,—that, even if it were, no harm having been done or intended, the proceedings against the vessels for an inadvertence of that kind were, in a high degree, harsh, unreasonable, and unfriendly, especially as for many years no such effect has been given to the Act in respect to the fishing-vessels, and no previous notice of a change in its construction had been promulgated.

It seems apparent, therefore, that the cases in question, as they are to be considered between the two Governments, present no points upon which the decisions of the Courts of Nova Scotia need be awaited or would be material.

Nor is it any longer open to the United States' Government to anticipate that the acts complained of will (as said by Mr. Fish in the despatch above quoted), be repudiated as “the pretensions of over-zealous officers of the . . . colonial vessels.” Because they have been so many times repeated as to constitute a regular system of procedure, have been directed and approved by the Canadian Government, and have been in nowise disapproved or restrained by Her Majesty's Government, though repeatedly and earnestly protested against on the part of the United States.

It is therefore to Her Majesty's Government alone that the United States' Government can look for consideration and redress. It cannot consent to become directly or indirectly a party to the proceedings complained of, nor to await their termination before the questions involved between the two Governments shall be dealt with. Those questions appear to the United States' Government to stand upon higher grounds, and to be determined, in large part at least, upon very different considerations from those upon which the Courts of Nova Scotia must proceed in the pending litigation.

Lord Iddesleigh, in the note above referred to, proceeds to express regret that no reply has yet been received from the United States' Government to the arguments on all the points in controversy contained in the Report of the Canadian Minister of Marine and Fisheries, of which Lord Rosebery has sent me a copy.

Inasmuch as Lord Iddesleigh, and his predecessor, Lord Rosebery, have declined

altogether, on the part of Her Majesty's Government, to discuss these questions until the cases in which they arise shall have been judicially decided, and as the very elaborate arguments on the subject previously submitted by the United States' Government remain, therefore, without reply, it is not easy to perceive why further discussion of it, on the part of the United States, should be expected. So soon as Her Majesty's Government consent to enter upon the consideration of the points involved, any suggestions it may advance will receive immediate and respectful attention on the part of the United States. Till then, further argument on that side would seem to be neither consistent nor proper.

Still less can the United States' Government consent to be drawn, at any time, into a discussion of the subject with the Colonial Government of Canada. The Treaty in question, and all the international relations arising out of it, exist only between the Governments of the United States and of Great Britain, and between those Governments only can they be dealt with. If in entering upon that consideration of the subject which the United States have insisted upon, the arguments contained in the Report of the Canadian Minister should be advanced by Her Majesty's Government, I do not conceive that they will be found difficult to answer.

Two suggestions contained in that Report are, however, specially noticed by Lord Iddesleigh, as being "in reply" to the arguments contained in my note. In quoting the substance of the contention of the Canadian Minister on the particular points referred to, I do not understand his Lordship to depart from the conclusion of Her Majesty's Government he had previously announced, declining to enter upon the discussion of the cases in which the questions arise. He presents the observations of the Report only as those of the Canadian Minister made in the argument of points upon which Her Majesty's Government decline at present to enter. I do not, therefore, feel called upon to make any answer to these suggestions. And more especially as it seems obvious that the subject cannot usefully be discussed upon one or two suggestions appertaining to it, and considered by themselves alone. While those mentioned by Lord Iddesleigh have undoubtedly their place in the general argument, it will be seen that they leave quite untouched most of the propositions and reasoning set forth in my note to Lord Rosebery above mentioned. It appears to me that the questions cannot be satisfactorily treated aside from the cases in which they arise. And that when discussed the whole subject must be gone into in its entirety.

The United States' Government is not able to concur in the favourable view taken by Lord Iddesleigh of the efforts of the Canadian Government "to promote a friendly negotiation." That the conduct of that Government has been directed to obtaining a revision of the existing Treaty is not to be doubted. But its efforts have been of such a character as to preclude the prospect of a successful negotiation so long as they continue, and seriously to endanger the friendly relations between the United States and Great Britain.

Aside from the question as to the right of American vessels to purchase bait in Canadian ports, such a construction has been given to the Treaty between the United States and Great Britain as amounts virtually to a declaration of almost complete non-intercourse with American vessels. The usual comity between friendly nations has been refused in their case, and in one instance, at least, the ordinary offices of humanity. The Treaty of Friendship and Amity which, in return for very important concessions by the United States to Great Britain, reserved to the American vessels certain specified privileges, has been construed to exclude them from all other intercourse common to civilized life, and to universal maritime usage among nations not at war, as well as from the right to touch and trade accorded to all other vessels.

And, quite aside from any question arising upon construction of the Treaty, the provisions of the Customs-house Acts and Regulations have been systematically enforced against American ships for alleged petty and technical violations of legal requirements, in a manner so unreasonable, unfriendly, and unjust as to render the privileges accorded by the Treaty practically nugatory.

It is not for a moment contended by the United States' Government that American vessels should be exempt from those reasonable port and Custom-house Regulations which are in force in countries which such vessels have occasion to visit. If they choose to violate such requirements, their Government will not attempt to screen them from the just legal consequences.

But what the United States' Government complain of in these cases, is that existing Regulations have been construed with a technical strictness, and enforced with a severity, in cases of inadvertent and accidental violation where no harm was done, which is both

unusual and unnecessary whereby the voyages of vessels have been broken up and heavy penalties incurred. That the liberal and reasonable construction of these laws that had prevailed for many years, and to which the fishermen had become accustomed, was changed without any notice given. And that every opportunity of unnecessary interference with American fishing-vessels, to the prejudice and destruction of their business, has been availed of. Whether, in any of these cases, a technical violation of some requirement of law had, upon close and severe construction, taken place, it is not easy to determine. But if such Rules were generally enforced in such a manner in the ports of the world, no vessel could sail in safety without carrying a solicitor versed in the intricacies of revenue and port Regulations.

It is unnecessary to specify the various cases referred to, as the facts in many of them have been already laid before Her Majesty's Government.

Since the receipt of Lord Iddesleigh's note, the United States' Government has learned with grave regret that Her Majesty's assent has been given to the Act of the Parliament of Canada, passed at its late Session, entitled, "An Act further to amend the Act respecting fishing by foreign vessels," which has been the subject of observation in the previous correspondence on the subject between the Governments of the United States and of Great Britain. By the provisions of this Act, any foreign ship, vessel, or boat (whether engaged in fishing or not) found within any harbour in Canada, or within 3 marine miles of "any of the coasts, bays, or creeks of Canada," may be brought into port by any of the officers or persons mentioned in the Act, her cargo searched, and her master examined upon oath, touching the cargo and voyage, under a heavy penalty if the questions asked are not truly answered: and if such ship has entered such waters "for any purpose" not permitted by Treaty or Convention, or by law of the United Kingdom or of Canada for the time being in force, such ship, vessel, or boat, and the tackle, rigging, apparel, furniture, stores and cargo thereof shall be forfeited."

It has been pointed out in my note to Lord Iddesleigh above mentioned, that the 3-mile limit referred to in this Act is claimed by the Canadian Government to include considerable portions of the high seas, such as the Bay of Fundy, the Bay of Chaleur, and similar waters, by drawing the line from headland to headland. And that American fishermen have been excluded from those waters accordingly.

It has been seen also that the term "any purpose not permitted by Treaty" is held by that Government to comprehend every possible act of human intercourse, except only the four purposes named in the Treaty: shelter, repairs, wood, and water.

Under the provisions of the recent Act, therefore, and the Canadian interpretation of the Treaty, any American fishing-vessel that may venture into a Canadian harbour, or may have occasion to pass through the very extensive waters thus comprehended, may be seized at the discretion of any one of numerous subordinate officers, carried into port, subjected to search, and the examination of her master upon oath, her voyage broken up, and the vessel and cargo confiscated, if it shall be determined by the local authorities that she has ever even posted or received a letter, or landed a passenger in any port of Her Majesty's dominions in America.

And it is publicly announced in Canada that a larger fleet of cruisers is being prepared by the authorities, and that greater vigilance will be exerted on their part in the next fishing season than in the last.

It is in the Act to which the one above referred to is an amendment that is found the provision to which I drew attention in a note to Lord Iddesleigh of the 2nd December, 1886; by which it is enacted that in case a dispute arises as to whether any seizure has, or has not, been legally made, the burden of proving the illegality of the seizure shall be upon the owner or claimant.

In his reply to that note of the 11th January, 1887, his Lordship intimates that this provision is intended only to impose upon a person claiming a licence the burden of proving it. But a reference to the Act shows that such is by no means the restriction of the enactment. It refers in the broadest and clearest terms to *any* seizure that is made under the provisions of the Act, which covers the whole subject of protection against illegal fishing. And applies not only to the proof of a licence to fish, but to all questions of fact whatever necessary to a determination as to the legality of a seizure, or the authority of the person making it.

It is quite unnecessary to point out what grave embarrassments may arise in the relations between the United States and Great Britain under such administration as is reasonably to be expected of the extraordinary provisions of this Act and its amendment, upon which it is not important at this time further to comment.

It will be for Her Majesty's Government to determine how far its sanction and support will be given to further proceedings such as the United States' Government have

now repeatedly complained of, and have just ground to apprehend may be continued by the Canadian authorities.

It was with the earnest desire of obviating the impending difficulty and of preventing collisions and dispute until such time as a permanent understanding between the two Governments could be reached, that I suggested on the part of the United States, in my note to Lord Iddesleigh of the 11th September, 1886, that an *ad interim* construction of the terms of the Treaty might be agreed on, to be carried out by instructions to be given on both sides without prejudice to the ultimate claims of either, and terminable at the pleasure of either. In an interview I had the honour to have with his Lordship, in which this suggestion was discussed, I derived the impression that he regarded it with favour. An outline of such an arrangement was therefore subsequently prepared by the United States' Government, which, at the request of Lord Iddesleigh, was submitted to him in my note of the 3rd December, 1886.

But I observe with some surprise, that in his note of the 30th November last, his Lordship refers to that proposal made in my note of the 11th September, as a proposition that Her Majesty's Government "should temporarily abandon the exercise of the Treaty rights which they claim and which they conceive to be indisputable."

In view of the very grave questions that exist as to the extent of those rights in respect to which the views of the United States' Government differ so widely from those insisted upon by Her Majesty's Government, it does not seem to me an unreasonable proposal, that the two Governments by a temporary and mutual concession without prejudice, should endeavour to reach some middle ground of *ad interim* construction by which existing friendly relations might be preserved until some permanent Treaty arrangements could be made.

The reasons why a revision of the Treaty of 1818 cannot now, in the opinion of the United States' Government, be hopefully undertaken, and which are set forth in my note to Lord Iddesleigh of the 11th September, 1886, have increased in force since that note was written.

I again respectfully commend the proposal above mentioned to the consideration of Her Majesty's Government.

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

2,774.

No. 105.

Foreign Office to Colonial Office.

FOREIGN OFFICE,
February 10th, 1887.

SIR,

I am directed by the Secretary of State for Foreign Affairs to transmit to you, to be laid before Sir Henry Holland, copies of despatches with enclosures from Her Majesty's Minister at Washington relative to a Bill introduced into the United States' House of Representatives and Senate authorising retaliatory measures in consequence of the action of the Dominion Government on the fisheries question.

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

The Under Secretary of State,
Colonial Office.

Enclosure 1 in No. 105.

WASHINGTON,
January 19th, 1887.

Treaty No. 6.

MY LORD,

I have the honour to enclose to your Lordship herewith copies of a Bill which has been introduced into the House of Representatives for the protection of American fishermen in consequence of the denial on the part of the Dominion Government of the

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right to land and transport American fish in bond over Canadian railroads to the United States.

It is said that American capitalists interested in Canadian railroads are strongly opposed to this Bill.

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

Her Majesty's Principal Secretary of State
for Foreign Affairs.

49TH CONGRESS,
2D. SESSION. **H. R. 10786.**

IN THE HOUSE OF REPRESENTATIVES.

JANUARY 17, 1887.

Read twice, referred to the Committee on Foreign Affairs, and ordered to be printed.

Mr. BELMONT introduced the following Bill :—

A BILL

To protect American vessels against unwarrantable and unlawful discriminations in the ports of British North America.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That hereafter whenever the President shall be satisfied that vessels of the United States are denied in ports of the British provinces in North America bordering on the Atlantic Ocean, or in the waters adjacent to said provinces, rights to which such vessels are entitled by treaty or by the law of nations, he may, by proclamation, prohibit vessels bearing the British flag and coming from such ports from entering the ports of the United States, or from exercising such privileges therein as he may in his proclamation define; and if, on and after the date at which such proclamation takes effect, the master or other person in charge of any of such vessels shall do, in the ports, harbours, or waters of the United States, for or on account of such vessel, any act forbidden by such proclamation aforesaid, such vessel, and its rigging, tackle, furniture, and boats, and all the goods on board, shall be liable to seizure and forfeiture to the United States; and any person or persons preventing or attempting to prevent, or aiding any other person in preventing or attempting to prevent, any officer of the United States from enforcing this Act, shall forfeit and pay to the United States one thousand dollars, and shall be guilty of a misdemeanor, and, upon conviction thereof, shall be liable to imprisonment for a term not exceeding two years.

SEC. 2. That the President may also, by such proclamation, forbid the entrance into the United States of all merchandise coming by land from the provinces of British North America, and may also forbid the entrance into the United States of the cars, locomotives, or other rolling stock of any railway company chartered under the laws of said provinces; and upon proof that the privileges secured by article twenty-nine of the treaty concluded between the United States and Great Britain on the eighth day of May, eighteen hundred and seventy-one, are denied as to goods, wares, and merchandise arriving at the ports of British North America, the President may also, by proclamation, forbid the exercise of the like privileges as to goods, wares, and merchandise arriving in any of the ports of the United States; and any person violating or attempting to violate the provisions of any proclamation issued under this section shall forfeit and pay to the United States the sum of one thousand dollars, and shall be guilty of a misdemeanor, and, upon conviction thereof, shall be liable to imprisonment for a term not exceeding two years.

SEC. 3 That whenever, after the issuance of a proclamation under this Act, the President is satisfied that the denial of rights and privileges on which his proclamation

was based no longer exists, he may withdraw the proclamation, or so much thereof as he may deem proper, and reissue the same thereafter when in his judgment the same shall be necessary.

Enclosure 2 in No. 105.

Treaty No. 7.

WASHINGTON,
January 19th, 1887.

MY LORD,

With reference to my preceding despatch I have the honour to enclose to your Lordship herewith copies of a preamble and resolution offered in the Senate in the same sense as the Bill introduced into the House of Representatives on the fisheries question.

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

Her Majesty's Principal Secretary of State
for Foreign Affairs.

Extract from the Congressional Record of January 19th, 1887.

FISHING RIGHTS OF THE UNITED STATES.

Mr. Gorman submitted the following resolution ; which was read :—

Whereas it appears from documents laid before the Senate that the ancient rights of the United States' fishermen, when bound to the north-east deep sea fisheries, of transit through Canadian waters, with the incidents appertaining thereto, of shelter, repair, and provisioning in the adjacent ports, such rights being founded on international law and on treaty, have been obstructed by Canadian authorities, such obstruction being attended by indignity and annoyance and followed by great loss to the parties interested in such fishing vessels ; and,

Whereas such transit, with its incidents of temporary shelter, repair, and provisioning, is part of a system with the transit with similar incidents permitted to Canadian engines, cars, vessels, and goods through the territory and territorial waters of the United States on their way from point to point in Canada, with this distinction, that the transit in the former case is a matter of right, based on international law and treaty, while in the latter case it is a matter of permission and gratuity.

Resolved, That the President of the United States is authorised whenever it shall appear to him that there is an insistence on the part of the Canadian authorities with the obstructions, indignities, and annoyances above recited, to issue his proclamation prohibiting the transit through the United States, or the territorial waters thereof, from point to point in Canada or from Canadato the Ocean, of any engines, cars, goods, or vessels proceeding from Canada.

Enclosure 3 in No. 105.

WASHINGTON,
January 21st, 1887.

Treaty No. 8.

MY LORD,

With reference to my despatch, Treaty No. 7, of the 19th instant, I have the honour to enclose to your Lordship herewith an article from the "New York Times," on the proposed retaliatory measures against Canada now before Congress.

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

Her Majesty's Principal Secretary of State
for Foreign Affairs.

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Extract from the "New York Times," of January 20th, 1887.

THE EDMUNDS FISHERIES REPORT.

Mr. Edmunds yesterday reported from the Senate Committee on Foreign Relations a bill authorising the President to protect and defend the rights of American fishing vessels and fishermen, and of American trading vessels in the waters and ports of the British Dominions of North America. The Bill does not in its main features differ widely from that introduced by Mr. Belmont in the House, though it is less specific in some of its provisions and more so in others. It leaves to the President complete discretion in the exercise of the powers confided to him, though it makes it his duty to exercise them in the cases specified. The President must first be satisfied that the rights of American vessels or their masters and crews, secured by treaty or by law, are or have lately been denied or abridged in the waters or ports of Canada, or that they have been vexed or harassed in the enjoyment of such rights, or that they are denied the privilege of entering such waters and ports under the same regulations as are applied to the vessels of the most favoured nation, or are prevented from purchasing such supplies as may be lawfully sold to trading vessels of the most favoured nation, or are denied any privilege accorded to such vessels or vexed or harassed in respect to the same. In case he is so satisfied, it is made his duty in his discretion by proclamation to deny vessels, masters, and crews from the British Dominions of North America entrance to the waters and ports of the United States—with proper exceptions in case of vessels in distress—and may, if he thinks best, deny entrance to Canadian fish or any other product or commodity of the British provinces coming into the United States. He may limit, qualify, or renew his proclamation in his discretion as he may deem necessary to the full and just execution of the purpose of the act.

It will be seen that the occasion and the extent of the application of the power to restrict intercourse with Canada, or rather from Canada, will remain entirely in the judgment and discretion of the President, guided by the spirit and conduct of the authorities of that country. The extent to which it will be applied will depend primarily on the authorities of the Dominion. They will at least conclude that the attempt to coerce or bully the United States' Government into a policy satisfactory to them, when it does not choose to adopt that policy, is a failure, and was altogether ill-advised. As was pointed out in the report of the House Committee, the course of Canada has apparently been inspired by a desire to force the United States to modify its policy in regard to the admission of Canadian fish to our markets. That policy may or may not be wise, but it is certain that the Canadian Government has hindered rather than promoted its modification by its recent course. There is not the least danger that the President will exercise the power which it is proposed to give him in any other than a moderate and discreet manner according to the requirements of the situation as it may be created by the conduct of the Canadian authorities. But in accordance with those requirements he will undoubtedly exercise it firmly and fearlessly for the protection of American rights.

The report accompanying the Edmunds Bill sets forth once more clearly and fully the position upon which the Administration at Washington, both Houses of Congress, and the people of all parties in the country appear to be agreed. The Committee draws somewhat upon the information which it gathered during the recess of Congress in regard to the fisheries. It concluded that the right of fishing within the three-mile limit on the Canada shores is practically worthless, and that there is no desire or inducement to encroach upon the prohibited limits. It also finds that there is no necessity of resorting to Canadian ports for bait, though that has been one of the things upon which the fishermen were supposed to insist. The effect and interpretation of the Treaty of 1818 and of the legislation for its enforcement are fully discussed, and the ground is taken that there is no violation of that Treaty implied in vessels visiting Canadian ports to purchase supplies, or for any legitimate purpose of trade. Under treaty provisions, the established principles of the comity of nations, and the reciprocal legislation of the United States and Great Britain, all American vessels having permits to touch and trade are entitled to ordinary commercial privileges, without reference to the fact that they may be engaged in fishing outside of the exclusive jurisdiction of the British dominions. This ground is so clear and reasonable, so perfectly in accord with established principles and practice, that nothing but resentment or blind prejudice or fancied self-interest could prevent its recognition by Canada herself.

It does not seem possible that the British Government can uphold Canada in con-

tinuing the course upon which she entered so rashly last year and which she pursued with such brutal disregard of international rights and obligations and the principles of comity. The most serious fact in the case is the approval given by the British Crown to the Act of the Dominion Parliament of last year, which was based on the Canadian interpretation of the Treaty of 1818 and a complete disregard of commercial rights guaranteed by other treaties and by reciprocal legislation. But whether Great Britain reconsiders its position and concludes to stand by its international obligations or not, there can be no doubt of the course of our Government. It cannot undertake to compel an adoption of its views, but it can defend the rights of Americans and of American vessels by a retaliation that will make the attitude and conduct of Canada, if persisted in, very costly to that country. There are many evidences that the people of the maritime provinces are not in sympathy with the policy adopted at Ottawa and they will certainly find that it is not favourable to their interests. Exclusion of American fishing vessels from the privilege of trading in their ports will do them no good, but exclusion of their vessels from trading in American ports will do them much harm. The question is likely to be one of endurance, and the United States can probably stand it as long as Canada can.

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No. 106.

Colonial Office to Foreign Office.

Confidential.

DOWNING STREET,
February 11th, 1887.

SIR,

I am directed by Secretary Sir Henry Holland to acknowledge the receipt of your letter of the 7th instant,* forwarding a copy of a note from the United States' Minister at this Court upon the North American Fisheries Question.

Sir Henry Holland concurs in the reply which the Marquis of Salisbury proposes to return to Mr. Phelps, but he would suggest that the words "at the earliest opportunity after its receipt" should be substituted for the words "immediately on its receipt."

I am to add with reference to the last paragraph of your letter that Sir Henry Holland does not think it expedient at the present moment to invite any expression of opinion from the Government of Newfoundland.

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

The Under-Secretary of State,
Foreign Office.

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No. 107.

Foreign Office to Colonial Office.

FOREIGN OFFICE,
February 11th, 1887.

SIR,

I am directed by the Secretary of State for Foreign Affairs to transmit to you, to be laid before Sir Henry Holland, copies of Despatches with enclosures, from Her Majesty's Minister at Washington, on the question of the North American Fisheries.

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

The Under Secretary of State,
Colonial Office.

Enclosure 1 in No. 107.

Treaty, No. 15.

WASHINGTON,

January 25th, 1887.

MY LORD,

I have the honour to inform your Lordship that the Senate has passed the Bill, copies of which were enclosed in my despatch, No. 7, of the 19th inst., by a vote of 46 to 1, after a debate, the official report of which is herewith enclosed, together with a *précis* by Mr. Spring Rice.

The Republican party have been all along determined to make political capital out of the Fisheries question and to hamper by this means the present Administration in its endeavours to bring about a settlement. The language used in this debate is only such as is generally employed in Congress when a difficulty arises with any foreign nation, but more especially with England, and is notably characteristic of the individual speakers who addressed the Senate on this occasion. In the language of the "New York Herald," "Senator Frye's impassioned oratory was intended for the latitude and longitude of Maine, his own dear State; and Mr. Ingalls spoke for the Republican party which has viewed with alarm, for a couple of weeks past, the firm attitude of the democratic administration on the fishery business as developed by Secretary Manning's report." The "New York Times" says: "There was an unnecessary bellicose tone adopted by some of the Senators who advocated the Bill, and the pastime of denouncing the arrogance and injustice of Great Britain was indulged in to an extent calculated to make the eagle scream and the lion growl. More calmness and soberness in the debate would have been in better keeping with the situation."

The Press is generally in favour of the proposed retaliatory measures, and both democratic and republican senators voted together in favour of the Bill. Twenty-eight Senators were, however, absent and did not vote. Whether or not the proposed legislation was originated by the administration I am unable to state, but it is not improbable that Mr. Bayard may have sought to obtain the power for the Executive which it gives of interdicting, if it is deemed expedient, commercial relations with Canada by a Presidential proclamation, as was done lately in the case of the Spanish commercial difficulties, and resulted in the surrender by Spain of her position under the Madrid agreement. I can, however, I think, assure your Lordship of Mr. Bayard's sincere desire to find a solution of the questions at issue, and that, notwithstanding the determination of the Republican party to prevent him from doing so, he will continue his efforts in this direction and endeavour to conciliate the conflicting interests by which he is surrounded and impeded. This, indeed, is evidenced by the *ad interim* arrangement proposed by the United States Minister in London, and communicated to me in the Earl of Iddesleigh's despatch, No. 72, Confidential, of this series, of the 11th ult., but in the event of the passage of the retaliatory measures through the House of Representatives before the negotiations with Her Majesty's Government on the proposal are concluded, Mr. Bayard will have still greater difficulties to contend with in obtaining the assent of the Senate to it than he has already encountered from that body, and will not improbably be called upon, as an alternative in their opinion to advise the President to exercise the power of commercial interdiction with which the Executive will then be invested in order to force the Government of the Dominion to recede from the position which they have all along maintained under the Treaty of 1818. The actual situation is, however, such as may seriously affect the future commercial relations between the two countries.

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

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

Debate in the Senate on the Bill introduced by Mr. Edmunds to authorise the President to protect and defend the rights of American fishing vessels in certain cases. January 24th, 1887.

Mr. Frye suggested that the words "also if he thinks proper" should be omitted from the Bill, on the ground that the retaliatory measures would be the first and not the last resort of the President in the existing circumstances.

Mr. Edmunds consented to the omission.

Mr. Ingalls thought it important that the Committee on Foreign Relations should inform the Senate whether this measure was an invitation to negotiate or practically a declaration of war. A simple measure of retaliation was not in his opinion sufficient. He suggested that the President should be empowered to appoint a Commission in order to reach some basis of understanding between Great Britain, Canada, and the United States in regard to the fisheries.

Mr. Frye said that this would be playing into the hands of Canada, whose only object was to secure a treaty which, as before, would turn out only to her advantage. If the President took advantage of this Bill, Canada would stop her outrages. The British Government had approved the Canadian statute for enforcing further measures of hostility against American fishermen. The only way of putting a stop to these outrages was to enforce rigorous measures of retaliation, a policy in which, as there was every reason to believe, the Administration sympathised.

Mr. Ingalls said he understood from Mr. Frye's speech that the Committee of Foreign Relations intended by this Bill not to remit the subject to the domain of diplomacy, but to warn Great Britain that its course, if pursued, would result in war.

Mr. Edmunds took exception to this expression. He said that a breach of a treaty might be the reason for reciprocal retaliatory measures intended to bring the offending party to a sense of the inconvenience of such conduct, but it did not necessarily follow that every breach of a treaty should be followed by actual hostilities.

Mr. Ingalls rejoined that if the purpose of the Bill was to apply the *Lex talionis*, it did not mean anything. The question must be decided by treaty or by war.

Mr. Edmunds denied the truth of such an alternative. The Canadians had infringed the treaty. The United States had recourse to retaliatory measures. The question was—Who could stand it best? He thought the United States could stand it best, and that Canada would be brought to reason.

Mr. Ingalls said that England had always been a ruffian, a coward, and a bully; that she had no purpose to secure a peaceful solution, but only to embitter the relations of the United States and Canada. He rejoiced in the interpretation of the Bill that it was a declaration to Great Britain that she would persist further at her peril.

Mr. Hoar dwelt on the absence of any explanation or apology for the various acts of violence committed by Great Britain. The Bill meant this—that so far from leading to a diminution of Customs duties, such proceedings would entail the exclusion of Canadian fish from the United States' market.

Mr. Morgan said that so far from this being a warlike measure, it was a measure to prevent war. If the troubles were allowed to go on there would be war in them. Both countries should arm themselves with all powers of law to prevent a conflict.

Mr. Evarts said that the Bill would remove the question from the "threat of collision" by "taking the subject away from local disturbance, irritation, and resentment," and placing it "under the control of both Governments in a deliberate consideration of what should be done in order to have stability of intercourse between the two great nations."

Mr. Hale strongly supported the Bill as leading to a condition where, if further negotiations were desirable or practicable, the way would be cleared. Until the American Congress should send this note—not of menace but of warning—to their Canadian neighbours these things would continue.

Mr. Vest pointed out that war would be the greatest calamity that could befall the two great English-speaking nations of the world. This commercial embargo was half-sister of war. In a maritime war, who could answer for the result? It was an aspect of the question better suited to a secret session of the Senate. It should be remembered what was the result of the embargo on which Mr. Jefferson relied to prevent war with Great Britain. Still, he would vote for the Bill as giving the President a discretionary power.

Mr. Gorman objected to the Bill as failing to strike at the only point in which Canada was vulnerable—that was the exclusion of its cars and engines by which its trade passed through United States territory.

Mr. Riddleberger opposed the Bill because it was "in the nature of a treaty with Great Britain. He wanted no treaty."

Mr. Vest's amendment for the appointment of a Commissioner to take testimony in regard to losses and injuries inflicted on American fishermen was lost—Yeas, 17; nays, 27.

The Bill was then passed.

(Yeas, 46; nays, 1—Riddleberger).

Enclosure 2 in No. 107.

WASHINGTON,
January 26th, 1887.

Treaty, No. 16.

MY LORD,

With reference to my despatch, No. 7 Treaty, of the 19th inst., I have the honour to transmit to you herewith copies of the report of the Committee of the Senate on Foreign Relations relative to the rights and interests of American fisheries and fishermen in British North America, as submitted by Mr. Edmunds on the 24th inst.

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

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

Enclosure 3 in No. 107.

WASHINGTON,
January 27th, 1887.

Treaty, No. 17.

MY LORD,

With reference to my despatch, No. 15, of the 25th January, I have the honour to add a *précis* of Senator Ewart's speech on the Fisheries Bill. His contention is clearly put in so far as the nature of the treaty of 1818 is concerned and the results of the interpretation of it, but he entirely ignores the persistent refusal of their Government after the denunciation of the treaty of 1854 to re-establish the commercial relations which existed under it, and which, in fact, were the outcome of the statutory legislation upon which he lays so much stress.

He makes no allusion to the comity and courtesy of the Dominion Government in continuing to accord the commercial privileges even after the treaty which secured them had been denounced, and actually complains that they are now withheld on the ground that there is no commercial treaty between the two countries. Mr. Ewart's speech, however, contrasts favourably with those of the violent advocates of the Bill, and indicates no intention of thwarting negotiations for a settlement of the dispute.

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

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

Précis of Speech of Senator Everts in the Debate in the Senate on the Fisheries Bill,
January 24th, 1887.

Mr. Everts clearly establishes that the Treaty of 1818 is essentially a fishery treaty regulating the fisheries between the two countries, and that in the absence of a Treaty of Commerce, and after the denunciation of the Fishery Articles of the Treaty of 1871, the two countries were brought back to the interpretation of that of 1818.

The effect of the enforcement of the regulations which Canada claims as a right under this treaty has been to exclude American fishermen from what would be an ordinary, suitable, and necessary intercourse of comity in matters of commerce. If such a construction of the treaty is admitted the remedy for the interruption of commerce which has taken place under it must be found in a modification or qualification of that treaty by negotiation.

If this construction is not admitted there can be no other ground for the interruption complained of except under the claim that there is no commercial treaty which obliges Great Britain and her dependency in the Dominion to admit the commercial intercourse which has hitherto been carried on.

If then on that ground and on that ground alone this interference is based when taken by the Dominion authorities, the United States' Government has in its power, according to the same right and level of commercial claims the same measure that Great Britain has. This action, he says, need not be called retaliatory, it is responsive. The first step in disturbing commerce was under the claim that there was no obligatory

treaty of commerce that held the two countries to enjoy these privileges, and the same line is now taken by the United States' Government. This brings the dispute directly back to whether under the construction of the Treaty of 1818 none of this disturbance, interruption, and interference on the part of the Dominion Authorities can be justified. He did not, however, propose to debate that question. The settled opinion of the Government of the United States now is that the Treaty of 1818 is a fishing treaty and not a commercial treaty at all. It is not a restriction of commerce, it is merely an enlargement of fishing rights.

He then goes on to explain that by the progress of mutual advantage, interest, and good neighbourhood a commercial intercourse was opened not by treaty but by statute law on the one side and on the other which permitted this reciprocal intercourse, and that it has been destroyed by a meaning attached to the Treaty of 1818 which has the actual and practical result on the part of Great Britain of exercising towards the commerce of the United States what is really an interruption of these interests. He denies that the Treaty of 1818 gives any right of interference with commercial relations, and he repeats that such right can only be based on having no treaty commercially obliging this relation to be kept open. So long, therefore, as comity and courtesy, freedom of commercial intercourse are withheld, not under treaty, but by positive law and authority, and only under positive law, the United States so respond by the present Bill.

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No. 108.

Governor-General the Most Hon. the Marquis of Lansdowne, G.C.M.G., to the Right Hon. Sir H. T. Holland, Bart., G.C.M.G., M.P. (Received February 15th, 1887).

GOVERNMENT HOUSE, OTTAWA,
January 31st, 1887.

No. 26.

SIR,

With reference to Mr. Stanhope's despatch No. 244 of the 22nd November last* transmitting copies of two letters from the Foreign Office enclosing notes from the Secretary of State of the United States respecting the alleged proceedings of the Canadian Authorities in the case of the United States' fishing vessels "Pearl Nelson" and "Everitt Steele" I have the honour to forward herewith a copy of an approved report of a Committee of the Privy Council embodying a report of my Minister of Marine and Fisheries on the subject.

You will observe from the accompanying Minute of Council that in reply to a telegram from the Secretary of State for the Colonies, dated the 6th November last,† copies of Orders in Council, approved on the 18th of the same month, containing full statements of facts regarding the detention of the above-named vessels were enclosed in my despatches Nos. 282 and 283 of the 29th November last.‡

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

The Right Hon. the Secretary of State
for the Colonies.

Enclosure in No. 108.

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

The Committee of the Privy Council have had under consideration a despatch dated 22nd November, 1886, from the Right Honorable the Secretary of State for the Colonies, enclosing letters from Mr. Secretary Bayard, bearing date 19th October, and referring to the cases of the schooners "Everitt Steele" and "Pearl Nelson."

The Minister of Marine and Fisheries to whom the despatch and enclosures were referred, reports that in reply to a telegram from the Secretary of State for the Colonies, an Order in Council passed on the 18th November last, containing a full statement of facts regarding the detention of the above-named vessels, was transmitted to Mr. Stanhope. It will not, therefore, be necessary to repeat this statement in the present report.

The Minister observes in the first place that the two fishing schooners, the "Everitt Steele" and "Pearl Nelson" were not detained for any alleged contravention of the Treaty of 1818 or the Fishery Laws of Canada, but solely for violation of the Customs Law. By this law all vessels of whatever character are required to report to the Collector of Customs immediately upon entering port, and are not to break bulk or land crew or cargo before this is done.

The Minister states that the captain of the "Everitt Steele" had on a previous voyage entered the port of Shelburne on the 25th March, 1886, and after remaining for eight hours had put to sea again without reporting to the Customs. For this previous offence he was, upon entering Shelburne Harbor on the 10th September last, detained, and the facts were reported to the Minister of Customs at Ottawa. With these facts was coupled the captain's statement that on the occasion of the previous offence he had been misled by the Deputy Harbor Master, from whom he understood that he would not be obliged to report unless he remained in harbor for twenty-four hours. The Minister accepted the statement in excuse as satisfactory, and the "Everitt Steele" was allowed to proceed on her voyage.

The Customs Law had been violated. The captain of the "Everitt Steele" had admitted the violation, and for this the usual penalty could have been legally enforced. It was, however, not enforced and no detention of the vessel occurred beyond the time necessary to report the facts to headquarters and obtain the decision of the Minister.

The Minister submits that he cannot discern in this transaction any attempt to interfere with the privileges of United States fishing vessels in Canadian waters, or any sufficient cause for the protest of Mr. Bayard.

The Minister states that in the case of the "Pearl Nelson" no question was raised as to her being a fishing vessel, or her enjoyment of any privileges guaranteed by the Treaty of 1818. Her captain was charged with a violation of the Customs Law, and of that alone, by having on the day before reporting to the Collector of Customs at Arichat landed ten of his crew.

This he admitted upon oath. When the facts were reported to the Minister of Customs, he ordered that the vessel might proceed upon depositing \$200 pending a fuller examination. This was done, and the fuller examination resulted in establishing the violation of the law, and in finding that the penalty was legally enforceable. The Minister, however, in consideration of the alleged ignorance of the captain as to what constituted an infraction of the law, ordered the deposit to be returned.

In this case there was a clear violation of Canadian law. There was no lengthened detention of the vessel; the deposit was ultimately remitted; and the United States Consul-General at Halifax expressed himself by letter to the Minister as highly pleased at the result.

The Minister observes that in this case he is at a loss to discover any well-founded grievance, or any attempted denial of or interference with any privileges guaranteed to United States fishermen by the Treaty of 1818.

The Minister further observes that the whole argument and protest of Mr. Bayard appears to proceed upon the assumption that these two vessels were subjected to unwarrantable interference, in that they were called upon to submit to the requirements of Canadian Customs Law, and that this interference was prompted by a desire to curtail or deny the privileges of resort to Canadian harbours for the purposes allowed by the Treaty of 1818. It is needless to say that this assumption is entirely incorrect.

Canada has a very large extent of sea coast with numberless ports into which foreign vessels are constantly entering for purposes of trade. It becomes necessary in the interests of legitimate commerce that stringent regulations should be made, by compulsory conformity to which illicit traffic should be prevented.

These Customs regulations all vessels of all countries are obliged to obey; and these they do obey, without in any way considering it a hardship. United States fishing vessels come directly from a foreign and not distant country, and it is not in the interests of legitimate Canadian commerce that they should be allowed access to our ports without the same strict supervision as is exercised over all other foreign vessels, otherwise there would be no guarantee against illicit traffic of large dimensions,

to the injury of honest trade and the serious diminution of the Canadian revenue. United States fishing vessels are cheerfully accorded the right to enter Canadian ports for the purpose of obtaining shelter, repairs, and procuring wood and water; but in exercising this right they are not and cannot be independent of the Customs Laws.

They have the right to enter for the purposes set forth, but there is only one legal way in which to enter, and that is by conformity to the Customs regulations.

When Mr. Bayard asserts that Captain Forbes had as much right to be in Shelburne Harbour seeking shelter and water "as he would have had on the high seas, carrying on, under shelter of the flag of the United States, legitimate commerce," he is undoubtedly right, but when he declares, as he in reality does, that to compel Captain Forbes in Shelburne Harbour to conform to Canadian Customs regulations, or to punish him for their violation, is a more unwarrantable stretch of power than "that of a seizure on the high seas of a ship unjustly suspected of being a slaver," he makes a statement which carries with it its own refutation. Customs regulations are made by each country for the protection of its own trade and commerce, and are enforced entirely within its own territorial jurisdiction; while the seizure of a vessel upon the high seas, except under extraordinary and abnormal circumstances, is an unjustifiable interference with the free right of navigation common to all nations.

As to Mr. Bayard's observation, that by treatment such as that experienced by the "Everitt Steele" "the door of shelter is shut to American fishermen as a class," the Minister expresses his belief that Mr. Bayard cannot have considered the scope of such an assertion, or the inferences which might reasonably be drawn from it.

If a United States fishing vessel enters a Canadian port for shelter, repairs, or for wood and water, her captain need have no difficulty in reporting her as having entered for one of these purposes, and the "Everitt Steele" would have suffered no detention had her captain on the 25th March simply reported his vessel to the Collector. As it was, the vessel was detained for no longer time than was necessary to obtain the decision of the Minister of Customs, and the penalty for which it was liable was not enforced. Surely Mr. Bayard does not wish to be understood as claiming for United States fishing vessels total immunity from all Customs' regulations, or as intimating that if they cannot exercise their privileges unlawfully they will not exercise them at all.

Mr. Bayard complains that the "Pearl Nelson," although seeking to exercise no commercial privileges was compelled to pay commercial fees such as are applicable to trading vessels. In reply, the Minister observes that the fees spoken of are not "commercial fees;" they are harbor master's dues, which all vessels making use of legally constituted harbours are by law compelled to pay, and entirely irrespective of any trading that may be done by the vessel.

The Minister observes that no single case has yet been brought to his notice in which any United States fishing vessel has in any way been interfered with for exercising any rights guaranteed under the Treaty of 1818 to enter Canadian ports for shelter, repairs, wood or water; that the Canadian Government would not countenance or permit any such interference, and that in all cases of this class when trouble has arisen it has been due to a violation of Canadian Customs law which demands the simple legal entry of the vessel so soon as it comes into port.

The Committee, concurring in the above report, recommend that your Excellency be moved to transmit a copy thereof to the Right Honorable the Secretary of State for the Colonies.

All which is respectfully submitted for your Excellency's approval.

JOHN J. MCGEE,
Clerk, Privy Council.

3,006.

No. 109.

Governor-General the Most Hon. the Marquis of Lansdowne, G.C.M.G., to the Right Hon. Sir H. T. Holland, Bart., G.C.M.G., M.P. (Received February 15th, 1887).

Secret.

GOVERNMENT HOUSE, OTTAWA,

February 1st, 1887.

SIR,

With reference to Mr. Stanhope's secret despatch of the 30th December last,* transmitting a copy of a note from the United States Minister in London enclosing an outline for an *ad interim* arrangement between the British and United States Governments on the subject of the North American Fisheries, together with a copy of a despatch from Mr. Bayard containing some observations thereon, I have the honour to forward herewith a copy of an approved report of a Committee of the Privy Council of Canada, containing the views of my Government on the subject.

I have, &c.,

(Signed) LANSDOWNE.

The Right Hon. the Secretary of State
for the Colonies.

Enclosure in No. 109.

Certified copy of a Report of a Committee of the Honourable the Privy Council for Canada, approved by His Excellency the Governor-General in Council, on the 1st February, 1887.

The Committee of the Privy Council have had under consideration a despatch, marked secret, dated 30th December, 1886, from the Right Honourable the Secretary of State for the Colonies, forwarding for the information of the Canadian Government, a note received through the Foreign Office from the United States Minister in London, enclosing a draft of a Memorandum for an arrangement between the British and United States Governments, on the subject of the North American Fisheries, entitled a "proposal for the settlement of the questions in dispute in relation to the fisheries on the north-eastern coasts of British North America," accompanied by a despatch, dated Washington, 15th November, 1886, from Mr. Bayard, United States' Secretary of State, containing some observations thereon. Mr. Secretary Stanhope requests your Excellency to obtain at the earliest possible moment from your Excellency's advisers their views on Mr. Bayard's proposals, and to report them to Her Majesty's Government.

The Minister of Marine and Fisheries to whom the said despatch and enclosures have been referred, reports that Mr. Bayard suggests that as the season for taking mackerel has now closed, "a period of comparative serenity may be expected of which advantage should be taken in order to adopt measures which will tend to make more harmonious the relations between Canada and the United States as regards the fisheries on the coasts of Canada."

The Minister observes that while any indication of a disposition on the part of the United States Government to make arrangements which might tend to put the affairs of the two countries on a basis more free from controversy and misunderstanding than at present exists must be hailed with satisfaction by the Government of Canada, it is to be regretted that the language in which Mr. Bayard refers to what has taken place during the past year indicates a disposition on his part to attribute to unfriendly motives the proceedings of the Canadian Government, and a tendency to misapprehend the character and scope of the measures which have been taken by it in order to enforce the terms of the Treaty of 1818, and to ensure respect for the municipal laws of the Dominion.

The Minister submits, therefore, that he cannot avoid protesting against such expressions in Mr. Bayard's letter as those in which he alludes to the proceedings of the last few months as "the administration of a strained and vexatious construction of the Convention of 1818," as "unjust and unfriendly treatment by the local authorities," as "unwarranted interferences (frequently accompanied by rudeness and unnecessary demonstration of force), with the rights of United States fishermen, guaranteed by express treaty stipulations and secured to them . . . by the commercial laws and regulations of the two countries, and which are demanded by the laws of hospitality

to which all friendly civilised nations owe allegiance," and as "conduct on the part of the Canadian officials which may endanger the peace of two kindred friendly nations."

The Minister has to observe again what has frequently been stated in the negotiations on this subject that nothing has been done on the part of the Canadian authorities since the termination of the Treaty of Washington in any such spirit as that which Mr. Bayard condemns, and that all that has been done with a view to the protection of the Canadian Fisheries has been simply for the purpose of guarding the rights guaranteed to the people of Canada by the Convention of 1818, and to enforce the Statutes of Great Britain and of Canada in relation to the fisheries. It has been more than once pointed out, in reports already submitted by the Minister of Marine and Fisheries, that such Statutes are clearly within the powers of the respective Parliaments by which they were passed, and are in conformity with the Treaty of 1818, especially in view of the passage of the Treaty which provides that the American fishermen shall be under such restrictions as shall be necessary to prevent them from abusing the privileges thereby reserved to them.

The Minister has further to call the attention of your Excellency to the fact that there is no foundation whatever for the following statement in the concluding part of Mr. Bayard's letter :—

"The numerous seizures made have been of vessels quietly at anchor in established ports of entry, under charges, which up to this day have not been particularised sufficiently to allow of intelligent defence; not one has been condemned after trial and hearing, but many have been fined without hearing or judgment, for technical violation of alleged commercial regulations, although all commercial privileges have been simultaneously denied to them."

The Minister observes, in relation to this paragraph that the seizures of which Mr. Bayard complains have been made under circumstances which have from time to time been fully reported to your Excellency and communicated to Her Majesty's Government, and upon grounds which have been distinctly and unequivocally stated in every case, that although the nature of the charges has been invariably specified and duly announced, those charges have not in any case been answered; that ample opportunity has in every case been afforded for a defence to be submitted to the executive authorities, but that no defence has been offered beyond the mere denial of the right of the Canadian Government; that the courts of the various provinces have been open to the parties said to have been aggrieved, but that not one of them has resorted to those courts for redress. To this it must be added that the illegal acts which are characterised by Mr. Bayard as "technical violations of alleged commercial regulations" involved breaches in most of the cases not denied by the persons who had committed them—of established commercial regulations, which, far from being specially directed or enforced against citizens of the United States are obligatory upon all vessels (including those of Canada herself) which resort to the harbours of the British North American coast.

With regard to the proposal for a settlement which accompanies Mr. Bayard's letter, the minister submits the following observations :—

Art. 1. The minister observes that in referring to this article Mr. Bayard states that he is "encouraged in the expectation that the propositions embodied in the memorandum will be acceptable to Her Majesty's Government, because, in the month of April, 1866, Mr. Seward, then Secretary of State sent forward to Mr. Adams, at that time United States Minister in London, the draft of a Protocol which in substance coincides with the first article of the proposal now submitted.

In regard to this statement it is to be remarked that Article 1 of the Memorandum although no doubt to some extent resembling the Protocol submitted in 1866 by Mr. Adams to Lord Clarendon, contains several most important departures from the terms of that Protocol. These departures consist not only in such comparatively unimportant alterations as the substitution in line 1 of the word "establish" for the word "define" without any apparent necessity for the change, and in other minor alterations of the text, but also in such grave changes as that which is involved in the interpolation in section 1 of the important passage in which it is stipulated "that the bays and harbours" from which American vessels are in future to be excluded, save for the purposes for which entrance into bays and harbours is permitted by said Article are hereby agreed to be taken to be such bays and harbours as are ten or less than ten miles in width, and the distance of three marine miles from such bays and harbours shall be measured from a straight line drawn across the bay or harbour in the part nearest the entrance at the first point where the width does not exceed ten miles.

This provision would involve a surrender of fishing rights which have always

been regarded as the exclusive property of Canada, and would make common fishing grounds of territorial waters which by the law of nations have been invariably regarded, both in Great Britain and the United States, as belonging to the adjacent country. In the case, for instance, of the Baie des Chaleurs, a peculiarly well-marked and almost land-locked indentation of the Canadian coast, the ten-mile line would be drawn from points in the heart of Canadian territory, and almost seventy miles distant from the natural entrance or mouth of the bay. This would be done in spite of the fact that, both by Imperial legislation and by judicial interpretation, this bay has been declared to form a part of the territory of Canada. (*See Imperial Stat., 14 and 15 Vic., cap. 63, and Monat versus McPhee, 5 Sup. Court of Canada Reports, p. 66.*)

The Convention with France in 1839, and similar Conventions with other European powers, although cited by Mr. Bayard as sufficient precedents for the adoption of a ten-mile limit, do not, the Minister submits, carry out his reasoning.

Those Conventions were doubtless passed with a view to the geographical peculiarities of the coasts to which they related. They had for their object the definition of boundary lines, which, owing to the configuration of the coast, perhaps could not readily be settled by reference to the law of nations, and involve other conditions which are inapplicable to the territorial waters of Canada.

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

The Minister submits, however, that the rule laid down by Mr. Bates with regard to the Bay of Fundy should not be treated as establishing the respective rights of Canada and of the United States as to bays and harbours not included in the terms of the reference, and in relation to which there was no agreement to abide by the decision of the umpire and no decision by him. It may reasonably be contended that as one of the headlands of the Bay of Fundy is in the territory of the United States any rules of international law applicable to that bay are not therefore equally applicable to other bays, the headlands of which are both within the territory of the same power.

As to the second paragraph of the first article, the Minister suggests that before such an article is acceded to, and even if the objections before stated should be removed, the article should be so amended as to incorporate the exact language of the Convention of 1818, in which case several alterations should be made. Thus the words "and for no other purpose whatever" should be inserted after the mention of the purposes for which vessels may enter Canadian waters, and after the words "as may be necessary to prevent" should be inserted "their taking, drying, or curing fish therein, or in any other manner abusing the privileges reserved, &c."

To make the language conform correctly to the Convention of 1818 several other verbal alterations which need not be enumerated here, would be necessary in order to prevent imaginary distinctions being drawn hereafter between the Convention of 1818 and any agreement of later date which may be arrived at.

The Minister moreover suggests that inasmuch as Mr. Bayard has from time to time denied the force and authority of the customs, harbour, shipping, and police laws of Canada, it may be well, in order to remove the possibility of misunderstanding on the part of his Government, to insert a proviso expressly recognising the validity of such enactments.

The proviso in Article I, in which it is stipulated that any arrangement which may be arrived at by the Commission shall not go into effect until it has been confirmed by Great Britain and the United States, should provide for confirmation by the Parliament of Canada.

2. The Minister submits that Article II of the proposed arrangement is, in his opinion, entirely inadmissible. It would suspend the operation of the Statutes of Great Britain and of Canada, and of the Provinces now constituting Canada, not only as to the various offences connected with fishing, but as to customs, harbours, and shipping, and would give to the fishing vessels of the United States privileges in Canadian ports which are not enjoyed by vessels of any other class, or of any other nation; such vessels would, for example, be free from the duty of reporting at the customs on entering a Canadian harbour, and no safeguard could be adopted to prevent infraction of the customs' laws by any vessel asserting the character of a fishing vessel of the United States.

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

It must, moreover, be borne in mind that should no definitive arrangement such as is looked forward to in the proposal, be arrived at, these extraordinary concessions, although applied for pending such a definitive arrangement, might remain in operation for an indefinite period, and that the article would be taken for all time to come as indicating the true interpretation of the Convention of 1818, although the interpretation placed upon that Convention by the article is, as a matter of fact, diametrically opposed to the construction which has heretofore been insisted upon by successive Canadian Governments.

The Minister further considers it his duty to point out that the article is beyond the powers of the Imperial Government, which cannot thus suspend or repeal Canadian laws.

3. As to Article III the Minister submits that it is entirely inadmissible. It proposes that Her Majesty's Courts in Canada, shall, without any show of reason, be deprived of their jurisdiction, and would vest that jurisdiction in a tribunal not bound by legal principles but clothed with supreme authority to decide on most important rights of the Canadian people.

It would be a disagreeable novelty to the people of Her Majesty's Canadian Dominions to find that any of their rights, or the rights of their country as a whole, were to be submitted to the adjudication of two naval officers, one of them belonging to a foreign country, who if they should disagree and be unable to choose an umpire must refer the final decision of the great interests which might be at stake to some person chosen by lot.

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

4. Article IV is also open to grave objection. It proposes to give the United States fishing vessels the same commercial privileges as those to which other vessels of the United States are entitled although such privileges are expressly renounced by the Treaty of 1818 on behalf of fishing vessels which were thereafter to be denied the right of access to Canadian waters except for shelter, repairs, and the purchase of wood and water. It has already been pointed out in previous reports on the subject, that an attempt was made during the negotiations which preceded the Convention of 1818, to obtain for the fishermen of the United States the right of obtaining bait in Canadian waters and that this attempt was successfully resisted. Your Excellency will observe that, in spite of this fact, it is proposed, under the article now referred to, to declare that the Convention of 1818 gave that privilege, as well as the privilege of purchasing other supplies, in the harbours of the Dominion.

5. To this novel and unjustified interpretation of the Convention, Mr. Bayard proposes to give retrospective effect by the next article of the proposal, in which it is assumed without discussion, that all United States fishing vessels which have been seized since the expiration of the Treaty of Washington have been illegally seized, leaving as the only question still open for consideration, the amount of the damages for which the Canadian authorities are liable. The Minister submits that the serious consideration of such a proposal would imply a disregard of justice as well as of the interests of Canada, and he is unwilling to believe that it will be entertained, either by your Excellency's advisers, or by the Imperial Government.

From the above enumeration of some of the principal objections to which the proposals contained in Mr. Bayard's memorandum, are open, it will be evident to your Excellency that those proposals as a whole will not be acceptable to the Government of Canada. The conditions which Mr. Bayard has sought to attach to the appointment of a mixed Commission involve in every case the assumption that upon the most important points in the controversy which has arisen, in regard to the fisheries on the eastern coast of British North America, Canada has been in the wrong, and the United States in the right. The reports which have already been submitted to your Excellency, and communicated to Her Majesty's Government upon this subject have been sufficient to show that the position which has been taken up by the Canadian Government is one perfectly justifiable, with reference to the rights expressly secured to British subjects by treaty, and that the legislation by which it has been and is now being sought to enforce those rights, is entirely in accordance with treaty stipulations, and is within the competence of the Colonial Legislature.

It is not to be expected that after having earnestly insisted upon the necessity of a strict maintenance of these treaty rights, and upon the respect due by foreign

vessels while in Canadian waters, to the municipal legislation by which all vessels resorting to those waters are governed; in the absence, moreover, of any decision of a legal tribunal to show that there has been any straining of the law in those cases in which it has been put in operation, the Canadian Government will suddenly, and without the justification supplied by any new facts or arguments, withdraw from a position taken up deliberately, and, by doing so, in effect plead guilty to the whole of the charges of oppression, inhumanity and bad faith which, in language wholly unwarranted by the circumstances of the case, have been made against it by the public men of the United States.

Such a surrender on the part of Canada would involve the abandonment of a valuable portion of the national inheritance of the Canadian people, who would certainly visit with just reprobation those who were guilty of so serious a neglect of the trust committed to their charge.

The Minister while, however, objecting thus strongly to the proposal as it now stands, considers that the fact of such a proposal having been made may be regarded as affording an opportunity which has, up to the present time, not been offered for an amicable comparison of the views entertained by your Excellency's Government and that of the United States, and he desires to point out that Mr. Bayard's proposal, though quite inadmissible in so far as the conditions attached to it are concerned, appears to be, in itself, one which deserves respectful examination by your Excellency's advisers. The main principle of that proposal is that a mixed Commission should be appointed for the purpose of determining the limits of those territorial waters within which, subject to the stipulations of the Convention of 1818, the exclusive right of fishing belongs to Great Britain.

The Minister cordially agrees with Mr. Bayard in believing that a determination of these limits would, whatever may be the future commercial relations between Canada and the United States, either in respect of the fishing industry, or in regard to the interchange of other commodities, be extremely desirable, and he believes that your Excellency's Government will be found ready to co-operate with that of the United States in effecting such a settlement.

Holding this view the Minister is of opinion that Mr. Bayard was justified in reverting to the precedent afforded by the negotiations which took place upon this subject between Great Britain and the United States after the expiration of the Reciprocity Treaty of 1854, and he concurs with him in believing that the memorandum communicated by Mr. Adams in 1866 to the Earl of Clarendon affords a valuable indication of the lines upon which a negotiation directed to the same points might now be allowed to proceed.

The Minister has already referred to some of the criticisms which were taken at the time by Lord Clarendon to the terms of the memorandum. Mr. Bayard has himself pointed out that its concluding paragraph, to which Lord Clarendon emphatically objected, is not contained in the memorandum now forwarded by him. Mr. Bayard appears, however, while taking credit for this omission, to have lost sight of the fact that the remaining articles of the draft memorandum contain stipulations not less open to objection and calculated to affect even more disadvantageously the permanent interests of the Dominion in the fisheries adjacent to its coasts.

The Minister submits that, in his opinion, there can be no objection on the part of the Canadian Government to the appointment of a mixed Commission whose duty it would be to consider and report upon the matters referred to in the three first articles of the memorandum communicated to the Earl of Clarendon by Mr. Adams in 1866.

Should a Commission instructed to deal with these subjects be appointed at an early date, the Minister is not without hope that the result of its investigations might be reported to the Governments affected without much loss of time. Pending the termination of the questions which it would discuss it will, in the opinion of the Minister, be indispensable that United States fishing vessels entering Canadian bays and harbours should govern themselves not only according to the terms of the Convention of 1818, but by the regulations to which they, in common with other vessels, are subject while within such waters.

The Minister has, however, no doubt that every effort will be made to enforce those regulations in such a manner as to cause the smallest amount of inconvenience to fishing vessels entering Canadian ports under stress of weather, or for any other legitimate purpose, and he believes that any representation upon this subject will receive the attentive consideration of your Excellency's Government.

The Minister in conclusion would remind your Excellency that your Government

has always been willing to remove any obstacles to the most friendly relations between the people of Canada and of the United States.

Your Government has not only been disposed from the first to arrive at such an arrangement as that indicated in the Report with regard to the Fisheries, but likewise to enter into such other arrangements as might extend the commercial relations existing between the two countries.

The Committee concur in the foregoing and they submit the same for your Excellency's approval.

(Signed) JOHN J. MCGEE,
Clerk, Privy Council, Canada.

3,006.

No. 110.

Colonial Office to Foreign Office.

Confidential.

DOWNING STREET,
February 15th, 1887.

SIR,

With reference to the letter from this department of the 5th January last,* I am directed by the Secretary of State for the Colonies to transmit to you, to be laid before the Marquis of Salisbury, a copy of a despatch† from the Governor-General of Canada forwarding an approved report of a Committee of the Privy Council of the Dominion which contains the views of the Canadian Government in respect of the outline for an "ad interim" arrangement between the British and United States Governments on the subject of the North American Fisheries communicated to the Foreign Office by the United States Minister at this Court, and sent to this Department in your letter of the 9th of December.‡

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

The Under Secretary of State,
Foreign Office.

3,203.

No. 111.

Foreign Office to Colonial Office.

FOREIGN OFFICE,
February 17th, 1887.

SIR,

I am directed by the Marquis of Salisbury to transmit to you, to be laid before Sir Henry Holland, a copy of a despatch from Her Majesty's Minister at Washington enclosing a copy of a note from the United States' Secretary of State requesting that an investigation may be made into the case of the United States' schooner "Sarah H. Prior;" and I am to request that a report may be obtained from the Dominion Government on the subject.

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

The Under Secretary of State,
Colonial Office.

Enclosure in No. 111.

WASHINGTON,
January 28th, 1887.

Treaty No. 21.

MY LORD,

I have the honour to enclose to your Lordship herewith copy of a note which I have received from the Secretary of State, as well as copy of an affidavit which

accompanied it, asking for an investigation into the case of the American schooner "Sarah H. Prior," as therein set forth.

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

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

WASHINGTON,
January 27th, 1887.

SIR,

I have the honour to enclose the copy of an affidavit of the Captain and two members of the crew of the schooner "Sarah H. Prior," of Boston, stating the refusal of the Captain of the Canadian revenue cutter "Critic" to permit the restoration to the former vessel, in the port of Malpeque, Prince Edward Island, of her large seine, which she had lost at sea, and which had been found by the Captain of a Canadian vessel who offered to return the seine to the "Prior," but was prevented from doing so by the Captain of the "Critic."

This act of prevention, the reason for which is not disclosed, practically disabled the "Prior," and she was compelled to return home without having completed her voyage, and in debt.

I have the honour to ask that Her Majesty's Government cause investigation of this case to be made.

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

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

Hon. T. F. Bayard, Secretary of State.

Affidavit.

On this 28th day of December, A.D., 1886, personally appeared before me Captain Thomas McLaughlin, Master, and George F. Little, and Charles Finnegan, two of the crew of the "Sarah H. Prior" of Boston, and being duly sworn, signed and made oath to the following statement of facts.

On September 10th, 1886, the schooner "Sarah H. Prior" while running for Malpeque, Prince Edward Island, and about seven miles from that port, lost her large seine. Four days afterwards the schooner "John Ingalls" of Halifax, N.S., Captain Wolfe, came into Malpeque and had the seine on board which she had picked up at sea. Captain Wolfe offered to deliver the seine to Captain McLaughlin in consideration of 25 dollars, which offer was accepted and paid him the money. The Canadian revenue cutter "Critic," Captain McLaren, was lying at Malpeque at the time, and Captain McLaughlin went to see him so as to ascertain if there would be any trouble in delivering the seine. Captain McLaren would not allow the Captain of the "John Ingalls" to give up the seine, so the latter returned the 25 dollars to Captain McLaughlin.

The schooner "Sarah H. Prior" had two seines, one large, and one small. It was the large one which she lost, and the schooner "John Ingalls" picked up. She had to leave Malpeque without it, and consequently came home with a broken voyage, and in debt

(Signed) THOS. McLAUGHLIN.
GEO. F. LITTLE.
CHAS. FINNEGAN.

Suffolk S.S., Boston, December 28th, 1886.

Personally appeared before me, Thomas McLaughlin, George F. Little, and Charles Finnegan, who signed and made oath that the foregoing statement was true.

(Signed) CHAS. H. HALLSTRAM,
Notary Public.

2,108.

No. 112.

The Right Hon. Sir H. T. Holland, Bart, G.C.M.G., M.P., to Governor-General the Most Hon. the Marquis of Lansdowne, G.C.M.G.

No. 38.

DOWNING STREET,
February 18th, 1887.

MY LORD,

I have the honour to transmit to you, for communication to your Government, a copy of a despatch* received through the Foreign Office, from Her Majesty's Minister at Washington, enclosing copies of a Bill, and report thereon, introduced into the House of Representatives for the appointment of a Commission to investigate losses and injuries inflicted on United States citizens engaged in North American fisheries.

I have, &c.,

(Signed) H. T. HOLLAND.

The Marquis of Lansdowne,

3,499.

No. 113.

Foreign Office to Colonial Office.

FOREIGN OFFICE,
February 21st, 1887.

SIR,

I am directed by the Secretary of State for Foreign Affairs to transmit to you, to be laid before Sir Henry Holland, a copy of a despatch from Her Majesty's Minister at Washington, enclosing a paper containing certain questions respecting the fisheries put by the Secretary of the Treasury to Professor Baird of the Fish Commission as well as the answers returned thereto.

I am, &c.,

(Signed) J. PAUNCEFOTE.

The Under Secretary of State,
Colonial Office.

Enclosure in No. 113.

WASHINGTON,
February 5th, 1887.

Treaty No. 25.

MY LORD,

I have the honour to enclose to your Lordship herewith a paper containing certain questions respecting the fisheries put by the Secretary of the Treasury to Professor Baird of the Fish Commission as well as the answers returned thereto.

I have, &c.,

(Signed) L. S. S. WEST.

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

Questions put to Professor Baird by the Secretary of the Treasury on the Fisheries and Answers thereto.

1. What are the descriptions of the fish which American fishermen desire to take either in the jurisdictional waters of British North America or in the open sea, or upon bays near the British Colonial Possessions?

Answer.—Mackerel is the only species of any importance which American fishermen desire to take within the three-mile limit; but at present the advantage to be derived from any privilege of fishing within the three-mile limit is comparatively insignificant.

* Enclosure in No. 103

2. In the method of fishing in the open sea, of what importance is the right to enter in a commercial way British Colonial ports in the neighbourhood?

Answer.—Only to purchase either salt barrels or ice. The privilege, however, of landing cargoes of fish at provincial ports for shipment to the United States is of considerable importance to vessels engaged in the mackerel fishery, and with it should be coupled the privilege of refitting. Some of the Gloucester owners of vessels are opposed to going to and from provincial ports on account of the loss of time thereby incurred, but as a considerable percentage of the men employed have families in the provinces, they urge upon the owners the necessity of obtaining bait in these localities.

3. The same question in regard to the fishing on the permitted coasts and the commercial entry in the prohibited bays and harbours, but not for fishing.

Answer.—There is at present comparatively little fishing by American vessels on that portion of the coast to which free access is given by the Treaty of 1818, but vessels fishing in that vicinity should have the same privileges in other ports as are accorded to other vessels, as it would seem unwise to discriminate, and it would perhaps, owing to the few settlements of any importance on the permitted coast be more convenient for the vessels to enter ports in the prohibited districts to purchase the necessary articles than to go out of their way in an opposite direction where there might be any uncertainty of securing them.

4. What is your estimate of the total tonnage of American vessels and the number of fishermen therein engaged in the Canadian and North Atlantic fisheries in 1886, and the total value of their catch.

Answer.—1,956 vessels aggregating 115,130 tons, with crew numbering 17,996 men. The fleet is estimated to have been divided as follows:—

1,530 vessels in the food-fish fishery.
215 in the shell fish and lobster fishery.
177 in the capture of whales and seals.
34 in the menhaden fishing.

5. What change has in your view come to American fisheries since the last full year of the Washington Treaty in regard to the quantity, character, and general features of that industry?

Answer.—During the year mackerel has been peculiarly scarce. The limited catch cannot, however, in any way be accounted for by the restrictions placed on American vessels within the three mile limit.

6. What are the new features in the diminished necessity for the purchase of bait in British and American ports?

Answer.—The employment of the Gill net obtained from Norway for catching cod fish which renders bait no longer necessary.

7. Have you ascertained new facts of public interest in regard to the decreasing importance to American fishermen of the inshore Canadian fisheries?

Answer.—The decreased importance is due to—

(1.) The increased size of American vessels which did away with the necessity of fishing close to land where harbours could be made in case of storms, and of landing to dry their fish.

(2.) The substitution of the purse seine for hand lines in the capture of mackerel which has necessitated fishing in deeper water, and at a greater distance from shore.

(3.) From the change in the location of the mackerel which has for the last few years enabled American vessels to obtain full cargoes in the vicinity of the American coasts instead of going to the Gulf of St. Lawrence where they formerly met with better success, but where of late years prior to the present season they have found fishing unsatisfactory.

3,500.

No. 114.

Foreign Office to Colonial Office.

FOREIGN OFFICE,

February 21st, 1887.

SIR,

I am directed by the Secretary of State for Foreign Affairs to transmit to you, to be laid before Sir Henry Holland, a copy of a Despatch from Her Majesty's Minister at Washington, enclosing copies of a letter from the United States' Secretary of State transmitting to the Senate a revised List of United States' vessels seized, detained, or warned off from Canada Ports during the last year.

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

The Under Secretary of State,
Colonial Office.

Enclosure in No. 114.

Treaty, No. 24.

WASHINGTON,

February 4th, 1887.

MY LORD,

I have the honour to enclose to your Lordship herewith copies of a letter from the Secretary of State transmitting to the Senate a revised List of the American vessels seized, detained, or warned off from Canadian ports during the last year.

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

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

Letter from the Secretary of State, transmitting revised list of vessels involved in the controversy with the Canadian authorities.

January 27th, 1887.—Ordered to be printed, and also to be bound with Senate Report No. 1683.

DEPARTMENT OF STATE, WASHINGTON,

January 26th, 1887.

SIR,

Responding to your request, dated the 17th and received at this Department on the 18th instant, on behalf of the Committee on Foreign Relations, for a revision of the list, heretofore furnished by this Department to the Committee, of all American vessels seized, warned, fined, or detained by the Canadian authorities during the year 1886, I now enclose the same.

Every such instance is therein chronologically enumerated, with a statement of the general facts attendant.

Very respectfully yours,
(Signed) T. F. BAYARD.

Hon. George F. Edmunds,
United States Senate.

List of American vessels seized, detained, or warned off from Canadian ports during the last year.

"Sarah B. Putnam."—Beverly, Mass.; Charles Randolph, master.
Driven from harbour of Pubnico in storm March 22, 1886.

"Joseph Story."—Gloucester, Mass.

Detained by customs officers at Baddeck, N.S., in April, 1886, for alleged violation of the customs laws. Released after twenty-four hours' detention.

"Seth Stockbridge."—Gloucester, Mass.; Antone Olson, master.
Warned off from St. Andrews, N.B., about April 30, 1886.

"Annie M. Jordan."—Gloucester, Mass. ; Alexander Haine, master.

Warned off at St. Andrews, New Brunswick, about May 4, 1886.

"David J. Adams."—Gloucester, Mass. ; Alden Kinney, master.

Seized at Digby, Nova Scotia, May 7, 1886, for alleged violation of Treaty of 1818, Act of 59 George III, and Act of 1883. Two suits brought in Vice-Admiralty Court at Halifax for penalties. Protest filed May 12. Suits pending still, and vessel not yet released apparently.

"Susie Cooper."—(Hooper ?) Gloucester (?), Mass.

Boarded and searched, and crew rudely treated, by Canadian officials in Canso Bay, Nova Scotia, May, 1886.

"Ella M. Doughty."—Portland, Me. ; Warren A. Doughty, master.

Seized at St. Ann's, Cape Breton, May 17, 1886, for alleged violation of the customs laws. Suit was instituted in Vice-Admiralty Court at Halifax, Nova Scotia, but was subsequently abandoned, and vessel was released June 29, 1886.

"Jennie and Julia."—Eastport, Me. ; W. H. Travis, master.

Warned off at Digby, Nova Scotia, by customs officers, May 18, 1886.

"Lucy Ann."—Gloucester, Mass. ; Joseph H. Smith, master.

Warned off at Yarmouth, Nova Scotia, May 29, 1886.

"Matthew Keany."—Gloucester, Mass.

Detained at Souris, Prince Edward Island, one day for alleged violation of customs laws, about May 31, 1886.

"James A. Garfield."—Gloucester, Mass.

Threatened, about June 1, 1886, with seizure for having purchased bait in a Canadian harbour.

"Martha W. Bradly."—Gloucester, Mass. ; J. F. Ventier, master.

Warned off at Canso, Nova Scotia, between June 1 and 8, 1886.

"Eliza Boynton."—Gloucester, Mass. ; George E. Martin, master.

Warned off at Canso, Nova Scotia, between June 1 and 9, 1886. Then afterwards detained in manner not reported, and released October 25, 1886.

"Mascot."—Gloucester, Mass. ; Alexander McEachern, master.

Warned off at Port Amherst, Magdalen Islands, June 10, 1886.

"Thomas F. Bayard."—Gloucester, Mass. ; James McDonald, master.

Warned off at Bonne Bay, Newfoundland, June 12, 1886.

"James G. Craig."—Portland, Me. ; Webber, master.

Crew refused privilege of landing for necessaries at Brooklyn, Nova Scotia, June 15 or 16, 1886.

"City Point."—Portland, Me. ; Keene, master.

Detained at Shelburne, Nova Scotia, July 2, 1886, for alleged violation of customs laws. Penalty of \$400 demanded. Money deposited, under protest, July 12, and in addition \$120 costs deposited July 14. Fine and costs refunded July 21, and vessel released August 26. Harbour dues exacted August 26, notwithstanding vessel had been refused all the privileges of entry.

"C. P. Harrington."—Portland, Me. ; Frellick, master.

Detained at Shelburne, Nova Scotia, July 3, 1886, for alleged violation of customs laws : fined \$400, July 5 ; fine deposited, under protest, July 12 ; \$120 costs deposited July 14 ; refunded July 21, and vessel released.

"Hereward."—Gloucester, Mass. ; McDonald, master.

Detained two days at Canso, Nova Scotia, about July 3, 1886, for shipping seamen contrary to port laws.

"G. W. Cushing."—Portland, Me. ; Jewett, master.

Detained July (by another report, June) 3, 1886, at Shelburne, Nova Scotia, for alleged violation of the customs laws ; fined \$400 ; money deposited with collector at Halifax about July 12 or 14, and \$120 for costs deposited 14th ; costs refunded July 21, and vessel released.

"Golden Hind."—Gloucester, Mass. ; Ruben Cameron, master.

Warned off at Bay of Chaleurs, Nova Scotia, on or about July 23, 1886.

"Novelty."—Portland, Me. ; H. A. Joyce, master.

Warned off at Pictou, Nova Scotia, June 29, 1886, where vessel had entered for coal and water ; also refused entrance at Amherst, Nova Scotia, July 24.

"N. J. Miller."—Booth Bay, Me. ; Dickson, master.

Detained at Hopewell Cape, New Brunswick, for alleged violation of customs laws, on July 24, 1886. Fined \$400.

"Rattler."—Gloucester, Mass. ; A. F. Cunningham, master.

Warned off at Canso, Nova Scotia, June, 1886. Detained in port of Shelburne,

Nova Scotia, where vessel entered seeking shelter August 3, 1886. Kept under guard all night and released on the 4th.

"Caroline Vought."—Booth Bay, Me.; Charles S. Reed, master.

Warned off at Paspebiac, New Brunswick, and refused water, August 4, 1886.

"Shiloh."—Gloucester, Mass.; Charles Nevit, master.

Boarded at Liverpool, Nova Scotia, August 9, and subjected to rude surveillance.

"Julia Ellen."—Booth Bay, Me.; Burnes, master.

Boarded at Liverpool, Nova Scotia, August 9, 1886, and subjected to rude surveillance.

"Freddie W. Allton."—Provincetown, Mass.; Allton, master.

Boarded at Liverpool, Nova Scotia, August 9, 1886, and subjected to rude surveillance.

"Howard Holbrook."—Gloucester, Mass.

Detained at Hawkesburg, Cape Breton, August 17, 1886, for alleged violation of the Customs laws. Released August 20, on deposit of \$400. Question of remission of the fine still pending.

"A. R. Crittenden."—Gloucester, Mass.; Bain, master.

Detained at Hawkesburg, Nova Scotia, August 27, 1886, for alleged violation of Customs laws. Four hundred dollars penalty deposited August 28 without protest, and vessel released. Three hundred and seventy-five dollars remitted, and a nominal fine of \$25 imposed.

"Mollie Adams."—Gloucester, Mass.; Solomon Jacobs, master.

Warned off into storm from Straits of Canso, Nova Scotia, August 31, 1886.

"Highland Light."—Wellfleet, Mass.; J. H. Ryder, master.

Seized off East Point, Prince Edward Island, September 1, 1886, while fishing within prohibited line. Suit for forfeiture begun in Vice-Admiralty Court at Charlottetown. Hearing set for September 20, but postponed to September 30. Master admitted the charge and confessed judgment. Vessel condemned and sold December 14. Purchased by Canadian Government.

"Pearl Nelson."—Provincetown, Mass.; Kemp, master.

Detained at Arichat, Cape Breton, September 8, 1886, for alleged violation of Customs laws. Released September 9, on deposit of \$200. Deposit refunded October 26, 1886.

"Pioneer."—Gloucester, Mass.; F. F. Cruched, master.

Warned off at Canso, Nova Scotia, September 9, 1886.

"Everett Steel."—Gloucester, Mass.; Charles H. Forbes, master.

Detained at Shelburne, Nova Scotia, September 10, 1886, for alleged violation of Customs laws. Released by order from Ottawa, September 11, 1886.

"Moro Castle."—Gloucester, Mass.; Edwin M. Joyce, master.

Detained at Hawksbury, Nova Scotia, September 11, 1886, on charge of having smuggled goods into Chester, Nova Scotia, in 1884, and also of violating Customs laws. A deposit of \$1,600 demanded. Vessel discharged November 29, 1886, on payment, by agreement, of \$1,000 to Canadian Government.

"William D. Daisley."—Gloucester, Mass.; J. E. Gorman, master.

Detained at Souris, Prince Edward Island, October 4, 1886, for alleged violation of Customs laws. Fined \$400, and released on payment; \$375 of the fine remitted.

"Laura Sayward."—Gloucester, Mass.; Medeo Rose, master.

Refused privilege of landing to buy provisions at Shelburne, Nova Scotia, October 5, 1886.

"Marion Grimes."—Gloucester, Mass.

Detained at Shelburne, Nova Scotia, October 9, for violation of Port laws in failing to report at Custom House on entering. Fined \$400. Money paid under protest and vessel released. Fine remitted December 4, 1886.

"Jennie Seaverns."—Gloucester, Mass.; Joseph Tupper, master.

Refused privilege of landing, and vessel placed under guard at Liverpool, Nova Scotia, October 20, 1886.

"Flying Scud."—Gloucester, Mass.

Detained for alleged violation of Customs laws at Halifax, November 1, or about that time. Released November 16, 1886.

"Sarah H. Prior."—Boston, Mass.

Refused the restoration of a lost seine, which was found by a Canadian schooner, December, 1886.

Boat (name unknown).—Stephen R. Balcom, master, Eastport, Me.

Warned off at St. Andrews, New Brunswick, July 9, 1886, with others.

Two small boats (unnamed).—Charles Smith, Pembroke, Me., master.
Seized at East Quaddy, New Brunswick, September 1, 1886, for alleged violation of Customs laws.

"Druid" (foreign built).—Gloucester, Mass.
Seized, warned off, or molested otherwise at some time prior to September 6, 1886.

"Abbey A. Snow."—Injury to this vessel has not been reported to the Department of State.

"Eliza A. Thomas."—Injury to this vessel has not been reported to the Department of State.

"Wide-Awake."—Eastport, Me.; William Foley, master.

Fined at L'Etang, New Brunswick, \$75 for taking away fish without getting a clearance; again, November 13, 1886, at St. George's, New Brunswick, fined \$20 for similar offence. In both cases he was proceeding to obtain clearances.

3,203.

No. 115.

The Right Hon. Sir H. T. Holland, Bart., G.C.M.G., M.P., to Governor-General the Most Hon. the Marquis of Lansdowne, G.C.M.G.

DOWNING STREET,
23rd February, 1887.

No. 42.

MY LORD,

I have the honour to transmit to your Lordship, for communication to your Government, a copy of a letter* from the Foreign Office with its enclosures, respecting the case of the United States schooner "Sarah H. Prior," and I am to request that I may be favoured with a report upon the alleged conduct of the Captain of the Canadian revenue cutter "Critic" on the occasion referred to.

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

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

3. Secret.

No. 116.

The Right Hon. Sir H. T. Holland, Bart., G.C.M.G., M.P., to Governor-General the Most Hon. the Marquis of Lansdowne, G.C.M.G.

TELEGRAPHIC.

24th February, 1887. Her Majesty's Government have carefully considered your despatch of the 1st February,† and will communicate with the United States Government in general accordance with views of your Ministers upon Bayard's proposal for Mixed Commission, but there are one or two points on which I will address you further.

While endeavouring to bring about this *ad interim* arrangement, Her Majesty's Government feel it right to intimate to you that after much consideration of the whole subject they are disposed to think that the simplest and best solution of present difficulties might be found if both parties would agree to revert, if not permanently, at least for a term, so as to admit of the discussion of more extended commercial arrangements, to the condition of things existing under the Treaty of Washington, the fisheries being again thrown reciprocally open, and fish and fish products being again reciprocally admitted duty free. They think, however, that it would be the clear interest of the Dominion to offer this arrangement without any suggestion of pecuniary indemnity.

3,203.

No. 117.

Colonial Office to Foreign Office.

DOWNING STREET,
24th February, 1887.

SIR,

With reference to your letter of the 17th instant,* I am directed by Secretary Sir Henry Holland to request that you will inform the Marquis of Salisbury that the Governor-General of Canada has been requested to cause a report to be furnished of the alleged conduct of the Captain of the Canadian revenue cutter "Critic" in connection with the case of the United States' schooner "Sarah H. Prior."

I am, &c.,

(Signed) JOHN BRAMSTON.

The Under Secretary of State,
Foreign Office.

3,895.

No. 118.

Foreign Office to Colonial Office.

FOREIGN OFFICE.
February 25th, 1887.

SIR,

I am directed by the Secretary of State for Foreign Affairs to transmit to you, to be laid before Sir Henry Holland a copy of a despatch from Her Majesty's Minister at Washington, transmitting a copy of the Bill which the Secretary to the Treasury proposes to substitute for the Belmont Bill.

I am, &c.

(Signed) J. PAUNCEFOTE.

The Under Secretary of State,
Colonial Office.

Enclosure in No. 118.

WASHINGTON,
February 7th, 1887.

Treaty, No. 26.

MY LORD,

I have the honour to inform your Lordship that the Secretary of the Treasury has sent a long reply to the request of the House Committee on Foreign Affairs for any suggestions he may desire to make with reference to the non-intercourse Bill now under consideration, and for which he proposes to substitute the Bill, copies of which, as published in the newspapers, are herewith enclosed. The Secretary holds that when Treaty rights are curtailed, the right to respond exists. The Canadian Act recently approved by the Imperial Government, he maintains, was intended to forfeit any American fishing vessel which is found having entered Canadian waters to buy ice, bait, or other articles, or for any purpose other than shelter, repairs, wood, or water, on the plea that the Treaty of 1818 permits and stipulates for such legislation. That he denies and contends that such legislation is a repeal and annulment by England of the arrangement made in 1830, and that to that repeal the United States Government is entitled to respond by a similar repeal of their own law and by a refusal hereafter, and while debate or negotiation goes on, to confer hospitality or any privileges whatever in United States ports on Canadian vessels or boats of any sort. England, he says, may judge for herself of the nature and extent of the comity and courtesy she will show the United States, and the United States simply respond—suspend comity and hospitality.

He therefore proposes a Bill which is in substance the one before the House, authorising the President under given circumstances to exclude both vessels, goods, engines, and cars coming from Canada. The Secretary considers the question whether

or not Art. 29 of the "Alabama" Treaty was left standing by the Act of Congress of 1883 (June 28th), and the President's proclamation thereunder. If, he concludes, the stipulations of this article are now binding on Great Britain, then it is indisputable that the vessels of the United States are entitled by the Treaty to enter fish as merchandise at the proper Custom House of any Canadian port for conveyance in bond to the United States; for, of necessity, the vessel containing the fish is entitled to enter the port in order to enter the merchandise at the proper Custom House. In the preamble of this proposed Bill will be found the grounds upon which it is based.

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

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

Extract from the "New York World" of February 7th, 1887.

SECRETARY MANNING'S BILL.

Subject to this policy, therefore, even when repelling aggression; avowing this common duty and ultimate destiny, even when responding to an offensive non-intercourse policy, by offended non-intercourse acts which at any moment we are more anxious to withdraw from than now willing to enter upon, I submit to your committee, with the greatest deference the following bill:

An Act to enable the President to protect and defend the rights and privileges of vessels of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled: *Whereas*, The United States having, by treaty with His Majesty the King of the United Kingdom of Great Britain and Ireland, renounced certain specified incidents and parts of the therein recognised liberties of the United States in the fisheries of the North Atlantic heretofore enjoyed in common with the inhabitants of the places bordering thereon, namely, the liberty to take, dry, and cure fish within three marine miles of certain designated coasts, bays, creeks, and harbours of the British dominions of North America;

Whereas, The United States having retained unrenounced the rest and residue of their rights and liberties in the fisheries of the North Atlantic, the Gulf of St. Lawrence, the Newfoundland and Labrador coasts; and

Whereas, The United States having by the said treaty subjected even their right to traverse and their liberty to enter such bays or harbours for the purpose of shelter, and of repairing damages therein, and of purchasing wood, and of obtaining water, to whatsoever restrictions might be necessary to effectuate their said renunciation of taking, drying, and curing fish therein; and

Whereas, The aforesaid renunciation of what has now become valueless, and which the United States have no wish to resume or enjoy, has, by those having authority over the lands adjacent to the said bays and harbours, been made a pretext for laws so executed as to enlarge, distend, and pervert the said renunciation into nullification or denial of the said unrenounced, recognised, and common rights and liberties of the United States in the said British waters, coasts and common sovereignty in the fisheries therein, to wit; Denial at all Canadian ports open to the entry of foreign vessels, to regularly documented vessels of the United States, whether following inshore fishery thereabouts on coasts, bays, creeks, harbours, shores, and straits, designated and unrenounced in the said treaty, or pursuing off-shore fishery, or fishery upon the high seas thereabouts, of rights to which such vessels and their crews are entitled; to wit, likewise, denial at all Canadian ports open entry by foreign vessels, to regularly documented vessels of the United States, of commercial and trading privileges now ordinary in the intercourse of civilised peoples, and such as in all ports of entry for foreign vessels established by law in the United States, are now, and for many years past have been, conceded to and enjoyed by Canadian and British vessels entering and trading at the same; and

Whereas, For past aggressions and injuries in that regard, redress is delayed or withheld; and

Whereas, A recent and more stringent statute enacted by the Canadian Parliament, and approved by the Queen in Council on the 26th of November last, seems to prove those aggressions and injuries deliberate and politic, to forbode their continuance and to

project Canadian non-intercourse with American fishing vessels for general purposes of trade; therefore

SECTION 1.—That whenever the President shall be satisfied that vessels of the United States are by British or Canadian authority denied or abridged in the reasonable enjoyment of any rights, privileges, or liberties on Canadian waters or coasts or in Canadian ports to which rights, privileges, or liberties such vessels, their masters, or crews are entitled, it shall, in his discretion, be lawful, and it shall, in his discretion, be the duty of the President to close, by a proclamation to that effect, all the ports of the United States against any and every vessel owned wholly or in part by a subject of Her Britannic Majesty, and coming or arriving from any port or place in the Dominion of Canada or in the Island of Newfoundland, whether directly or having touched at any other port, excepting such vessels shall be in distress of navigation and of needed repairs or supplies therefor, and every vessel thus excluded from the ports of the United States that shall enter, or attempt to enter, the same, in violation of this act, shall, with her tackle, apparel, furniture, and all the cargo on board be seized and forfeited to the United States, or the value thereof to be recovered of the person or persons making or attempting to make entry.

SEC. 2.—That it shall, in his discretion, be lawful for the President, and it shall, in his discretion, be his duty, whenever he shall be satisfied as is in the first section hereof declared, to prohibit, by proclamation, the entry, or importation, or bringing into any collection district, or place in the United States, of any goods, wares, or merchandise from the aforesaid Dominion of Canada; or Newfoundland, or any locomotive, car, or other vehicle, from the Dominion of Canada, but the President may, in his discretion, apply such proclamations to any part or all of the things or articles herein named, and may qualify, limit, rescind, or renew the application thereof; and all goods, wares, or merchandise, locomotives, cars, or other vehicles imported or brought, or attempted to be imported or brought, into the United States, contrary to the provisions of this act, shall be seized and forfeited to the United States, or the value thereof to be recovered of the person or persons so importing or bringing.

SEC. 3.—Any person who shall violate any of the provisions of the first or second section of this act, or any proclamation of the President made in pursuance hereof, shall be deemed guilty of misdemeanour, and on conviction thereof shall be punished by a fine not exceeding \$1,000, or by imprisonment for a term not exceeding two years, or by both said punishments, in the discretion of the Court.

SEC. 4.—That the President be and is hereby authorised to appoint a commissioner to proceed to such places, in the United States or elsewhere, as may be designated by the Secretary of State, to take testimony, under oath or affirmation, in relation to the losses and injuries inflicted since the 31st of December, 1885, by British authorities, Imperial or Colonial, upon citizens of the United States engaged in the fisheries on the north east coast of British North America. Said commissioner shall everywhere have, in respect to the administration of oaths or affirmation and the taking of testimony, the same powers as a Commissioner of a Circuit Court, and shall be paid the same fees as are prescribed for similar services of a Commissioner of a Circuit Court, together with travelling expenses.

The above is but a summary—the bill, of act which might be ordained; the preamble, of reasons and grounds. Of course, preambles can never create powers, but may serve to explain them. They are rare in the acts of Congress. The disused form was convenient to enable me to satisfy your request.

3,865.

No. 119.

Governor-General the Most Hon. the Marquis of Lansdowne, G.C.M.G., to the Right Hon. Sir H. T. Holland, Bart., G.C.M.G., M.P. (Received February 27th, 1887).

TELEGRAPHIC.

26th February. Referring to your telegram of 24th February,* Canadian Government is prepared to accept your suggestion of reverting temporarily to condition of things existing under the Treaty of Washington without at present raising question of indemnity.

* No. 116.

3,004.

No. 120.

*Colonial Office to Foreign Office.*DOWNING STREET,
28th February, 1887

SIR,

With reference to the letter from this Department of the 8th ultimo,* as to previous correspondence respecting the alleged action of the Canadian authorities in the case of the United States' fishing schooners "Pearl Nelson" and "Everitt Steele," I am directed by Secretary Sir H. Holland to transmit to you to be laid before the Marquis of Salisbury, a copy of a further despatch† with its enclosure from the Governor-General of the Dominion on the subject.

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

The Under-Secretary of State,
Foreign Office.

3,865.

No. 121.

*Colonial Office to Foreign Office.*DOWNING STREET,
February 28th, 1887.

SIR,

With reference to previous correspondence relating to an ad interim arrangement with the Government of the United States upon the North American fisheries question, I am directed by Secretary Sir Henry Holland to transmit to you, to be laid before the Marquis of Salisbury, a copy of a telegram,‡ which, with his lordship's concurrence, was sent to the Governor-General on the 24th of this month, together with a copy of a telegram§ which has been received from the Marquis of Lansdowne in reply.

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

The Under Secretary of State,
Foreign Office.

3,499.

No. 122.

The Right Hon. Sir H. T. Holland, Bart., G.C.M.G., M.P., to Governor-General the Marquis of Lansdowne, G.C.M.G.

No. 49.

DOWNING STREET,
March 1st, 1887.

MY LORD,

I have the honour to transmit to you, for any observations which your Ministers may wish to offer upon the subject, a copy of a despatch|| received through the Foreign Office from Her Majesty's Minister at Washington, with a paper containing certain questions respecting the fisheries put by the Secretary of the Treasury to Professor Baird, of the Fish Commission, as well as the answers returned thereto.

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

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

* No. 91

† No. 108.

‡ No. 116.

§ No. 119.

|| Enclosure in No. 113.

4,495.

No. 123.

*Foreign Office to Colonial Office.*FOREIGN OFFICE,
March 7th, 1887.

SIR,

I am directed by the Secretary of State for Foreign Affairs to transmit to you, to be laid before Sir Henry Holland, a copy of a despatch from Her Majesty's Minister at Washington on an article in the "Nation" newspaper, suggesting arbitration with reference to the Fishery question.

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

Enclosure in No. 123.

WASHINGTON,
February 21st, 1887.

Treaty No. 27.

MY LORD,

I have already reported to your Lordship the nature of the so-called Retaliation Bills which have been introduced into both Houses of Congress, and are still under discussion. In commenting upon the House Bill, which goes further in the way of interference with trade with Canada than the Senate Bill, the "Nation" newspaper of New York remarks that it goes further even than the fishing fraternity desire or approve. The latter would be content with the entire exclusion of Canadian fish from American markets. A monopoly of the fish trade is what they are striving for, and as no monopoly could be more complete than prohibition, they appear not to favour the more drastic measure, the operation of which would, whenever put in force, produce a vociferous outcry all along the border from Passamaquoddy Bay to Puget Sound. "The stoppage of a traffic amounting to more than seventy million dollars per year in order to secure justice respecting a few codfish, would be like firing a Columbiad gun to kill a mosquito. The recoil would be far more destructive than the discharge. Why not submit the difficulty to arbitration? But, it is said, the United States were cheated out of their money by the Halifax award. If that is true, was not England cheated by the Geneva award? What has become of the surplus of the \$15,000,000 after paying the Alabama claims? Was this overplus greater or less than the \$5,500,000 paid by the United States for the Halifax award? If it was greater, the United States paid it with British gold, and had something left over."

It must be borne in mind, however, that retaliatory measures, as a means of making political capital find favour in the Congress of the United States, and that, therefore, the Fishery question is not likely to be allowed to drop as long as it is possible to make use of it for this purpose.

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

17. Secret.

No. 124.

The Right Hon. Sir H. T. Holland, Bart., G.C.M.G., M.P., to the Most Hon. the Marquis of Lansdowne, G.C.M.G.

TELEGRAPHIC.

8th March.—Bayard's arrangement, Article 3. We think joint action of cruisers desirable if last sentence of Article omitted and Canadian jurisdiction preserved by provision that unless officers agree to release vessel shall be sent to Halifax, words in second sentence defining violations of Convention being also omitted.

4,963.

No. 125.

*Foreign Office to Colonial Office.*FOREIGN OFFICE,
March 12th, 1887.

Confidential.

SIR,

With reference to previous correspondence, I am directed by the Marquis of Salisbury to transmit to you a draft of a note which his Lordship proposes to address to the United States' Chargé d'Affaires, in reply to Mr. Phelps' note of the 3rd of December last, on the subject of the proposed *ad interim* arrangement respecting the North American Fisheries; and I am to request that Sir Henry Holland will inform his Lordship at his early convenience whether he concurs in the terms thereof.

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

Enclosure in No. 125.

*Draft of Letter from the Marquis of Salisbury to Mr. White.*FOREIGN OFFICE,
March , 1887.

SIR,

In a note of the 3rd December last, addressed to my predecessor, Mr. Phelps was good enough to transmit a copy of a despatch from Mr. Bayard, dated the 15th of the preceding month, together with an outline of a proposed *ad interim* arrangement "for the settlement of all questions in dispute in relation to the fisheries on the north-eastern coasts of British North America."

Her Majesty's Government have given their most careful consideration to that communication, and it has also received the fullest examination at the hands of the Canadian Government, who entirely share the satisfaction felt by Her Majesty's Government at any indication on the part of that of the United States of a disposition to make arrangements which might tend to put the affairs of the two countries on a basis more free from controversy and misunderstanding than unfortunately exists at present. They deprecate, however, several passages in Mr. Bayard's despatch which attribute unfriendly motives to their proceedings, and in which the character and scope of the measures they have taken to enforce the terms of the Convention of 1818 are, as they believe, entirely misapprehended.

They insist that nothing has been done on the part of the Canadian authorities since the termination of the Treaty of Washington in any such spirit as that which Mr. Bayard's condemns, and that all that has been done with a view to the protection of the Canadian fisheries has been simply for the purpose of guarding the rights guaranteed to the people of Canada by the Convention of 1818, and of enforcing the Statutes of Great Britain and of Canada in relation to the fisheries. They maintain that such Statutes are clearly within the powers of the respective Parliaments by which they were passed, and are in conformity with the Convention of 1818, especially in view of the passage of the Convention which provides that the American fishermen shall be under such restrictions as shall be necessary to prevent them from abusing the privileges thereby reserved to them.

There is a passage in Mr. Bayard's despatch to which they have particularly called the attention of Her Majesty's Government. It is the following;—

"The numerous seizures made have been of vessels quietly at anchor in established ports of entry, under charges which up to this day have not been particularised sufficiently to allow of intelligent defence; not one has been condemned after trial and hearing, but many have been fined, without hearing or judgment, for technical violation of alleged commercial regulations, although all commercial privileges have been simultaneously denied to them."

In relation to this paragraph the Canadian Government observe that the seizures of which Mr. Bayard complains have been made upon grounds which have been distinctly

and unequivocally stated in every case ; that, although the nature of the charges has been invariably specified and duly announced, those charges have not in any case been answered ; that ample opportunity has in every case been afforded for a defence to be submitted to the Executive authorities, but that no defence has been offered beyond the mere denial of the right of the Canadian Government ; that the Courts of the various provinces have been open to the parties said to have been aggrieved, but that not one of them has resorted to those Courts for redress. To this it is added that the illegal acts which are characterised by Mr. Bayard as "technical violations of alleged commercial regulations," involved breaches, in most of the cases not denied by the persons who had committed them, of established commercial regulations which, far from being specially directed or enforced against citizens of the United States, are obligatory upon all vessels (including those of Canada herself) which resort to the harbours of the British North American coast.

I have thought it right, in justice to the Canadian Government, to embody in this note almost in their own terms their refutation of the charges brought against them by Mr. Bayard ; but I would prefer not to dwell on this part of the controversy, but to proceed at once to the consideration of the six Articles of Mr. Bayard's Memorandum in which the proposals of your Government are embodied.

Mr. Bayard states that he is "encouraged in the expectation that the propositions embodied in the Memorandum will be acceptable to Her Majesty's Government, because, in the month of April, 1866, Mr. Seward, then Secretary of State, sent forward to Mr. Adams, at that time United States' Minister in London, the draft of a Protocol, which, in substance, coincides with the 1st Article of the proposal now submitted."

Article 1 of the Memorandum no doubt to some extent resembles the draft Protocol submitted in 1866 by Mr. Adams to Lord Clarendon (of which I inclose a copy for convenience of reference), but it contains some important departures from its terms.

Nevertheless, the Article comprises the elements of a possible accord, and if it stood alone, I have little doubt that it might be so modelled, with the concurrence of your Government, as to present an acceptable basis of negotiation to both parties. But, unfortunately, it is followed by other Articles which, in the view of Her Majesty's Government and that of Canada, would give rise to endless and unprofitable discussion and which, if retained, would be fatal to the prospect of any satisfactory arrangement, inasmuch as they appear, as a whole, to be based on the assumption that upon the most important points in the controversy the views entertained by Her Majesty's Government and that of Canada are wrong, and those of the United States' Government are right, and to imply an admission by Her Majesty's Government and that of Canada that such assumption is well founded.

I should extend the present note to an undue length were I to attempt to discuss in it each of the Articles of Mr. Bayard's Memorandum, and to explain the grounds on which Her Majesty's Government feel compelled to take exception to them. I have therefore thought it more convenient to do so in the form of a counter-Memorandum, which I have the honour to inclose, and in which will be found, in parallel columns, the Articles of Mr. Bayard's Memorandum, and the observations of Her Majesty's Government thereon.

Although, as you will perceive on a perusal of those observations, the proposal of your Government as it now stands is not one which could be accepted by Her Majesty's Government, still Her Majesty's Government are glad to think that the fact of such a proposal having been made affords an opportunity which, up to the present time, had not been offered for an amicable comparison of the views entertained by the respective Governments.

The main principle of that proposal is that a Mixed Commission should be appointed for the purpose of determining the limits of those territorial waters within which, subject to the stipulations of the Convention of 1818, the exclusive right of fishing belongs to Great Britain.

Her Majesty's Government cordially agree with your Government in believing that a determination of these limits would, whatever may be the future commercial relations between Canada and the United States, either in respect of the fishing industry or in regard to the interchange of other commodities, be extremely desirable, and they will be found ready to co-operate with your Government in effecting such a settlement.

They are of opinion that Mr. Bayard was justified in reverting to the precedent afforded by the negotiations which took place upon this subject between Great Britain and the United States after the expiration of the Reciprocity Treaty of 1854, and they concur with him in believing that the Draft Protocol communicated by Mr. Adams in

1866 to the Earl of Clarendon affords a valuable indication of the lines upon which a negotiation directed to the same points might now be allowed to proceed.

Mr. Bayard has himself pointed out that its concluding paragraph, to which Lord Clarendon emphatically objected, is not contained in the 1st Article of the Memorandum now forwarded by him; but he appears to have lost sight of the fact that the remaining Articles of that Memorandum contain stipulations not less open to objection, and calculated to affect even more disadvantageously, the permanent interests of the Dominion in the fisheries adjacent to its coasts.

There can be no objection on the part of Her Majesty's Government to the appointment of a Mixed Commission, whose duty it would be to consider and report upon the matters referred to in the three first Articles of the Draft Protocol communicated to the Earl of Clarendon by Mr. Adams in 1866.

Should a Commission instructed to deal with these subjects be appointed at an early date, the result of its investigations might be reported to the Governments affected without much loss of time. Pending the termination of the questions which it would discuss it would be indispensable that United States' fishing-vessels entering Canadian bays and harbours should govern themselves not only according to the terms of the Convention of 1818, but by the regulations to which they, in common with other vessels, are subject while within such waters.

Her Majesty's Government, however, have no doubt that every effort will be made to enforce those regulations in such a manner as to cause the smallest amount of inconvenience to fishing-vessels entering Canadian ports under stress of weather, or for any other legitimate purpose.

In order to give your Government a further guarantee on this head, Her Majesty's Government would not be unwilling to adopt and put into force a part of the 3rd Article of Mr. Bayard's Memorandum—that is to say, so much of it as would provide that naval officers of both Governments should be appointed to examine on the spot the grounds of any seizure of a United States' fishing-vessel; that if those officers should be of opinion that the charge is not sustained, the vessel shall be released; but if they should be unable to agree, then that the vessel should be sent for trial before the Vice-Admiralty Court at Halifax.

But there is another course which Her Majesty's Government are inclined to propose, and which, in their opinion, would afford a temporary solution of the controversy equally creditable to both parties.

Her Majesty's Government have never been informed of the reasons which induced the Government of the United States to denounce the Fishery Articles of the Treaty of Washington, but they have understood that the adoption of that course was in a great degree the result of a feeling of disappointment at the Halifax Award, under which the United States were called upon to pay the sum of 1,100,000*l.*, being the estimated value of the benefits which would accrue to them, in excess of those which would be derived by Canada and Newfoundland, from the operation of the Fishery Articles of the Treaty.

Her Majesty's Government and the Government of Canada, in proof of their earnest desire to treat the question in a spirit of liberality and friendship, are now willing to revert for the coming fishing season, and, if necessary, for a further term, to the condition of things existing under the Treaty of Washington, without any suggestion of pecuniary indemnity.

This is a proposal which, I trust, will commend itself to your Government as being based on that spirit of generosity and good-will which should animate two great and kindred nations, whose common origin, language, and institutions constitute as many bonds of amity and concord.

I have, &c.

Draft Protocol of 1866.

WHEREAS in the 1st Article of the Convention between the United States and Great Britain, concluded and signed in London on the 26th October, 1818, it was declared that:—

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

And whereas differences have arisen in regard to the extent of the above-mentioned

renunciation the Government of the United States and Her Majesty the Queen of Great Britain, being equally desirous of avoiding further misunderstanding, have agreed to appoint, and do hereby authorize the appointment, of a Mixed Commission for the following purposes, namely :

1. To agree upon and define, by a series of lines, the limits which shall separate the exclusive from the common right of fishery, on the coasts and in the seas adjacent, of the British North American Colonies, in conformity with the 1st Article of the Convention of 1818. The said lines to be regularly numbered, duly described, and also clearly marked on charts prepared in duplicate for the purpose.

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

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

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

Pending a definite arrangement on the subject, the United States' Government engages to give all proper orders to officers in its employment ; and Her Britannic Majesty's Government engages to instruct the proper Colonial or other British officers to abstain from hostile acts against British and United States' fishermen respectively.

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

ARTICLE I.

WHEREAS, in the 1st Article of the Convention between the United States and Great Britain, concluded and signed in London on the 20th October, 1818, it was agreed between the High Contracting Parties "that the inhabitants of the said United States shall have for ever, in common with the subjects of His Britannic Majesty, the liberty to take fish of every kind on that part of the southern coast of Newfoundland which extends from Cape Ray to the Rameau Islands, on the western and northern coast of Newfoundland, from the said Cape Ray to the Quirpon Islands, on the shores of the Magdalen Islands, and also on the coasts, bays, harbours, and creeks, from Mount Joly on the southern coast of Labrador, to and through the Straits of Belleisle, and thence northwardly indefinitely along the coast, without prejudice, however, to any of the exclusive rights of the Hudson's Bay Company ; and that the American fishermen shall also have liberty for ever to dry and cure fish in any of the un-

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

This provision would involve a surrender of fishing rights which have always been regarded as the exclusive property of Canada, and would make common fishing-grounds of territorial waters which, by the law of nations, have been invariably regarded both in Great Britain and the United States as belonging to the adjacent country. In the case, for instance, of the

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

settled bays, harbours, and creeks of the southern part of the coast of Newfoundland, here above described, and of the coast of Labrador; but so soon as the same, or any portion thereof, shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such portion so settled without previous agreement for such purpose with the inhabitants, proprietors, or possessors of the ground;" and was declared that "the United States hereby renounce for ever any liberty heretofore enjoyed or claimed by the inhabitants thereof to take, dry, or cure fish on or within 3 marine miles of any of the coasts, bays, creeks, or harbours of His Britannic Majesty's dominions in America not included within the above-mentioned limits; provided, however, that the American fishermen shall be admitted to enter such bays or harbours for the purpose of shelter, and of repairing damages therein, of purchasing wood, and obtaining water, and for no other purpose whatever. But they shall be under such restrictions as may be necessary to prevent their taking, drying, or curing fish therein, or in any other manner whatever abusing the privileges hereby reserved to them;" and whereas differences have arisen in regard to the extent of the above-mentioned renunciation, the Government of the United States and Her Majesty the Queen of Great Britain, being equally desirous of avoiding further misunderstanding, agree to appoint a Mixed Commission for the following purposes, namely:—

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

Baie des Chaleurs, a peculiarly well-marked and almost land-locked indentation of the Canadian coast, the 10-mile line would be drawn from points in the heart of Canadian territory, and almost 70 miles distance from the natural entrance or mouth of the bay. This would be done in spite of the fact that, both by Imperial legislation and by judicial interpretation, this bay had been declared to form a part of the territory of Canada. (See Imperial Statute 14 & 15 Vict., cap. 63; and "*Mouat v. McPhee*," 5 Sup. Court of Canada Reports, p. 66.)

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

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

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

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

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

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

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

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

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

ARTICLE II.

Pending a definitive arrangement on the subject, Her Britannic Majesty's Government agree to instruct the proper Colonial and other British officers to abstain from seizing or molesting fishing-vessels of the United States unless they are found within 3 marine miles of any of the coasts, bays, creeks, and harbours of Her Britannic Majesty's dominions in America, there fishing, or to have been fishing or preparing to fish within those limits, not included within the limits within which, under the Treaty of 1818, the fishermen of the United States continue to retain a common right of fishery with Her Britannic Majesty's subjects.

ARTICLE III.

For the purpose of executing Article I of the Convention of 1818, the Government of the United States and the Government of Her Britannic Majesty

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The second paragraph of the 1st Article does not incorporate the exact language of the Convention of 1818. For instance, the words, "and for no other purpose whatever," should be inserted after the mention of the purposes for which vessels may enter Canadian waters, and after the words, "as may be necessary to prevent," should be inserted, "their taking, drying, or curing fish therein, or in any other manner abusing the privileges reserved," &c.

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

This Article would suspend the operation of the Statutes of Great Britain and of Canada, and of the provinces now constituting Canada, not only as to the various offences connected with fishing, but as to Customs, harbours, and shipping, and would give to the fishing vessels of the United States privileges in Canadian ports which are not enjoyed by vessels of any other class, or of any other nation. Such vessels, would, for example, be free from the duty of reporting at the Customs on entering a Canadian harbour, and no safeguard could be adopted to prevent infraction of the Customs Laws by any vessel asserting the character of a fishing-vessel of the United States.

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

This Article would deprive the Courts in Canada of their jurisdiction, and would vest that jurisdiction in a Tribunal not bound by legal principles, but clothed with

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

ARTICLE IV.

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

supreme authority to decide on most important rights of the Canadian people.

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

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

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

For these reasons, the Article in the form proposed is inadmissible, but Her Majesty's Government are not indisposed to agree to the principle of a joint inquiry by the naval officers of the two countries in the first instance, the vessel to be sent for trial at Halifax if the naval officers do not agree that she should be released.

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

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

ARTICLE V.

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

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

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

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

ARTICLE VI.

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

This Article calls for no remark.

20. Secret.

No. 126.

Colonial Office to Foreign Office.

DOWNING STREET,
March 12th, 1887.

SIR,

With reference to previous correspondence relating to the North American Fisheries Question, I am directed by Secretary Sir Henry Holland to transmit to you, to be laid before the Marquis of Salisbury, a copy of a telegram* which was sent to the Governor-General of Canada on the 8th instant upon the subject of the proposal contained in the 3rd article of the basis of an arrangement recently suggested on behalf of the United States' Government by Mr. Bayard.

I am also to enclose the decypher of a telegram† which has been received from the Governor-General in reply.

Sir Henry Holland, as at present advised, is disposed to think that there is considerable force in the Governor-General's observations relating to the difficulty which, owing to the extent of coast line, would be experienced in the cases of vessels seized being promptly dealt with by the national vessels referred to.

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

The Under Secretary of State,
Foreign Office.

* No. 124.

† See No. 130

5,248.

No. 127.

*Foreign Office to Colonial Office.*FOREIGN OFFICE,
March 18th, 1887.

SIR,

With reference to previous correspondence, I am directed by the Secretary of State for Foreign Affairs to transmit to you, to be laid before Secretary Sir Henry Holland, a copy of a despatch from Sir Lionel West enclosing copies of the report of the House Conferences on the Retaliatory Bills, and of the report of the debate thereupon.

I am, &c.,
(Signed) P. W. CURRIE.The Under-Secretary of State,
Colonial Office.

Enclosure in No. 127.

Treaty, No. 33.

WASHINGTON,
March 2nd, 1887.

MY LORD,

With reference to my preceding despatch, I have the honour to enclose to your Lordship herewith copies of the report of the House Conferees on the Retaliatory Bills, and of the report of the debate thereupon.

It will be seen that the House maintains its attitude towards the Senate by refusing to accept the Bill of that body.

I have, &c.,
(Signed) L. S. WEST.The Marquis of Salisbury,
&c., &c., &c.*Extract from the "Congressional Record" of March 2nd, 1887.*

NON-INTERCOURSE WITH CANADA.

Mr. BELMONT. I rise to make a privileged report from a Committee of Conference.

The SPEAKER. The report will be read.

The report was read as follows:—

The Committee of Conference on the disagreeing votes of the two Houses on the Amendments of the House to the Bill of the Senate 3173, to authorise the President of the United States to protect and defend the rights of American fishing vessels, American fishing men, American trading and other vessels in certain cases, and for other purposes, after full and free conference, have been unable to agree.

GEORGE F. EDMUNDS,

JOHN T. MORGAN,

WILLIAM P. FRYE,

Managers on the part of the Senate.

PERRY BELMONT,

J. C. CLEMENTS,

W. W. RICE,

Managers on the part of the House.

Mr. BELMONT. I ask that the Statement of the House Conferees be read.

The Statement was read, as follows:—

STATEMENT.

The undersigned, managers of the Conference on the part of the House of Representatives on the disagreeing votes of the two Houses on the amendments of the House of Representatives to the Bill (S. 3173) "to authorise the President of the United States to protect and defend the rights of American fishing vessels," &c., submit the following Statement:—

The unanimity expressed in the Senate and the House, respectively, had given the managers on the part of the House every reason to hope that, by mutual concessions, an agreement would be reached in Conference which would result in giving such ample authority to the President as might be necessary for a satisfactory settlement of the pending question of the American fisheries on the Canadian coast. It is therefore with the deepest regret and disappointment they are compelled to report a disagreement.

The managers on the part of the House entered the Conference with the determination that no minor difference should stand in the way of an agreement. They proposed, in order to remove all question on the part of the Senate Conferees as to violation of the Treaty of 1871, to insert in line 21 of the amended Bill, after the word "Newfoundland," as follows:—

"Except such goods, wares, and merchandise as are entitled to enter the United States under Article XXIX of the treaty concluded between the United States and Great Britain on the 8th day of May, 1871, and may also forbid the entrance of any locomotive, car, or other vehicle, with any goods that may be contained therein, except such as are wholly loaded with and exclusively engaged in the transportation of goods, wares, and merchandise entitled to come into the United States under said Article XXIX."

This amendment was not accepted, and it became evident that no proposition that included cars and rolling stock in the operation of the law would be acceptable to the Senate Conferees. The unanimous voice of the House authorising the President to declare, in his discretion, non-intercourse with Canada by land as well as by sea, did not, in the opinion of your Conferees, leave them at liberty to disregard that important principle contained in the House substitute for the Senate Bill. They therefore declined to recede in Conference from the position taken by the House on this point.

The dignified, deliberate, and earnest maintenance of our national rights under treaty stipulations, under public commercial laws and ordinary international comity, is the sole object of the United States. If these rights have been impaired and invaded, and redress, when properly asked for, has been refused, or not accorded, then self-respect as a nation, and a sense of duty to our citizens, should compel the people of the United States to act as a unit in adopting such measures as will restore the rights of their citizens. If a suspension of commercial intercourse be asserted as the remedy for the withholding of commercial privileges such suspension should be co-extensive with the attainment of the desired end, and would be useless, or worse, if it fell short of that.

To limit such non-intercourse to a single article of commerce, or to a single mode of communication, would not be just in theory nor adequate in practice. The act of exclusion to be successful should be effective and unmistakable in its extent and results. The opinions which have found expression in the Senate Bill, and which have been reflected in the Conference, would limit the action of the Government to a prohibition upon the importation of Canadian fish into the United States. The House Conferees are of opinion that, if such a prohibitory law be deemed sufficient for a settlement of important political questions as to American rights under treaty stipulations, the obvious and proper method would be to pass a tariff enactment to that effect.

The question to be legislated upon is national in its aspects, and not sectional or local. It is not the article fish we are to consider, but the rights of our citizens under international law, and our treaties with Great Britain. The rights of the fishermen are national rights, and the whole nation is concerned in resisting their destruction or diminution. It is not the profit or loss of the fishing business that is in question, but the right to fish, to navigate, and to trade, that is at stake. The establishment of non-intercourse by railroad might possibly inflict hardship upon some of our citizens, but we are unwilling to believe that private interests will be placed above the maintenance of the honour and dignity of the country.

The settlement of the pending question rests between the Government of the United States and the Government of Great Britain. It will continue to be a recurring source of irritation, annoyance, and even danger, so long as it is permitted to remain in the condition of a dispute between our fishermen and the Canadian authorities. The action of the administration has been directed to accommodate all differences, and to procure an amicable, just, and honourable settlement. To such overtures no reply has yet been made, although since December 3, 1886, a proposition looking to such an

adjustment, which we had been invited to make, has been in the hands of the British Government.

If Great Britain will join in a just and reasonable interpretation of the Treaty of 1818 with the United States, there will be no difficulty; but should that Government continue to sustain its provinces in a misuse of the provisions of that treaty we must prevent it. Non-intercourse, applied to essential lines of British railway traffic would be more effective than confining our action to the exclusion of fish alone, which is the sum and substance of the Senate Bill.

We deal with Great Britain, not Canada, and our measures should be begun with that view, and with a determination to continue them until just action is arrived at.

PERRY BELMONT.

J. C. CLEMENTS.

Mr. RICE. Mr. Speaker—

Mr. BELMONT. I believe I have the floor.

Mr. RICE. I desire to make a motion which I believe takes precedence.

The SPEAKER. There is no question now that can come before the House except this Conference report. After it is disposed of, motions will be in order.

Mr. RICE. This is not the report of the Conferees, Mr. Speaker. It is simply a statement made by two gentlemen.

The SPEAKER. The Chair understands that it is a report of a disagreement, and is signed by the managers on the part of the Senate as well as by the managers on the part of the House.

Mr. RICE. It is not.

The SPEAKER. The Chair thinks the gentleman is mistaken, but the Chair will examine. (*After examining the paper.*) This report is signed by the managers on the part of the Senate as well as by the managers on the part of the House. The statement which has just been read, to which the gentleman from Massachusetts (Mr. Rice) probably refers, has been read in the time of the gentleman from New York (Mr. Belmont), and is no part of the report.

Mr. BELMONT. Mr. Speaker, the action which has been taken in regard to this statement was, in the opinion of those who have signed it, a necessity because of the course of the conferees acting for the body at the other end of the Capitol. I do not know how far it is proper to refer here to the action of the Senate but it is a matter of public notoriety that a report was made by the Senate conferees from which it appeared that there were irreconcilable differences between the Senate and the House. Such is the language of the report made for the information of the Senate.

The majority of the conference committee on the part of the House regret exceedingly that the gentlemen representing the other body should have reached the conclusion that our differences are irreconcilable. It may be so; but as they have made such a statement in a report to the Senate, it seemed but right that we, the majority of the Conference Committee on the part of the House, should make to this body a statement of our grounds of difference. We do not say that our differences are irreconcilable; but we declare that we do not feel at liberty to disregard the expressed will of the House—a will expressed unanimously.

It may be that some gentlemen who have presented views on this question believe that the limit upon the action of Congress should be established by the citizens injured; in other words, that we should limit our action in accordance with the wishes and interests of our fellow-citizens in New England and of the fishermen who have been injured. But your conferees have been of the opinion that the House of Representatives, as shown by its votes, believed this to be a purely national question, not a question to be decided by a retaliatory measure, which should have effect upon a particular product and a particular locality only. We have not believed that in response to Canadian aggressions we should do something not clearly defined, unless it be a prohibition of the entrance of fish from Canada to the United States, for such, with the exception of certain provisions of doubtful interpretation, is the chief purpose of the Senate Bill.

Congress never would have taken the step it has taken in this matter had this not been regarded as solely a national question. Otherwise we might have similar action demanded by other sections of the country. If the limit of our action should be decided by the views of the persons injured it might be that our fellow-citizens upon the Mexican border would, through their representatives in Congress, demand that a discretion be given to the President to declare a certain limited non-intercourse in regard

to Mexican imports which came in conflict with Texan products. It might be that our friends from California might deem it necessary to give to the President certain discretionary power to declare a limited non-intercourse as to a special class of persons coming to this country.

But, as shown in the statement of a majority of the conferees, which has been read, your conferees have felt it their duty to insist upon the position taken by the House. Any other course would have been considered by them a failure, not only in the appreciation of the dignity of the House itself but of the international importance of the pending controversy between the United States and Great Britain.

I ask, Mr. Speaker, that this report follow the same course that has been adopted in the Senate. I know no reason why the report of the Senate conferees should have been published in the "Record" unless the same privilege can be granted to the House conferees. Furthermore, the report in the Senate is to be printed as a document; and I ask the same privilege for the House report.

The SPEAKER. The Chair will state that, if the gentleman by the term "report" means to refer to the paper which has been signed by two of the managers on the part of the House, that has been read as a part of the debate, and goes into the "Record" as a matter of course.

Mr. BELMONT. So I understand, Mr. Speaker; but the report of the Senate conferees is also to be printed separately as a document.

The SPEAKER. What is the request of the gentleman from New York?

Mr. BELMONT. My request is that the report read here take the same course as the report in the Senate.

The SPEAKER. The gentleman asks, as the Chair understands, that it be printed as a document. Is there objection?

Mr. RICE and others objected.

Mr. DINGLEY. What is it that the gentleman desires to have printed, his argument or the report?

The SPEAKER. The paper which was read; not the report.

Mr. DINGLEY. The speech.

The SPEAKER. There is only one report. That is the paper signed by the managers on the part of both the House and the Senate.

Mr. DINGLEY. There is no objection to the report being printed; but the proposition to print the speech of the gentleman as a document is entirely out of the usual course.

The SPEAKER. The gentleman from Massachusetts (Mr. Rice) objects to the request. Does the gentleman from New York (Mr. Belmont) reserve his time?

Mr. BELMONT. I do.

Mr. RICE. Mr. Speaker, at this late period in the Session, when within a little more than sixty hours the hands of the clock will mark the end of the Forty-ninth Congress, I am very sorry to be obliged to ask the attention of the wearied and over-worked members of the House for a few moments on this subject. But the question is one whose importance is sufficient to justify me in the request I make, that I may have the careful attention of gentlemen for a short time only; for I am unwilling to weary them.

Mr. Speaker, the gravity of this subject is admitted by all. The American honour is at stake; there is no question about that. The rights of a large class of our citizens, as we believe and affirm, have been trenched upon and outraged. There is no question about that. We are now in the last days of the Session, and have done nothing to vindicate the honour of the nation and the rights of our citizens. What is our position at this moment? There has been a declaration—so the Chairman of the Committee informs us—that there was an irreconcilable difference between the conferees of the Senate and those of the House in reference to this matter. Four hours on Saturday and three on Monday the conferees were engaged in discussion; and I agree in the statement that an irreconcilable difference was manifested between the representatives in conference of the two Houses.

What is that difference? Let me say this, Mr. Speaker: there was no difficulty in agreeing on all minor questions of phraseology of slight amendments. The Senate conferees were ready to agree to what the House conferees requested on those points. There was but one material difference, only one, and that one difference was as to including cars and locomotives in the proposed exclusion. That point the Senate had voted against after solemn discussion in their first debate, and it was considered here somewhat in our debate.

Now, the gentleman from New York (Mr. Belmont) has said in the statement

which he and my friend from Georgia (Mr. Clements) have signed, and which has just been read, that the Senate bill excludes nothing but fish, or authorises the President to exclude nothing but Canadian fish from this country. This statement they took from the morning papers, where I read it some hours ago, and this mistake had somehow crept into this statement. The Senate Bill does not simply authorise the President to exclude Canadian fish from the American market, but to exclude all and every product of Canada from the American market. The gentlemen have fallen into that mistake by copying the statement from the morning papers without a sufficiently careful examination by themselves.

Now, Mr. Speaker, the Senate Bill authorises the President, upon certain conditions, at his discretion, to exclude from the American market all Canadian products and from American ports all Canadian vessels. That is the Senate Bill. The House Bill goes just one step farther, but that a long one, and authorises the President, under the same conditions, in addition to exclude from this country all cars, rolling-stock, locomotives, and railroad trains coming from Canada. In addition to his authority to exclude all Canadian products and all Canadian vessels, my friend, the Chairman of this Committee, and his colleague from Georgia (Mr. Clements), ask this House, or this Congress, also to authorise him to exclude all rolling-stock and railroad cars coming from Canada into this country; in other words, to proclaim absolute non-intercourse between the two countries. That is the difference.

Mr. DANIEL. Let me ask the gentleman a question.

Mr. RICE. Certainly.

Mr. DANIEL. What is the theory of having cars if we are to exclude everything from them? In other words, if goods are to be excluded by the Senate proposition—and he says the only difference is as to cars—why does the gentleman want to insist cars should come in if there is to be nothing for them to carry?

Mr. RICE. If the gentleman had listened to the debate, or investigated the subject under consideration when it was discussed in the Committee on Foreign Affairs, he would understand it. In these cars, which pass between the two countries by Article XXIX of the treaty of Washington, goods in bond are carried from ports of both countries through sections of the other and returned into those countries.

Mr. DANIEL. Let me ask the gentleman another question.

Mr. RICE. I have not got through yet. More than that, these cars carry passengers. They carry men having business in one country to the other, back and forth. They carry persons having relatives and acquaintances. They carry much else than mere goods or produce of Canada, which we would authorise the President to exclude. The gentleman will answer his questions in his own time—the rest of them.

Now, that is the difference. To this proposition of the House conferees to extend this exclusion to everything between Canada and the United States, the Senate conferees state absolutely and positively, "No; we will go as far as the fishermen and their representatives have suggested; we will agree to exclude from this country all Canadian produce, but when you ask us to authorise the President to declare absolute non-intercourse between this country and Canada we say, no."

That is where the division, the irreconcilable difference between the conferees of the Senate and the House occurs. They said no, when asked to declare absolute non-intercourse. They say that is the last step before war. They are unwilling to take that step. They desire to adopt first those measures which are clearly within our treaty obligations, to do which is clearly within the rights of comity between the two nations; that is to say, "You have kept our vessels out of your ports, we will keep your vessels out of ours. We will keep your fish and other products out of our markets." That is what the fishermen and those interested in that industry ask; that is what the representatives of these interests ask, and which they and we say is sufficient, and we refuse to take that further step you insist we shall take.

I am not going to weary the House by the discussion of this question. The Senate is willing to go on a certain line of policy to an extent which it is deemed by those best fitted to know will answer all the necessities of the occasion.

The House is willing to go to the same extent upon the same line, but demands that another step shall be taken in advance which the Senate absolutely refuses to take. Now the question is for this House to say whether because we can not have all and everything that we ask, because we cannot get to the extremest point of our desires shall we do nothing?

That is the question before us at this moment. That is the question upon which somebody is to take the responsibility of action. Shall this Congress adjourn having

done nothing, or shall it recede from this amendment to the Senate Bill and take that which, in the judgment of those best fitted to know, will be sufficient to accomplish the desired result.

Mr. Speaker, this is a grave and important question. Somebody will be very much blamed if Congress refuses to act upon it. I do not know what are the motives that have actuated my fellow-conferees in this matter, nor need I discuss them. There have been publications in the papers which I have read to the effect that the Chairman of the Committee has certain instructions or communications from the administration or from the State Department, under which he is acting. I cannot believe that that is true, for although the Secretary of State was called upon by the sub-committee for his opinion in this matter, yet so far as I am aware that opinion has not been given. It certainly was never communicated to the Committee.

I desire to disabuse any person of the idea of any such influence upon the action of the Committee. Surely if any communication of that character from the Secretary of State had been received it would have been communicated to the Committee and we should all have had the advantage of the information. The statement just read also stated—and it is so stated in the report of the Committee—that negotiations are going on between this Government and that of Great Britain which it is hoped will speedily solve all difficulties. From the minority of the Committee any information of such negotiations has been withheld.

We know nothing of any communication from the Secretary of State; we know nothing of any negotiations pending between the two governments as reported. If the gentleman from New York, the Chairman of the Committee, has any light which the rest of us have not obtained, I will not, as old Diogenes is said to have asked Alexander, request him to get out of my light, but I will ask him to let a little of his superior light shine upon me, that I may be guided in my action by what he may communicate.

Now, sir, all the members of this House, and both sides of it, stand upon exact equality in this matter. We are all interested alike. There is no partisanship in it. The men who want this protection are members of all parties, and they ask from all parties the passage of this measure. In the Senate there is no party division. Republican and Democratic conferees stood alike; the conferee, the Senator from Alabama, the senior member of the Senate Committee on Foreign Affairs, was as strong, as earnest, and as uncompromising in his refusal to accede to the request of the House conferees as any other member of the conference. So that here only is there a suggestion of division upon party grounds in this matter.

I call upon the members of this House to rise above all party considerations and take action here which will sustain the administration in the manly, able, and patriotic position it has taken upon this subject. I call upon them not to be led away by any party or personal appeals or influences from taking such action at this critical moment as is demanded. We are told, and we know it, that should this Congress adjourn without action it is probable blood will flow along the borders and will stain the waters in contention before another Congress shall meet.

Does my friend from New York desire that that shall follow, and therefore would he omit to do that by which this nation may be prevented from being led into a war with Great Britain? I trust not. Does he desire to omit that which national honour demands should be done and which the interest of the fisheries demands should be done? I hope not. New York, the Imperial State, which sends him here, has too much at stake. She runs all along the lake line. Her great metropolis fronts the ocean, and is exposed to the first attack of war, come from whencesoever it may; and I call upon him to remember the words of that great statesman of New England, whose magnetic words were wont to echo in yonder halls, the mightiest ever heard within them, that wise men sometimes change their opinion, the strongest oak sometimes sways, the greatest wisdom sometimes retreats from an extreme point which it desires but cannot attain; and I ask the gentleman from New York, in view of the necessities of the case, in view of the emergencies by which we are surrounded, to withdraw his opposition to the Senate bill and let us have that measure of relief.

Now, Mr. Speaker, I desire to move, as I believe it is a motion having precedence at this stage of the question, that the House recede from its amendment to the Senate bill and concur in the same; and I reserve the remainder of my time.

The SPEAKER. That motion will be in order at the proper time. The gentleman from New York is entitled to the floor and has forty minutes of his time remaining.

Mr. BELMONT addressed the Chair.

The SPEAKER. The gentleman from New York has forty minutes of his time remaining.

3,895.

No. 128.

Colonial Office to Foreign Office.

DOWNING STREET,
18th March, 1887.

SIR,

I am directed by Secretary Sir Henry Holland to acknowledge the receipt of your letter of the 25th of February last,* relating to the North American Fisheries question, and enclosing a copy of a despatch from Her Majesty's Minister at Washington with a copy of a Bill which the Secretary to the Treasury of the United States proposes to substitute for the Belmont Bill.

With reference to the question raised by the Secretary to the Treasury and referred to in the concluding paragraph of Sir L. West's despatch, as to whether Article XXIX of the Treaty of Washington is still in force, I am to state that this article was not one which was subject to termination under Article XXXIII, and Sir Henry Holland presumes that it is still in force, but he would be glad to know the opinion of the Marquis of Salisbury as to the effect of any legislation of the United States affecting that article.

Should there be any doubt as to whether this article is in force or not, it might be advisable to consult the law officers of the Crown.

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

The Under Secretary of State,
Foreign Office.

4,963.

No. 129.

Colonial Office to Foreign Office.

DOWNING STREET,
18th March, 1887.

SIR,

I am directed by Secretary Sir Henry Holland to acknowledge the receipt of your letter of the 12th instant,† enclosing the draft of a note which the Marquis of Salisbury proposes to address to the United States' Chargé d'Affaires in reply to Mr. Phelps' note of the 3rd of December last on the subject of the proposed *ad interim* arrangement respecting the North American Fisheries.

Sir Henry Holland desires me to request that you will inform Lord Salisbury that he concurs in the terms of this draft, but with reference to the paragraph in page 5 commencing "In order to give your Government a further guarantee," Sir Henry Holland thinks that the attention of Lord Salisbury should be called to the telegram from the Governor-General of Canada of the 10th instant, of which a copy accompanied my letter of the 12th instant,‡ and that either the note to the United States' Chargé d'Affaires should be delayed until the arrival of the further answer promised by the Marquis of Lansdowne, or, if it is necessary to make the communication to Mr. Phelps immediately, that the paragraph referred to should be guarded by the insertion of the words "as at present advised" after the words "Her Majesty's Government," and by adding the following sentence after the word "Halifax." "It has been suggested to Her Majesty's Government that some practical difficulty may arise, owing to the length of the coast line, about 3,000 miles, to be protected, in securing the accessibility of national vessels when required, which would occasion prolonged detention of seized vessels, but it is possible that this difficulty may be obviated."

Sir H. Holland has, by telegraph, requested Lord Lansdowne to telegraph the views of his Government upon this point.

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

The Under Secretary of State,
Foreign Office.

* No. 118.

† No. 125.

‡ No. 126.

7,028.

No. 130.

Governor-General the Most Hon. the Marquis of Lansdowne, G.C.M.G. to the Right Hon. Sir H. T. Holland, Bart., G.C.M.G., M.P.

Confidential.

GOVERNMENT HOUSE, OTTAWA,
March 19th, 1887.

SIR,

I had the honour to send you a telegraphic message in cypher on the 10th instant of which the following is the substance :—

Referring to your telegram of March 8th* final answer cannot be sent for two or three days. Some of our objections are met by the amendments suggested by you, but owing to the great length of coast line (some three thousand miles) which requires protection, we fear that the national vessels when wanted would not be accessible, thus occasioning prolonged detention of any vessels which might be seized. My Government also questions whether the disputed points of law which would be undoubtedly raised could be dealt with satisfactorily by naval officers.

I have &c.,
(Signed) LANSDOWNE.

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

5,276.

No. 131.

Foreign Office to Colonial Office.

FOREIGN OFFICE,
March 19th, 1887.

SIR,

I am directed by the Secretary of State for Foreign Affairs to transmit to you, to be laid before Sir Henry Holland a copy of a despatch from Her Majesty's Minister at Washington reporting the passing of the Retaliatory Bill of the Senate in connection with the fishery question.

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

The Under Secretary of State,
Colonial Office.

Enclosure in No. 131.

WASHINGTON,
March 3rd, 1887.

Treaty, No. 35.

MY LORD,

With reference to my despatch No. 33 of this series of the 2nd inst., I have the honour to inform your Lordship that the House of Representatives yesterday receded from their amendments to the Senate Retaliatory Bill by a vote of 149 to 134, and the Senate Bill was passed.

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

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

5,261.

No. 132.

*Foreign Office to Colonial Office.*FOREIGN OFFICE,
March 19th, 1887.

SIR,

I am directed by the Marquis of Salisbury to transmit to you to be laid before Sir Henry Holland, copies of despatches on the subject of the proposed retaliatory bills introduced into the United States Legislative Chambers in connection with the North American Fisheries Question.

I am to suggest that it may be advisable to ascertain the views of the Canadian Government as to the bearing of Article 29 of the Treaty of Washington upon this subject.

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

Enclosure 1 in No. 132.

*Sir L. West to the Marquis of Salisbury. (Received March 10th.)*WASHINGTON,
February 24th, 1887.

No. 28.

MY LORD,

I have the honour to enclose to your Lordship herewith copies of the retaliatory Bill as passed by the House of Representatives yesterday by a vote of 252 to 1.

This Bill is a substitute for the Senate Bill, and authorizes the stopping of cars carrying goods in transit, provided for under Article XXIX of the Treaty of 1871. This clause, it was objected, would be in violation of the Treaty, and was an evasion unworthy of a civilized country.

The Senate Bill, on the contrary, was retorsion—it was retaliation in kind—always the most efficient. The House, however, refused to adopt the argument, and adhered to the substitute Bill, which was unanimously carried.

I have the honour to enclose a précis which I have made of the debate.

I have, &c.,
(Signed) L. S. SACKVILLE WEST.*Extract from the "Congressional Record" of February 25th, 1887.*

Strike out all after the enacting clause and insert :—

“That hereafter, whenever the President shall be satisfied that vessels of the United States are denied, in ports or territorial waters of the British dominions in North America, rights to which such vessels are entitled by Treaty or by the law of nations, or are denied the comity of treatment or the reasonable privileges usually accorded between neighbouring and friendly nations, he may, in his discretion, by Proclamation, prohibit from entering the ports of the United States, or from exercising such privileges therein as he may, in his discretion, by such Proclamation, define, vessels owned wholly or in part by a subject of Her Britannic Majesty, and coming or arriving from any port or place in the Dominion of Canada, or in the Island of Newfoundland, whether directly or having touched at any other port, excepting such vessel shall be in distress of navigation and of needed repairs or supplies therefor; and he may also forbid the entrance or importation, either by land or water, into the United States of any goods, wares, or merchandize from the aforesaid Dominion of Canada or Newfoundland, or any locomotive, car, or other vehicle with any goods that may be therein contained from the Dominion of Canada; and upon proof that the privileges secured by Article XXIX of the Treaty concluded between the United States and Great Britain on the 8th day of May, 1871, are denied as to goods, wares, and merchandize arriving at the ports of British North America, the President may also, by Proclamation, forbid the exercise of the like privileges as to goods, wares, and merchandize arriving in any of the ports of the United States; and any person violating or attempting to violate the provisions of

any Proclamation issued under this Act, and any person preventing or attempting to prevent any officer of the United States from enforcing such Proclamation shall be guilty of a misdemeanour, and upon conviction thereof shall be liable to a fine of not more than 1,000 dollars, or imprisonment for a term not exceeding two years, or by both said punishments, in the discretion of the Court; and if, on and after the date at which such Proclamation takes effect, the master or other person in charge of any vessel thereby excluded from the ports of the United States, shall do, in the ports, harbours, or waters of the United States, for or on account of such vessel, any act forbidden by such Proclamation aforesaid, such vessel and its rigging, tackle, furniture, and boats, and all the goods on board shall be liable to seizure and forfeiture to the United States; and any goods, wares, or merchandize, and any car, locomotive, or other vehicle coming into the United States in violation of any Proclamation as aforesaid shall be seized and forfeited to the United States.

“Sec. 2. That whenever, after the issuance of a Proclamation under this Act, the President is satisfied that the denial of rights and privileges on which his Proclamation was based no longer exists, he may withdraw the Proclamation, or so much thereof as he may deem proper, and reissue the same thereafter when in his judgment the same shall be necessary.”

Précis of Debate on the Canadian Non-Intercourse Bill.

Mr. BELMONT, Chairman of the Committee on Foreign Relations, said that the Fishery Question demanded the serious consideration of the country. It was not a mere commercial question, but one involving a submission to repeated violations of a treaty. The Treaty of 1783 declared independence, defined boundaries, and was permanent in its provisions. It conferred also certain rights to deep-sea fisheries and liberties to inshore fisheries, and this distinction between rights to deep-sea fisheries and liberties to inshore fisheries had been maintained in all negotiations. The war of 1812 did not disturb these rights, nor were the fisheries mentioned in any of the Articles of the Treaty of Ghent in 1814. The fishery disputes, however, arising out of the system of non-commercial intercourse existing at that time, led to the Treaty of 1818.

Following upon the Treaty of 1818 were certain concerted legislative enactments, which finally put an end to the non-commercial intercourse. But, in the meanwhile recourse had been had to retaliatory measures, and in 1827 Mr. Adams issued a Proclamation, which was applicable under present circumstances, declaring trade with the British Colonies prohibited, and reviving the restrictions of the Acts of 1818 and the following years. This was in consequence of American vessels having been interdicted from entering British Colonial ports in 1826. Under the succeeding Administration, negotiations ensued by which the restrictions on both sides were withdrawn. There is, therefore, a precedent for interdiction of colonial commerce, not as a war measure, but as an incident to a negotiation by which a relief from prior restrictions was obtained.

There is no desire or intention of entering the prohibited waters as defined in the Treaty of 1818, but it is asked that that Treaty be interpreted according to its provisions, which refer only to inshore fisheries. The purpose of the Canadian Government is to strain the Treaty of 1818 to cover deep-sea fishing, and virtually to make the deep-sea fisheries territorial waters of Great Britain covered by the restrictions of the Treaty of 1818 upon inshore fisheries. This purpose is apparent from their legislative enactments of 1844, 1868, 1870, and, finally, the Act against the Proclamation of which by the Queen the United States protested in London. He then quotes Mr. Bayard's note of the 29th May, 1886, to Sir L. West, notwithstanding which the Act was proclaimed.

He then proceeds to enumerate the vessels which have been driven from Canadian ports in storm and stress of weather, and those which have been refused the privilege of landing to buy provisions, and says that, after the adjournment of Congress, the Canadian Statute may be still more vigorously enforced, and that, for this reason, power of defensive retaliation must be conferred upon the President. He objects to the Senate Bill, which provides that the President shall issue his Proclamation in case he is satisfied that American vessels are denied the rights granted to most favoured nations.

But he went on to say the United States have no treaty with Great Britain containing any favoured nation clause, nor were the United States prepared to put themselves upon the same footing as any other nation, since under the Treaty of Peace they had

certain rights to deep-sea fisheries, rights acquired by joint conquest, rights which no other nation, excepting Great Britain and themselves, possessed. The power conferred on the President should be conferred in distinct terms as regards the transit trade and its interdiction, because Canada, under Article XXIX of the Treaty of 1871, claims the right to send merchandize through the territory of the United States in sealed cars during the winter, when her own ports are closed. The Bill under discussion provided for the stoppage of railway cars, and how necessary this might be is seen from a passage in an article from the "Quarterly Review," to the effect that commerce fortunately can, by sealed cars and bonding arrangements, afford to disregard political boundaries. He therefore advocated the substitute Bill under consideration.

In answer to a question as to the meaning of the words, "vessels owned wholly or in part by a subject of Her Britannic Majesty," Mr. Belmont said that, if vessels under the British flag were simply shut out, it would not be sufficient, as there might be a transfer of ownership, and that American citizens might perhaps come to some arrangement for their own interests with their Canadian neighbours, and that, for this reason, the words, "wholly or in part," had been inserted in the Bill.

Mr. RICE contended, as was argued by Mr. Phelps, that American fishing vessels sailing from American ports for deep-sea fishing had an unquestionable right, if provided with proper permits, to touch at Canadian ports for trading purposes, or to procure bait or other supplies like other vessels. The New England fishermen did not want to go into Canadian waters or to interfere with the inshore fisheries. If, however, the Canadian Government shuts out American vessels fishing in the deep seas who go into Canadian ports for the purpose of buying supplies, upon the sale of which many of their poor people live, let them do it. The United States say that there is no provision that American vessels shall not go there. They say there is, and that is the question upon which the two Governments have joined issue. "They shut American fishing-vessels out of their ports, and we shut their fish out of our markets."

The Senate Bill, he contended, by which the President was authorised to prohibit all Canadian vessels from coming into American ports and the importation of all Canadian caught fish and all Canadian products, was sufficient, and went far enough. He advocated therefore the adoption of the Senate Bill.

Mr. DAVIS maintained that the claim now, for the first time made, that American fishing-vessels are by the terms of the Treaty of 1818 prohibited from commercial intercourse with British North America, is unfounded. If, he said, Great Britain is determined to sustain the Canadian authorities in a policy of commercial non-intercourse with a class of American vessels engaged in a legal and laudable occupation wholly without her jurisdiction, we must prove to her that such policy will be inconvenient and injurious to her interests. But the representations of the United States Government have been wholly futile. No adequate reply has been vouchsafed, and it is now full time to vindicate by other steps our rights, interest, and honour. The character of the retaliatory legislation proposed was in harmony with international law and numerous precedents.

Mr. DINGLEY said that if the United States Government was right in assuming that the legislative arrangement with Great Britain obliges the United States to extend commercial privileges to the fishing-vessels of Canada in return for similar privileges granted to American vessels by Canada, then it becomes necessary to arm the President with authority to withdraw such privileges from Canadian fishing-vessels when and so long as Canada declines to concede them to fishing-vessels of the United States.

Mr. HERR attacked the Secretary of State for his subserviency to the British Government in the matter of the temporary arrangement, which, he said, would have been a repetition of the Halifax Commission. Retaliatory measures had become necessary, but he strongly objected to the clause in the Bill providing for stopping locomotives and cars from coming from Canada, which, he said, had a hidden purpose, namely, to defy a treaty and violate national faith. Under the XXIX Article of the Treaty of 1871 with Great Britain, goods in transit have a right to go either way through the United States to Canada from American seaports, or through Canada to the United States from Canadian seaports, or the reverse.

Goods in transit are therefore allowed to go through by the Treaty, and the only way it can be done away with is to give two years' notice for its termination. One party to it cannot be held to grant the privilege or right when the other denies it. It expires when violated. But it is intended to reach it by this clause, which adroitly includes cars and locomotives among the things that may be stopped, though they are loaded with goods in transit under Treaty through the United States. The goods may go, but the cars which carry them must not.

"Now," said Mr. Hitt, "if such a proposition as that were presented by some crafty savage chief in making a treaty he would be laughed at, and yet it is deliberately proposed to the American Congress in order to evade and set at naught, not to violate squarely, a treaty which is admitted to be in force."

He then proceeded to point out the inconvenience and delay which would be caused by adopting this clause which the Senate had almost unanimously rejected in their Bill, and would probably reject again when sent up to them by the House. A conference must then ensue, the outcome of which was doubtful.

Enclosure 2 in No. 132.

Sir L. West to the Marquis of Salisbury. (Received March 10th).

WASHINGTON,
February 25th, 1887.

No. 29.

(Extract.)

I have the honour to inclose to your Lordship herewith copies of a Resolution submitted to the Senate yesterday against negotiations with Great Britain having for object any change in existing duties on imports.

Extract from the "Congressional Record" of February 25th, 1887.

RECIPROCITY TREATY WITH CANADA.

Mr. Hoar.—I ask leave to submit a Resolution to go over under the Rules ;—

Resolved—That it is the judgment of the Senate that under present circumstances no negotiation should be undertaken with Great Britain in regard to existing difficulties with her Province of Canada, which has for its object the reduction, change, or abolition of any of our existing duties on imports.

Enclosure 3 in No. 132.

Sir L. West to the Marquis of Salisbury. (Received March 10th).

WASHINGTON,
February 27th, 1887

No. 31.

MY LORD,

With reference to my despatch of the 25th instant, I have the honour to enclose to your Lordship herewith a short précis which I have made of the speeches of Senators Hoar, Morgan, and Morrill on the resolution, copies of which were inclosed therein.

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

Précis of Debate on Non-Reciprocity Resolution in the Senate.

Mr. HOAR said that his Resolution did not undertake to deal with any question of general principle as to existing duties, but it simply affirmed that, in the judgment of the Senate, the present conduct of Canada in regard to American fishing vessels ought not to be met by a modification of duties merely, and that the attempt to force a change ought to be resisted. The Resolution, moreover, did not affirm opposition to any change of duties, or even to reciprocity treaties, but simply that it is no time to negotiate with Great Britain for a modification of customs' duties when the question of the mal-treatment of American vessels has to be dealt with.

Mr. MORGAN said that he apprehended that the object of the resolution was to forestall the President and Department of State in negotiations for a treaty with Great Britain. It has repeatedly been asserted that a treaty arrangement for reciprocity which modified the tariff laws of the United States, or which would prevent their

modification by an Act of Congress, was in itself unconstitutional. He did not concur in the length and breadth of that proposition, nor was he prepared to vote that a treaty of reciprocity between the United States and Canada would not be a beneficial treaty to both countries. There might be a reciprocity treaty that would be of very great benefit to both countries, but this resolution proposed to commit the Senate in advance to a broad, firm, unyielding declaration that no reciprocity shall exist between the United States and Canada, which, if run to its logical consequences, would compel the abandonment of the advantages obtained under the Treaty of Washington. He deprecated the discussion of so grave a matter at the close of the Session, and objected that the Senate of the United States has no right, either as a legislative body or as a separate body, to interfere in advance with negotiations between this country and any other country. He objected, moreover, to relieving the President from his constitutional duty of concluding such negotiations as may benefit the country, or to interfering with the exercise of his constitutional powers so as to anticipate any result, and compel him either to come to a certain conclusion in his negotiations, or to avoid a certain conclusion. This disposition on the part of the Senate he pronounced pragmatism and unwarranted.

Mr. MORRILL denied the constitutional power of the President, even with the aid of the Senate, to negotiate a reciprocity treaty with Canada, and make it binding as the supreme law of the land. If he may do it with one nation he may do it with all, and thus usurp the entire power of the House of Representatives as to the introduction and consideration of revenue bills. He then proceeded to argue that any advantageous treaty with Canada was impossible, for he believed that reciprocity treaties were in direct conflict with the "most-favoured-nation" clause of existing treaties. To undertake, therefore, to have a reciprocity treaty with any nation by which more favours are given to one than to another would be in violation of existing treaty obligations. Beyond this, any treaty with Canada has to be made with the condition that the same favours that Canada grants are to be granted to Great Britain, thereby making the whole stipulation utterly valueless so far as the United States are concerned, unless American labour is put upon the level of that of Great Britain in order to undersell in Canada.

Mr. HOAR replied that the question of the general policy of reciprocity treaties was not involved in this resolution. It was only intended against the attempt of Canada to compel the United States to open their market to Canadian fishermen, an attempt which is clearly indicated in a speech of Sir John Macdonald, who declared that his policy was to compel the United States to open their markets, and that if he persisted in it the Canadian people might confide in him, and that the result should be accomplished. It was to defeat this attempt that his resolution was directed. He did not intend to press a division, and would allow it to go over under the assurance that the Finance Committee, to which it was referred, would deal with it at once.

5,598.

No. 133.

Foreign Office to Colonial Office.

FOREIGN OFFICE,
March 22nd, 1887.

SIR,

With reference to previous correspondence on the North American Fishery question, I am directed by the Secretary of State for Foreign Affairs to transmit to you, to be laid before Secretary Sir Henry Holland, a copy of a despatch from Sir Lionel West on the subject of the conferences of the two Houses on the Retaliatory Bill.

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

The Under Secretary of State,
Colonial Office.

Enclosure in No. 133.

WASHINGTON,
March 1st, 1887.

Treaty, No. 32.

MY LORD,

In consequence of the action of the House of Representatives in passing the Retaliatory Bill, as reported in my despatch No. 28 of this series of the 24th ult., a conference was appointed upon the disagreeing votes, and the report of the managers on the part of the Senate of the conference was read to that body on the 28th ult.

The irreconcilable point of difference, says the report, on the part of the two Houses is the insistence on the part of the House managers upon adding to the scope of the Senate Bill, and so going beyond it, the further provision that in case of injurious treatment to American vessels in British North American waters, it shall be within the competence of the President to absolutely stop intercourse, not only by water, but by land between the people of the United States and the people of the British territories adjacent, thus cutting off the continuous movement of railway trains from the British provinces to any part of the United States, and, in effect, reciprocally from the United States to the British Dominions, at all places where there now exist interior railroad lines crossing the boundaries of the two countries, in some cases operated and practically owned by British subjects, and in other cases by American citizens. The Senate managers have felt it to be a duty to decline to go to this extent. It seems clear to them, and has not been controverted by the House managers, that the things the President is authorised to do by the Senate Bill in the cases named are none of them in derogation, either directly or indirectly, of any treaty right or of the peaceful business intercourse of nations, but that the Government in these respects is absolutely free to act in the manner proposed without being subject to the imputation that it is either in any way infringing the most liberal interpretation of any treaty or doing any act that nations at peace have not hitherto found themselves from time to time justified in doing, not in a spirit of belligerency, but merely as a matter of countervailing business regulations.

The result of the Conference, therefore, has been that the House of Representatives declines to accept the Senate Bill unless provisions are made which the Senate believes to be unwise. The report concludes by laying down the principle upon which the two Houses have hitherto acted, namely, that when either House proposes legislation that is satisfactory to the other, as far as it goes, and the other House desires to go further and make affirmative and additional law, if it cannot convince its co-ordinate body that it is desirable to go further, the House proposing the affirmative additional legislation must recede.

The pretension, therefore, of the House in the present case is quite untenable.

I have the honour to enclose to your Lordship herewith a précis of Senator Morgan's speech on the report of the Senate managers of the conference.

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

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

Précis of Senator Morgan's Speech on Senate Managers' Report on the Retaliatory Bills.

Senator Morgan said that the only difficulty in coming to a final arrangement was the apprehension of the Senate conferees that the proposition submitted by the House would lead to a belligerent conflict with an existing treaty between Great Britain and the United States. There was no argument between the two countries in respect to commercial rights, except under statute and legislation, and in one particular under Art. XXIX of the Treaty of Washington, and it was clearly the duty of the Senate to consider the question whether the proposition of the House was a violation of that treaty, or whether it might be considered as a threat of the violation of it. The Committee cannot sanction the proposition. It is said that the Administration is in favour of it, but he would scarcely think that in view of the power conferred on the

President by the Senate Bill, the Administration sought also the power to prohibit intercourse between the United States and the people of Canada. He could not, he said, conceive any act of legislation, or any act of diplomacy that can be named, that is as near the border line of belligerency as that of prohibiting intercourse and communication between the people of the two countries. Proclaim non-intercourse between father and son, families, friends, merchants, traders, railroad officers, between the United States and Canada as a measure of retaliation, because of injuries done to the fisheries or anything else, and how long can a position so strenuous, so dangerous, and so belligerent be sustained? A greater power could not be put in the hands of Great Britain than merely to make a proclamation in this country that the best means to prevent aggression on the fishing interests would be absolute non-intercourse, personal non-intercourse, between the people of Canada and the United States. It could not be sustained for three months, perhaps not for three weeks in the absence of actual hostilities.

He then proceeded to say that so far as the House of Representatives was concerned, as claiming for themselves that they are the more immediate representatives of the people than the Senate, he denied it. They are not so in heart or in sentiment. They are not so in any other respect. The Senate had done all that was necessary under the circumstances, and the Bill they had passed was sufficient, and gave sufficient power to the President. But the power which is demanded as the one supreme thing to be insisted upon is the power to proceed to the very last line of friendly action towards Great Britain, the power next to which only can come the loading of guns and the array of men under arms.

5,661.

No. 134.

Governor-General the Most Hon. the Marquis of Lansdowne, G.C.M.G., to the Right Hon. Sir H. T. Holland, Bart., G.C.M.G., M.P. (Received March 24th, 1887.)

GOVERNMENT HOUSE, OTTAWA,
March 9th, 1887.

No. 67.

SIR,

In consequence of the repeated complaints which have been addressed to Her Majesty's Government by that of the United States of the manner in which the Canadian authorities have acted in enforcing against American fishing vessels the provisions of the Convention of 1818, and the Acts of Parliament passed for the purpose of giving effect to that Treaty, I have thought it my duty to invite the special attention of my advisers to the action of the Dominion fisheries' police during the last fishing season, and to ask them to consider, upon a general review of the events of that season and of the different cases in which vessels had been either denied privileges, or had been seized or detained within Canadian waters for alleged infractions of the law, or otherwise interfered with by the officials of the Dominion, whether any amendment was called for in the instructions which had been issued by the Fisheries Department to the officers in its employment or in the procedure which has been resorted to in dealing with infractions of the Fishery or Customs' Law.

2. With regard to the spirit in which the Government of the Dominion desires to act in regard to these questions I am glad to refer you again to the printed instructions issued on the 16th of March, 1886, to all fishery officers in command of Government steamers and vessels engaged in the protection of the Inshore Fisheries of Canada. These instructions after carefully defining the circumstances under which foreign fishing vessels may be detained, enjoin upon the officers to whom the instructions were addressed the duty of performing the service in which they are engaged with forbearance and discrimination. It is especially pointed out that "foreign fishing craft may be driven into Canadian waters by violent or contrary winds, by strong tides, or through misadventure, or some other cause independent of the will of the master and crew." In such cases the fishery officer is desired to take these circumstances into his consideration and to "satisfy himself with regard thereto before taking the extreme step of seizing or detaining any vessels." In another passage special reference is made "to the general conciliatory spirit in which it is desirable that you should carry out these instructions," and "the wish of Her Majesty's Government that the rights of exclusion should not be strained."

3. The information given to me by my Ministers affords no reason for believing that during the past season there has been any appreciable departure from the intentions of the framers of the instructions which I have quoted.

4. In almost every case in which complaints of the kind to which I have referred have been forwarded to me by your predecessors I have been able to supply them with full information which has, I venture to think, been sufficient to show that as a rule the complaints were founded upon *ex parte* and misleading statements, and the action of the Canadian authorities entirely warranted by treaty and law. It is indeed, I think, a matter for congratulation considering the fact that my Government had to deal on the one hand with a body of fishermen accustomed to resort without molestation to Canadian waters and likely to resent any interference with the freedom of access which such fishermen had heretofore enjoyed, and on the other with a newly constituted police force of which the members were necessarily without experience in the novel and delicate duties entrusted to them, that no serious mistakes should have so far been committed.

5. I am, however, able to assure you that should there be any particular in respect to which Her Majesty's Government may desire to see the instructions already issued amended so as to prevent the possibility of hardship to vessels *bona fide* resorting to Canadian waters for any of the purposes permitted by the Convention of 1818, my Government will gladly take into its favourable consideration the suggestions which you may be disposed to make with this object.

6. In this connection, however, I may point out that in the despatches which have been addressed to Her Majesty's Government by Mr. Bayard, as well as in the reports presented to Congress with a view to justify legislation upon these subjects, objection has been taken not only to the interpretation which Canadian authorities have placed upon the law which they were called upon to administer, but apparently to the allowance of any discretion whatever to Canadian officials in dealing with acts committed by American vessels in Canadian waters. Of this a conspicuous illustration is afforded by the language used in the report recently presented to Congress by Mr. Edmunds from the Committee on Foreign Relations, which contains the following passage:—

“On the 12th of May, 1870, the Dominion Act of 33 Vic., ch. 15, was passed repealing the third section of the last-mentioned Act on the subject of bringing vessels into port, &c., and provided in lieu thereof that any of the officers or persons before mentioned might bring any vessel being within any harbour in Canada or hovering in British waters within three miles of the coast into port, search her cargo, examine her master on oath, &c., without any previous notice to depart which had been required by the former Act. So that an American fishing vessel at sea being driven by stress of weather, want of wood or water, or need of repairing damages, which should run into a Canadian harbour, under the right reserved to it by the Treaty of 1818, the moment her anchor was dropped, or she was within the shelter of a headland was, at the discretion of the Canadian official, to be immediately seized and carried into port, which might be, and often would be, many miles from the place where she could have her safe shelter, or could obtain her wood and water, or repair her damages.

“The Committee thinks it is not too much to say that such a provision is, in view of the treaty and of the common principles of comity among nations, grossly in violation of rights secured by the treaty, and of that friendly conduct of good neighbourhood that should exist between civilised nations holding relations such as ought to exist between the United States and Her Majesty's Dominions.

* * * * *

“From all this it would seem that it is the deliberate purpose of the British Government to leave it to the individual discretion of each one of the numerous subordinate magistrates, fishery officers, and customs officers of the Dominion of Canada to seize and bring into port any American vessels, whether fishing or other, that he finds within any harbour in Canada, or hovering within Canadian waters.”

7. It is, I venture to submit, impossible to contrive any system for enforcing regulations for the protection of the Canadian Fisheries, or for the prevention of smuggling along the Canadian coast, no matter how liberal the spirit in which those regulations might be conceived, under which the initiative to be taken in each case should not be left to “the individual discretion” of Canadian officials. If no such discretion is allowed to these, if every intruding vessel is to be free, after committing an act of trespass, to depart without hindrance from the place in which that act was committed subject merely to the chance of her being made liable for subsequent legal

proceedings, the protection which it was intended to afford to the interests of the Dominion would become illusory and valueless.

8. The same argument applies to the enforcement against the American fishing vessels of the Canadian Customs Law. The acts of vessels which have been proceeded against under this law are constantly represented, as for instance on page 10 of the Report already quoted, to be "merely formal or technical violations of some Canadian Customs Statute or Regulation." The Statute which has been enforced in these cases is, as I have more than once had occasion to point out, one which is consistently put into operation against all vessels resorting to Canadian waters, nor would it be possible to cease enforcing it against a particular class of vessels without giving to them opportunities for systematically and with complete impunity evading the law upon coasts of which the configuration is particularly favourable to the operations of smugglers.

9. For these reasons I cannot hold out the expectation that my Government will abandon the position which I have described, and which may be summed up in the statement that it cannot recognise the right of United States fishing vessels to resort to Canadian waters except for the purposes specified in the Convention of 1818, and that it considers that its officials should have the discretion of determining in what cases and to what extent, subject to the ultimate decision of the courts, vessels entering those waters for a lawful purpose should comply with the requirements of the municipal law of the Dominion. With this reservation my Government desires to afford to all foreign vessels every facility for availing themselves of the privileges to which they are entitled, and to avoid, as far as possible, attaching to the exercise of those privileges any condition of an irritating or vexatious character.

10. If you should be of opinion that any alterations are desirable in the procedure of the local authorities, or in the instructions to which I have already referred, I trust that you will favour me with an expression of your views.

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

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

5,664.

No. 135.

Governor-General the Most Hon. the Marquis of Lansdowne, G.C.M.G., to the Right Hon. Sir H. T. Holland, Bart., G.C.M.G., M.P. (Received March 24th, 1887.)

GOVERNMENT HOUSE, OTTAWA,
10th March, 1887.

Confidential.

SIR,

I had the honour of receiving your telegram of the 8th instant,* in which you suggested that my Government should accept, subject to certain amendments, the proposal contained in Article III of Mr. Bayard's Memorandum, under which Her Majesty's Government and that of the United States would send two vessels each to cruise during the fishing season in the Gulf of St. Lawrence, and on the coast of Nova Scotia, for the purpose of investigating cases in which fishing vessels of the United States might be seized for violation of the provisions of the Convention of 1818.

My despatch "confidential" of December 28th, 1886,† and the Order in Council enclosed in my despatch "secret" of February 1st,‡ contained a reference to some of the objections felt by my Government to the procedure described in this Article. The amendments which are suggested in your telegram would, to some extent, but not entirely, remove those objections.

Under the Article as it would stand after the introduction of your amendments, a vessel seized for contravention of the Convention of 1818 would, except where the commanding officers of the two "national vessels" were unanimous in considering that the charge was not sustained, be sent for trial before the Vice-Admiralty Court at Halifax. While in this respect the Article as amended would be less open to objection than in its original shape, I fear that there are practical difficulties in the way of its adoption which are likely to be insurmountable, in spite of the earnest desire of my

* No. 124.

† No. 92.

‡ No. 109.

advisers to consider favourably any recommendations made in connection with these matters by Her Majesty's Government.

Owing to the absence from Ottawa of some of my Ministers, it is not probable that I shall be able to obtain a final expression of their views for two or three days. I may, however, in the meantime refer briefly to some of the points which will undoubtedly be raised before the proposal, even in its amended shape, can be entertained.

1. It would appear from the words of the Article, that a jurisdiction in all cases of seizure is to be given to the naval officers in command of the two "national vessels" detailed for this service. One of these officers will presumably belong to the American and the other to the British naval service. My Government will, I have no doubt, object to empowering a tribunal thus constituted, in which no Canadian representative will have a place, to deal with offences committed within Canadian territory, and against Canadian law.

2. Such a tribunal would not be competent to deal in a manner which would inspire public confidence, with intricate questions affecting international rights, such as those which have been raised in connection with the Fisheries dispute.

3. A floating tribunal, such as that which would be constituted under the Article, would have the greatest difficulty in obtaining evidence as to matters of fact. The offences for which vessels have been, or are likely to be seized, are as a rule committed in close proximity to the shore, and the bulk of the evidence relating to the offence is obtained from persons resident on shore, and could not be obtained by an examination merely of the masters and crews of the seized vessel, or of the vessel by which the seizure was made. This would be the case more especially in regard to such violations of the Convention, as might be involved by the purchase of bait or of supplies. In the same way evidence in regard to the precise position of a vessel alleged to have been fishing within the proscribed limits could often not be obtained, except by investigation conducted on shore. Such evidence could, it is submitted, be obtained with greater ease and rapidity by the local authorities, or by the Department of Marine and Fisheries, to which all cases of seizure are at once reported by telegram, and which has great facilities for conducting local enquiries upon the spot, through its officers. In a large number of cases, such evidence has been obtained by the department within a few hours of the seizure, and you will see, on reference to the reports which I have from time to time sent you, that where the facts thus elicited did not appear to point to a deliberate or serious contravention of the law, instructions for the release of the vessel were at once sent from Ottawa by telegram.

4. The most formidable of the objections which are likely to be urged against Mr. Bayard's proposal is, however, that which will be founded upon the belief that it would be impossible for the four national vessels selected as cruisers to cover the whole of the lengthy coast line along which acts of trespass by American fishing vessels are to be anticipated. Two of these vessels would, I apprehend, become responsible for the coast from the mouth of the St. Lawrence to Cape Breton, and two others for the whole of the coast from Cape Breton to the Bay of Fundy. These vessels would, I presume, be instructed to navigate in couples. If this were not done it would be impossible to obtain an examination, such as that contemplated under the wording of the Article, by "the officer in command of one of the said national vessels in conjunction with the officer in command of another of said vessels of the different nationality." The assumption that both vessels will always be available simultaneously when a case of seizure has been reported, supposes a complete agreement between the two Governments as to the instructions under which their respective vessels would act, and also between the two commanding officers as to the directions in which they would cruise. Even, however, if it were to be assumed that the two vessels would be inseparable, it is, I think, obvious that it would repeatedly happen that many days would elapse before the officer of the Canadian police vessel by which the seizure had been made, was able to report his seizure to one of the "national vessels," or to obtain a hearing of the case by the officers of both those vessels. The seizure might have taken place shortly after the "national vessels" had passed the spot at which it was made on their way round the coast. It might be impossible to obtain a hearing of the case or even to report it until the trip of the two vessels had been completed. It might again happen that, while the hearing and examination of the case was proceeding in one locality, other seizures might be simultaneously made at different and distant points. In all such cases the vessel by which the seizure had been made would be compelled to detain her prize for an indefinite time thereby occasioning prolonged delay and much hardship and inconvenience to the owners and crew of the seized vessel. In almost every case of seizure or detention which has hitherto occurred the facts have, as I have already pointed out,

been reported immediately by telegram to the Department of Marine and Fisheries, which has been able, often within the course of a few hours, to deal expeditiously with the matter. The new arrangement suggested by Mr. Bayard would beyond all doubt, in many cases operate to the disadvantage of those whom it is designed to protect, while it is not improbable that in cases where a vessel had been detained under circumstances such as those which I have described, and where the charge was subsequently not sustained, heavy claims for damages would be preferred against the Canadian Government. The force of the above objections becomes more apparent when it is taken into consideration that the length of the coast line along which the "national vessels" would be required to operate, extends to about 3,000 miles, while the police vessels by which the seizures are made, being, with two exceptions, sailing schooners, would be liable to prolonged detention by adverse weather, and would frequently find the utmost difficulty in placing themselves in communication with the "national cruisers." The same difficulty would be experienced in an even greater degree whenever the seizure of the vessel had taken place in port by an officer on shore.

5. In the event of Article III being adopted in any shape it would be necessary in line 2, after the date, "1818," to insert the words "and the laws in force for giving effect to the same." If such words were not to be inserted it is probable that the Government of the United States would refuse, as it has already, to admit the validity of the Acts of Parliament which have at different times been passed both in the United Kingdom and in Canada for the purpose of enforcing the Convention.

6. I observe that under the Article it is laid down that where it is decided that a vessel shall be subjected to a judicial examination she shall be sent for trial before the Vice-Admiralty Court at Halifax. As to this I have to observe that there are Vice-Admiralty Courts at Charlottetown, Prince Edward Island, and St. John, New Brunswick, and at Quebec, and that there appears to be no reason for invoking exclusively the jurisdiction of the Court at Halifax which is possessed in an equal degree by the other Vice-Admiralty Courts mentioned.

7. As it is expressly stated that the Article under consideration is for the purpose of executing Article I of the Convention of 1818 I presume that it is not intended to interfere in any way with the operation of the Customs Law of the Dominion, which, as you are aware, has been repeatedly put in force against fishing vessels neglecting to comply with its requirements. Care should be taken in any arrangement which may be come to with the United States that there should be no misapprehension in regard to this point.

8. I may in conclusion observe that, although it may no doubt be the case, as stated by Mr. Bayard in his letter of November 15th, 1886, that arrangements resembling in some respects that which he has advocated in the draft Article III, have been adopted by European Governments, including that of Her Majesty, for the settlement of fisheries disputes, it is open to question whether the local and political circumstances were in these cases identical with those present in the case of the Canadian fisheries. I would suggest that it would be worth while to enquire in reference to such cases whether the extent of coast line to be protected is as great, whether the points in dispute involve the construction of treaties and the right of resorting to legislation for their enforcement, or whether they are not rather limited to the more trivial disputes which arise wherever fishermen of different nationalities frequent the same fishing grounds.

9. I shall take the earliest opportunity of laying before you a fuller statement of the views of my Government. I have, however, thought it advisable to lose no time in making you aware of the general character of the objections which, in spite of its earnest desire to be guided by your recommendations in regard to these matters, it will probably urge against the adoption in any shape of the Article under consideration.

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

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

5,880.

No. 136.

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

SIR,

With reference to your letter of the 18th instant,* I am directed by the Marquis of Salisbury to transmit to you a copy of the reply which his Lordship has now made to Mr. Phelps' note of the 3rd of December last, on the subject of the proposed *ad interim* arrangement, relative to the North American Fisheries.

Sir Henry Holland will perceive that, in view of the observations contained in your letter, his Lordship has considered it desirable to omit entirely the paragraph in the draft originally sent to you, which deals with the question of joint action by naval officers of both Governments in cases of seizure of United States vessels.

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

Enclosure in No. 136.

*The Marquis of Salisbury to Mr. White.*FOREIGN OFFICE,
March 24th, 1887.

SIR,

In a note of the 3rd December last, addressed to my predecessor, Mr. Phelps was good enough to transmit a copy of a despatch from Mr. Bayard, dated the 15th of the preceding month, together with an outline of a proposed *ad interim* arrangement "for the settlement of all questions in dispute in relation to the fisheries on the north-eastern coasts of British North America."

Her Majesty's Government have given their most careful consideration to that communication, and it has also received the fullest examination at the hands of the Canadian Government, who entirely share the satisfaction felt by Her Majesty's Government at any indication on the part of that of the United States of a disposition to make arrangements which might tend to put the affairs of the two countries on a basis more free from controversy and misunderstanding than unfortunately exists at present. The Canadian Government, however, deprecate several passages in Mr. Bayard's despatch which attribute unfriendly motives to their proceedings, and in which the character and scope of the measures they have taken to enforce the terms of the Convention of 1818 are, as they believe, entirely misapprehended.

They insist that nothing has been done on the part of the Canadian authorities since the termination of the Treaty of Washington in any such spirit as that which Mr. Bayard condemns, and that all that has been done with a view to the protection of the Canadian fisheries has been simply for the purpose of guarding the rights guaranteed to the people of Canada by the Convention of 1818, and of enforcing the Statutes of Great Britain and of Canada in relation to the fisheries. They maintain that such Statutes are clearly within the powers of the respective Parliaments by which they were passed, and are in conformity with the Convention of 1818, especially in view of the passage of the Convention, which provides that the American fishermen shall be under such restrictions as shall be necessary to prevent them from abusing the privileges thereby reserved to them.

There is a passage in Mr. Bayard's despatch to which they have particularly called the attention of Her Majesty's Government. It is the following;—

"The numerous seizures made have been of vessels quietly at anchor in established ports of entry, under charges which up to this day have not been particularised sufficiently to allow of intelligent defence; not one has been condemned after trial and hearing, but many have been fined, without hearing or judgment, for technical violation of alleged commercial regulations, although all commercial privileges have been simultaneously denied to them."

* No. 129.

In relation to this paragraph the Canadian Government observe that the seizures of which Mr. Bayard complains have been made upon grounds which have been distinctly and unequivocally stated in every case; that, although the nature of the charges has been invariably specified and duly announced, those charges have not in any case been answered; that amply opportunity has in every case been afforded for a defence to be submitted to the Executive authorities, but that no defence has been offered beyond the mere denial of the right of the Canadian Government; that the Courts of the various provinces have been open to the parties said to have been aggrieved, but that not one of them has resorted to those Courts for redress. To this it is added that the illegal acts which are characterised by Mr. Bayard as "technical violations of alleged commercial regulations," involved breaches, in most of the cases not denied by the persons who had committed them, of established commercial regulations which, far from being specially directed or enforced against citizens of the United States, are obligatory upon all vessels (including those of Canada herself) which resort to the harbours of the British North American coast.

I have thought it right, in justice to the Canadian Government, to embody in this note almost in their own terms their refutation of the charges brought against them by Mr. Bayard; but I would prefer not to dwell on this part of the controversy, but to proceed at once to the consideration of the six Articles of Mr. Bayard's Memorandum in which the proposals of your Government are embodied.

Mr. Bayard states that he is "encouraged in the expectation that the propositions embodied in the Memorandum will be acceptable to Her Majesty's Government, because, in the month of April, 1866, Mr. Seward, then Secretary of State, sent forward to Mr. Adams, at that time United States Minister in London, the draft of a Protocol which, in substance, coincides with the 1st Article of the proposal now submitted."

Article 1 of the Memorandum no doubt to some extent resembles the draft Protocol submitted in 1866 by Mr. Adams to Lord Clarendon (of which I enclose a copy for convenience of reference), but it contains some important departures from its terms.

Nevertheless, the Article comprises the elements of a possible accord, and if it stood alone I have little doubt that it might be so modelled, with the concurrence of your Government, as to present an acceptable basis of negotiation to both parties. But, unfortunately, it is followed by other Articles which, in the view of Her Majesty's Government and that of Canada, would give rise to endless and unprofitable discussion, and which, if retained, would be fatal to the prospect of any satisfactory arrangement, inasmuch as they appear, as a whole, to be based on the assumption that upon the most important points in the controversy the views entertained by Her Majesty's Government and that of Canada are wrong, and those of the United States Government are right, and to imply an admission by Her Majesty's Government and that of Canada that such assumption is well founded.

I should extend the present note to an undue length were I to attempt to discuss in it each of the Articles of Mr. Bayard's Memorandum, and to explain the grounds on which Her Majesty's Government feel compelled to take exception to them. I have therefore thought it more convenient to do so in the form of a counter-Memorandum, which I have the honour to inclose, and in which will be found, in parallel columns, the Articles of Mr. Bayard's Memorandum, and the observations of Her Majesty's Government thereon.

Although, as you will perceive on a perusal of those observations, the proposal of your Government as it now stands is not one which could be accepted by Her Majesty's Government, still Her Majesty's Government are glad to think that the fact of such a proposal having been made affords an opportunity which, up to the present time, had not been offered for an amicable comparison of the views entertained by the respective Governments.

The main principle of that proposal is that a Mixed Commission should be appointed for the purpose of determining the limits of those territorial waters within which, subject to the stipulations of the Convention of 1818, the exclusive right of fishing belongs to Great Britain.

Her Majesty's Government cordially agree with your Government in believing that a determination of these limits would, whatever may be the future commercial relations between Canada and the United States, either in respect of the fishing industry or in regard to the interchange of other commodities, be extremely desirable, and they will be found ready to co-operate with your Government in effecting such a settlement

They are of opinion that Mr. Bayard was justified in reverting to the precedent afforded by the negotiations which took place upon this subject between Great Britain and the United States after the expiration of the Reciprocity Treaty of 1854, and they concur with him in believing that the draft Protocol communicated by Mr. Adams in 1866 to the Earl of Clarendon affords a valuable indication of the lines upon which a negotiation directed to the same points might now be allowed to proceed.

Mr. Bayard has himself pointed out that its concluding paragraph, to which Lord Clarendon emphatically objected, is not contained in the 1st Article of the Memorandum now forwarded by him; but he appears to have lost sight of the fact that the remaining Articles of that Memorandum contain stipulations not less open to objection, and calculated to affect even more disadvantageously the permanent interests of the Dominion in the fisheries adjacent to its coasts.

There can be no objection on the part of Her Majesty's Government to the appointment of a Mixed Commission, whose duty it would be to consider and report upon the matters referred to in the three first Articles of the draft Protocol communicated to the Earl of Clarendon by Mr. Adams in 1866.

Should a Commission, instructed to deal with these subjects, be appointed at an early date, the result of its investigations might be reported to the Governments affected without much loss of time. Pending the termination of the questions which it would discuss, it would be indispensable that United States fishing-vessels entering Canadian bays and harbours should govern themselves not only according to the terms of the Convention of 1818, but by the Regulations to which they, in common with other vessels, are subject while within such waters.

Her Majesty's Government, however, have no doubt that every effort will be made to enforce those Regulations in such a manner as to cause the smallest amount of inconvenience to fishing-vessels entering Canadian ports under stress of weather, or for any other legitimate purpose.

But there is another course which Her Majesty's Government are inclined to propose, and which, in their opinion, would afford a temporary solution of the controversy equally creditable to both parties.

Her Majesty's Government have never been informed of the reasons which induced the Government of the United States to denounce the Fishery Articles of the Treaty of Washington, but they have understood that the adoption of that course was in a great degree the result of a feeling of disappointment at the Halifax Award, under which the United States were called upon to pay the sum of 1,100,000*l.*, being the estimated value of the benefits which would accrue to them, in excess of those which would be derived by Canada and Newfoundland, from the operation of the Fishery Articles of the Treaty.

Her Majesty's Government and the Government of Canada, in proof of their earnest desire to treat the question in a spirit of liberality and friendship, are now willing to revert for the coming fishing season, and, if necessary, for a further term to the condition of things existing under the Treaty of Washington, without any suggestion of pecuniary indemnity.

This is a proposal which, I trust, will commend itself to your Government as being based on that spirit of generosity and good-will which should animate two great and kindred nations, whose common origin, language, and institutions constitute as many bonds of amity and concord.

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

Draft Protocol communicated by Mr. Adams to the Earl of Clarendon in 1866.

WHEREAS in the 1st Article of the Convention between the United States and Great Britain, concluded and signed in London on the 26th October, 1818, it was declared that:—

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

And whereas differences have arisen in regard to the extent of the above-mentioned renunciation, the Government of the United States and Her Majesty the Queen of Great Britain, being equally desirous of avoiding further misunderstanding, have agreed to

appoint, and do hereby authorise the appointment, of a Mixed Commission for the following purposes, namely;—

1. To agree upon and define, by a series of lines, the limits which shall separate the exclusive from the common right of fishery, on the coasts and in the seas adjacent, of the British North American Colonies, in conformity with the 1st Article of the Convention of 1818. The said lines to be regularly numbered, duly described, and also clearly marked on charts prepared in duplicate for the purpose.

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

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

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

Pending a definitive arrangement on the subject, the United States' Government engages to give all proper orders to officers in its employment; and Her Britannic Majesty's Government engages to instruct the proper Colonial or other British officers to abstain from hostile acts against British and United States fishermen respectively.

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

Observations on Mr. Bayard's Memorandum.

ARTICLE I.

WHEREAS, in the 1st Article of the Convention between the United States and Great Britain, concluded and signed in London on the 20th October, 1818, it was agreed between the High Contracting Parties "that the inhabitants of the said United States shall have for ever, in common with the subjects of His Britannic Majesty, the liberty to take fish of every kind on that part of the southern coast of Newfoundland which extends from Cape Ray to the Rameau Islands, on the western and northern coast of Newfoundland, from the said Cape Ray to the Quirpon Islands on the shores of the Magdalen Islands, and also on the coasts, bays, harbours, and creeks, from Mount Joly on the southern coast of Labrador, to and through the Straits of Belleisle, and thence northwardly indefinitely along the coast, without prejudice, however, to any of the exclusive rights of the Hudson's Bay Company; and that the American fishermen shall also have liberty for ever to dry and cure fish in any of the unsettled bays, harbours, and creeks of the southern part of the coast of Newfoundland, here above described, and of the coast of Labrador; but so soon as the

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

This provision would involve a surrender of fishing rights which have always been regarded as the exclusive property of Canada, and would make common fishing-grounds of territorial waters which, by the law of nations, have been invariably regarded both in Great Britain and the United States as belonging to the adjacent country. In the case, for instance, of the Baie des Chaleurs, a peculiarly well-marked and almost land-locked indentation of the Canadian coast, the 10-mile line would be drawn from points in the heart

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

Observations on Mr. Bayard's Memorandum.

same, or any portion thereof, shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such portion so settled without previous agreement for such purpose with the inhabitants, proprietors, or possessors of the ground;" and was declared that "the United States hereby renounce for ever any liberty heretofore enjoyed or claimed by the inhabitants thereof to take, dry, or cure fish on or within 3 marine miles of any of the coasts, bays, creeks, or harbours of His Britannic Majesty's dominions in America not included within the above-mentioned limits; provided, however, that the American fishermen shall be admitted to enter such bays or harbours for the purpose of shelter, and of repairing damages therein, of purchasing wood, and obtaining water, and for no other purpose whatever. But they shall be under such restrictions as may be necessary to prevent their taking, drying, or curing fish therein, or in any other manner whatever abusing the privileges hereby reserved to them;" and whereas differences have arisen in regard to the extent of the above-mentioned renunciation, the Government of the United States and Her Majesty the Queen of Great Britain, being equally desirous of avoiding further misunderstanding, agree to appoint a Mixed Commission for the following purposes, namely:—

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

2. To agree upon and establish such Regulations as may be necessary and proper to secure to the fishermen of the

of Canadian territory, and almost 70 miles distance from the natural entrance or mouth of the bay. This would be done in spite of the fact that, both by Imperial legislation and by judicial interpretation, this bay has been declared to form a part of the territory of Canada. (See Imperial Statute 14 & 15 Vict., cap. 63; and "*Mouat v. McPhee*," 5 Sup. Court of Canada Reports, p. 66.)

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

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

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

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

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

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

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

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

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

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

ARTICLE II.

Pending a definitive arrangement on the subject Her Britannic Majesty's Government agree to instruct the proper Colonial and other British officers to abstain from seizing or molesting fishing-vessels of the United States unless they are found within 3 marine miles of any of the coasts, bays, creeks, and harbours of Her Britannic Majesty's dominions in America, there fishing or to have been fishing or preparing to fish within those limits, not included within the limits within which, under the Treaty of 1818, the fishermen of the United States continue to retain a common right of fishery with Her Britannic Majesty's subjects.

ARTICLE III.

For the purpose of executing Article I of the Convention of 1818, the Government of the United States and the Government of Her Britannic Majesty hereby agree to send each to the Gulf of St. Lawrence a national vessel, and also one each to cruise during the fishing

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

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

This Article would suspend the operation of the Statutes of Great Britain and of Canada, and of the provinces now constituting Canada, not only as to the various offences connected with fishing, but as to Customs, harbours, and shipping, and would give to the fishing-vessels of the United States privileges in Canadian ports which are not enjoyed by vessels of any other class, or of any other nation. Such vessels would, for example, be free from the duty of reporting at the Customs on entering a Canadian harbour, and no safeguard could be adopted to prevent infraction of the Customs laws by any vessel asserting the character of a fishing-vessel of the United States.

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

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

It would submit such rights to the ad-

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

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

ARTICLE IV.

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

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

If a vessel charged with infraction of Canadian fishing rights should be thought worthy of being subjected to a "judicial examination," she would be sent to the Vice-Admiralty Court at Halifax, but there would be no redress, no appeal, and no reference to any Tribunal if the naval officers should think proper to release her. It should, however, be observed that the limitation in the second sentence of this Article of the violations of the Convention which are to render a vessel liable to seizure could not be accepted by Her Majesty's Government.

For these reasons, the Article in the form proposed is inadmissible, but Her Majesty's Government are not indisposed to agree to the principle of a joint inquiry by the naval officers of the two countries in the first instance, the vessel to be sent for trial at Halifax if the naval officers do not agree that she should be released.

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

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

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

ARTICLE V.

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

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

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

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

ARTICLE VI

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

This Article calls for no remark.

6,020.

No. 137.

Foreign Office to Colonial Office.

FOREIGN OFFICE,
March 29th, 1887.

SIR,

In reply to your letter of the 18th instant* suggesting that if there is any doubt whether Article 29 of the Treaty of Washington is now in force or not, it might be advisable to consult the Law Officers of the Crown, I am directed by the Marquis of Salisbury to request you to refer Sir Henry Holland to my letter of the 19th instant,† and to state that his Lordship does not think there is at present any necessity for a reference to the Law Officers on this point; but that it might be desirable to obtain the opinion of the Canadian Government as to whether that article is affected by any recent American legislation.

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

The Under-Secretary of State,
Colonial Office.

6,031.

No. 138.

Governor-General the Most Hon. the Marquis of Lansdowne, G.C.M.G., to the Right Hon. Sir H. T. Holland, Bart., G.C.M.G., M.P. (Received March 30th, 1887).

GOVERNMENT HOUSE, OTTAWA,
11th March, 1887.

No. 74.

SIR,

In reference to the subject mentioned in my despatch of the 9th instant,‡ No. 67,

* No 128.

No. 132.

‡ No. 134.

and as an illustration of the desire of my Government to remove obstacles in the way of United States' fishing vessels resorting to Canadian waters for purposes permitted by the Convention of 1818, I may mention that a sub-collector of customs will be stationed upon an island or at Sand Point at the mouth of Shelburne Harbour, so as to render it unnecessary for vessels entering that harbour to report to the collector who is stationed in the port of Shelburne, which is several miles distant from the outer harbour.

It will be in your recollection that a complaint was made in the case of the "Rattler," detained in this harbour in the month of August, 1886, that she was delayed for some time in consequence of her being taken from the spot at which she was found by the Canadian police vessel to the port of Shelburne.

I may also mention that the captains of police vessels have been authorised in certain cases, in which entrance at the regular customs' port would entail serious loss of time owing to distance from the place of shelter, to act as customs' officers for the purpose of accepting reports from United States' fishing vessels who may find it necessary to enter Canadian harbours.

The attention of the Department of Customs is specially directed to these points, and the Minister will do all in his power to enable foreign fishing vessels to comply with the requirements of the customs' law under conditions as little onerous as possible.

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

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

5,664.

No. 139.

Colonial Office to Foreign Office.

DOWNING STREET,
31st March, 1887.

SIR,

With reference to the letter from this Department of the 18th inst.,* I am directed by Secretary Sir H. Holland to transmit to you, to be laid before the Marquis of Salisbury, a copy of a despatch† from the Governor-General of Canada, submitting observations on Article III of Mr. Bayard's proposed *ad interim* arrangement respecting the joint action of national vessels in dealing with United States' fishing vessels seized for violating the provisions of the Convention of 1818.

I am also to enclose a paraphrase of a telegram‡ from Lord Lansdowne upon the subject.

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

The Under Secretary of State,
Foreign Office.

5,261.

No. 140.

The Right Hon. Sir H. T. Holland. Bart., G.C.M.G., M.P., to Governor-General the Most Hon. the Marquis of Lansdowne, G.C.M.G.

TELEGRAPHIC.

1st April. Ascertain opinion of your Ministers as to whether Article XXIX Treaty of Washington is still in force and its bearing on bill passed by United States Congress. Despatch follows by mail.

* No. 128.

† No. 135.

‡ See No. 144.

6,267.

No. 141.

*Foreign Office to Colonial Office.*FOREIGN OFFICE,
April 2nd, 1887.

SIR,

I am directed by the Secretary of State for Foreign Affairs to transmit to you, to be laid before Sir Henry Holland, a copy of a despatch from Her Majesty's Minister at Washington, enclosing copies of a Fisheries Circular issued by the United States Treasury Department, which contains the text of the recent Retaliatory Act as approved.

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

Enclosure in No. 141.

WASHINGTON,
March 20th, 1887.

Treaty No. 41.

MY LORD,

I have the honour to enclose to your Lordship herewith copies of a Treasury Circular calling the attention of officers of Customs and others to the provisions of the recent Acts of Congress relating to the importing and landing of mackerel caught during the spawning season, and authorising the President to protect the rights of American fishing vessels.

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

CIRCULAR.

*The Fisheries.*TREASURY DEPARTMENT,
BUREAU OF NAVIGATION,
WASHINGTON, D.C.,

1887. Department No. 32.

March 16th, 1887.

TO COLLECTORS OF CUSTOMS AND OTHERS,

The attention of officers of customs and others is invited to the provisions of the recent Acts of Congress printed below, one relating "to the importing and landing of mackerel caught during the spawning season," and the other authorising the "President of the United States to protect the right of American fishing-vessels, American fishermen, American trading and other vessels, in certain cases, &c."

C. B. MORTON,
Commissioner.

Approved :

C. S. FAIRCHILD,
Acting Secretary.

An Act relating to the importing and landing of Mackerel caught during the spawning season.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That for the period of five years from and after the first day of March, eighteen hundred and eighty-eight, no mackerel, other than what is known as Spanish mackerel, caught between the first day of March and the first day of June,

inclusive, of each year, shall be imported into the United States or landed upon its shores; *Provided however*, That nothing in this Act shall be held to apply to mackerel caught with hook and line from boats, and landed in said boats, or in traps and weirs connected with the shore.

SEC. 2. That section forty-three hundred and twenty-one of the Revised Statutes is amended, for the period of five years aforesaid, so as to read before the last sentence as follows: "This license does not grant the right to fish for mackerel, other than for what is known as Spanish mackerel, between the first day of March and the first day of June, inclusive of this year." Or in lieu of the foregoing there shall be inserted so much of said period of time as may remain unexpired under this Act.

SEC. 3. That the penalty for the violation or attempted violation of this Act shall be forfeiture of license on the part of the vessel engaged in said violation, if a vessel of this country, and the forfeiture to the United States, according to law, of the mackerel imported or landed, or sought to be imported or landed.

SEC. 4. That all laws in conflict with this law are hereby repealed.

Approved, February 28th, 1887.

An Act to authorise the President of the United States to Protect and Defend the Rights of American Fishing Vessels, American Fishermen, American Trading and other Vessels in certain cases, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That whenever the President of the United States shall be satisfied that American fishing vessels or American fishermen, visiting or being in the waters or at any ports or places of the British dominions of North America, are or then lately have been denied or abridged in the enjoyment of any rights secured to them by treaty or law, or are or then lately have [been] unjustly vexed or harassed in the enjoyment of such rights, or subjected to unreasonable restrictions, regulations, or requirements in respect of such rights; or otherwise unjustly vexed or harassed in said waters, ports, or places; or whenever the President of the United States shall be satisfied that any such fishing vessels or fishermen having a permit under the laws of the United States to touch and trade at any port or ports, place or places, in the British dominions of North America, are or then lately have been denied the privilege of entering such port or ports, place or places in the same manner and under the same regulations as may exist therein applicable to trading vessels of the most favoured nation, or shall be unjustly vexed or harassed in respect thereof, or otherwise be unjustly vexed or harassed therein, or shall be prevented from purchasing such supplies as may there be lawfully sold to trading vessels of the most favoured nation; or whenever the President of the United States shall be satisfied that any other vessels of the United States, their masters or crews, so arriving at or being in such British waters or ports or places of the British dominions of North America, are or then lately have been denied any of the privileges therein accorded to the vessels, their masters or crews, of the most favoured nation, or unjustly vexed or harassed in respect of the same, or unjustly vexed or harassed therein by the authorities thereof, then, and in either or all of such cases, it shall be lawful, and it shall be the duty of the President of the United States, in his discretion, by proclamation to that effect, to deny vessels, their masters and crews, of the British dominions of North America, any entrance into the waters, ports, or places of, or within the United States (with such exceptions in regard to vessels in distress, stress of weather, or needing supplies as to the President shall seem proper), whether such vessels shall have come directly from said dominions on such destined voyage or by way of some port or place in such destined voyage elsewhere; and also, to deny entry into any port or place, of the United States of fresh fish or salt fish or any other product of said dominions, or other goods coming from said dominions to the United States. The President may, in his discretion, apply such proclamation to any part or to all of the foregoing named subjects, and may revoke, qualify, limit, and renew such proclamation from time to time as he may deem necessary to the full and just execution of the purposes of this Act. Every violation of any such proclamation, or any part thereof, is hereby declared illegal, and all vessels and goods so coming or being within the waters, ports, or places of the United States contrary to such proclamation shall be forfeited to the United States; and such forfeiture shall be enforced and proceeded upon in the same manner and with the same effect as in the case of vessels or goods whose importation or coming to or being in the waters or ports of the United States contrary to law may now be enforced and proceeded upon. Every

person who shall violate any of the provisions of this Act, or such proclamation of the President made in pursuance hereof, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine not exceeding one thousand dollars, or by imprisonment for a term not exceeding two years, or by both said punishments, in the discretion of the court.

Approved, March 3rd, 1887.

5,261.

No. 142.

Colonial Office to Foreign Office.

DOWNING STREET,
4th April, 1887.

SIR,

With reference to your letters noted in the margin,* I am directed by the Secretary of State for the Colonies, to acquaint you, for the information of the Marquis of Salisbury that he has telegraphed to the Governor-General of Canada to ascertain the views of his Government as to whether Article XXIX of the Treaty of Washington is still in force, and as to its bearing on the retaliatory bills passed by the United States Congress.

I am to add that Sir H. Holland would be glad if Lord Salisbury would telegraph to Her Majesty's Minister at Washington to send to the Governor-General of Canada by the first opportunity copies of the Bill in question as passed by Congress; should this not already have been done.

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

The Under Secretary of State,
Foreign Office.

5,880.

No. 143.

Colonial Office to Foreign Office.

DOWNING STREET,
4th April, 1887.

SIR,

I am directed by the Secretary of State for the Colonies to acknowledge the receipt of your letter of the 25th ult.,† enclosing a copy of the reply which the Marquis of Salisbury has made to Mr. Phelps' note of the 3rd of December last on the subject of the proposed *ad interim* arrangement relative to the North American Fisheries.

I am to enquire whether Lord Salisbury is aware of any objection to the communication of the despatch in question to the Canadian Government.

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

The Under Secretary of State,
Foreign Office.

7,587.

No. 144.

Governor-General the Most Hon. the Marquis of Lansdowne, G.C.M.G., to the Right Hon. Sir H. T. Holland, Bart., G.C.M.G., M.P.

Confidential.

GOVERNMENT HOUSE, OTTAWA,
April 5th, 1887.

SIR,

I had the honour to send to you on the 24th ultimo a cypher message, of which the following is the substance:

* Nos. 128, 131, 132, and 133.

† No. 136.

"The Privy Council report on Article III of Bayard's proposal referred to in telegram of March 10th will not be ready till next week. My confidential despatch of 10th March* may in the meantime be taken as an authoritative exposition of the Canadian view of the subject."

I have, &c.
(Signed) LANSDOWNE.

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

5,661.

No. 145.

Colonial Office to Foreign Office.

DOWNING STREET,
6th April, 1887.

SIR,

With reference to previous correspondence, I am directed by Secretary Sir H. Holland to transmit to you to be laid before the Marquis of Salisbury a copy of a despatch† from the Governor-General of Canada, in which he ably and, in Sir H. Holland's opinion, conclusively justifies the manner in which the Canadian Fishery Police have acted in enforcing against American fishing vessels the provisions of the Convention of 1818 and the Acts of Parliament passed for the purpose of giving effect to that Treaty.

The general instructions under which the Canadian Fishery Police have acted formed one of the enclosures in the letter from this department of the 21st of April 1886,‡ and as you will see from paragraph 5 of the despatch now enclosed, the Dominion Government invite Her Majesty's Government to suggest any modifications likely to diminish the friction involved in carrying out the regulations. Sir H. Holland would be glad to learn if Lord Salisbury has any suggestions on this subject to make for the consideration of the Canadian Government; if he has not Sir H. Holland proposes, with his Lordship's concurrence, to reply to Lord Lansdowne that Her Majesty's Government gladly recognise the readiness of his Ministers to consider favourably any suggestions which may be made by them, and that they trust that great forbearance and discrimination will be exercised by the Fishery Police in carrying out the instructions so as to afford no just ground of complaint to the Government of the United States.

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

The Under Secretary of State,
Foreign Office.

6,031.

No. 146.

Colonial Office to Foreign Office.

DOWNING STREET,
6th April, 1887.

SIR,

With reference to my letter of this day's date,§ relating to the instructions to Canadian officers engaged in the protection of the Fisheries, I am directed by the Secretary of State for the Colonies to transmit to you for the information of the Marquis of Salisbury a copy of a despatch|| from the Governor-General of Canada reporting that a sub-collector of customs will be stationed upon an island or at Sand Point at the mouth of Shelburne Harbour, so as to render it unnecessary for vessels entering that harbour to report to the collector who is stationed in the port of Shelburne, which is several miles distant from the outer harbour.

Sir H. Holland proposes, with Lord Salisbury's concurrence, to acknowledge the receipt of this despatch, with an expression of satisfaction at the action of the Canadian Government in this matter.

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

The Under Secretary of State,
Foreign Office.

5,261.

No. 147.

The Right Hon. Sir H. T. Holland, Bart., G.C.M.G., M.P., to Governor-General the Most Hon. the Marquis of Lansdowne, G.C.M.G.

No. 73.

DOWNING STREET,
7th April, 1887.

MY LORD,

I have the honour to transmit to you for the information of your Government with reference to previous correspondence, copy of a despatch* from Her Majesty's Minister at Washington forwarding a précis of the debate in the United States House of Representatives on the Retaliatory Bill.

On the 1st inst.† I telegraphed to you to ascertain the opinion of your Ministers as to what is in their opinion the bearing of Article XXIX of the Treaty of Washington on the bill passed by the United States Congress.

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

The Marquis of Lansdowne.

7,962.

No. 148.

Governor-General the Most Hon. the Marquis of Lansdowne, G.C.M.G., to the Right Hon. Sir H. T. Holland, Bart., G.C.M.G., M.P.

Confidential.

GOVERNMENT HOUSE, OTTAWA,
April 9th, 1887.

SIR,

I had the honour to send to you on the 4th instant a cypher message, of which the following is the substance :

"Canadian Government regards Article XXIX as being still in force and not to be abrogated save by two years notice. It is contended by my Government that the validity of the Article is not affected by the Statute of Congress."

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

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

6,822.

No. 149.

Governor Sir G. W. Des Vœux, K.C.M.G. (Newfoundland), to the Right Hon. Sir H. T. Holland, Bart., G.C.M.G., M.P. (Received April 9th, 1887).

GOVERNMENT HOUSE, NEWFOUNDLAND,
21st March, 1887.

No. 29.

SIR,

I have the honour to forward to you a cutting from a local paper reporting remarks recently made before the Merchants' Club at Boston, United States, by the Honourable David A. Wells, an American politician, on the Fishery Questions pending between the Governments of the United States and the British North American Colonies.

2. If you should not have had your attention previously drawn to Mr. Wells' speech, I feel sure that you will read it with interest as it contains an exceedingly forcible explanation of the weakness of the American case which has all the more weight as coming from an American citizen.

I have, &c.,
(Signed) G. W. DES VŒUX.

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

* Enclosure in No. 132.

† No. 140.

Enclosure in No. 149.

*Extract from "The Standard and Conception Bay Advertiser," Saturday,
March 12th, 1887.*

THE FISHERY DISPUTE.

Opinion of One who paid Newfoundland a Visit.

Late last month there was delivered, by the Hon. David A. Wells, before the Merchants' Club of Boston, a very manly address in regard to the fishery dispute between the Canadian Dominion and the United States. He showed, among other things, that the only grievances from which the American fishermen suffer are the results of American restrictions, not Canadian. Hon. Mr. Wells, it seems, had made a journey down to this country to especially acquaint himself thoroughly with all the facts surrounding the vexed question. During the course of his speech, the subject of which was the commercial topics of the day, he remarked, in regard to "the relation of the fishery difficulty to the trade and business interests of Boston and New England," as follows, viz. :—

"Judging from the tone of the press and the utterances in Washington, there would soon be but one side to this question. The Dominion authorities and fishermen are 'brutal,' 'unreasonable,' 'grasping.' The Americans are 'generous,' 'long-suffering,' asking for simple right and justice, and willing at all times to concede to right and justice. But, gentlemen, there are two sides to every question, and there are two sides to this, although I am afraid it is somewhat venturesome to stand up in Boston and say it. But I have studied up this question somewhat, and I have even made a journey down to Newfoundland to see what I could further learn about it by personal intercourse and observation. And this is the way I look at the troublesome business :

"The people of Newfoundland are, as a whole, poor. Its climate, it may almost be said, is practically 8 months winter, and 4 months spring and summer ; its agriculture is limited to potatoes, oats, hay, &c. But the sea to these hardy islanders is their farm, and nature, as if in compensation for denying them almost every other bounty and blessing, would seem to have desired to especially favour them in respect to almost the only one industry, that of fishing, that is open to them. Here live the fish that constitute a desirable and cheap food for the people of other countries. Here naturally come the caplin, the herring, and the squid, which constitute the best bait that is essential for successful deep-sea fishing. Here are the only harbours and inlets for shelter and repair, and for renewing supplies of ice and fuel.

"What more natural than that, thus restricted to one industry as a means of earning their living, they should jealously regard their sole natural privileges, and desire to make the most of them ? And why should they not ? Have not the great people to the south of them taught them this policy for years by precept and example ? Is not the whole present fiscal and commercial policy of the United States based on the principle that what we have got we mean to keep exclusively, and what other people have got we mean to get it if we can ? And, to day, I do not believe, that any person can look at this question fairly, but must see that if the Massachusetts fishermen succeed in enforcing acquiescence in their demands, and are allowed to enter freely into the bays and inlets of Newfoundland to buy or catch bait, land fish, and, what is more important, but is in a great measure kept out of sight, ship crews from the provincials, they will, for all intents and purposes, enjoy all the rights which the poor Newfoundland fishermen believe to belong to them exclusively in virtue of territorial ownership and geographical location, and concede nothing in return. And under such circumstances what could be expected than that a manly people, who think their rights are invaded, should resent the intrusion, and, perhaps, overstep in so doing the strict provisions of comity and international law, and sometimes be 'brutal,' as Secretary Manning says they have been ?"

After referring to the payment of the fishery award of \$5,500,000, to which Mr. Wells attributed a good deal of the soreness felt on the part of the United States ; and after making the assertion that "the fault was in a great degree our own, and especially that of New England, in consenting that there should go on to the commission, as one of our special representatives, a man whose habits or health incapacitated him in a great degree from attending to his business ; (this, it is said, made such an impression upon

M. Delfosse, the Belgian Minister, who held the balance of power on the treaty commission, that he thought the United States virtually cared little about the decision, but was not a little amazed and depressed at the outbreak of American dissent and disgust that followed);—after, we say, alluding to this evidently unpleasant circumstance, the speaker went on to remark:—

“Again, at the outset of this difficulty, a good deal was said about the outrageous assumption of the British and Dominion authorities, that the three-mile line of marine jurisdiction and fishing limitation, which the law of nations concedes to every country, should be so interpreted as to exclude American fishermen from the great inland bays of the provinces, the entrance to which, from headland to headland, was not in excess of three miles, but which afterward widened out to a great extent. But there has not been much said about this of late; and the reason is that when the subject came to be examined it was found that the assumptions of the United States were so extensive that those of Great Britain were nowhere in comparison.”

“Note also,” frankly acknowledged the speaker, “note how ungenerous and unworthy of a great people like this, has been the policy of the United States towards the people of the British Provinces since and under the Treaty of 1871.

“By that treaty it was solemnly agreed that ‘fish of all kinds, the products of the fisheries of the Dominion of Canada, shall be admitted into the United States free of duty, fish caught in inland waters and fish packed in oil excepted.’ But in 1875 Congress, under an influence exerted in behalf of the canned-salmon interest, imposed a duty of 1½ per cent on each quart of contents of ‘cans or packages made of tin or other material containing fish of any kind admitted free of duty under any existing law or treaty.’ The effect of this was to nullify, by a small and mean device, an essential part of the stipulated provisions of the treaty; and all remonstrances on the part of the Dominion Government against such enactment availed nothing. Had a similar act, adverse to the interests of the United States, been perpetrated by any foreign state, words could hardly be found to express the extent of American indignation for an intentional violation of solemn public engagements, and the Government at Washington would have been quick to demand reparation.

“Again, under the provisions of the Treaty of 1871, all sea fish, the product of the Dominion Fisheries, fresh, dry, or preserved in any way, except in oil, were to be admitted into the United States free of duty. The regular tariff of the United States at the same time had a provision that all fresh fish intended for immediate consumption, ‘wherever caught,’ should also be admitted to free entry. But our Treasury Department promptly ruled that fresh fish imported from Canada, packed in ice, simply in order that they might be transported in better condition and to inland markets, were not for immediate consumption; and thus another provision of the treaty favourable to the Canadians was nullified. But, very curiously, and undoubtedly by chance, now that the treaty has expired, the Treasury reverses its ruling about the importation of frozen fish, and thus impliedly admits that the former decision, encroaching on the treaty, was wrong.”

All this, it will be admitted, is very candid, very honest speaking, on the part of a citizen of the Great Republic. Not less free and frank are the admissions which Mr. Wells makes in respect to that which we in this colony have always regarded as a piece of sharp practice unworthy a nation of the size and importance of the United States of America. That was with respect to the admission to American markets of our seal oil. Says the candid speaker:—

“Some time afterward the seal fishery became an important occupation for the fishermen of Newfoundland, and they naturally supposed, under the wording of the treaty, that the products of the Dominion fisheries should be admitted free of duty; that they could send seal oil into Boston and New York, without customs restrictions. But here again our Government did not lose an opportunity to act ungenerously, for they promptly decided that the seal was not a fish, and therefore that seal oil should pay 20 per cent. duty.”

The next admission made by the frank speaker was the failure of the American Government to carry out the stipulations granted to Britain by Article 27 of the Treaty of 1871—the stipulations, viz., that the Government of Canada would secure to the citizens of the United States the use of the canals in the Dominion on terms of equality with the inhabitants of the Dominion; and the United States in turn would engage to secure to the subjects of Great Britain the use of the lakes and rivers contiguous to the boundary line between the possessions of the two contracting parties on terms of equality with the inhabitants of the United States. At the same time also the free navigation of the St. Lawrence was guaranteed to the United States.

In regard to this Mr. Wells was free to confess that:—

“Immediately after the ratification of the treaty, the British and Colonial Governments made haste to carry out the stipulations on their part in these respects; the St. Lawrence was made free, and the privileges of the Canadian canals were granted to American vessels on the payment of tolls that barely covered the cost of wages and repairs. But the United States never did anything to facilitate the transit of Canadian commerce through the States, but they have omitted no opportunity to harass and obstruct it.”

After giving utterance to the foregoing candid sentiments, the Hon. Mr. Wells observed that he was not there to assert that American fishermen have no grievances. He knew they had. He considered it “a very great grievance that they should be taxed on every instrumentality they use in prosecuting their hardy and dangerous employment; that they should be compelled to pay more for their boats, their sails and canvas, their cables, lines and rigging, their anchors and their leads, than their Canadian competitors.” What he did assert is “that there are two sides to this question; and that, by resorting to threats and wrong, a greatly superior force to compel acquiescence of the other party to make concessions, is not a method of settlement worthy of the times in which we live, or of the enlightened Christian people we claim to be. And does not a refusal or unwillingness to submit this difficulty to the arbitration of fair-minded men, on its face argue that we are either not so smart as other people, or that our claims are not defensible.”

6,893.

No. 150.

Foreign Office to Colonial Office.

FOREIGN OFFICE,

April 9th, 1887.

SIR,

In reply to your letter of the 4th instant,* I am directed by the Marquis of Salisbury to request you to inform Sir Henry Holland that his Lordship has no objection to the communication to the Canadian Government of his despatch of the 24th ultimo to Mr. White on the subject of the proposed *ad interim* arrangement respecting the North American Fisheries.

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

The Under Secretary of State,
Colonial Office.

29. Secret.

No. 151.

Colonial Office to Foreign Office.

DOWNING STREET,

9th April, 1887.

SIR,

With reference to the letter from this Department of the 4th inst.,† I am directed by the Secretary of State for the Colonies to acquaint you, for the information of the Marquis of Salisbury, that he received a telegram from the Governor-General of Canada stating that the Dominion Government regard Article XXIX of the Treaty of Washington as still in force, and not to be abrogated except by two years' notice, and that they contend that the statute passed by the United States Congress does not affect the validity of the Article in question.

I am at the same time to point out that the statement of the Committee of Conference of the two Houses of the United States Legislature which accompanied your letter of the 18th ulto.‡ recognises the continued validity of this Article.

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

The Under Secretary of State,
Foreign Office.

* No. 143.

† No. 142.

‡ No. 127.

7,039.

No. 152.

Governor-General the Most Hon. the Marquis of Lansdowne, G.C.M.G., to the Right Hon. Sir H. T. Holland, Bart., G.C.M.G., M.P. (Received April 13th, 1887.)

GOVERNMENT HOUSE, OTTAWA,
29th March, 1887.

Confidential.

SIR,

With reference to your cypher message of the 8th instant* on the subject of the third article of the proposal submitted by Mr. Bayard for an *ad interim* arrangement in regard to the Fisheries Question, I have the honour to transmit to you a copy of an approved minute of the Privy Council of Canada concurring in a report of my Minister of Marine and Fisheries, from which it will be seen that even as proposed to be amended the article is open to serious and grave objections on the part of the Canadian Government.

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

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

Enclosure in No. 152.

Copy of a Report of a Committee of the Honourable the Privy Council for Canada approved by his Excellency the Governor-General in Council on the 28th March 1887.

The Committee of the Privy Council have had under consideration a telegram of the 8th of March from Sir Henry Holland, Secretary of State for the Colonies, to his Excellency the Governor-General upon the subject of the third article of the proposal recently submitted by Mr. Bayard for an *ad interim* arrangement in regard to the Fisheries question.

This telegram is to the effect that Her Majesty's Government is disposed to approve of Mr. Bayard's suggestion for joint action by international cruisers, provided the last sentence of the draft article is omitted, provided also that in order to preserve Canadian jurisdiction, unless both officers agree to release the vessel seized, she shall be sent to Halifax for trial before the Vice-Admiralty Court, and provided further that the definitions of violations of the Convention in the second sentence of the article be omitted.

The Minister of Marine and Fisheries, to whom the telegram was referred, does not consider it necessary to go over the grounds set forth in the Minute of Council approved by his Excellency on the 1st February, 1887, in which the propositions made by Mr. Secretary Bayard were discussed at considerable length, and the objections made thereto by the Dominion Government fully set forth, but will confine his observations entirely to the consideration of Article III of the United States proposition as it would stand if amended in the direction indicated in Sir Henry Holland's telegram.

The Minister observes that there is no doubt that the amended proposition would be devoid of several very objectionable features which were present in the original article, such as the narrow and forced interpretation of the principal Article of the Convention of 1818 limiting offences to fishing or preparing to fish in Canadian waters, and the provision by which, in case of disagreement between the two naval officers, an umpire be chosen by lot, if necessary, for which in the amended form would be substituted a reference to the Vice-Admiralty Court at Halifax.

Her Majesty's Government would no doubt extend this reference to the Vice-Admiralty Courts at Charlottetown, St. John, and Quebec, as these are similarly constituted and with equal powers to that at Halifax. It would seem necessary, as well, that the words "and the laws in force for giving effect to the same" should be added after the words in the sentence of the amended Article "seized for violating the provisions of the aforesaid Convention," and that it is clearly understood that seizure for breach of the Customs laws should in no way come within the scope of the proposed tribunal.

The Minister submits, however, that even as proposed to be amended, the Article is open to grave and serious objections on the part of the Canadian Government, the principal of which are hereinafter briefly mentioned:—

1. The tribunal proposed to be established would be in no sense a Canadian tribunal, consisting, as it presumably would, of one officer belonging to the United States, and one belonging to the British naval service. The formation of a court in which Canada had no representative dealing with offences committed in Canadian territory and against Canadian laws, would be most objectionable to the Canadian people.

2. The tribunal would not be composed of judges, nor necessarily of persons who had enjoyed the advantages of legal training, and it does not seem that a Court so constituted would be one fitted for deciding upon cases involving the scope of international treaties, the decision of international rights, the interpretation of nice points of law, and the sifting of evidence, or would be one well calculated to inspire public confidence in its decisions.

3. The constitution of the Court makes it necessarily a floating tribunal. The two vessels must be together in the adjudication of the case, and must, therefore, either patrol the coast in company with each other, or communicate with each other when a case arises, and meet at a point agreed upon.

The difficulty of at once notifying every seizure which might be made along an extended coast line, supplied at not very frequent intervals with points of telegraphic communication, to a tribunal thus circumstanced and constituted, a tribunal the very situation of which might be unknown to those desiring to resort to it, would be almost insuperable.

4. This objection appears in fuller force when it is taken into account that the coast line to be patrolled by the one set of national vessels extends from the mouth of the St. Lawrence and Magdalen Islands to Cape Breton, a distance of some 1,500 miles, and by the other set, from Cape Breton to the borders of Maine, a distance of about 750 miles. Whenever along this immense extent of coast a United States fishing vessel should be seized by one of the cruisers, the captain of the cruiser would be obliged to ascertain where the cruisers might be and communicate with the floating court, and would then have either to convey his seizure to the perhaps far distant point where this Court might at the time be, or to stay by the captured vessel until the tribunal should arrive at the point of capture.

The Minister observes that in either case a great loss of time to both cruisers and fishermen would be entailed, which in the one case would lead to vastly increased cost in the fishery protection service, and in the other case, should the offending vessel be released, would occasion claims for pecuniary compensation being preferred against the Canadian Government, as it is well known that the detention of a few days is often sufficient to break up a fishing voyage and render it unsuccessful. It might easily occur that by design on the part of would-be trespassers, comparatively worthless craft might at the various points be exposed to seizure by the different cruisers, and for the whole time, necessarily protracted, during which these seizures were being reported, taken to the floating tribunal and adjudicated upon, the fishing grounds would be left without protection and an easy prey to poachers.

It appears to the Minister of Marine and Fisheries that the delay and loss of time, and consequent damage to United States fishing vessels in cases of the latter kind would soon come to be intolerable, and would not be in the interest of the United States fishermen, whose protection it is the aim of Mr. Bayard to secure.

It is to be borne in mind as well that the protecting cruisers are necessarily, for purposes of efficiency, mostly sailing vessels, and that the delays above alluded to would be indefinitely increased if either heavy weather, contrary winds, fogs, or dead calms, should be encountered by them when seeking to report their seizures to the naval officers. If the method adopted were for the cruisers to simply hold their prizes until the national vessels could reach their locality for purposes of adjudication, the objection on the grounds of delay and damages would be quite as great along a coast of such extent, and where seizures would be liable to be made on several parts of the coast at any time.

The Minister does not see how in the majority of cases it will be possible for the Court to decide upon points of fact upon the evidence of the officers and crews of the cruiser and captured vessel respectively; evidence as to locality and circumstances must be sought from examination of the place where the capture occurred and of persons on shore who are cognizant of the facts upon which the seizure was based. This observation would certainly apply to all cases where vessels are seized for violation of the

fishery laws by Collectors of Customs. These examinations would involve great loss of time, and, taking into consideration the number of cases which in all probability would arise, the Minister is of the opinion that the tribunal proposed would be found cumbersome, tedious, and altogether inadequate.

Under the present method of administering the law, each seizure with its facts is at once communicated to the Department at Ottawa by telegraph; investigations can be made in very few hours, and if the facts do not seem to warrant the holding of the vessel she is released with the least possible detention and consequent loss.

Instances occurred last season in which the Government after such speedy examination ordered instant release, while in other cases a small deposit was demanded on payment of which the vessel was allowed to proceed and the fuller examination of facts took place thereafter.

The Committee concurring in the report of the Minister of Marine and Fisheries advise that your Excellency be moved to transmit a copy of this Minute to the Right Honourable the Secretary of State for the Colonies.

All which is respectfully submitted for your Excellency's approval.

JOHN J. MCGEE,
Clerk, Privy Council.

7,086.

No. 153. .

Foreign Office to Colonial Office.

FOREIGN OFFICE,
April 13th, 1887.

SIR,

I am directed by the Marquis of Salisbury to request you to express to Sir Henry Holland his Lordship's concurrence in the reply which, as stated in your letter of the 6th instant,* it is proposed to make to Lord Lansdowne's despatch of the 11th ultimo relative to the stationing of a sub-collector at the mouth of Shelburne Harbour in order to avoid difficulties connected with the fisheries police.

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

The Under Secretary of State,
Colonial Office.

7,088.

No. 153a.

Foreign Office to Colonial Office.

FOREIGN OFFICE,
April 13th, 1887.

SIR,

In reply to your letter of the 5th instant,† I am directed by the Marquis of Salisbury to request you to state to Sir Henry Holland that as there does not appear to be any probability that the proposal for the joint action of national vessels in fisheries cases can be put into practical operation, his Lordship considers that it will be desirable to proceed without loss of time to consider the nature of the instructions to be given to the Imperial cruizers for their guidance on the North American Station, on the assumption that the proposal in question will not be agreed to and put in operation, at all events during the ensuing fishing season.

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

The Under Secretary of State,
Colonial Office.

6,893.

No. 154.

*The Right Hon. Sir Henry Holland, Bart., G.C.M.G., M.P., to Governor-General
the Most Hon. the Marquis of Lansdowne, G.C.M.G.*

No. 78.

DOWNING STREET,
14th April, 1887.

MY LORD,

With reference to previous correspondence I have the honour to transmit to you for the information of your Lordship's Government, a copy of the reply‡ which the

* No 146

Printed in Newfoundland Fishery Paper (North American No 126).

‡ Enclosure in No. 136.

Marquis of Salisbury has made to Mr. Phelps' note of the 3rd of December last on the subject of the proposed *ad interim* arrangement relative to the North American Fisheries.

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

The Marquis of Lansdowne,

7,164.

No. 155.

Governor-General the Most Hon. the Marquis of Lansdowne, G.C.M.G., to the Right Hon. Sir H. T. Holland, Bart., G.C.M.G., M.P. (Received April 15th, 1887.)

No. 99.

GOVERNMENT HOUSE, OTTAWA,
2nd April, 1887.

SIR,

With reference to Mr. Stanhope's despatch, No. 274, of the 16th December last,* transmitting a copy of a letter from the Foreign Office, with its enclosures, respecting the alleged improper conduct of authorities in the Dominion in dealing with the United States fishing vessels "Laura Sayward" and "Jennie Seavern," and requesting to be furnished with a report on these cases for communication to the United States Government, I have the honour to forward herewith a copy of an approved minute of the Privy Council of Canada embodying a report of my Minister of Marine and Fisheries on the subject.

I have much pleasure in calling your attention to the penultimate paragraph of that report from which you will observe that it will, in the opinion of my Government, be possible, in cases like that of the "Jennie Seavern," where a foreign fishing vessel has entered a Canadian harbour for a lawful purpose, and in the pursuance of her Treaty rights, to exercise the necessary supervision over the conduct of her master and crew, and to guard against infractions of the customs law and other statutes binding upon foreign vessels while in Canadian waters without placing an armed guard on board, or preventing reasonable communication with the shore.

My advisers are, in regard to all such matters, fully prepared to recognize that a difference should be made between the treatment of vessels *bona fide* entering a Canadian harbour for shelter or repairs, or to obtain wood and water, and that of other vessels of the same class entering such harbours ostensibly for a lawful purpose, but really with the intention of breaking the law.

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

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

Enclosure in No. 155.

Certified copy of a Report of a Committee of the Honourable the Privy Council for Canada approved by His Excellency the Governor-General in Council on the 23rd March, 1887.

The Committee of the Privy Council have had under consideration a despatch dated the 16th of December, 1886, from the Right Hon. the Secretary of State for the Colonies, transmitting a copy of a letter from the Foreign Office covering copy of a despatch from Her Majesty's Minister at Washington, enclosing notes which he has received from Mr. Bayard, United States' Secretary of State, protesting against the conduct of the Dominion authorities in their dealings with the United States' fishing vessels, "Laura Sayward" and "Jennie Seavern," and requesting to be furnished with a report on the subject for communication to the Government of the United States.

The Minister of Marine and Fisheries, to whom the despatch and enclosures were referred for immediate report, observes that Mr. Bayard takes exception to the "inhospitable and inhuman conduct" of the Collector of Customs at the Port of Shelburne, Nova Scotia, in refusing to allow Captain Rose, of the "Laura Sayward," to buy sufficient food to last himself and crew on their homeward voyage, and complains of the action of the Collector in "unnecessarily retaining the papers of the vessel." Mr. Bayard bases his representation upon the annexed declaration made by Captain Rose, but supported by no other testimony.

The Minister states that immediately on the receipt of the despatch above mentioned a copy of the charges was forwarded to the Collector at the port of Shelburne, and his statement in reply thereto is annexed.

The Minister believes that Collector Atwood's statement is a reasonable and sufficient answer to the allegations made by the Captain of the "Sayward," and leaves no ground of justification for the strong language used by Mr. Bayard in his note to Sir L. Sackville West.

The Minister further observes that with reference to the "Jennie Seavern," Mr. Bayard complains of the conduct of Captain Quigley, of the "Terror," in preventing the Captain of the "Jennie Seavern" from landing to visit his relations in Liverpool, Nova Scotia, and in forbidding his relatives to visit him on board his vessel, and in placing a guard upon the "Seavern" while she was in port. These complaints are based upon the affidavit of Captain Tupper, of the "Seavern," a copy of which is attached. The statements of Captain Quigley and his first officer, Bennett, are submitted in reply, and seem to afford ample proof that no violence or injustice was done to the fishing schooner.

The Minister is of the opinion that the Captain of the "Jennie Seavern" has nothing to complain of. He came in solely for shelter, and this was not denied him. He was requested to report at the Customs, with which request he, upon his own evidence, willingly complied.

The other precautions taken by Captain Quigley were simply to ensure that while shelter was being had, the provisions of the Convention and of the Customs law were not violated.

The Minister, however, while assured that the vessel in question suffered no deprivation of or interference with its rights as defined by the Convention of 1818, is of opinion that in pursuance of the spirit of uniform kindly interpretation of the law which it has been the constant aim of the Government of Canada to exemplify in its dealings with United States' fishermen, it is possible for the officers in charge of the cruisers to efficiently guard the rights of Canadian citizens and enforce the provisions of the law without, in such cases as the above, finding it necessary to place an armed guard on board the fishing vessel, or preventing what may be deemed reasonable communication with the shore.

The Committee concurring in the report of the Minister of Marine and Fisheries, recommend that your Excellency be moved to transmit a copy of this Minute to the Right Hon. the Secretary of State for the Colonies for the purpose of communication to the Government of the United States.

All which is respectfully submitted for your Excellency's approval.

JOHN J. MCGEE,

Clerk, Privy Council, Canada.

I, Medeo Rose, master of schooner "Laura Sayward," of Gloucester, being duly sworn, do depose and say that on Saturday, October 2nd, being then on Western Bank, on a fishing trip, and being short of provisions, we hove up our anchor and started for home.

The wind was blowing almost a gale from the north-west, and being almost dead ahead we made slow progress on our voyage home. On Tuesday, October 5th, we made Shelburne, Nova Scotia, and arrived in that harbour about 8 o'clock, p.m., on that day, short of provisions, water, and oil to burn. On Wednesday I sailed for the inner harbour of Shelburne, arriving at the town about 4 p.m. On going ashore, I found the Custom House closed, and hunted up the Collector and entered my vessel, and asked permission from him to buy 7 lbs. of sugar, 3 lbs. coffee, a 5 to 1 bushel potatoes, and 2 lbs. butter or lard or pork, and oil enough to last us home, and was refused.

I stated to him my situation, short of provisions and a voyage of 250 miles before, and plead with him for this slight privilege, but it was of no avail. I then visited the American Consul and asked his assistance, and found him powerless to aid me in this matter. The Collector of Customs held my papers until the next morning, although I asked for them as soon as I found I could not buy any provisions—say about one and a half hours after I entered, but he refused to give them to me until the next morning. Immediately on receiving my papers on Thursday morning I started for home, arriving on Sunday. I think the treatment I received harsh and cruel, driving myself and crew to sea with a scant supply of provisions, we having but a little flour and water, and liable to be buffeted for days before reaching home.

(Signed) MEDEO ROSE.

Mass., Essex, S.S.,

Oct. 13th, 1886.

Personally appeared, Medeo Rose, and made oath to the truth of the above statement.

Before me,

(Signed) AARON PARSONS. N.P.

CUSTOM HOUSE, SHELBURNE,
January 5th, 1887.

SIR,

With reference to the statement made by Medeo Rose, master of the schooner "Laura Sayward," I beg to say that in many particulars it is not true and is very unjust. The Custom House was not closed as stated. Office hours are supposed to be from 9 a.m. to 4 p.m., but masters of vessels, American fishermen particularly, are allowed to report their vessels inward and outward, and obtain clearances at any hour between 6 a.m. and 11 p.m. (Sundays excepted), and the office is always open. On the 6th October last I left at 4 p.m., and went to an Agricultural Exhibition not an eighth of a mile distant, say a three-minute walk, and left word at the office to tell anyone who called where I could be found. I had been on the grounds about fifteen minutes when Captain Rose put in an appearance, and I at once came to the office and he reported his vessel, stated that he was from the Bank, bound home, and came in to fill water and wanted provisions as follows, viz. : 7 lbs. sugar, 3 lbs. coffee, 1 bushel potatoes, and 2 lbs. butter. This was all. I took a memo., and attached to his inward report, and oil is not mentioned. Stated that he had plenty of flour, fish, and other provisions, sufficient for voyage home.

I gave him permission to fill water at once, but as the treaty made no provision for purchase of supplies, I would telegraph the Department at Ottawa, and no doubt it would be allowed. Captain Rose expressed his willingness to remain until a reply was received. He called at the office next morning (Thursday) at 6.30 a.m., and finding I had not received a reply, said as the wind was fair and a good breeze, he would not wait longer, and would take a clearance, which I gave him. I told him an answer to telegram would probably be received by 10 a.m. I did not consider it a case of actual distress by any means, as by the master's own statement he had plenty of other provisions, and all that he really and actually needed was to fill water.

The statement that I held his papers, although he asked for them, &c., and that I refused to give them to him until next morning is all false. He did not ask further until next morning, when he got his clearance. The statement that the treatment he received was harsh, and driving him to sea having little water and flour, &c., is all untrue, as what I have already stated will prove. Captain Medeo Rose was here with his vessel on the 23rd November last, and entered his vessel and obtained clearance at 8 in the evening. Was here again on the 27th November, and remained five days for repairs, and nothing was said by him of the "inhuman conduct" or "harsh treatment" on the part of the Collector towards him.

The above is a plain statement of the facts, and many of the statements can be corroborated by the American consul of this port, if referred to him.

I am, &c.,

(Signed) W. W. ATWOOD,
Collector.

J. Johnson, Esq.,
Commissioner of Customs, Ottawa.

I, Joseph Tupper, Master of the schooner "Jennie Seaverns," of Gloucester, being duly sworn, do depose and say : that on Thursday, October 28th, while on my passage home from a fishing trip, the wind blowing a gale from S.E., and a heavy sea running, I was obliged to enter the harbour of Liverpool, N.S., for shelter. Immediately on coming to anchor, was boarded by Captain Quigley of Canadian cruiser "Terror," who ordered me to go on shore at once and report at the Custom House, to which I replied that such was my intention. He gave me permission to take two men in the boat with me, but they must remain in the boat, and must not step on shore. I asked Captain Quigley if I could, after entering, visit some of my relations who resided in Liverpool and whom I had not seen for many years. This privilege was denied me. After entering having returned to my vessel some of my relatives came to see me off. When Captain Quigley saw their boat alongside of my vessel, he sent an officer and boat's crew, who ordered them away, and at sundown he placed an armed guard on board our vessel, who remained on board all night and was taken off just before we sailed in the morning.

I complied with the Canadian laws, and had no intention or desire to violate them in any way, but to be made a prisoner on board my own vessel and treated like a suspicious character, grates harshly upon the feelings of an American seaman and I protest

against such treatment, and respectfully ask from my own Government protection from such unjust unfriendly, and arbitrary treatment.

(Signed) JOSEPH TUPPER.

Mass., Essex, S.S.

Nov. 4th, 1886.

Personally appeared Joseph Tupper and made oath to to the truth of the above statement.

Before me,
(Signed) AARON PARSONS, N.P.

NEWCASTLE,
January 19th, 1887.

To Major John Tilton, D.M.F.

SIR,

In reference to the American schooner "Jennie Seaverns," of Gloucester, I find she arrived on Thursday, October 28th, as stated in his complaint, at Liverpool, N.S., and after she anchored, I sent Chief Officer Bennett on board with instructions telling him what the law was, so that he would not do anything through ignorance of it, and get his vessel in trouble. These instructions were to report his vessel at the Customs before sailing, and to take two of his crew and boat with him when he did go for that purpose, but the rest of his crew were not to go on shore, and that after he reported, no person from his vessel was to go on shore, as he got all he put in for, viz:—shelter, and he reported his vessel putting in for that purpose and for no other; not for the purpose of letting his crew on shore.

The boat that was ordered from his vessel was from shore and was not allowed alongside of these vessels as it gave the crews a chance to get ashore with them or to smuggle provisions alongside, so they were ordered off in all cases. See Chief Officer's statement regarding it; also his statement regarding the men who rowed the Captain on shore.

I never prevented the men who went ashore with the masters of vessels from landing and going with the masters to the Custom House if they wished, nor gave instructions to prevent them.

I placed two watchmen on board this vessel as I did in all other cases, to prevent them from breaking the law in any respect through the night, and they were taken off in the morning before he sailed.

It is not true that I boarded this vessel as stated. I never spoke to him. There were two other American seiners in at the same time and were treated in the same way, less the watchmen, which were not required in their case as they were close to me, and I could see what was done on board them at all times from my vessel. These are the facts.

I have, &c.,
(Signed) THOMAS QUIGLEY.

I, Albert Bennett, late First Officer of Dominion Cutter "Terror, Captain Quigley, remember boarding the American seiner "Jennie Seaverns," of Gloucester, U.S., at the port of Liverpool, N.S., on the 28th day of October last past, boarded her, ordered Captain Tupper to report to the Customs at Liverpool aforesaid, which he did, taking with him two men in his boat. Never told Captain Tupper not to allow his men to leave his boat while on shore; further, Captain Tupper to the best of my knowledge and belief never intimated to me that he had friends or relatives that he wished to visit in Liverpool, N.S.

Seeing a boat alongside, I went on board and ordered them away. Captain Tupper told me he did not know the visitors, and further did not wish them on board his vessel.

Further, during the time the "Jennie Seaverns" was in the harbour of Liverpool, N.S., Captain Quigley never was on board her, I boarding her and carrying out his instructions to me.

(Signed) ALBERT BENNETT,
Late First Officer, Cutter "Terror."

Hopewell Cape, N.B.

January 14th, 1887.

7,186.

No. 155a.

Governor-General the Most Hon. the Marquis of Lansdowne, G.C.M.G., to the Right Hon. Sir H. T. Holland, Bart., G.C.M.G., M.P. (Received April 15th, 1887.)

GOVERNMENT HOUSE, OTTAWA,
2nd April, 1887.

Confidential.

SIR,

I have the honour to enclose herewith a certified copy of a Privy Council Order respecting the case of the United States schooner "Mollie Adams," which formed the subject of your predecessor's despatches, Nos. 218 and 272, of the 6th October and 16th December* respectively.

I have to express my regret that it should have proved impossible to supply you with the necessary information bearing upon this case at an earlier date. Some time was, however, taken in collecting the evidence embodied in the reports, copies of which accompany the Minute; and the occurrence of the General Elections for the Federal Parliament to some extent interrupted the course of business in the Public Departments and increased the delay.

You will find in the report of my Minister of Marine and Fisheries, and in the enclosures appended to it, a full, and I think satisfactory reply to the whole of the charges made by the Government of the United States against the conduct of the Canadian officials concerned in the matter of the "Mollie Adams."

I would venture to draw your especial attention to the concluding passages of the Minister's report, in which he earnestly deprecates the manner in which in this, as well as in other cases in which disputes have arisen under conditions of a similar character, the Government of the United States has not hesitated to adopt, without any enquiry, and to support with the whole weight of its authority, *ex parte* charges, entirely unconfirmed by collateral evidence, and unaccompanied by any official attestation.

In view of the fact that, owing to the action of the Government of the United States in terminating the fishery clauses of the Treaty of Washington, a large body of American fishermen have suddenly found themselves excluded from waters to which they had for many years past resorted without molestation, and that the duty of thus excluding them has been thrown upon a newly constituted force of Fishery police, necessarily without experience of the difficult and delicate duties which it is called upon to perform; there would be no cause for surprise if occasional cases of hardship, or of over zealous action upon the part of the local authorities engaged in protecting the interests of the Dominion were to be brought to light. It is the earnest desire of my Government to guard against the occurrence of any such cases, to deal in a spirit of generosity and forbearance with United States fishermen resorting to Canadian waters in the exercise of their lawful rights, and to take effectual measures for preventing arbitrary or uncalled for interference on the part of its officials with the privileges allowed to foreign fishermen under the terms of the Convention of 1818.

The difficulty of acting in such a spirit must, however, be greatly increased by the course which has been pursued in this and in numerous other cases already brought to your notice, in founding not only the most urgent remonstrances, but the most violent and offensive charges, and the most unjust imputation of motives upon complaints, such as that put forward by the captain of the "Mollie Adams," a person so illiterate that he appears not to have been qualified to make out the ordinary entry papers on his arrival in a Canadian port, but whose statements, many of which bear upon the face of them evidence of their untrustworthiness, appear to have been accepted *in globo* without question by the Secretary of State.

You will, I cannot help thinking, concur in the opinion expressed in the Minister's report, that such hasty and indiscriminate accusations can only have the effect of prejudicing and embittering public feeling in both countries, and of retarding the prospect of a reasonable settlement of the differences which have unfortunately arisen between them upon these subjects.

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

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

* Nos. 6 and 62.

Enclosure in No. 155a.

Certified copy of a Report of a Committee of the Honourable the Privy Council for Canada, approved by his Excellency the Governor-General in Council, on the 31st March, 1887.

The Committee of the Privy Council have had under consideration a despatch, dated 6th October, 1886, from the Right Honourable the Secretary of State for the Colonies, transmitting a copy of a letter from the Foreign Office enclosing copy of a despatch from Her Majesty's Minister at Washington, with a note from the Secretary of State of the United States, calling attention to the alleged refusal of the Collector of Customs at Port Mulgrave, Nova Scotia, to allow the master of the United States fishing vessel "Mollie Adams" to purchase barrels to hold a supply of water for the return voyage, and also a further despatch, dated 16th December, 1886, referring to the same schooner, the "Mollie Adams," and her alleged treatment at Malpeque, Prince Edward Island, and Port Medway, Nova Scotia, and requesting an early report on the circumstances of this case.

The Minister of Marine and Fisheries, to whom the said despatches and enclosures were referred, submits the following report thereon.

Mr. Bayard's note of September 10th, calls attention to the alleged refusal of the Collector of Customs at Port Mulgrave, Nova Scotia, to allow the master of the "Mollie Adams" to purchase barrels to hold a supply of water for which the vessel had put into port. The report of the Sub-Collector of Customs at Port Mulgrave, which is hereto annexed, and which he expresses his readiness to verify upon oath, shows that the "Mollie Adams" was fitted out with a watertank which was reported as leaking, that the Collector offered to borrow barrels for carrying the water on board if the tank were made tight, and even offered to send a man on board to perform this work, that while the captain of the schooner and he were in conversation, one of the crew brought the information that the cook had succeeded in caulking the tank. That thereupon the Sub-Collector borrowed the seven barrels with which the crew supplied water for their vessel, that the barrels were returned to the Collector, and the captain appeared well pleased with what had been done. The good-will of the Sub-Collector is also shown in his giving the men a letter to his superior officer in explanation of the circumstances and recommending that the purchase of barrels be allowed, a step which was rendered unnecessary by the arrangements later made.

The Sub-Collector, in answer to his enquiry as to what had become of the water barrels in use on board the vessel, was informed that they had been filled with mackerel. This answer goes to prove that Mr. Murray was acting strictly within the scope of his duty in ascertaining that the barrels sought to be purchased were not to be used for an illicit purpose.

The Colonial Secretary's despatch, No. 272, of the 16th December, 1886, refers to the same schooner the "Mollie Adams" and her alleged treatment at Malpeque, Prince Edward Island, and Port Medway, Nova Scotia.

In this case Mr. Bayard's representations are based solely upon a letter written to him by the captain of the vessel, under date November 12th, which is unsupported by any other evidence, and upon the strength of which Mr. Bayard proceeds to charge the Canadian authorities with "churlish and inhospitable treatment," and with exhibiting a coldness and rudeness of conduct at variance with the hospitable feelings of common humanity.

The Minister of Marine and Fisheries, submits as a complete reply to the allegations contained in Captain Jacob's letter: (1) The statement of the Collector of Customs at Malpeque, Prince Edwards Island; (2) the statement of Captain McLaren of the Canadian cruiser "Critic"; and (3) the report of the Collector of Customs at Port Medway.

The two former officers, although giving their reports without concert, agree upon the main points at issue, and the statements of all three are clear, straightforward, and reasonable, and in marked contrast to the sensational and improbable story related by Captain Jacobs.

Captain Jacobs declares that on or about the 26th September last during very heavy weather, he fell in with the barque "Neskilita" which had run on a bar at Malpeque Harbour, and became a total wreck. That he took off the crew, 17 in number, at 12 o'clock at night, carried them to his own vessel, fed them for three days, and then gave them \$60.00 with which to pay their fare home, and provisions to last them on their way. He states that the captain of the Canadian cruiser "Critic" came on board,

was told the circumstances but offered no assistance, and that no one on shore would take the wrecked men, unless he became responsible for the payment of their board.

The Collector at Malpeque, in his report says, "that early on the morning after the wreck, so soon as the news reached him, he repaired to the harbour to see what assistance could be given, that he then met the captain of the "Neskilita" in company with Captain Jacobs, and was told by the latter that the crew of the wrecked vessel were comfortably cared for on his vessel, and that nothing more could be done.

Captain McLaren of the "Critic" says that he at once visited the "Mollie Adams," and was told by Captain Jacobs that "he had made all arrangements for the crew."

The Collector and Captain McLaren agree in stating from information gathered by them, that the crew of the wrecked vessel came to shore in their own boat, unassisted, and after boarding a Nova Scotia vessel were invited by Captain Jacobs with whom the captain of the "Neskilita" had before time sailed out of Gloucester, to go on board the "Mollie Adams."

The Collector was asked by the captain of the "Neskilita" if he could assist himself and crew to their homes, and answered that he could not unless assured that they were themselves without means for that purpose, in which case he would have to telegraph to Ottawa for instructions. The captain of the "Neskilita" made no further application.

The Minister observes that it is the practice of the Dominion Government to assist shipwrecked and destitute sailors in certain cases of great hardship, to their destination or homes, but in all cases it must be clear that they are destitute, and the application for assistance must be made to Ottawa through the Collector of Customs. Had such an application been made by the captain of the "Neskilita" it would have received due consideration.

In answer to the charge that board could not be obtained for the wrecked crew, it is stated by Captain McLaren that the crew of a United States vessel wrecked about the same time found no difficulty in getting board, and that the captain of the "Neskilita" had himself arranged to board with the Collector, who expressed surprise at his failing to come.

Captain Jacobs complains that he was not allowed to land from his vessel the material saved from the wreck. To this charge the Collector replies that he received no intimation of any wrecked material, except the crews' luggage, being on board the "Mollie Adams," and that Captain Jacobs made no request to him regarding the landing of wrecked material, and that he (the Collector) gave all assistance in his power to the captain of the "Neskilita" in saving material from the wreck.

It was subsequently discovered that Captain Jacobs had on board the "Mollie Adams" a seine from the wrecked vessel belonging to the underwriters, for taking care of which, when obliged to give it up, Captain Jacobs claimed and was paid the sum of ten dollars.

Captain Jacobs states that he was put to a loss of ten days fishing by his detention with the "Neskilita." The reports of both the Collector and Captain McLaren agree in giving a very different and sufficient reason, viz.: very bad weather and consequent inability to fish—a disability experienced by the whole fishing fleet at that time anchored in Malpeque.

The second complaint of Mr. Bayard is that when Captain Jacobs, experiencing a dearth of provisions as a consequence of his charitable action, shortly after put into Port Medway and asked to purchase half a barrel of flour and enough provisions to take him home, the Collector "with full knowledge of all the circumstances" refused the request, and threatened him with seizure if he bought anything whatever.

The Collector's report, hereto annexed, shows that Captain Jacobs entered his port on the 25th of October—fully one month after the occurrence at Malpeque—that in entering he made affirmation that he called for shelter and repairs and for no "other purpose whatever," that just before leaving he asked permission to purchase half a barrel of flour, and when asked by the Collector if he was without provisions, he replied that he was not, adding that he had "a good supply of all kinds of provisions except flour, and enough of that to last him home unless he met some unusual delay."

Under these circumstances the Collector did not give the permission asked, but he made no threat of seizure of vessel or imposition of a penalty.

Mr. Bayard supports the complaint of Captain Jacobs that he was charged fees for entering his vessel at Canadian Customs, and that these fees varied at different

ports; being for instance 15 cents at Souris, Prince Edward Island, 50 cents at Port Mulgrave, and 50 cents at Port Hood, at which latter port Captain Jacobs sent his brother to enter for him, but was informed that his entry was illegal, and that he, as master, must himself enter his vessel.

He complains of being obliged to pay twice, once for his brother's entry and once for his own.

The Minister states, with regard to this that no Collector of Customs in Canada is authorised to charge a fee for entering or clearing a vessel nor for any papers necessary to do this.

Sailing masters however, who are unused to the law or not competent to make out their papers, are in the habit of employing persons as Customs brokers to make out their papers for them, and for this service these brokers charge a small fee. These are not Government officers nor under Government control, and their services are voluntarily paid for by those who employ them. The small fees of which Captain Jacobs complains need not have been paid by him if he had been willing or qualified to make out his own papers. That he was not so willing or qualified, and that he employed a broker to make out his papers is conclusively shown by the following telegram received from the Collector at Port Hood, the charges at which port Mr. Secretary Bayard so vigorously denounces.

COPIES OF TELEGRAMS.

Deputy Minister of Fisheries to Collector, Port Hood, N.S.

“ OTTAWA,
“ 16th March, 1887.

“ Did you during last season exact from Captain Solomon Jacobs, of schooner ‘ Mollie Adams,’ any charge for reporting or other service at Port Hood? If so, please state amount received, and for what.”

Collector, Port Hood, to Deputy Minister of Fisheries.

“ PORT HOOD, N.S.,
“ 16th March, 1887.

“ Solomon Jacobs, of schooner “ Mollie Adams,” sent one of his crew to report September 13th last, he made a report, I told him, however, that the report should be made by the master. A few hours afterwards Jacobs himself came and reported. They got Dan McLennan, who is now in Halifax, to write out the reports. I believe he charged them 25 cents each for brokerage. No other charges whatever were made.”

The Minister states that he has no doubt that the other payments at Customs ports alluded to by Mr. Bayard were made for services rendered Captain Jacobs by persons making out his entry papers, and which he does not appear to have been qualified to do himself.

With reference to Mr. Bayard's reiteration of Captain Jacobs' complaint that in different harbours he was obliged to pay a different scale of dues, the Minister of Marine submits that in Canada there are distinct classes of harbours. Some are under the control of a Commission appointed wholly or in part by the Government, under whose management improvements are made, and which regulates, subject to the approval of Government, the harbour dues which are to be paid by all vessels entering such ports and enjoying the advantages therein provided.

Others are natural harbours, in great part unimproved, whose limits are generally defined by Order in Council, and for which a harbour master is appointed by Government, to whom all vessels entering pay certain nominal harbour masters' fees which are regulated by a general Act of Parliament, and which constitute a fund out of which the harbour master is paid a small salary for his services in maintaining order within the harbour. The port of St. John, N.B. is entirely under municipal control, and has its own stated and uniform scale of charges.

Harbour dues are paid whenever a vessel enters a port which is under Commission, and harbour masters' fees are paid only twice per calendar year, by vessels entering ports not under a Commission. Sydney belongs to the first class, and at that port,

Captain Jacobs paid the legal harbour dues. Malpeque and Port Mulgrave belong to the second class, and in these Captain Jacobs paid the legal harbour masters' fees, which for a vessel like his of from 100 to 200 tons is \$1⁵⁰/₁₀₀. That he paid only \$1⁰⁰/₁₀₀ in Malpeque is due to an error of the harbour master, who should have charged him \$1⁵⁰/₁₀₀, and by this error Captain Jacobs saved 50 cents, of which he should not complain. For full information as to the legal status of Canadian harbours, Mr. Bayard is respectfully referred to the Canadian Statutes, 36 Vic., cap. 63, 42 Vic., cap. 30, and 38 Vic., cap. 30.

The Minister of Marine and Fisheries believes that after a thorough perusal of these, Mr. Bayard will not cite the payments made by Captain Jacobs as evidences of the "irresponsible and different treatment to which he was subjected in the several ports he visited, the only common feature of which seems to have been a surly hostility."

The Minister submits that from a careful consideration of all the circumstances, he cannot resist the conviction that in this whole transaction Captain Jacobs was more concerned in making up a case against the Canadian authorities, than in unobtrusively performing any necessary acts of hospitality, and that his version of the matter as sent to Mr. Bayard is utterly unreliable.

The "Neskilita" was wrecked off a Canadian harbour, the crew it is stated came ashore in their own boat and unassisted; a Canadian collector was at hand offering his services and within easy appeal to the Government, and the captain of a Canadian cruiser was in port, yet Captain Jacobs would appear by his own story to have taken complete charge of the captain, to have ignored all proffers of assistance, and to have constituted himself the sole guardian and spokesman of the wrecked crew, to have been in short the one sole man actuated by kindly, humane feelings among a horde of cruel and unsympathetic Canadians.

For any exercise of goodwill and assistance to Canadian seamen in distress by either foreign or native vessels, the Canadian Government cannot but feel deeply grateful, and stands ready, as has been its invariable custom, to recognise suitably and reward such services, and when Captain Jacobs performs any necessary act of charitable help towards Canadian seamen in distress without the obvious aim of manufacturing an international grievance therefrom he will not prove an exception to Canada's generous treatment.

The Minister observes that in a despatch to the Governor-General dated 27th December, 1886, and in reference to this same case Mr. Stanhope writes: "With reference to my despatch, No. 272, of the 16th instant, relating to the case of the United States fishing vessel "Mollie Adams," and referring to the general complaints made on the part of the United States Government of the treatment of American fishing vessels in Canadian ports, I think it right to observe that whilst Her Majesty's Government do not assume the correctness of any allegations without first having obtained the explanations of the Dominion Government, they rely confidently upon your Ministers taking every care that Her Majesty's Government are not placed in a position of being obliged to defend any acts of questionable justice or propriety."

The Minister, while thanking Her Majesty's Government for the assurance conveyed that it will not "assume the correctness of any allegations without having obtained the explanations of the Dominion Government," and whilst assuring Her Majesty's Government that every possible care has been and will be taken that no "acts of questionable justice or propriety" are committed by the officers of the Dominion Government, cannot refrain from calling attention to the loose, unreliable, and unsatisfactory nature of much of the information supplied to the United States Government, and upon which very grave charges are made and very strong language officially used against the Canadian authorities. For instance, as stated in a previous part of this report, the strong representations made by Mr. Bayard in the case of the "Mollie Adams" are based solely upon a letter, written by Captain Jacobs, not even accompanied by an official attestation, and not supported by a tittle of corroborative evidence.

It does not appear that any attempt was made to investigate the truth of this story, unreasonable and improbable as it must have appeared, as the letter written by Captain Jacobs bears date November 12th, while Mr. Bayard's note based thereupon is dated December 1st. It would seem only fitting that, in so grave a matter, involving alike the good name of a friendly country, and the continued subsistence of previous amicable relations, great care should have been taken to avoid the use of such strong and even hostile language, based upon the unsupported statements of an interested skipper, and one whose reputation for straightforward conduct does not appear to be above reproach, if credence is to be given to the attached description, taken from the

"Boston Advertiser," of a transaction said to have occurred in his native city, and in which Captain Jacobs appears to have played no enviable part.

Numerous other instances of like flimsy and unreliable foundations for charges made against the Canadian authorities in regard to their treatment of United States fishing vessels cannot have failed to attract the attention of Her Majesty's Government in the despatches which from time to time have reached it from the United States.

The Master of a United States fishing vessel, imperfectly understanding the provisions of the Convention of 1818, the requirements of the Canadian Customs law, or the regulations of Canadian ports, having perhaps an exaggerated idea of his supposed rights, or, it may be desirous of evading all restrictions, is brought to book by officers of the law. He feels aggrieved and angry, and straightway conveys his supposed grievance to the authorities at Washington.

Thereupon, without any seeming allowance for the possibility of the statement being inaccurate or the narrator unfriendly, and with apparently no attempt to investigate the truth of the statement, it is made the basis of strong and unfriendly charges against the Canadian Government. Canada has suffered from such unfounded representations, and against the course adopted by the United States in this respect the Minister enters his most earnest protest.

As an additional instance of the manner in which evidence is gathered and used to the prejudice of the Canadian case, the Minister calls attention to a communication submitted to the Senate of the United States by Mr. Edmunds, and which forms printed document No. 54 of the 49th Congress, 2nd Session. This is the report of Mr. Spencer F. Baird, United States Fish Commissioner, containing a list, with particulars of 68 New England fishing vessels, which had, as he alleged "been subjected to treatment which neither the treaty of 1818, nor the principles of international law would seem to warrant."

The Minister observes that it will appear from a perusal of this report, that these 68 cases were made up by Mr. Baird's officer from answers of owners, agents, or masters of fishing vessels, in response to a circular letter sent to all New England fishing vessels inviting them to forward statements of any interference with their operations by the Canadian Government.

Not a single statement was investigated by the Commissioner, or anyone acting for him, and not a single statement is accompanied by the affidavit of the person making it, or by corroborative evidence of any kind. In most instances, neither date, locality, or name of Canadian officer is given, and an analysis of many of the cases affords *prima facie* evidence that they embody no real cause for complaint. Yet Mr. Baird and his officer, Mr. Earle, vouched for the correctness and entire reliability of these 68 statements, they were gravely submitted to the Senate as trustworthy evidence of Canadian aggression, and became no doubt powerful factors in influencing Congressional legislation hostile to Canadian and British interests.

The Minister while inviting attention to, and strongly deprecating such action as above recited on the part of the United States, takes occasion at the same time to express his entire confidence that the rights of Canada will not thereby be in any degree prejudiced in the eyes of Her Majesty's Government.

The Committee concur in the foregoing report of the Minister of Marine and Fisheries, and they recommend that your Excellency be moved to transmit a copy of this Minute, if approved, to the Right Honourable the Secretary of State for the Colonies.

All which is respectfully submitted for your Excellency's approval.

JOHN J. MCGEE,

Clerk, Privy Council, Canada.

PORT MULGRAVE, N.S.,
November 1st, 1886.

SIR,

Referring to your letter of the 28th October, I beg to say that on Monday, 30th August, the schooner "Mollie Adams," of Gloucester, Mass., Solomon Jacobs, master, passed two Customs ports in the Strait of Canso before coming to my port. In fact he sent his boat (dory) with his brother and a Captain Campbell to me to see if I would allow him to get seven empty barrels to put water in. I asked the men what they did with their water barrels. They told me that they filled them with mackerel, and that their tank leaked. I told the men that I had no power to allow them to purchase

barrels, but I would borrow barrels to fill with water if they would caulk the tank. I also gave them a letter to take to my superior, asking him to allow Captain Jacobs to purchase the barrels. They went on board, told their story, and captain anchored his vessel and came ashore to see me. I offered to send a man on board to caulk the tank. In the meantime one of the crew came on shore, and said that the cook had succeeded in tightening the tank ; that it held salt water. I then borrowed the seven barrels to fill the water which they did, and I returned the barrels again, and the captain was well pleased, as he appeared so.

If this is not satisfactory, I can make oath to the foregoing.

I am, &c.,

(Signed) DAVID MURRAY, Jr.,
Sub-Collector Customs.

John Tilton, Esq.,
Deputy Minister of Fisheries,
Ottawa.

MALPEQUE, P.E.I.,
January 7th, 1887.

SIR,

I have the honor to acknowledge the receipt of your letter of the 29th December, covering statement made by Captain Jacobs, and now adjoin statement of facts as personally known by and communicated to me of wreck of "Neskilita," on Malpeque Bar, on Sunday night, 26th September last. Information reached me early on the following morning, and I at once proceeded to the harbor to see what assistance could be given in the case, where I met Captain Thornborne, of "Neskilita," and Captain Jacobs in company, and was informed by the latter that the crew were on board his vessel, and assured that everything that could be done for their comfort had been done. I was also given to understand that during the night the crew had abandoned their schooner, and came in the harbor unassisted in their seine boat, and boarded a Nova Scotia schooner lying in the harbor, and were the next morning invited by Captain Jacobs to make his vessel their home. I was also informed by Captain McLaren, commander of the Canadian cruiser "Critic," that he also tendered his assistance, and was rather haughtily received by Captain Jacobs, with the information that the crew were aboard his vessel, and that he (Captain McLaren) did not think the case demanded him to force his assistance.

With regard to the wrecked material aboard of Captain Jacobs's vessel, I have only to say that this is the first intimation I have ever had of such material being aboard his vessel, except the crews' luggage, and that assuredly Captain Jacobs did not so far as I can recollect, make any request of me whatever with regard to the landing of wrecked material.

With reference to the saving of material from the wrecked vessel, I would wish to say that I rendered the captain of the "Neskilita" all necessary assistance in procuring suitable men to do that work (and who were thus employed by him), and although I am aware that Captain Jacobs did accompany the captain of the "Neskilita" to the wreck, I cannot say in what capacity, or under what authority he did so.

So far as the assertion that the crew received the means to take them home from Captain Jacobs is concerned, I know nothing positive except that he (Captain Jacobs) asked me if the Canadian Government would remunerate him for his attention to the crew, and, feeling that I had nothing to do with him, I merely replied that I did not know. But I may say that shortly after the wreck occurred the captain of the "Neskilita" asked me if I could render them (the crew) any assistance in getting home, and I answered that I could not, unless I was assured that they themselves were without the means of doing so, and that in any case I would have to telegraph to the department at Ottawa for instructions. Here the matter stopped, the captain making no further application.

With regard to the delay of ten days said to be occasioned (Captain Jacobs) by reason of the shipwrecked crew, I may say that during the ten or fourteen days following on the said shipwreck we had an almost continuous period of stormy weather, with the exception of a couple or so of fine days, which were taken advantage of by

the fishing fleet, and one at least by Captain Jacobs himself; but by all reports received by me resulting in little or no catches of mackerel.

These, so far as I can now recall them to memory, are the true facts in the case.

I am, &c.,
(Signed) JAMES M. MACNUTT,
Sub.-Coll.

John Tilton, Esq.,
Deputy Minister of Fisheries.

GEORGETOWN, P.E.I.,
January 6th, 1887.

DEAR SIR,

Yours of the 29th ultimo to hand. In reference to the first part of the statement made by Captain Jacobs, I would say that he may have been off Malpeque at the time the wreck occurred, but I do not think he took the crew off, as, so far as I could learn at the time, they came ashore in one of their own seine boats, and went, first to a Nova Scotia vessel, and afterwards on board the "Mollie Adams."

On the morning after the wreck occurred I went on board the "Mollie Adams," and was immediately told by Captain Jacobs that he had made all arrangements for the crew, and, having secured a team, was going with the captain of the "Neskilita" to the Custom House to note a protest. As I could see by the conduct of both captains that I was not wanted, I returned to my own vessel. Afterwards, in the course of a conversation with the captain of the "Neskilita," he informed me that he had sailed out of Gloucester for some time, and in the course of that time with Captain Jacobs.

As to the statement that he couldn't get a boarding house for his crew, I think it is false, as the crew of one of the American vessels wrecked about the same time had no difficulty in getting the people to board them. Once while talking with Mr. MacNutt, the Collector of Customs at Malpeque, he mentioned that the captain of the "Neskilita" had engaged to board at his place, and he expressed his surprise that he was not coming. Both Captain Jacobs and the captain of the "Neskilita" were committing a fraud in trying to get off with the seine of the wrecked vessel, as it belonged to the underwriters, and I think that it was the prospect of getting Captain Jacobs to get away with the seine that prevented the captain of the "Neskilita" from asking me for assistance. However, Captain Jacobs, on finding he could not carry out his fraud, presented a claim of \$10 for the salvage of the seine and gear, which sum was paid him by Mr. Lemuel Poole, of Charlottetown, who was acting in behalf of the underwriters. It may be possible that Captain Jacobs stayed at Malpeque after I sailed, but, if so, it was his own fault, as the crew of the "Neskilita" had gone home before then.

It is my opinion that Captain Jacobs need not have lost one hour of time, for during the time the "Neskilita" crew were on board his vessel the fleet, with the exception of one or two small vessels, was anchored in Malpeque, and unable to put to sea owing to the heavy sea on the bar.

After the occurrence of the wreck, about the 20th September, Captain Jacobs cruised in the North Bay and on the Cape Breton coast, and not until the 24th October was he reported as passing through Canso, bound home.

As to the paying of the crews' passage home, I can say nothing, except that if he did, he did it voluntarily, as the captain of the "Neskilita" could have sent his crew home without his assistance.

Yours respectfully,
(Signed) WM. MCLAREN.

John Tilton, Esq.,
Deputy Minister of Fisheries,
Ottawa.

CUSTOM HOUSE, PORT MEDWAY,
January 6th, 1887.

SIR,

In reply to your letter of the 30th ultimo, enclosing extract of statement made by Captain S. Jacobs, of the schooner "Mollie Adams," I have to say that, on the 25th of October last Captain Solomon Jacobs, of schooner "Mollie Adams," reported at this

office. His report is now before me, in which he swears that he called here for shelter and repairs, and for no other purpose. After making his report, and when about leaving the office, Captain Jacobs asked if I would allow him to purchase a half-barrel of flour. I asked him if he was without provisions, and he replied that he was not, adding that he had a good supply of all kinds of provisions, except flour, and enough of that to last him home, unless he met with some unusual delay. I then told him that under the circumstances I could not give him permission to purchase the flour, but no threat was made about seizing his vessel, or imposing any penalty whatever.

The above I am quite willing to substantiate under oath, and can produce a witness to the truth of the statement.

I am, &c.,
(Signed) E. E. LETSOM,
Collector.

The Deputy Minister of Fisheries,
Ottawa, Canada.

From the Boston, United States, Advertiser, of November 19th, 1886.

Gloucester Politics.—An appearance of Ballot Stuffing.—George Morse nominated for Mayor.

Gloucester, November 13th.—At a citizens' mass meeting held here this evening, Lawyer Taft, Chairman, to nominate a Mayor, a Committee consisting of J. J. Whalen, Albert P. Babson, Captain Solomon Jacobs, J. N. Dennison, and Edwin L. Lane was appointed to count ballots. After much wrangling one informal and three formal ballots were taken, when Mr. Dennison made a minority report, accusing Captain Solomon Jacobs of stuffing the ballot box.

William T. Merchant counted the ballots, while being cast, making 264, but the Committee reported 312 cast, which tended to show that Jacobs had put in 48 illegally.

Much excitement prevailed and a motion was made that he be dismissed from the Committee. The Chairman called for Jacobs to come forward and explain his action, but it was found that he had disappeared. He was in favor of David J. Robinson as candidate for Mayor, but went over to William A. Pew, Jr.

Another ballot was taken and Dr. George Morse received the nomination.

49th Congress, 2nd Session.

SENATE.

Mis. Doc. No. 54.

IN THE SENATE OF THE UNITED STATES.

February 8th, 1887.—Ordered to be printed.

Mr. Edmunds submitted the following communication from Spencer F. Baird, United States Commissioner of Fish and Fisheries:—

U.S. COMMISSION OF FISH AND FISHERIES,
WASHINGTON, D.C.,
February 5th, 1887.

SIR,

I forward herewith, for your information, a copy of a communication from Mr. R. Edward Earll, in charge of the Division of Fisheries of this Commission, accompanied by a list of New England fishing vessels which have been inconvenienced in their fishing operations by the Canadian authorities during the past season, these being in addition to the vessels mentioned in the revised list of vessels involved in the controversy with the Canadian authorities furnished to your Committee on January 26th by the Secretary of State.

The papers containing the statements were received from the owners, masters, or

agents of the vessels concerned, and, though not accompanied by affidavits, are believed to be correct.

Very respectfully yours.

(Signed) SPENCER F. BAIRD,
Commissioner.

Hon. George F. Edmunds,
Chairman, Committee on Foreign Relations
United States' Senate.

U.S. COMMISSION OF FISH AND FISHERIES,
WASHINGTON, D.C.,
February 5th, 1887.

SIR,

Some time since at your request I mailed circulars to owners or agents of all New England vessels employed in the food-fish fisheries. These called for full statistics of the vessels' operations during the year 1886, and in addition, for statements of any inconveniences to which the vessels had been subjected by the recent action of the Canadian Government in denying to American fishing vessels the right to buy bait, ice, or other supplies in its ports, or in placing unusual restrictions on the use of its harbors for shelter.

A very large per centage of the replies to these circulars have already been received, and an examination shows that, in addition to the vessels mentioned in the revised list transmitted by the Secretary of State to the Committee on Foreign Relations of the United States' Senate on January 26th, 1887, sixty-eight other New England fishing vessels have been subjected to treatment which neither the Treaty of 1818, nor the principles of international law would seem to warrant.

I enclose for your consideration a list of these vessels, together with a brief abstract of the statements of the owners or masters regarding the treatment received. The statements were not accompanied by affidavits, but are believed to be entirely reliable. The name and address of the informant are given in each instance.

Very respectfully yours,
(Signed) R. EDWARD EARLL,
In charge Division of Fisheries.

Professor Spencer F. Baird,
U.S. Commissioner of Fish and Fisheries.

Partial list of vessels involved in the Fisheries controversy with the Canadian authorities, from information furnished to the United States Commissioner of Fish and Fisheries.

(Supplementing a list transmitted to the Committee on Foreign Relations, United States Senate, by the Secretary of State, January 26th, 1887).

"Eliza A. Thomes," (schooner), Portland, Me., E. S. Bibbs, master. Wrecked on Nova Scotia shore, and unable to obtain assistance. Crew not permitted to land or to save anything until permission was received from captain of cutter. Canadian officials placed guard over fish saved, and everything saved from wreck narrowly escaped confiscation. (From statements of C. D. Thomes, owner, Portland, Me.)

"Christina Ellsworth" (schooner), Eastport, Me., James Ellsworth, master. Entered Port Hastings, Cape Breton, for wood, anchored at 10 o'clock, and reported at Custom House. At 2 o'clock was boarded by captain of cutter "Hector" and ordered to sea, being forced to leave without wood. In every harbour entered was refused privilege of buying anything. Anchored under lee of land in no harbour, but was compelled to enter at Custom House. In no two harbours were the fees alike. (From statements of James Ellsworth, owner and master, Eastport, Me.)

"Mary E. Whorf" (schooner), Wellfleet, Mass., Simon Berrio, master. In July 1886, lost seine off North Cape, Prince Edward Island, and not allowed to make any repairs on shore, causing a broken voyage and a long delay. Ran short of provisions and being denied privilege of buying any on land, had to obtain from another American vessel. (From statements of Freeman A. Snow, owner, Wellfleet, Mass.)

"Stowell Sherman," (schooner), Provincetown, Mass., S. F. Hatch, master. Not allowed to purchase necessary supplies and obliged to report at Custom houses situated at distant and inconvenient places, ordered out of harbors in stress of weather, namely out of Cascumpec Harbour, Prince Edward Island, nineteen hours after entry, and out of Malpeque Harbour, P.E.I., fifteen hours after entry, wind then blowing too hard to admit of fishing. Returned home with broken trip. (From statements of Samuel T. Hatch, owner and master, Provincetown, Mass.)

"Walter L. Rich" (schooner), Wellfleet, Mass., Obadiah Rich, master. Ordered out of Malpeque, P.E.I., in unsuitable weather for fishing, having been in harbor only 12 hours. Denied right to purchase provisions. Forced to enter at Custom house at Port Hawkesbury, C.B., on Sunday, Collector fearing that vessel would leave before Monday and he would thereby lose his fee. (From statements of Obadiah Rich, owner and master, Wellfleet, Mass.)

"Bertha D. Nickerson" (schooner), Booth Bay, Me., N. E. Nickerson, master. Occasioned considerable expense by being denied Canadian harbors to procure crew, and detained in spring while waiting for men to come from Nova Scotia. (From statements of Nickerson and Sons, owners, Booth Bay, Me.)

"Newell B. Hawes" (schooner), Wellfleet, Mass., Thomas C. Kennedy, master. Refused privilege of buying provisions in ports on Bay St. Lawrence, and in consequence obliged to leave for home with half a cargo. Made harbor at Shelburne, Nova Scotia, in face of storm, at 5 p.m. and master immediately started for Custom house 5 miles distant, meeting captain of cutter "Terror" on way, to whom he explained errand. On returning found two armed men from cutter on his vessel. At 7 o'clock next morning was ordered to sea, but refused to go in the heavy fog. At 9 o'clock the fog lifted slightly, and though the barometer was very low and a storm imminent, vessel was forced to leave. Soon met the heavy gale, which split sails, causing considerable damage. Captain of "Terror" denied claim to right of remaining in harbour twenty-four hours. (From statements of T. C. Kennedy, part owner and master, Wellfleet, Mass.)

"Helen F. Tredick" (schooner), Cape Porpoise, Me., R. J. Nunan, master, July 20, 1886. Entered Port Latour, N.S., for shelter and water. Was ordered immediately to sea. (From statements of R. J. Nunan, owner and master, Cape Porpoise, Me.)

"Nellie M. Snow" (schooner), Wellfleet, Mass., A. E. Snow, master. Was not allowed to purchase provisions in any Canadian ports or to refit or land and ship fish, consequently obliged to leave for home with broken trip. Not permitted to remain in ports longer than local Canadian officials saw fit. (From statements of J. C. Young, owner, Wellfleet, Mass.)

"Gertrude Summers" (schooner), Wellfleet, Mass., N. S. Snow, master. Refused privilege of purchasing provisions, which resulted in injury to voyage. Found harbor regulations uncertain. Sometimes could remain in port twenty-four hours, again was ordered out in three hours. (From statements of N. S. Snow, owner and master, Wellfleet, Mass.)

"Charles R. Washington" (schooner), Wellfleet, Mass., Jesse S. Snow, master. Master was informed by Collector at Ship Harbor, C.B., that if he bought provisions, even if actually necessary, he would be subject to a fine of \$400 for each offence. Refused permission by the Collector at Souris, P.E.I., to buy provisions, and was compelled to return home September 10th, before close of fishing season. Was obliged to report at custom house every time he entered a harbor, even if only for shelter. Found no regularity in the amount of fees demanded, this being apparently at the option of the Collector. (From statements of Jesse S. Snow, owner and master, Wellfleet, Mass.)

"John M. Ball" (schooner), Provincetown, Mass., N. W. Freeman, master. Driven out of Gulf of St. Lawrence to avoid fine of \$400 for landing two men in the Port of Malpeque, P.E.I. Was denied all supplies, except wood and water, in same port. (From statements of N. W. Freeman, owner and master, Provincetown, Mass.)

"Zephyr" (schooner), Eastport, Me., Warren Pulk, master. Cleared from Eastport, May 31st, 1886, under register for West Isles, N.B., to buy herring. Collector
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refused to enter vessel, telling captain that if he bought fish, which were plenty at the time, the vessel would be seized. Returned to Eastport, losing about a week, which resulted in considerable loss to owner and crew. (From statements of Guildford Mitchell, owner, Eastport, Me.)

"Abdon Keene" (schooner), Bremen, Me., William C. Keene, master. Was not allowed to ship or land crew at Nova Scotia ports, and owner had to pay for their transportation to Maine. (From statements of William C. Keene, owner and master, Bremen, Me.)

"William Keene" (schooner), Portland, Me., Daniel Kimball, master. Not allowed to ship a man or to send a man ashore except for water at Liverpool, N.S., and ordered to sea as soon as water was obtained. (From statements of Henry Trefethen, owner, Peak's Island, Me.)

"John Nye" (schooner), Swan's Island, Me., W. L. Joyce, master. After paying entry fees and harbor dues was not allowed to buy provisions at Malpeque, P.E.I., and had to return home for same, making a broken trip. (From statements of W. L. Joyce, owner and master, Atlantic, Me.)

"Asa H. Pervere" (schooner), Wellfleet, Mass., A. B. Gore, master. Entered harbor for shelter, ordered out after 24 hours. Denied right to purchase food. (From statements of S. W. Kemp, agent, Wellfleet, Mass.)

"Nathan Cleaves" (schooner), Wellfleet, Mass., P. E. Hickman, master. Ran short of provisions and not being permitted to buy, left home with a broken voyage. Customs officers at Port Mulgrave, Nova Scotia, would allow purchase of provisions for homeward passage, but not to continue fishing. (From statements of Parker E. Hickman, owner and master, Wellfleet, Mass.)

"Frank G. Rich" (schooner), Wellfleet, Mass., Charles A. Gorham, master. Not permitted to buy provisions or to lay in Canadian ports over 24 hours. (From statements of Charles A. Gorham, owner and master, Wellfleet, Mass.)

"Emma O. Curtis" (schooner), Provincetown, Mass., Elisha Rich, master. Not allowed to purchase provisions, and therefore obliged to return home. (From statements of Elisha Rich, owner and master, Provincetown, Mass.)

"Pleiades" (schooner), Wellfleet, Mass., F. W. Snow, master. Driven from harbor within 24 hours after entering. Not allowed to ship or discharge men under penalty of \$400. (From statements of F. W. Snow, owner and master, Wellfleet, Mass.)

"Charles F. Atwood" (schooner), Wellfleet, Mass., Michael Burrows, master. Captain was not permitted to refit vessel or to buy supplies, and when out of food had to return home. Found Canadians disposed to harass him and put him to many inconveniences. Not allowed to land seine on Canadian shore for purpose of repairing same. (From statements of Michael Burrows, owner and master, Wellfleet, Mass.)

"Gertie May" (schooner), Portland, Me., I. Doughty, master. Not allowed, though provided with permit, to touch and trade, to purchase fresh bait in Nova Scotia, and driven from harbors. (From statements of Charles F. Gutpill, owner, Portland, Me.)

"Margaret S. Smith" (schooner), Portland, Me., Lincoln W. Jewett, master. Twice compelled to return home from Bay St. Lawrence with broken trip, not being able to secure provisions to continue fishing. Incurred many petty inconveniences in regard to Customs regulations. (From statements of A. M. Smith, owner, Portland, Me.)

"Elsie M. Smith" (schooner), Portland, Me., Enoch Bulger, master. Came home with a half fare, not being able to get provisions to continue fishing. Lost seine in a heavy gale rather than be annoyed by customs regulations when seeking shelter. (From statements of A. M. Smith, Portland, Me.)

"Fannie A. Spurling" (schooner), Portland, Me., Caleb Parris, master. Subject to

many annoyances, and obliged to return home with a half fare, not being able to procure provisions. (From statements of A. M. Smith, owner, Portland, Me.)

"Carleton Bell" (schooner), Booth Bay, Me., Seth W. Eldridge, master. Occasioned considerable expense by being denied right to procure crew in Canadian harbors, and detained in spring while waiting for men to come from Nova Scotia. (From statements of S. Nickerson and Sons, owners, Booth Bay, Me.)

"Abbie M. Deering" (schooner), Portland, Me., Emery Gott, master. Not being able to procure provisions obliged to return home with a third of a fare of mackerel. (From statements of A. M. Smith, owner, Portland, Me.)

"Cora Louisa" (schooner), Booth Bay, Me., Obed Harris, master. Could get no provisions in Canadian ports and had to return home before getting a full fare of fish. (From statements of S. Nickerson and Sons, Booth Bay, Me.)

"Eben Dale" (schooner), North Haven, Me., R. G. Babbidge, master. Not permitted to buy bait, ice, or to trade in any way. Driven out of harbors and unreasonable restrictions whenever near the land. (From statements of R. G. Babbidge, owner and master, Pulpit Harbor, Me.)

"Charles Haskell" (schooner), North Haven, Me., Daniel Thurston, master. Obligated to leave Gulf of St. Lawrence at considerable loss, not being allowed to buy provisions. (From statements of C. S. Staples, owner, North Haven, Me.)

"Willie Parkman" (schooner), North Haven, Me. William H. Banks, master. Unable to get supplies while in Gulf of St. Lawrence, which necessitated returning home at great loss, with a broken voyage. (From statements of William H. Banks, owner and master, North Haven, Me.)

"D. D. Geyer" (schooner), Portland, Me., John K. Craig, master. Being refused privilege of touching at a Nova Scotia port to take on resident crew already engaged, owner was obliged to provide passage for men to Portland, at considerable cost causing great loss of time. (From statements of J. H. Jordan, owner, Portland, Me.)

"Good Templar" (schooner), Portland, Me., Elias Tarlton, master. Touched at La Have, Nova Scotia, to take on crew already engaged, but was refused privilege and ordered to proceed. The men being indispensable to voyage, had them delivered on board outside of three-mile limit by a Nova Scotia boat. (From statement of Henry Trefethen, owner, Peak's Island, Me.)

"Eddie Davidson" (schooner), Wellfleet, Mass., John D. Snow, master, June 12, 1886. Touched at Cape Island, Nova Scotia, but was not permitted to take on part of crew. Boarded by customs officer and ordered to sail within 24 hours. Not allowed to buy food in ports of Gulf of St. Lawrence. (From statements of John D. Snow, owner and master, Wellfleet, Mass.)

"Alice P. Higgins" (schooner), Wellfleet, Mass., Alvin W. Cobb, master. Driven from harbors twice in stress of weather. (From statements of Alvin W. Cobb, master, Wellfleet, Mass.)

"Cynosure" (schooner), Booth Bay, Me., L. Rush, master. Was obliged to return home before securing a full cargo, not being permitted to purchase provisions in Nova Scotia. (From statements of S. Nickerson and Sons, owners, Booth Bay, Me.)

"Naid" (schooner), Lubec, Me., Walter Kennedy, master. Presented frontier license (heretofore acceptable) on arriving at St. George, N.B., but collector would not recognise same, was compelled to return to Eastport and clear under register, before being allowed to purchase herring, thus losing one trip. (From statements of Walter Kennedy, master, Lubec, Me.)

"Louisa A. Grout" (schooner), Provincetown, Mass., Joseph Hatch, Jr., master. Took permit to touch and trade, arrived at St. Peter's, Cape Breton, in afternoon of

May, 19, 1886, entered and cleared according to law, was obliged to take inexperienced men at their own prices to complete fishing crew, to get to sea before the arrival of a seizing officer who had started from Straits of Canso at 5 o'clock same afternoon in search of vessel, having been advised by telegraph of shipping of men. (From statements of Joseph Hatch, Jr., owner and master, Provincetown, Mass.)

"Lottie E. Hopkins" (schooner), Vinal Haven, Me., Emery J. Hopkins, master. Refused permission to buy any article of food in Canadian ports. Obtained shelter in harbors only by entering at Custom House. (From statement of Emery J. Hopkins, owner and master, North Haven, Me.)

"Florine F. Nickerson (schooner), Chatham, Mass., Nathaniel E. Eldridge, master. Engaged fishermen for vessel at Liverpool, Nova Scotia, but action of Canadian Government necessitated their transportation to the United States and loss of time to vessel while awaiting their arrival, otherwise would have called for them on way to fishing grounds. Returning touched at Liverpool, but immediately on anchoring, Canadian officials came aboard and refused permission for men to go ashore. Captain at once signified his intention of immediately proceeding on passage, but officer prevented his departure until he had reported at Custom House, vessel being thereby detained two days. (From statements of Kendrick and Bearse, owners, South Harwich, Mass.)

"B. B. B" (sloop), Eastport, Me., George W. Copp, master. Obligated to discontinue business of buying sardine-herring in New Brunswick Port for Eastport canneries, as local customs regulations were, during the season of 1886, made so exacting that it was impossible to comply with them, without risk of the fish becoming stale and spoiled by detention. (From statements by George W. Copp, master, Eastport, Me.)

"Sir Knight" (schooner), Southport, Me., Mark Rand, master. Compelled to pay transportation for crew from Nova Scotia to Maine, the vessel not being allowed to call at Nova Scotia ports for them on her way to the fishing grounds. (From statements of William T. Maddocks, owner, Southport, Me.)

"Uncle Joe" (schooner), Southport, Me., J. W. Pierce, master. Compelled to pay transportation for crew from Nova Scotia to Maine, the vessel not being allowed to call at Nova Scotia ports for them on her way to the fishing grounds. (From statements of William T. Maddocks, owner, Southport, Me.)

"Willie G" (schooner), Southport, Me., Albert F. Orne, master. Compelled to pay transportation for crew from Nova Scotia to Maine, the vessel not being allowed to call at Nova Scotia ports for them on her way to the fishing grounds. (From statements of William T. Maddocks, owner, Southport, Me.)

"Lady Elgin" (schooner), Southport, Me., George W. Pierce, master. Compelled to pay transportation for crew from Nova Scotia to Maine, the vessel not being allowed to call at Nova Scotia ports for them on her way to the fishing grounds. (From statements of William T. Maddocks, owner, Southport, Me.)

"John H. Kennedy" (schooner), Portland, Me., David Dougherty, master. Called at a Nova Scotia port for bait, but left without obtaining same, fearing seizure and fine, returning home with a broken voyage. At a Newfoundland port was charged \$16 lighthouse dues, giving draft on owners for same, which being excessive, they refused to pay. (From statements of E. G. Willard, owner, Portland, Me.)

"Ripley Ropes" (schooner), Southport, Me., C. E. Hare, master. Vessel ready to sail, when telegram from authorities at Ottawa refused permission to touch at Canadian ports to ship men, consequently to pay for their transportation to Maine, and vessel detained while awaiting their arrival. (From statements of Freeman Orne and Son, owners, Southport, Me.)

"Jennie Armstrong" (schooner), Southpart, Me., A. O. Webber, master. Vessel ready to sail, when telegram from authorities at Ottawa refused permission to touch at Canadian ports to ship men, consequently obliged to pay for their transportation to Maine, and vessel detained while awaiting their arrival. (From statements of Freeman Orne and Son, owners, Southport, Me.)

"Vanguard" (schooner), Southport, Me., C. C. Dyer, master. Vessel ready to sail when telegram from authorities refused permission to touch at Canadian ports to ship men, consequently obliged to pay for their transportation to Maine, and vessel detained while awaiting their arrival. (From statements of Freeman Orne and Son, owners, Southport, Me.)

"Electric Flash" (schooner), North Haven, Me., Aaron Smith, master. Unable to obtain supplies in Canadian ports, and obliged to return home before obtaining full cargo. (From statements of Aaron Smith, master and agent, North Haven, Me.)

"Daniel Simmons" (schooner), Swan's Island, Me., John A. Gott, master. Compelled to go without necessary outfit while fishing in Gulf of St. Lawrence. (From statements of M. Stimpson, owner, Swan's Island, Me.)

"Grover Cleveland" (schooner), Boston, Mass., George Lakeman, master. Compelled to return home with only partial fare of mackerel, being refused supplies in Canadian ports. (From statements of B. F. De Butts, owner, Boston, Mass.)

"Andrew Burnham" (schooner), Boston, Mass., Nathan F. Blake, master. Not allowed to buy provisions, or to land and ship fish to Boston, thereby losing valuable time for fishing. (From statements of B. F. De Butts, owner, Boston, Mass.)

"Harry G. French" (schooner), Gloucester, Mass., John Chisholm, master. Refused permission to purchase provisions or to land cargo for shipment to the United States. (From statements of John Chisholm, master and owner, Gloucester, Mass.)

"Col. J. H. French" (schooner), Gloucester, Mass., William Harris, master. Was refused permission to purchase any supplies, or to forward fish to the home port by steamer, causing much loss of time and money. (From statements of John Chisholm, owner, Gloucester, Mass.)

"W. H. Wellington" (schooner), Gloucester, Mass., D. S. Nickerson, master. Was refused permission to purchase any supplies, or to forward fish to the home port by steamer, causing much loss of time and money. (From statements of John Chisholm, owner, Gloucester, Mass.)

"Ralph Hodgdon" (schooner), Gloucester, Mass., Thomas F. Hodgdon, master. Was refused permission to purchase any supplies, or to forward fish to the home port by steamer, causing much loss of time and money. (From statements of John Chisholm, owner, Gloucester, Mass.)

"Hattie Evelyn" (schooner) Gloucester, Mass., James A. Cromwell, master. Not allowed to buy any provisions in any provincial ports, and thereby compelled to return home during the fishing season, causing broken voyage and great loss. (From statements of James A. Cromwell, owner and master, Gloucester, Mass.)

"Emma W. Brown" (schooner) Gloucester, Mass., John McFarland, master. Was forbidden buying provisions at any provincial ports, and thereby lost three weeks time, and was compelled to return home with only part of cargo. (From statement of John McFarland, master, Gloucester, Mass.)

"Mary H. Thomas" (schooner) Gloucester, Mass., Henry B. Thomas, master. Prohibited from buying provisions, and in consequence had to return home before close of fishing season. (From statements of Henry B. Thomas, owner and master, Gloucester, Mass.)

"Hattie B. West" (schooner) Gloucester, Mass., C. H. Jackman, master. Prevented from buying provisions to enable vessel to continue fishing. Two of crew deserted in a Canadian port, and captain went ashore to report at Custom House, and to secure return of men. Was delayed by Customs Officer not being at his post, and ordered to sea by first officer of cutter "Howlett," before having an opportunity of reporting at Custom House, or of finishing business. Had to return and report on same day or be subject to fine. Prevented from shipping men at same place. At Port

Hawkesbury, Nova Scotia, while on homeward passage, not allowed to take on board crew of seized American fishing schooner "Moro Castle," who desired to return home. (From statements of C. H. Jackman, master, Gloucester, Mass.)

"Ethel Maud" (schooner) Gloucester, Mass., George H. Martin, master. Provided with a United States permit to touch and trade, entered Tignish, P.E.I. Purchased salt in barrels, was prohibited from buying anything. Collector was offered permit, but declared it to be worthless, and would not examine it. Vessel obliged to return home for articles mentioned. On second trip was not permitted to get any food. (From statements of George H. Martin, owner and master, East Gloucester, Mass.)

"John W. Bray" (schooner) Gloucester, Mass., George McLean, master. On account of extreme prohibitory measures of the Canadian Government in refusing shelter, supplies, and other conveniences, was obliged to abandon her voyage and come home without fish. (From statements of John F. Wonson and Co., owners, Gloucester, Mass.)

"Henry W. Longfellow" (schooner) Gloucester, Mass., W. W. King, master. Obligated to leave to Gulf of St. Lawrence, with only 62 barrels of mackerel, on account of restrictions imposed by Canadian Government in preventing captain from procuring necessary supplies to continue fishing. (From statements of John F. Wonson and Co., owners, Gloucester, Mass.)

"Rushlight" (schooner) Gloucester, Mass., James L. Kenny, master. Compelled to leave gulf of St. Lawrence with only 90 barrels of mackerel, because of restrictions imposed by Canadian Government in prohibiting captain from purchasing supplies needed to continue fishing. (From statements of John F. Wonson and Co., owners, Gloucester, Mass.)

"Belle Franklin" (schooner) Gloucester, Mass., Henry D. Kendrick, master. Obligated to leave Gulf St. Lawrence, with 156 barrels of mackerel, on account of restrictions imposed by Canadian Government in denying the captain the right to procure necessary supplies to continue fishing. (From statements of John F. Wonson and Co., owners, Gloucester, Mass.)

"Neponset" (schooner), Boston, Mass., E. S. Frye, master, August 27th, 1886. Anchored in Port Hawkesbury, C.B., and immediately reported at custom house. Being short of provisions, master asked collector for permission to buy, but was twice refused. The master expressing his intention of seeing the United States consul at Port Hastings C.B., three miles distant, the customs officer forbade him landing at that port to see the consul. He did so, however, saw the consul, but could get no aid, the consul stating that if provisions were furnished the vessel would be seized. Master being sick and wishing to return home by rail, at the suggestion of the consul he landed secretly and travelled through the woods to the station three miles distant. (From statements of E. S. Frye, owner and master, Boston, Mass.)

7,185.

No. 156.

Governor-General the Most Hon. the Marquis of Lansdowne, G.C.M.G., to the Right Hon. Sir H. T. Holland, Bart, G.C.M.G., M.P. (Received April 15th, 1887).

Secret.

GOVERNMENT HOUSE, OTTAWA,
April 2nd, 1887.

SIR,

With reference to my despatch No. 99 of this day's date,* I have the honour to enclose copy of a memorandum which I have communicated to Sir John Macdonald upon the subject of the treatment of the "Jennie Seaverns," one of the vessels to which the above despatch has reference.

While the treatment experienced by this vessel at the hands of the Canadian officials was technically warranted by the terms of the Convention and the statutes binding upon vessels resorting to Canadian harbours, and while there is, as pointed out

* No. 155.

by my Minister of Marine and Fisheries in his report, no reason for supposing that the master and crew of the vessel suffered any material deprivation of their rights, it might, I think, have been possible, considering the fact that the "Jennie Seaverns" had entered the harbour of Liverpool, Nova Scotia, for a purpose admittedly lawful, to have exercised the necessary supervision over the proceedings of those on board of her in a manner less likely to offend their susceptibilities or to give rise to such complaints as those which have been actually preferred by the master.

It is desirable to make a difference between the treatment of foreign fishing vessels entering Canadian harbours ostensibly for a legitimate purpose, but really with the intention of breaking the law, and other vessels of the same description which have come into harbour in the exercise of their undoubted Treaty rights. In the case of the latter, while a reasonable amount of supervision on the part of the customs and other authorities is no doubt indispensable, it is, I think, unnecessary to insist with absolute strictness upon compliance with the full technical requirements of the law.

You will observe from the penultimate paragraph of the Minute of Council enclosed in my despatch above referred to, a paragraph which was added to the report in consequence of my observations, that my advisers are ready to recognise this distinction and it is therefore unlikely that in any future cases resembling that of the "Jennie Seaverns" the supervision of the local authorities will be exercised in a manner to provoke a renewal of the same complaints.

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

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

Enclosure in No. 156.

Note on case of "Jennie Seaverns."

P.C.O., 23.3.87.

In this case it is conceded that the vessel put into the harbour of Liverpool, Nova Scotia, for shelter. On her so doing Captain Quigley, of the "Terror," sent an officer on board with instructions to explain the law to the captain and to order him to report at the customs before sailing. For this purpose he was to take two of his crew with him, the rest of the crew being forbidden to leave the ship. The captain was further told that after he had reported, no person from the vessel was to go on shore "as he got all he put in for, viz., shelter, and he reported his vessel putting in for that purpose, and for no other, not for the purpose of letting his crew on shore." It further appears that boats from shore were not allowed to come alongside of the "Seaverns" for fear of giving the crew a chance of landing or smuggling provisions, and were "ordered off in all cases."

Two watchmen were placed on board the vessel to prevent breaches of the law.

It is worth consideration whether in cases where a United States' fishing vessel enters a Canadian port for a purpose authorised by the Convention and where there is no dispute as to this, it is necessary to enforce the Customs Law in a manner quite so aggressive as that described above.

Would it not be possible to take adequate precautions against smuggling by keeping a watch on the proceedings of those on board the vessel without going the length of putting a guard on board of her and forbidding all communications with the shore except for the purpose of reporting to the customs?

Considering the fact that so many of these American fishing boats are manned by Canadian crews who may be presumed to have friends or relatives in a port entered under the above circumstances, might not greater facilities be given to them for going ashore or for seeing their friends on board, proper precautions being of course taken to prevent either the landing of dutiable goods by the vessel's crew or the supply to them of stores or bait in contravention of the terms of the Convention.

It is desirable that the action of the local officials should in all such cases be not only reasonable and moderate, but that it should be such as to avoid even the appearance of harshness.

(Signed) LANSDOWNE.

7,186.

No. 156a.

Colonial Office to Foreign Office.

DOWNING STREET,
19th April, 1887.

SIR,

With reference to your letters of the 4th October and 15th December last, and to the letter from this department of the 27th December* respecting the case of the United States fishing vessel "Mollie Adams," I am directed by Secretary Sir Henry Holland to transmit to you to be laid before the Marquis of Salisbury, a copy of a despatch† from the Governor-General of Canada enclosing a copy of an order of his Privy Council relating to this case. I am to request that Sir H. Holland may be informed of any communication which Lord Salisbury may make to the United States Government in reference to this matter.

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

The Under Secretary of State,
Foreign Office.

6,822.

No. 157.

The Right Hon. Sir H. T. Holland, Bart., G.C.M.G., M.P., to Governor-General the Most Hon. the Marquis of Lansdowne, G.C.M.G.

No. 87.

DOWNING STREET,
20th April, 1887.

MY LORD,

I have the honour to transmit to you for the information of your Government with reference to previous correspondence copy of a despatch‡ from the Governor of Newfoundland, forwarding a cutting from a newspaper reporting remarks recently made before the Merchants' Club at Boston, United States, by Mr. David A. Wells on the Fishery Question.

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

The Marquis of Lansdowne.

7,692.

No. 158.

Foreign Office to Colonial Office.

FOREIGN OFFICE,
April 20th, 1887.

SIR,

I am directed by the Marquis of Salisbury to acknowledge the receipt of your letter of the 6th instant§ enclosing a copy of a despatch from the Governor-General of Canada on the subject of the Fisheries Police.

In reply to Sir Henry Holland's enquiry, I am to state that his Lordship is unable to suggest any definite modifications of the instructions to the police which would be likely to diminish friction in carrying them out. Any such modifications, if required, could only, in Lord Salisbury's opinion, be made after full consultation with those possessing accurate local knowledge and practical acquaintance with the police duties in question; and his Lordship therefore concurs in the reply which Sir Henry Holland proposes to make to Lord Lansdowne's despatch.

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

The Under Secretary of State,
Colonial Office.

* Nos. 1, 60, and 76.

† No. 155a.

‡ No. 149.

§ No. 145.

6,822.

No 159.

Colonial Office to Foreign Office.

DOWNING STREET,
20th April, 1887¹

SIR,

With reference to previous correspondence, I am directed by the Secretary of State for the Colonies to transmit to you for the information of the Marquis of Salisbury copy of a despatch* from the Governor of Newfoundland forwarding a cutting from a newspaper reporting remarks recently made before the Merchants' Club at Boston, United States, by Mr. David A. Wells on the Fishery Question.

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

The Under Secretary of State,
Foreign Office.

7,039.

No. 160.

Colonial Office to Foreign Office.

DOWNING STREET,
April 22nd, 1887,

SIR,

With reference to the letter from this department of the 31st ultimo,† and to previous correspondence relating to the proposals made by Mr. Bayard for an *ad interim* arrangement in regard to the Fisheries question, I am directed by Secretary Sir Henry Holland to transmit to you, to be laid before the Marquis of Salisbury, a copy of a despatch‡ from the Governor-General of Canada, enclosing a copy of an approved minute of his Privy Council explaining the objections of the Dominion Government to the suggestion respecting the joint action of national vessels.

Some of the objections entertained by the Canadian Government might possibly be met, but Sir Henry Holland fears that, on the whole, the proposal is impracticable.

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

The Under Secretary of State,
Foreign Office.

7,859.

No. 161.

Foreign Office to Colonial Office.

FOREIGN OFFICE,
April 23rd, 1887.

SIR,

I am directed by the Secretary of State for Foreign Affairs to transmit to you, to be laid before Sir Henry Holland, a copy of a despatch from Her Majesty's Minister at Washington, relative to a report that the Canadian cruiser "Vigilant," fired a blank shot at an American fishing vessel within the three-mile limit.

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

The Under Secretary of State,
Colonial Office.

* No. 149.

† No. 139.

‡ No. 152.

Enclosure in No. 161.

Treaty, No. 51.

WASHINGTON,
April 8th, 1887.

MY LORD,

It is reported from St. John, New Brunswick, that the Canadian cruiser "Vigilant," fired a blank shot at an American fishing vessel within the three-mile limit. The press is, in consequence, urging that action should be taken under the Retaliatory Act, and it is said that the Cabinet are considering the question.

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

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

7,957.

No. 162.

Governor-General the Most Hon. the Marquis of Lansdowne, G.C.M.G., to the Right Hon. Sir H. T. Holland, Bart., G.C.M.G. (Received April 26th, 1887.)

GOVERNMENT HOUSE, OTTAWA,
12th April, 1887.

No. 112.

SIR,

I caused to be referred for the consideration of my Government a copy of your despatch, No. 42, of the 23rd February last,* transmitting copy of a letter from the Foreign Office, with its enclosures, respecting the case of the "Sarah H. Prior," and requesting to be furnished with a report upon the alleged conduct of the Captain of the Canadian revenue cutter "Critic," on the occasion referred to, and I have now the honour to forward to you herewith a certified copy of an approved report of a Committee of my Privy Council embodying a statement of Captain McLaren of the "Critic" with reference to the circumstances complained of.

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

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

Enclosure in No. 162.

Certified Copy of a Report of a Committee of the Honourable the Privy Council for Canada, approved by His Excellency the Governor-General in Council on the 7th April, 1887.

The Committee of the Privy Council have had under consideration a despatch dated 23rd February, 1887, from the Right Honourable the Secretary of State for the Colonies asking that an investigation be made into the conduct of the captain of the Canadian cruiser "Critic," as regards the treatment extended to Captain Thomas McLaughlan, of the United States' fishing schooner "Sarah H. Prior" in the harbour of Malpeque, Prince Edward Island, in September last.

The Minister of Marine and Fisheries, to whom the despatch was referred, submits the following statement of Captain McLaren, of the "Critic" with reference to the circumstances complained of:—

On or about the 14th September, 1886, Captain McLaughlan of the "Sarah H. Prior," came on board the Government cruiser "Critic" at Malpeque, Prince Edward Island, wanting to know if he would be infringing on the laws by paying the Captain of the schooner "John Ingalls" a small sum of money for the recovery of a seine which he said he had lost a few days before, and which had been picked up by the said captain.

"I told him that I would not interfere with him if the Captain of the "Ingalls" chose to run the risk of taking the matter in his own hands, but the proper course would be for the captain of the "John Ingalls" to report the matter to the Collector of Customs, who was also Receiver of Wrecks, and then if he (Captain McLaughlan)

could prove that the seine was his, he could recover it by paying the costs. Captain McLaughlan then said that as the seine was all torn to pieces he would not bother himself about it.

"The Captain of the "John Ingalls" did not come to see me about the matter, and I heard nothing of it afterwards.

(Signed) "W. McLAREN."

The Committee respectfully advise that your Excellency be moved to forward the foregoing statement of Captain McLaren to the Right Honourable the Secretary of State for the Colonies in answer to his despatch of the 23rd February last.

(Signed) JOHN J. MCGEE.
Clerk, Privy Council.

7,967.

No. 163.

Governor-General the Most Hon. the Marquis of Lansdowne, G.C.M.G., to the Right Hon. Sir H. T. Holland, Bart., G.C.M.G., M.P. (Received April 26th, 1887.)

GOVERNMENT HOUSE, OTTAWA,
14th April, 1887.

Confidential A.

SIR,

I have the honour to inform you that the speech from the Throne with which the first session of the recently elected Parliament is about to be opened will contain an announcement that "in order to provide against the possible interruption of the navigation of our great inland waters" the House of Commons will be asked for "an appropriation in aid of the construction of a canal to connect the waters of Lakes Huron and Superior at Sault Ste. Marie."

The canal by which these lakes are at present connected runs, as you are aware, through United States' territory, and might at any moment be closed against this country should the President deem it his duty to issue a proclamation giving effect to the Statute passed by Congress entitled "A Bill to protect American vessels against unwarrantable and unlawful discriminations in the ports of British North America."

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

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

7,981.

No. 164.

Foreign Office to Colonial Office.

FOREIGN OFFICE,
April 26th, 1887.

SIR,

I am directed by the Marquis of Salisbury to state to you that the American Minister called on the 23rd instant and read to his Lordship the telegram of which a copy is herewith enclosed relative to the alleged refusal of the Canadian Authorities at Halifax to supply salt to American fishing vessels driven in to that port to repair damages.

His Lordship in reply promised that enquiries should be made; and I am to request that you will move Sir Henry Holland to telegraph to the Canadian Government for an immediate report upon the statement contained in this telegram.

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

The Under Secretary of State,
Colonial Office.

Enclosure in No. 164.

*Copy of telegram from Mr. Bayard to Mr. Phelps.**April 23rd, 1887.*

The United States' Consul-General at Halifax reports refusal of the Canadian authorities to permit American fishing vessels, driven into that port to repair damages sustained by storm on the Grand Banks, to replace salt lost in a storm, although other repairs have been allowed. Such extreme and unfriendly construction of an express right under the Treaty of 1818 is most unfortunate at present juncture, pending negotiation, and must lead to serious consequences unless the Government of Great Britain interfere to maintain treaty and ordinary hospitality.

7,981.

No. 165.

The Right Hon. Sir H. T. Holland, Bart., G.C.M.G., M.P., to Governor-General the Most Hon. the Marquis of Lansdowne, G.C.M.G.

TELEGRAPHIC.

April 26th.—United States Minister states that Consul at Halifax reports American fishing boats driven to that port stress of weather refused permission replace salt lost in storm.

Send report on statement as soon as possible. Despatch follows by mail.

8,066.

No. 166.

Foreign Office to Colonial Office.

FOREIGN OFFICE,
April 27th, 1887.

SIR,

I am directed by the Secretary of State for Foreign Affairs to transmit to you, to be laid before Sir Henry Holland, a copy of a despatch from Her Majesty's Minister at Washington, enclosing extracts from the "Washington Republican" and "Washington Post" of the 9th instant relative to a letter addressed by the President of the United States to the American Fisheries Union on the question of putting in force the Retaliatory Act.

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

The Under Secretary of State,
Colonial Office.

Enclosure in No. 166.

WASHINGTON,
April 9th, 1887.

No. 53 Treaty.

MY LORD,

I have the honour to enclose to your Lordship herewith, copies of a letter addressed by the President to the American Fisheries Union on the question of putting in force the Retaliatory Act. Your Lordship will perceive that it is only against Canadian fish that the Union seeks the exercise of the powers conferred on the President by the Act of Congress, and the article from a Washington paper* which I annex is a severe comment on what is called the "Gloucester combine."

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

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

* Not printed.

Extract from the "Washington Republican" of April 9th, 1887.

THE RETALIATION BILL.

A BROAD AND PATRIOTIC LETTER FROM THE PRESIDENT.

If it becomes necessary to Enforce the Law, He will do so without regard to Personal or Private Interests.

The President having received a communication from the American Fisheries Union of Massachusetts, calling attention to the fisheries dispute, and suggesting that the Retaliatory Act, passed by the late Congress, would, in their opinion, be sufficiently executed if the proposed retaliation was confined to the closing of United States markets to Canadian fish products, he has made the following answer :—

EXECUTIVE MANSION, WASHINGTON,
April 7th, 1887.

George Steele, Esq., President American Fishery Union, and others, Gloucester, Mass.

GENTLEMEN,

I have received your letter lately addressed to me, and have given full consideration to the expression of the views and wishes therein contained, in relation to the existing differences between the Government of Great Britain and the United States, growing out of the refusal to award to our citizens engaged in fishing enterprises the privileges to which they are entitled, either under treaty stipulations or the guarantees of international comity and neighbourly concession.

I sincerely trust the apprehension you express of unjust and unfriendly treatment of American fishermen lawfully found in Canadian waters will not be realized. But if such apprehension should prove to be well founded I earnestly hope that no fault or inconsiderate action of any of our citizens will in the least weaken the just position of our Government or deprive us of the universal sympathy and support to which we should be entitled.

The action of this Administration since June, 1885, when the fishery articles of the Treaty of 1871 were terminated under the notification which had two years before been given by our Government, has been fully disclosed by the correspondence between the representatives and the appropriate departments of the respective Governments, with which I am apprised by your letter you are entirely familiar. An examination of this correspondence has doubtless satisfied you that in no case have the rights or privileges of American fishermen been overlooked or neglected, but that, on the contrary, they have been sedulously insisted upon and cared for by every means within the control of the Executive branch of the Government.

The Act of Congress approved March 3, 1887, authorizing a course of retaliation through Executive action, in the event of a continuance on the part of the British-American authorities of unfriendly conduct and treaty violations affecting American fishermen has devolved upon the President of the United States exceedingly grave and solemn responsibilities, comprehending highly important consequences to our national character and dignity, and involving extremely valuable commercial intercourse between the British possessions in North America and the people of the United States.

I understand the main purpose of your letter is to suggest that, in case recourse to the retaliatory measures authorized by this Act should be invited by unjust treatment of our fishermen in the future, the object of such retaliation might be fully accomplished by "prohibiting Canadian-caught fish from entry into the ports of the United States."

The existing controversy is one in which two nations are the parties concerned. The retaliation contemplated by the Act of Congress is to be enforced, not to protect solely any particular interest, however meritorious or valuable, but to maintain the national honour, and thus protect all our people. In this view, the violation of American fishery rights, and unjust or unfriendly acts towards a portion of our citizens engaged in this business, is but the occasion for action, and constitutes a national affront which gives birth to, or may justify, retaliation. This measure, once resorted to, its effectiveness and value may well depend upon the thoroughness and extent of its application; and in the performance of international duties, the enforcement of international rights, and the protection of our citizens, this Government and the people of the United

States must act as a unit—all intent upon attaining the best result of retaliation upon the basis of a maintenance of national honour and duty.

A nation seeking by any means to maintain its honour, dignity and integrity is engaged in protecting the rights of its people; and if in such efforts particular interests are injured and special advantages forfeited, these things should be patriotically borne for the public good.

An immense volume of population, manufactures and agricultural productions, and the marine tonnage and railways to which these have given activity, all largely the result of intercourse between the United States and British America, and the natural growth of a full half century of good neighbourhood and friendly communication, form an aggregate of material wealth and incidental relations of most impressive magnitude. I fully appreciate these things, and am not unmindful of the great number of our people who are concerned in such vast and diversified interests.

In the performance of the serious duty which the Congress has imposed upon me, and in the exercise upon just occasion of the power conferred under the Act referred to, I shall deem myself bound to inflict no unnecessary damage or injury upon any portion of our people; but I shall, nevertheless, be unflinchingly guided by a sense of what the self-respect and dignity of the nation demand. In the maintenance of these and in the support of the honour of the Government beneath which every citizen may repose in safety, no sacrifice of personal or private interests shall be considered as against the general welfare.

Yours very truly,
GROVER CLEVELAND.

7,981.

No. 167.

The Right Hon. Sir H. T. Holland, Bart., G.C.M.G., M.P., to Governor-General the Most Hon. the Marquis of Lansdowne, G.C.M.G.

No. 91.

DOWNING STREET,
27th April, 1887.

MY LORD,

I have the honour to transmit to you, for communication to your Government and for any observations which they may have to offer, a copy of a letter* from the Foreign Office enclosing copy of a telegram left with the Marquis of Salisbury by the American Minister relative to the alleged refusal of the authorities at Halifax to permit American fishing vessels (driven into that port to repair damages) to replace salt lost in a storm.

I addressed you upon this subject in my telegram of the 26th inst.†

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

The Marquis of Lansdowne.

7,086.

No. 168.

The Right Hon. Sir H. T. Holland, Bart., G.C.M.G., M.P., to Governor-General the Most Hon. the Marquis of Lansdowne, G.C.M.G.

No. 94.

DOWNING STREET,
April 27th, 1887.

MY LORD,

I have the honour to acknowledge the receipt of your despatch, No. 74, of the 11th of March,‡ reporting that a sub-collector of Customs would be stationed upon an Island or at Sand Point at the mouth of Shelburne Harbour, so as to render it unnecessary for vessels entering that harbour to report themselves to the Collector who is stationed in the port of Shelburne, which is several miles distant from the outer harbour.

Her Majesty's Government have learned with satisfaction of this contemplated action of your Government.

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

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

* No. 164.

† No. 165.

‡ No. 138.

7,692.

No. 169.

*The Right Hon. Sir H. T. Holland, Bart., G.C.M.G., M.P., to Governor-General the
Most Hon. the Marquis of Lansdowne, G.C.M.G.*

No. 92.

DOWNING STREET,
27th April, 1887.

MY LORD,

I have the honour to acknowledge the receipt of your despatch No. 67 of the 9th of March,* respecting the manner in which the Canadian Fishery Police have acted in enforcing against American fishing vessels the provisions of the Convention of 1818 and the Acts of Parliament passed for the purpose of giving effect to that treaty, and stating that the Dominion Government would be glad to take into favourable consideration any modification of the instructions to the Fishery Police which Her Majesty's Government might wish to suggest.

In reply I have to acquaint you that Her Majesty's Government gladly recognise the readiness of your Ministers to consider favourably any suggestions which they might make, and they trust that great forbearance and discrimination will be exercised by the Fishery Police in carrying out the instructions so as to afford no just ground of complaint to the Government of the United States.

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

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

7,164.

No. 170.

Colonial Office to Foreign Office.

DOWNING STREET,
27th April, 1887.

SIR,

With reference to your letter of the 8th of December last,† I am directed by Secretary Sir H. Holland to transmit to you for the information of the Marquis of Salisbury, copy of a despatch‡ from the Governor-General of Canada, forwarding an approved Minute of the Privy Council on the subject of the cases of the "Jennie Seavern" and the "Laura Sayward."

Sir H. Holland would suggest that a copy of the Privy Council Minute should be communicated to the United States' Government, and proposes in replying to Lord Lansdowne's despatch to express the appreciation of Her Majesty's Government of the intention of the Canadian Government to relax in future the stringency of the regulations in such cases as that of the "Jennie Seavern."

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

The Under Secretary of State,
Foreign Office.

7,185.

No. 171.

Colonial Office to Foreign Office.

DOWNING STREET,
27th April, 1887.

SIR,

With reference to the letter from this department of even date,§ I am directed by the Secretary of State for the Colonies to transmit to you for the information of the Marquis of Salisbury a copy of a despatch|| from the Governor-General of Canada forwarding copy of a memorandum which he had communicated to Sir John Macdonald on the subject of the treatment of United States' fishing vessels putting into Canadian

* No. 134.

† No. 52

‡ No. 155.

§ No. 170.

|| No. 156.

harbours for shelter in circumstances similar to those in the case of the "Jennie Seavern."

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

The Under Secretary of State,
Foreign Office.

8,061.

No. 172.

Governor-General the Most Hon. the Marquis of Lansdowne, G.C.M.G., to the Right Hon. Sir H. T. Holland, Bart., G.C.M.G., M.P. (Received April 28th, 1887.)

TELEGRAPHIC.

Referring to your telegram of 26th April,* vessel referred to was given every facility for repair of damages, but was refused permission to replace twenty hogsheads of salt which were required for curing fish, and not for safety of vessel or sustenance of crew.

7,859.

No. 173.

The Right Hon. Sir H. T. Holland., Bart., G.C.M.G., M.P., to Governor-General the Most Hon. the Marquis of Lansdowne, G.C.M.G.

DOWNING STREET,
30th April, 1887.

No. 97.

MY LORD,

I have the honour to transmit to you for communication to your Ministers for any observations which they may have to offer, a copy of a letter† from the Foreign Office forwarding a despatch from Her Majesty's Minister at Washington in regard to a report that the Canadian cruiser "Vigilant" fired a blank shot at an American fishing vessel within the three-mile limit.

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

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

8,066.

No. 174.

The Right Hon. Sir H. T. Holland, Bart., G.C.M.G., M.P., to Governor-General the Marquis of Lansdowne, G.C.M.G.

DOWNING STREET,
April 30th, 1887.

No. 98.

MY LORD,

I have the honour to transmit to you for communication to your Lordship's Government a copy of a letter‡ from the Foreign Office enclosing a despatch from Her Majesty's Minister at Washington with a printed letter addressed by the President to the American Fisheries Union, published in the "Washington Republican," on the question of putting in force the Retaliatory Act, and an Article from the "Washington Post."

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

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

* No. 165.

† No. 161.

‡ No. 166.

8,061.

No. 175.

*Colonial Office to Foreign Office.*DOWNING STREET,
30th April, 1887.

SIR,

With reference to your letter of the 26th instant,* I am directed by Secretary Sir H. Holland to transmit to you to be laid before the Marquis of Salisbury, copies of a telegram and a despatch† which he addressed to the Governor-General of Canada calling for a report on the subject of the refusal of the authorities at Halifax to permit United States fishing vessels driven into that port by stress of weather to replace salt lost in the storm.

I am also to enclose a copy of the reply‡ received from Lord Lansdowne.

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

The Under Secretary of State,
Foreign Office.

7,957.

No. 176.

*Colonial Office to Foreign Office.*DOWNING STREET,
4th May, 1887.

SIR,

With reference to the letter from this department of the 24th of February last,§ I am directed by Secretary Sir H. Holland to transmit to you, for the information of the Marquis of Salisbury, a copy of a despatch|| from the Governor-General of Canada enclosing an approved Minute of a Committee of the Privy Council respecting the case of the United States' schooner "Sarah H. Prior."

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

The Under Secretary of State,
Foreign Office.

8,815.

No. 177.

*Foreign Office to Colonial Office.*FOREIGN OFFICE,
May 5th, 1887.

SIR,

I am directed by the Secretary of State for Foreign Affairs to transmit to you, to be laid before Sir Henry Holland, a copy of a despatch from Her Majesty's Minister at Washington enclosing an article from the "Washington Post," headed "What retaliation means."

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

The Under Secretary of State,
Colonial Office.

Enclosure in No. 177.

WASHINGTON,
22nd April, 1887.

No. 57. Treaty.

MY LORD,

I have the honour to enclose to your Lordship herewith an article from the

* No. 164.
(2566)

† Nos. 165 and 167.

‡ No. 172.

§ No. 117.

|| No. 162.
2 G 2

"Washington Post" headed "What retaliation means." This newspaper is Democratic and supports the present Administration.

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

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

Extract from the "Washington Post" of April 22, 1887.

WHAT RETALIATION MEANS.

Shall the President enforce the retaliation law with all that it implies?

If it damaged only Canada it might be fun, but the trouble is it would inflict the least damage on Canada and the most on ourselves. A man might perhaps be considered foolish to discharge a musket at an enemy if he were perfectly sure that instead of hitting the enemy it would shoot his own head off,

As gun, well aimed at duck or plover,
Bears wide and kicks the aimer over.

If the Retaliation law is to be executed it will no doubt be in horizontal terms, and it will cut the two nations apart from New Brunswick to Puget's Sound. It will ruin railroads, destroy great industries, paralyze frontier cities. It would impoverish thousands on both sides of the line.

Is this advisable?

The alternative is a settlement by diplomacy—by a Convention to consider the substitution of a new treaty for the obsolete and outworn but not yet inactive Treaty of 1818.

The Canadians know that in our monstrous mackerel tariff of forty per cent. we are at once robbing them and afflicting ourselves; and they believe that in rigidly construing the Treaty of 1818 they are keeping within the line of international obligations. Shall we not try a new Convention before we resort to what is virtually war?

A Convention would have the alternative of arogating the Treaty of 1818, and then either making another better adapted to present conditions, or else falling back on the Treaty of 1783, which defined rights and liberties in a manner satisfactory to us, and, doubtless, to both parties.

A treaty signifies reciprocity. It means an exchange of desirable privileges. If the Treaty of 1818 really gives to Canada the right to deny bait to our fishermen, Canada is not likely to give up that right without some sort of concession on our part.

And what if the President goes on and declares horizontal retaliation, according to the provisions of the law and the howl of the land—what will it settle? It will settle some of our rich railroads, and it will settle Detroit and Buffalo, and Ogdensburgh—there is no doubt about that; but will it settle any principle? Will the quarrel vanish because we have resorted to violence? Of course not. It will be temporizing not deciding. It will not be statesmanship, but merely two school boys making up faces. It is a method unworthy of a great nation, and worthy only of a bully and a ruffian.

Still worse and more foolish would it be to retaliate simply by prohibiting the importation of Canada fish. This would be taxing the whole nation for the benefit of the Gloucester ring—a method invented by Robin Hood, the distinguished English "protectionist."

7,083.

No. 178.

The Right Hon. Sir H. T. Holland, Bart., G.C.M.G., M.P., to Governor-General the Most Hon. the Marquis of Lansdowne, G.C.M.G.

TELEGRAPHIC.

9th May, 1887.—Fisheries instructions naval officers being prepared; were delayed pending consideration joint national cruisers proposal, to which there seems now no prospect of giving effect. Are Canadian instructions of 16th and 23rd March last year both to be acted upon this season? Reply as soon as possible, and inform me what alterations in instructions made in consequence of Act passed last year.

9,173.

No. 178a.

Governor-General the Most Hon. the Marquis of Lansdowne, G.C.M.G., to the Right Hon. Sir H. T. Holland, Bart., G.C.M.G., M.P. (Received May 12th, 1887.)

GOVERNMENT HOUSE, OTTAWA,
27th April, 1887.

No. 140.

SIR,

With reference to previous correspondence on the subject of the Fishery Question, I have the honour to transmit to you a copy of an approved Minute of my Privy Council to which is appended a copy of the Special Instructions issued for this season to the officers in command of vessels employed in the protection of the Canadian Fisheries on the Atlantic coast.

I have much pleasure in calling your attention to the passages in which the Minister impresses upon such officers that in carrying out these instructions they are to be most careful not to strain the interpretation of the law in the direction of interference with the rights and privileges remaining to United States fishermen in Canadian waters under the Convention of 1818, and that the largest liberty compatible with the full protection of Canadian interests is to be granted to United States fishing vessels in obtaining in Canadian waters the privileges to which they are entitled under that Convention.

You will also observe that it has been determined to authorise the captains of cruisers in harbours to which United States fishing vessels are accustomed to resort for shelter only, to take entry from and grant clearance to the masters of such vessels without requiring them to go on shore for that purpose. This step has been taken in order to avoid the delay which has in some cases inevitably taken place owing to the necessity of requiring the masters of these fishing vessels to report to the Collector at the nearest Customs port, which might be at some distance from that part of the harbour which the vessel had entered.

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

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

Enclosure in No. 178a.

Special Instructions to Fishery Officers in Command Fisheries Protection Vessels.

DEPARTMENT OF FISHERIES, OTTAWA,
April 16th, 1887.

SIR,

In reference to the letters of this Department, dated March 16th, 1886, I have to intimate to you that during the present season, and until otherwise ordered, you will be guided in the performance of the duties entrusted to you by the instructions contained in that letter.

I have every reason for believing that these have been executed with efficiency and firmness as well as with discretion and a due regard to the rights secured by treaty to foreign fishing vessels resorting to Canadian waters.

I desire, however, to impress upon you that in carrying out those instructions, and protecting Canadian inshore fisheries, you should be most careful not to strain the interpretation of the law in the direction of interference with the rights and privileges remaining to United States fishermen in Canadian waters under the Convention of 1818.

To this end the largest liberty compatible with the full protection of Canadian interests is to be granted United States fishing vessels in obtaining in our waters shelter, repairs, wood and water.

Care should be taken that while availing themselves of these privileges, such vessels do not engage in any illegal practices, and all proper supervision necessary to accomplish this object is to be exercised, but it is not deemed necessary that in order to effect this an armed guard should be placed on board, or that any reasonable communication with the shore should be prohibited after the vessel has duly entered unless sufficient reasons appear for the exercise of such precautions.

In places where United States fishing vessels are accustomed to come into Canadian

waters for shelter only, the captain of the cruiser which may be there is authorised to take entry from and grant clearance to the masters of such fishing vessels without requiring them to go on shore for that purpose. Blank forms of entry and clearance are furnished to the captains of cruisers; these, after being filled in, are to be forwarded by the captain of the cruiser to the Customs officer of the port within whose jurisdiction they have been used. In cases of distress, disaster, need of provisions for the homeward voyage, of sickness or death on board a foreign fishing vessel, all needful facilities are to be granted for relief, and both you and your officers will be carrying out the wishes of the Department in courteously and freely giving assistance in such cases.

The above special instructions while designed with regard to the fullest recognition of all lawful rights and reasonable liberties to which United States fishermen are entitled in Canadian waters, are not to be construed as authorising a lax enforcement of the provisions of the laws for the protection of the Canadian Fisheries. Fishing, preparing to fish, procuring bait, trading or transshipping of cargoes, by United States fishing vessels within the three-mile limit, are manifest violations of the Convention of 1818, and of Imperial and Canadian statutes, and in these cases your instructions, which are explicit, are to be faithfully followed.

I have, &c.,
(Signed) GEORGE E. FOSTER,
Minister of Marine and Fisheries.

Certified Copy of a Report of a Committee of the Honourable the Privy Council for Canada, approved by his Excellency the Governor-General in Council on the 25th April, 1887.

The Committee of the Privy Council on the recommendation of the Minister of Marine and Fisheries, submit for your Excellency's approval the annexed Special Instructions to the officers in command of the Fisheries Protection vessels.

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

9,203.

No. 179.

Foreign Office to Colonial Office.

FOREIGN OFFICE,
May 12th, 1887.

SIR,

I am directed by the Marquis of Salisbury, to transmit to you a copy of a letter from Mr. C. W. Hall, containing observations on the North American Fisheries Question, and I am to suggest that, if Sir H. Holland sees no objection, it might be well to send a copy of it to the Canadian Government for any observations they may desire to offer.

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

The Under Secretary of State,
Colonial Office.

Enclosure in No. 179.

ELLENDALE, DAKOTA.

MY LORD,

I take the liberty of writing to you concerning the Fisheries Question, being an American by birth, but having been for nearly thirty years interested in the shore fisheries of Prince Edward Island and Nova Scotia—about the only places where the opposing interests clash. It is not, in my opinion, the question of right, but the method of its enforcement which makes trouble. I understand that on your own coasts the fishermen of France and Holland come wrongfully "within the three-mile line," and that your Coastguard vessel arrests and fines them therefor. Is this true?

If so, that is right, and no American, who is honest and manly, will object to Canada if she does the same thing with our fishermen if they fail to observe the laws of the Dominion. But Canadian officials have again and again confiscated and sold large

and fine fishing schooners worth from \$2,000 to \$4,000 with all their outfit for such petty trespass as the catching of a few fish to eat, buying a few dollars worth of bait, and the like. Is it just that such a crushing penalty such as you mete out to a slaver should be inflicted on innocent cruisers for a slight carelessness on the part of their employers?

Nor is this all. Our vessels go hundreds, and sometimes thousands, of miles along your coasts, even as far as Greenland, and we are liable to need repairs, food, medicine, ice, &c. These things they cannot purchase or take on board except at the risk of confiscation, and this policy is as distasteful and more ruinous to the people of the maritime provinces as to Americans. I have seen 160 to 200 sail in our harbour of Prince Edward Island, each of which bought bait barrels, salt, or food, or fuel, or procured and paid for repairs, &c., besides often packing and shipping their fares to the States by English packets. Hundreds of thousands of dollars were thus expended among the provincials who needed and still need this trade. Was it wise or just in Upper Canada, who has no interest in these fisheries, to ruin her own people and ports, in the hope of forcing a reciprocal free trade in grain and lumber?

I would further say that, in thirty years, I have never seen as many American vessels actively fishing within the three-mile limit on the coast of Prince Edward Island—and our own boats seldom take fish in quantity much inside the line—and most of the time have to fish outside that limit. No vessel, as a rule, needs to fish within the jurisdiction of Canada, but it is very easy for a crew when actively fishing to drift within the line and to do so without knowing it. In fact, it will occur to you that no living man at all times can tell how far he is from shore, and I have known vessels to anchor supposing themselves to be close to shore when nearly two miles out, and on the other hand to be wrecked when they supposed they were at a safe distance out.

I think if you will pardon the suggestion that some arrangement for licence to fish not exceeding \$1.00 per registered ton, and the privilege of purchasing provisions, bait, ice, &c., and procuring repairs, would be acceptable to the American Government and people. You will be told that the licence system was tried, but the first year it was \$0.50 and nearly all the vessels took them out, next year it was raised to \$1.00 and again paid, the third year it was \$2.00, *purposely* made so as to make it prohibitory and re open the difficulty. My authority for the last statement is Sir George Dundas, then Her Majesty's Representative as Governor of Prince Edward Island.

I heartily desire to see this matter settled with due regard to justice, right, and the good feeling and mutual esteem which should exist between England and her children. Pardon me if I have intruded on your patience or time, and believe me, with due respect,

Yours truly,
(Signed) CHARLES W. HALL.

Lord Salisbury,
London, England.

9,235.

No. 180.

Governor-General the Most Hon. the Marquis of Lunsdowne, G.C.M.G., to the Right Hon. Sir H. T. Holland, Bart., G.C.M.G., M.P. (Received May 13th, 1887.)

GOVERNMENT HOUSE, OTTAWA,
2nd May, 1887.

No. 150.

SIR,
I have the honour to forward herewith copies of telegraphic correspondence upon the subject of the "G. W. Pearce," the United States' fishing vessel, to which your telegram of the 26th April* must have had reference.

You will observe that the Master of the "G. W. Pearce" was afforded every facility for repairing the damage sustained by his vessel, but that he was refused permission to replace twenty hogsheads of salt alleged to have been lost at sea during his cruise.

This salt was required not for consumption by the crew but for curing fish, and my Government is of opinion that the purchase of salt for use in this manner, even although such salt might possibly be required to replace a supply of the some commodity lost by the vessel while at sea, is not a purpose for which United States' fishing vessels have a right, under the terms of the Convention of 1818, to enter Canadian waters.

The intention of the framers of the Convention was, as has been more than once pointed out, to afford to United States' fishing vessels such rights as could not be denied them without occasioning danger to the safety of the vessel and her crew. The rights specified in Article I of the Convention are all of them of a kind which fall within this description, it would, however, certainly not apply to the right of purchasing for a commercial purpose large quantities of such a commodity as salt.

The loss by a vessel of her stores of salt does not appear to differ in this respect from the loss of her fishing gear, or of the supplies necessary for the prosecution of her industry, and if the right to make good such losses were once conceded it would be impossible to place any restriction upon the extent to which advantage would be taken of the concession. It will, for instance, be obvious to you that in many cases the truth or untruth of the statements made by the master of a vessel alleging that the stores he desired to purchase were required in order to replace losses sustained at sea, could not possibly be tested, and that there would be nothing to prevent such vessels from making a practice of leaving home without a sufficient supply of such stores or transferring such stores to other vessels, in the confidence that it would be possible to make good the deficiency in a Canadian port.

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

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

Enclosure 1 in No. 180.

United States' Consul at Halifax to the Hon. M. Bowell.

TELEGRAM.

HALIFAX,
April 19th, 1887.

American fishing vessel while on the Banks lost rudder, spars, and twenty hogsheads of salt, is now in port for repairs. Collector will permit all repairs, but that of salt. Fishing materials, which include salt, gave this vessel the distinctive character of fishing vessel, and place her within the purview of the treaty under which she is entitled to privilege of repairing damages to any and everything necessary to the proper equipment of a fishing vessel, will you permit her to repair damages to salt, to enable her to complete her voyage?

(Signed) M. H. PHELAN.

Enclosure 2 in No. 180.

The Hon. M. Bowell to United States' Consul at Halifax.

TELEGRAM.

OTTAWA,
April 20th, 1887.

Purchase of salt is not one of the purposes for which United States' fishing vessels can use our waters.

(Signed) M. BOWELL.

9,203.

No. 181.

The Right Hon. Sir H. T. Holland, Bart., G.C.M.G., M.P., to Governor-General the Most Hon. the Marquis of Lansdowne, G.C.M.G.

No. 120.

DOWNING STREET,
May 16th, 1887.

MY LORD,

I have the honour to transmit to your Lordship a copy of a letter* received through the Foreign Office from Mr. C. W. Hall, containing remarks on the North American Fisheries Question.

I shall be obliged if you will be so good as to communicate this letter to your Ministers, with a request that they will furnish Her Majesty's Government with any observations upon it which they may desire to offer.

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

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

9,235.

No. 182.

Colonial Office to Foreign Office.

DOWNING STREET,
17th May, 1887.

SIR,

With reference to your letter of the 26th of April and to the letter from this department of the 30th of that month* relative to the alleged refusal of the Canadian Authorities at Halifax to supply salt to American fishing vessels driven in to that port to repair damages, I am directed by Secretary Sir Henry Holland to transmit to you, to be laid before the Marquis of Salisbury a copy of a despatch† from the Governor-General of Canada respecting the case of the 'United States' fishing vessel "G. W. Pearce."

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

The Under Secretary of State,
Foreign Office.

7,088.

No. 182a.

Colonial Office to Foreign Office.

DOWNING STREET,
17th May, 1887.

SIR,

I am directed by Secretary Sir Henry Holland to acknowledge the receipt of your letter of the 13th ultimo,‡ in which it is suggested that in consequence of the improbability of arriving at any agreement with the United States Government in respect to the proposal for the joint action of national cruisers during the present fishing season it will be desirable to consider the instructions to be given to the officers of the Imperial cruisers for their guidance on the North American Station.

Before considering the instructions to be given to the Imperial officers, Sir Henry Holland thought it advisable to ascertain precisely the instructions under which the Canadian officers were acting this season, and I am to enclose a copy of a telegram§ which was addressed, with Lord Salisbury's concurrence, to the Governor-General of Canada, on the 9th instant, together with the decypher of a telegram ¶ which was received from the Marquis of Lansdowne in reply.

I am also to enclose a copy of a despatch¶ which has been received from the Governor-General, enclosing the supplementary instructions referred to in his telegram. I am to request that these papers may be laid before Lord Salisbury for his consideration; with respect to the Canadian supplementary instructions, Sir Henry Holland would propose, with his Lordship's concurrence, to express the satisfaction of Her Majesty's Government with their purport, and I am to state that a further communication will shortly be addressed to the Foreign Office in regard to the instructions to the Imperial Officers.

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

The Under Secretary of State,
Foreign Office.

* Nos. 164 and 175. † No. 184. ‡ No. 153a. § No. 178. ¶ See No. 186. ¶ No. 178a.
(2566) 2 H

9,697.

No. 183.

*Foreign Office to Colonial Office.*FOREIGN OFFICE,
May 18th, 1887.

SIR,

I am directed by the Secretary of State for Foreign Affairs to transmit to you, to be laid before Sir Henry Holland a copy of a circular issued by the United States' Treasury for the purpose of obtaining detailed information respecting the fisheries.

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

The Under Secretary of State,
Colonial Office.

Enclosure in No. 183.

CIRCULAR.

STATISTICS OF THE FISHERIES.

(Superseding Circular 63, May 28, 1886, of which the supply is exhausted).

1887.

Department No. 45.
Bureau of Navigation.

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY, WASHINGTON, D. C.,
April 11th, 1887.

TO COLLECTORS OF CUSTOMS AND OTHERS,

It is represented to this Department by the Honourable Spencer F. Baird, Commissioner of Fish and Fisheries, that, in view of the questions arising as to the shaping and negotiating of a new fishery treaty with Great Britain affecting Colonial waters in North America, and for other reasons, it is desirable to have at hand, available for reference, full and accurate information regarding our fisheries.

A large percentage of the product of the fisheries of the United States is taken by vessels licensed for the fisheries or the coasting trade, and the owner and master in each case are thoroughly informed relative to the movements of the vessel and the quantity of fish, shell-fish, and other products obtained.

It is, therefore, directed that whenever the owner, master, or agent of any vessel of over five tons burden, engaged in the capture or transportation of any kind of fish, shell-fish, crustacea, or other products of the seas, rivers, or lakes, shall surrender his marine papers, or shall present himself at the custom-house for the purpose of obtaining or renewing the same, or of making application for their renewal, the collector or his deputy will question him regarding the information required by the blank appended hereto, and will fill out the blank from the details thus obtained, and certify that it is correct. The statistics should be for the exact period covered by the papers about to be surrendered.

On the first day of each month the collector will forward by mail all such blanks filled out during the preceding month, addressed to "The Commissioner of Fish and Fisheries, Washington, D. C."

Such additional copies of this circular as may be necessary for your use will be furnished by the Bureau of Navigation.

C. S. FAIRCHILD,
Secretary.

TREASURY DEPARTMENT.

*Statistics of the Vessel Fisheries of the United States furnished by**, Collector of Customs for the Port of**Date of Record,*

Name of vessel, ; rig, ; net tonnage,
Present value of vessel, \$; value of apparatus and outfit, \$
Hailing port, ; fishing port,

Papers about to be surrendered or renewed were issued , 188 , and given up , 188 .

Name of owner or agent, ; P. O. address,

Name of master, ; P. O. address,

Number of persons on vessel, as follows : American subjects, (white,) ; American subjects, (colored) ; British provincials, ; other foreigners, ; total,

Name separately all fisheries engaged in during period covered by papers mentioned above,

Where fishing, and on what grounds,

Kinds of apparatus used,

Date of starting on first trip under above papers, ; date of return from last trip under same,

Total number of trips made, ; how long idle during period covered by above papers,

Quantity of fish or other products taken or transported during period covered by above papers, as follows ;

Pounds sold fresh : Mackerel, ; cod, ; halibut, ; herring, ; haddock, ; white-fish, ; lake trout, ; menhaden (bbls.) ; other fish, (specifying kinds and quantities),

Pounds dry-salted or split for salting : Cod, ; hake, ; haddock, ; pollack, ; other fish (specifying kinds and quantities),

Barrels brine-salted, (sea-packed) : Mackerel, ; sea-herring, ; white fish, ($\frac{1}{2}$ -bbls.) ; lake trout, ($\frac{1}{2}$ -bbls.) ; lake herring, ($\frac{1}{2}$ -bbls.) ; other fish,

Bushels of shell-fish : Oysters caught for market, ; oysters caught for trans planting, ; oysters (not caught by crew) transported only, ; clams caught by crew, ; (clams not caught by crew transported only), ; scallops, ; other shell fish,

Number of lobsters : Lobsters caught by crew, ; lobsters (not caught by crew) transported only,

Gallons of oil (specify kind and quantity),

Miscellaneous products : Seal skins, ; sponges, ; other products, (specify kind and quantity),

Total value of fish and other products taken, before deducting any expenses, \$

Disposition made of fish or other products (where landed),

Has the vessel entered foreign waters for any purpose whatever during the above period ? If so, please answer fully the questions on the following page ; if not, they may be neglected.

Statistics of American Fishing Vessels entering Foreign Waters, especially those of Canada, Newfoundland, Iceland, or Greenland.

Name of vessel, ; rig, ; net tonnage

Number of weeks actual fishing in foreign waters,

Where fishing, and on what grounds,

Kinds of apparatus used,

Total quantity of fish or other products taken in foreign waters, as follows :—

Pounds sold fresh : Mackerel, ; herring, ; cod, halibut, white-fish, ; lake trout, ; other fish.

Pounds dry-salted : Cod, ; hake, ; haddock, ; halibut, ; other fish,

Barrels brine-salted (sea-packed) : Mackerel, ; sea herring, ; white fish, ($\frac{1}{2}$ -bbls.), ; lake trout ($\frac{1}{2}$ -bbls.), ; lake herring ($\frac{1}{2}$ -bbls.), ; other fish,

Other products (state kind and quantity),

State fully the quantity of each kind taken within three miles of any land, and locality where taken,

Total value of fish taken in foreign waters, \$

Value of portion taken within three miles of land, \$

(2566)

Money paid to foreign merchants for ice, \$; bate, \$; supplies, \$;
 gear, \$; other expenditures and repairs, \$;
 Number of times entering foreign ports for shelter, repairs, bait, or supplies during period
 covered by last papers,

Port of

188

I CERTIFY that the above information was obtained as prescribed by the Circular of
 the Treasury Department, dated April 11th, 1887.

Collector of Customs.

9,810.

No. 184.

Foreign Office to Colonial Office.

FOREIGN OFFICE,
May 20th, 1887.

Confidential.

SIR,

I am directed by the Secretary of State for Foreign Affairs to transmit to you, to
 be laid before Sir Henry Holland, a copy of a despatch from Her Majesty's Minister at
 Washington, reporting a conversation with Senator Edmunds on the subject of the
 North American Fisheries question.

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

The Under Secretary of State,
 Colonial Office.

Enclosure in No. 184.

WASHINGTON,
May 3rd, 1887.

Treaty, No. 59.
 Confidential.

MY LORD,

Senator Edmunds, one of the leaders of the Republican Party in the Senate, a
 staunch advocate of the rights of the Gloucester fishermen, and an active participator in
 the recent retaliatory legislation, called upon me to-day, and at once proceeded to discuss
 the Fishery question.

The Senator said that he understood that negotiations, which, however, he did not
 think necessary, were being carried on in London, and that your Lordship had proposed
 to revert to the Fishery Articles of the Treaty of Washington as the best means of
 settling the dispute. But he said it could hardly be expected that the Senate, who
 had denounced those articles for reasons which they deemed good and sufficient,
 should, after what had lately occurred, consent to renew them unless they were presented
 under a new form of arrangement.

The commercial question involved ought, he thought, to be kept separate from
 the fishery question. If Canada did not want commercial intercourse with her neigh-
 bours she had a perfect right to say so, and her ships would receive the same treatment
 in American ports as she chose to impose on American ships in Canadian ports. It
 was a question of the continuance of commercial comity between the two countries,
 which had more or less always existed, but the fishery question bore a different cha-
 racter. It was a local and provincial one, and from all he had learnt when on the
 Senate sub-Committee, appointed to investigate the fishery disputes, he had come to
 the conclusion that the Canadian fisheries were of no value to American fishermen, and
 that there was no reason for their going into Canadian waters at all to follow their
 occupation.

Now, said the Senator, if, according to their own showing, this is the case, these
 men must abide by their assertions, and he would be the first to allow them to be
 punished for trading with Canadian ports under the pretence of fishing operations, in
 waters which, according to their own statements, were of no use to them. Canada had
 made regulations which he thought had been injudiciously enforced by the provincial
 authorities, but, as he had said before, if she did not wish to trade she had the right to

exclude all vessels from her ports as well as fishing vessels which might trade under false pretences.

The irritation which had been caused was of no account, and would subside if only the two Governments kept their tempers and allowed matters to right themselves. Senator Edmunds did not ask for information of any kind as to what was passing between the two Governments in connection with the questions at issue, nor did he attack the present Administration for the course which they had pursued in recommending the appointment of a Commission which he had so strenuously opposed in the Senate.

The language which he held was so much at variance with his utterances in the Senate, that I am induced to believe that he had some object in view in coming to see me, which, from his allusion to pending negotiations, may have been to intimate to me the inability of any action being taken without the consent of the co-treaty-making power, and by his phrase "allow matters to right themselves," to indicate that the Senate would undertake to see them righted according to their own judgment and not in accordance with the views either of the President or the Secretary of State.

However this may be, Senator Edmunds was most cordial and conciliatory in his language to me.

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

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

9,890.

No. 185.

Foreign Office to Colonial Office.

FOREIGN OFFICE,
May 21st, 1887.

SIR,

In reply to your letter of the 17th instant,* I am directed by the Marquis of Salisbury to request you to inform Sir Henry Holland that his Lordship concurs in his proposal to express the satisfaction of Her Majesty's Government at the purport of the supplementary instructions issued by the Canadian Government to the Fisheries Police.

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

The Under Secretary of State,
Colonial Office.

11,476.

No. 186.

Governor-General the Most Hon. the Marquis of Lansdowne, G.C.M.G., to the Right Hon. Sir H. T. Holland, Bart., G.C.M.G., M.P.

Confidential.

GOVERNMENT HOUSE, OTTAWA,
26th May, 1887.

SIR,

I had the honour to send to you on the 12th instant a telegraphic message in cypher, the substance of which is as follows:—

"In reply to your telegram of 9th May† a copy of the new supplementary instructions was mailed on April 28th. The instructions of 16th and 23rd March are still in force. Directions were, however, given to Captain Scott last year to warn United States vessels off the Bay des Chaleurs. My Government trust similar instructions will be issued by you. No mention seems to be made respecting Canadian rights as to headland lines. Last year this was left in abeyance in the hope of negotiations being resumed for adjustment of all questions. My Government does not think this should be indefinitely continued."

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

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

* No. 182a.

† No. 178.

10,575.

No. 187.

Foreign Office to Colonial Office.

Confidential.

FOREIGN OFFICE,
May 30th, 1887

SIR,

I am directed by the Marquis of Salisbury to acknowledge the receipt of your letters of the 30th of April and 17th instant* relative to the refusal of the Canadian authorities to supply salt to the American fishing vessel "G. W. Pearse."

I am to request that you will state to Sir Henry Holland that there appears to his Lordship to be a distinction between the admission of the right of American fishing vessels to come into Canadian ports for salt, and the consent to let it be bought by a fishing vessel which on other grounds has rightfully come in. To refuse it in the latter case is a matter which does not depend on the terms of the Convention of 1818, and might tend to exasperation without being strictly necessary for upholding Treaty rights.

Under these circumstances Lord Salisbury hesitates to communicate to the United States Minister a copy of the despatch which has been received from the Governor-General on this subject, and would be glad to learn whether Sir Henry Holland would be disposed to urge upon the Canadian Government the expediency of taking a lenient view in similar cases in future.

If an assurance to that effect could be received from Canada by telegraph it might be possible to make a more conciliatory reply to Mr. Phelps' note.

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

The Under Secretary of State,
Colonial Office.

9,810.

No. 188.

Colonial Office to Foreign Office.

DOWNING STREET,
May 31st, 1887.

SIR,

I am directed by the Secretary of State for the Colonies to acknowledge the receipt of your letter of the 20th instant,† forwarding copy of a despatch from Her Majesty's Minister at Washington, giving an account of a conversation with Senator Edmunds on the North American Fishery Question.

I am to enquire whether the Marquis of Salisbury sees any objection to the communication of Sir L. West's despatch to the Governor-General of Canada for his personal information and not for publication.

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

The Under Secretary of State,
Foreign Office.

10,972.

No. 189.

Governor-General the Most Hon. the Marquis of Lansdowne, G.C.M.G., to the Right Hon. Sir H. T. Holland, P.C., G.C.M.G., M.P. (Received June 7th, 1887.)

No. 166.

GOVERNMENT HOUSE, TORONTO,
May 20th, 1887.

SIR,

With reference to previous correspondence on the subject of the alleged ill-treatment of the United States fishing vessels, "Laura Sayward" and "Jenny Seaverns,"

* Nos. 175 and 182.

† No. 184.

and with especial reference to the affidavit purporting to have been sworn to by Captain Medeo Rose of the first-named vessel, copy of which formed an enclosure in Mr. Stanhope's despatch, No. 274, of the 16th December last,* I have the honour to forward herewith a certified copy of an approved Minute of my Privy Council, to which is appended a letter from the Collector of Customs at Shelburne, enclosing a declaration made by Captain Rose, in which he states that the statements alleged to have been made by him in that affidavit "are all untrue."

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

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

Enclosure in No. 189.

Certified copy of a Report of a Committee of the Honourable the Privy Council for Canada, approved by his Excellency the Governor-General in Council on the 16th May, 1887.

On a Report, dated 10th May, 1887, from the Minister of Marine and Fisheries submitting with reference to his report, approved in Council on the 23rd of March last, as to the alleged ill-treatment of the United States fishing vessels, "Laura Sayward" and "Jenny Seaverns," and to the affidavit of Captain Medeo Rose, of the first-named vessel, the copy of a letter from the Collector of Customs at Shelburne, Nova Scotia, dated 20th ultimo, together with an affidavit from Captain Rose herewith, in which it will be observed that he not only bears testimony to the generous treatment that had been extended to him when at the port of Shelburne on previous occasions, but also declares that the statements made in the affidavit of the 15th October last, purporting to be sworn to by him, and which affidavit formed the basis of a despatch from Mr. Bayard, the United States Secretary of State, protesting against the inhuman and inhospitable conduct of the Collector of Customs at Shelburne, Nova Scotia, to use Captain Rose's own words, "are all untrue."

The Committee recommend that your Excellency be moved to forward a copy of this Minute, together with copies of the papers mentioned, to the Right Honourable the Secretary of State for the Colonies.

All which is respectfully submitted for your Excellency's approval.

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

CUSTOM HOUSE, SHELburne,
April 20th, 1887.

SIR,
With reference to my letter of 5th January last, and a statement made by Medeo Rose, of schooner "Laura Sayward," a copy of which was sent me from your department for my report thereon, I beg to state that Captain Rose, with his vessel, is now lying off Sandy Point. He reported and obtained clearance yesterday on board Dominion cutter "Triumph." On being questioned by Captain Lorway relative to the statement made in October last, he said much of it was untrue, and denied having made it. Enclosed please find a statement signed by Captain Rose in my presence, at Sandy Point, sworn to and witnessed by Captain John Purney, J.P. He made no objection at all to signing it, and admits that this statement is true in every particular. Will you kindly have it forwarded to John Tilton, Esq., Deputy Minister of Fisheries.

I am, &c.,
(Signed) W. W. ATWOOD,
Collector.

J. Johnson, Esq.,
Commissioner of Customs, Ottawa.

I, Medeo Rose, Master of the schooner "Laura Sayward," of Gloucester, do solemnly declare and say that on the 6th October last I arrived at the port of Shelburne, Nova Scotia, and reported my vessel at the Custom House some time after 4 p.m.

Stated to the Collector that I was from Western Banks, bound home, and required provisions as follows, viz.: 7 lbs. sugar, 3 lbs. coffee, 1 bushel potatoes, 2 lbs. butter, and to fill water. This was all. The Collector told me to fill the water, but as there was no provision made in the treaty for the purchase of supplies or stores, he would telegraph the department at Ottawa at once; that no doubt they would be allowed, and I consented to wait until the next morning for a reply.

I called at the Custom House early the next morning, before 7 o'clock; stated that as the wind was fair, and blowing a strong breeze, I would not wait for a reply to telegram, but take a clearance, which the Collector gave me. I was treated kindly, allowed to enter my vessel after customs hours, and a clearance granted me next morning before the office was supposed to be open. I was at the port again in November on my way to the Banks, and the Collector allowed me to report my vessel inwards and outwards, and gave me a clearance at 8 in the evening. The statements purporting to have been made by me to the effect that the collector refused to give me my papers when I asked for them, also that his treatment towards me was harsh and cruel, driving myself and crew to sea, having but little flour and water, &c., are all untrue.

And I make this solemn declaration conscientiously believing the same to be true, and by virtue of an Act of Parliament entitled "An Act for the suppression of voluntary and extra-judicial oaths.

(Signed) MEDEO ROSE.

Taken and declared before me at Sandy Point, this 20th day of April, A.D. 1887.

(Signed) JOHN PURNEY, J.P.

10,985.

No. 189A.

Governor-General the Most Hon. the Marquis of Lansdowne, G.C.M.G., to the Right Hon. Sir H. T. Holland, Bart., G.C.M.G., M.P. (Received June 7th, 1887.)

GOVERNMENT HOUSE, TORONTO,
25th May, 1887.

Secret and Confidential.

SIR,

I was informed a few days ago by Sir John Macdonald that Sir Charles Tupper, my Minister of Finance, intended to take advantage of the adjournment of the House of Commons for a week in order to visit Baltimore and Washington. Sir John Macdonald expressed his opinion that it would be desirable that Sir Charles should avail himself of this opportunity in order to meet Mr. Bayard and discuss with him informally some of the points which have arisen in regard to the Fisheries dispute.

Under these circumstances I could see no objection to furnishing Sir Charles with a letter of introduction, of which a copy is enclosed, to Sir Lionel West acquainting him with the object of Sir Charles' visit. It will be within your knowledge that a similar course has been pursued on former occasions.

I have no doubt that nothing but good is likely to result from a friendly discussion such as that which is likely to take place, and that Sir Charles Tupper, will be able to represent the action which has been taken by the Dominion Authorities in enforcing the Customs and Fishery Laws in a manner calculated to remove in some degree the feelings of irritation which it has produced.

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

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

Enclosure in No. 189A.

Lord Lansdowne to Sir L. S. S. West.

GOVERNMENT HOUSE, TORONTO,
17th May, 1887.

DEAR SIR LIONEL,

Sir Charles Tupper, the Canadian Minister of Finance, whose acquaintance you have, I think, made, is likely to be in Washington before long.

It will be desirable that he should unofficially have an opportunity of seeing the Secretary of State, and of comparing notes with him as to one or two of the points involved in the Fisheries dispute.

I have reason to know that Sir Charles Tupper's views as to these are moderate, and in accordance with those which have been expressed from time to time by myself, and I shall be very glad if you are able to give him any assistance in your power, and

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

10,575.

No. 190.

Colonial Office to Foreign Office.

DOWNING STREET,
11th June, 1887.

SIR,

I am directed by the Secretary of State for the Colonies to acknowledge the receipt of your letter of the 30th ultimo,* respecting the refusal of the Canadian authorities to supply salt to the American fishing vessel "G. W. Pearse."

In reply I am to request that you will inform the Marquis of Salisbury, that it appears to Sir H. Holland that the distinction drawn in your letter between admitting the right of American fishing vessels to enter a Canadian port for the express purpose of buying salt, and consenting to allow salt to be bought by a fishing vessel which has rightfully entered such port on other grounds, could not be accepted by the Canadian Government as disposing of their contention. It does not seem possible to admit that, because a vessel has lawfully entered a port for one of the purposes recognised by the Convention of 1818, it can take advantage of this circumstance to do things which are not specified in that Convention, and which, in fact, might be the real object of entering. The true test in each case is, in the opinion of Sir H. Holland, the purpose for which an article (in this case, salt) is wanted; and if the salt, as in the present case, is wanted for curing fish, it would seem that under whatever circumstances the vessel may have entered the port, the purchase of that article cannot be claimed as a privilege under the Convention. It would otherwise be impossible to place any restriction on the purchases made by an American vessel which has ostensibly run in for repairs, and bait, gear, and stores required for fishing purposes, might be obtained without hindrance, and so the manifest object of the Convention might be evaded and defeated.

Sir H. Holland apprehends that for these reasons the Dominion Government would protest against the surrender in this case of a part of the position which has been taken up with the concurrence of Her Majesty's Government, viz; that in terminating the Treaty of Washington, the United States Government has brought again into force, and must abide by, the specific provisions of the Convention of 1818. It appears to him, further, to be a question deserving consideration, whether if a concession of the kind suggested were made on a point of detail, the prospect of the United States Government entertaining the proposal to resume provisionally the provisions of the late treaty would not become less hopeful.

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

The Under Secretary of State,
Foreign Office.

11,478.

No. 190A.

Governor-General the Most Hon. the Marquis of Lansdowne, G.C.M.G., to the Right Hon. Sir H. T. Holland, Bart., G.C.M.G., M.P. (Received June 13th, 1887.)

GOVERNMENT HOUSE, OTTAWA,
31st May, 1887.

Confidential.

SIR,

In reference to my despatch, secret and confidential, of the 25th instant† upon the subject of Sir Charles Tupper's recent visit to Washington, I have the honour to inform

you that since his return I have received from him an account of his reception by the Secretary of State, and of the conversation which took place upon that occasion.

It appears that Sir Charles Tupper had received through a third person an intimation that it would be agreeable to Mr. Bayard to have an unofficial conversation of this kind with him, and that upon the strength of this Sir Charles, whose presence in Washington had been announced to Mr. Bayard by Sir L. West, called upon that gentleman on the morning of the 21st instant.

Sir Charles pointed out to Mr. Bayard that while a genuine desire prevailed in this country for amicable relations with the United States, no Government could exist in Canada that did not maintain the rights secured to the Dominion by treaty, and that in all cases where those rights had been insisted upon the Canadian authorities had been actuated, not by a desire to interfere needlessly or vexatiously with the fishermen of the United States, but by a conviction that such action was absolutely necessary in order to prevent those fishermen from systematically making use of the territorial waters of the Dominion for purposes not permitted by the Convention of 1818.

The action of the Canadian Government in allowing the fishermen of the United States the free use of our waters for a year after the expiration of the Fishery Clauses of the Treaty of 1871, was an earnest of the good faith of the Canadian Government. This concession, for which it had been attacked by its opponents in Parliament, had been made in the expectation that the United States Government would be able to carry a proposal for the appointment of a Joint Commission to settle the whole question. Sir Charles added that he regretted that the President's proposal for the appointment of such a Commission had unfortunately been rejected without sufficient consideration by Congress. He also referred to his interview with Mr. Frelinghuysen in 1884, when he visited Washington under somewhat similar circumstances, and to the prospect which had existed at that time of an understanding being arrived at for the establishment of improved trade relations between the two countries.

In regard to the present prospect of such an arrangement, Sir Charles insisted upon the impracticability of the proposals which had recently been put forward by Mr. Butterworth, Mr. Erastus Wiman, and others for the establishment of a complete Customs Union between Canada and the United States. He expressed his opinion that Canada would never entertain a proposal for enacting anything like the tariff of the United States against England, while admitting the products of the United States duty free. If on the other hand there were to be free trade between Canada and the United States without a tariff directed against English imports entering Canada, no restrictions could be devised that would prevent the United States from being flooded with English manufactures imported through Canada. He dwelt, however, upon the fact that after the Treaty of 1854 had been abrogated, legislation had taken place in the Canadian Parliament, and was still in force, under which the Canadian Government was enabled to reduce or cancel the duties imposed upon certain articles imported into Canada from the United States, whenever the United States Government might cancel or reduce its duties upon the same articles. With reference to this point he urged upon Mr. Bayard that many of the objections which had been formerly entertained by the people of the United States to reciprocity with Canada in certain natural products, more particularly coal and lumber, were, for various reasons, no longer likely to be entertained to the same extent, and that possibly a solution of the difficulty might be found in the free interchange of the products of the farm, the forest, and the mine.

Mr. Bayard expressed great satisfaction at having been able to meet Sir Charles Tupper, and stated that he shared his desire to arrive at an amicable settlement, and his opinion that the President's proposal for a Commission had been rejected without sufficient consideration. He added—and this statement appears to be one of great importance—that his Government was determined to resist any pressure which might be put upon it to adopt non-intercourse with Canada, and would, on the contrary, be glad if a large measure of reciprocity could be devised. He expressed his agreement with Sir Charles as to the impracticability of Mr. Wiman's views, but thought that the agitation was doing good by directing public attention in the United States to the value of Canadian trade. He added that considering that the negotiations in progress specially involved Canadian interests, it might be desirable that a Canadian statesman should be deputed to visit Washington officially for the purpose of considering with him the question in all its bearings. He led Sir Charles Tupper to suppose that after communication with the President he would make a suggestion of some sort as to this.

The conversation then turned upon the action of the Canadian authorities in enforcing the Fishery and Customs Laws, in regard to which Sir Charles pointed out

that the recent action of the Department of Marine and Fisheries had been strictly in accordance with the provisions of the Convention of 1818, and that if American fishing vessels were to be allowed to enter Canadian waters freely upon pretences such as those which had been put forward in recent cases (notably in one where an application was made for leave to replace stores alleged to have been consumed or lost at sea during the prevalence of bad weather), the whole British Navy would not be able to prevent the Canadian coast from being used, in defiance of the terms of the Convention, as a base of operations for United States fishermen. Sir Charles thought that Mr. Bayard seemed to recognise the force of this reasoning.

Mr. Bayard then expressed his regret that, as Congress was not sitting, it was not in the power of his Government to adopt the proposal made to him by Lord Salisbury, to have free fishing and free fish pending negotiations. He hoped, however, that an early and satisfactory solution of the problem might not be beyond reach.

The general tenor of the conversation appears to have been of a most friendly and reassuring character, and I have no doubt that Sir Charles' visit will have contributed something to allay any feelings of irritation which may have lately existed at Washington in regard to these matters.

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

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

7,088.

No. 191.

Colonial Office to Foreign Office.

DOWNING STREET,
14th June, 1887.

SIR,

With reference to the concluding paragraph of the letter from this Department of the 17th ultimo,* relating to the North American Fisheries question, I am directed by Secretary Sir Henry Holland to transmit to you, to be laid before the Marquis of Salisbury, a copy of a letter† which it is proposed to address to the Admiralty respecting the instructions which should be given to the naval officers in command of Her Majesty's ships on the North American station for their guidance whilst engaged in the protection of the fisheries.

Sir Henry Holland would be glad to be informed whether the Marquis of Salisbury concurs in the proposed instructions.

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

The Under Secretary of State,
Foreign Office.

10,972.

No. 192.

Colonial Office to Foreign Office.

DOWNING STREET,
17th June, 1887.

SIR,

With reference to the letter from this department of the 27th of April,‡ relating to the treatment of the United States fishing vessels "Laura Sayward" and "Jenny Seaverns," I am directed by Secretary Sir Henry Holland to transmit to you, to be laid before the Marquis of Salisbury for such action as he may think proper to take upon it, a copy of a despatch§ from the Governor-General of Canada with an affidavit by the Master of the "Laura Sayward."

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

The Under Secretary of State,
Foreign Office.

No. 182a.

† See No. 201.

‡ No. 170.

§ No. 189.

(2566)

2 I 2

11,932.

No. 193.

Governor-General the Most Hon. the Marquis of Lansdowne, G.C.M.G., to the Right Hon. Sir H. T. Holland, Bart., G.C.M.G., M.P. (Received June 20th, 1887.)

GOVERNMENT, HOUSE, OTTAWA,

9th June, 1887.

Confidential.

SIR,

It will be in your recollection that in my despatch Confidential of the 31st May* I repeated to you the description which Sir Charles Tupper had given me of his recent interview with Mr. Bayard at Washington, and I stated that Sir Charles had gathered from what Mr. Bayard had said to him that it was likely that he, Mr. Bayard, would, after he had seen the President, communicate with him further in regard to the questions which they had discussed.

2. Sir Charles Tupper called upon me yesterday and showed me a letter, dated 31st May, which he had received from Mr. Bayard, and which he asked me to read. A copy of this letter is enclosed herewith. Sir Charles impressed upon me that Mr. Bayard in representing him as having in effect taken upon himself to invite negotiations at Washington [*v.* page 4 of the letter] had given a somewhat misleading description of what had passed between them. Their meeting had, it will be remembered, taken place in consequence of a suggestion made by Mr. Bayard to a third person.

3. I observed that it was desirable that these informal communications should now give place to a discussion of Mr. Bayard's latest proposal through the usual official channels, and I suggested that in his reply to Mr. Bayard he should state that with this object he had placed the correspondence in my hands for confidential communication to you.

4. I also pointed out to Sir Charles that Mr. Bayard was in error in supposing that there had been any disposition on the part of Her Majesty's Government to postpone Canadian interests to its own, or to retard by needless delays a settlement desired by and advantageous to the people of Canada and the United States. Sir Charles entirely concurred with me upon both these points, which are touched upon in his reply to Mr. Bayard. A copy of this is also enclosed herewith.

5. It appears to my Government that although there are obvious difficulties in the way of effecting such an arrangement as Mr. Bayard desires—an arrangement which would embrace "the entire commercial relations of the two countries"—while Congress is not sitting; yet the tone of his letter, as well as his intimation referred to in my despatch already quoted that the Executive had no intention of adopting a policy of non-intercourse with Canada, render it desirable that his proposal should receive at the hands of Her Majesty's Government every encouragement of which the circumstances admit.

6. While therefore in submitting this correspondence to your consideration my Government is not able to offer any definite recommendation which might form the basis of negotiations such as those which Mr. Bayard invites, it notes with much satisfaction the anxiety which he has expressed for an amicable adjustment of the commercial relations of Canada and the United States, and trusts that Her Majesty's Government will afford every facility for such a settlement, and for the full representation of Canadian interests in any negotiations which may take place upon these subjects. My Government would recommend that Mr. Bayard should be invited to embody in a formal proposal the suggestions which he has made unofficially to Sir Charles Tupper with the view of securing the ultimate assemblage of a Conference or Commission for the purpose of dealing with the questions now at issue.

7. In the meanwhile it will, as I have already had the honour of explaining to you, be the endeavour of my Government to avoid as far as possible all action which might embitter the controversy, or diminish the prospects of an amicable solution. It is satisfactory that up to the present time the complaints which have been made by United States fishermen of the conduct of the Canadian authorities during the present fishing season have been neither numerous nor important.

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

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

Enclosure 1 in No. 193.

*Personal and Unofficial.*WASHINGTON,
May 31st, 1887.

MY DEAR SIR CHARLES,

The delay in writing has been unavoidable.

In the very short interview afforded by your visit I referred to the embarrassment arising out of the gradual practical emancipation of Canada from the control of the Mother Country and the consequent assumption by that community of attributes of an autonomous and separate sovereignty, not, however, distinct from the Empire of Great Britain.

The awkwardness of this imperfectly developed sovereignty is felt most strongly by the United States, which cannot have formal treaty relations with Canada, except indirectly and as a Colonial dependency of the British Crown, and nothing could better illustrate the embarrassment arising from this amorphous condition of things, than the volumes of correspondence published severally this year, relating to the Fisheries, by the United States, Great Britain, and the Government of the Dominion.

The time lost in this circumlocution, although often most regrettable, was the least part of the difficulty, and the *indirectness* of appeal and reply, was the most serious feature, ending, as it did, very unsatisfactorily.

It is evident that the commercial intercourse between the inhabitants of Canada and those of the United States has grown into too vast proportions to be exposed much longer to this wordy triangular duel, and more direct and responsible methods should be resorted to.

Your own able, earnest, and patriotic services in the Government and Parliament of the Dominion, are well known and afford ample proof of your comprehension of the resources, rapidly increasing interests, and *needs* of British North America.

On the other hand, I believe I am animated by an equal desire to serve my own country and trust to do it worthily.

The immediate difficulty to be settled, is found in the Treaty of 1818, between the United States and Great Britain, which has been *questio vexata* ever since it was concluded, and to-day is suffered to interfere with and seriously embarrass the good understanding of both countries in the important commercial relations and interests, which have come into being since its ratification, and for the adjustment of which it is wholly inadequate, as has been unhappily proved by the events of the past two years.

I am confident we both seek to attain a just and permanent settlement, and there is but one way to procure it, and that is by a straightforward treatment on a liberal and statesmanlike plan of the entire commercial relations of the two countries.

I say *commercial* because I do not propose to include, however indirectly, or by any intendment, however partial or oblique, the political relations of Canada and the United States, nor to affect the legislative independence of either country.

When you were here I was prepared to send my reply to the "observations" upon my proposal for a settlement (of November 15th last) which were communicated to Mr. Phelps by Lord Salisbury on March 24th, and also to express my views of his Lordship's alternative proposition.

Your visit and invitation to negotiate here was entirely welcome, and of this I endeavoured to impress you.

Conversation with the President has confirmed these views, and now it remains to give them practical effect.

Great Britain being the only treaty-making party to deal with the United States, the envoys of that Government alone are authorised to speak in her behalf and create her obligations.

I presume you will be personally constituted a Plenipotentiary of Great Britain to arrange here, with whomsoever may be selected to represent the United States, terms of arrangement for a *modus vivendi* to meet present emergencies and also a permanent plan to avoid all future disputes.

It appears to me that as matters now stand the Colony of Newfoundland might be represented and included, for a single arrangement should suffice to regulate all the joint and several interests involved.

I should therefore be informed speedily through the proper channel as to the authorization and appointment by the Imperial Government of such representatives.

The gravity of the present condition of affairs between our two countries demands entire frankness.

I feel we stand at "the parting of the ways." In one direction I can see a well assured, steady, healthful relationship, devoid of petty jealousies and filled with the fruits of a prosperity arising out of a friendship cemented by mutual interests, and enduring because based upon justice; on the other, a career of embittered rivalries, staining our long frontier with the lines of hostility, in which victory means the destruction of an adjacent prosperity, without gain to the prevalent party—a mutual physical and moral deterioration which ought to be abhorrent to patriots on both sides, and which I am sure no two men will exert themselves more to prevent, than the parties to this unofficial correspondence.

As an intelligent observer of the current of popular sentiment in the United States, you cannot have failed to note that the disputed interpretation of the Treaty of 1818 and the action of Canadian officials towards American fishing vessels during the past season has awakened a great deal of feeling.

It behoves those who are charged with the safe conduct of the honour and interests of the respective countries by every means in their power sedulously to remove all causes of difference.

The roundabout manner in which the correspondence on the Fisheries has been necessarily (perhaps) conducted has brought us into the new fishing season, and the period of possible friction is at hand, and this admonishes us that prompt action is needed.

I am prepared, therefore, to meet the authorised agents of Great Britain at this capital at the earliest possible day, and enter upon negotiations for a settlement of all differences.

The magnitude of the interests involved, and the far-reaching and disastrous consequences of any irritating and unfriendly action, will, I trust, present themselves to those in whose jurisdiction the fisheries lie, and cause a wise abstention from vexatious enforcement of disputed powers.

Awaiting your reply,

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

Sir Charles Tupper,
&c., &c., &c.,
Ottawa, Canada.

Enclosure 2 in No. 193.

Sir Charles Tupper to Mr. Bayard.

Personal and Unofficial.

OTTAWA,
June , 1887.

MY DEAR MR. BAYARD,

I had great pleasure in receiving your letter of May 31st, evincing as it does the importance which you attach to an amicable adjustment of the Fisheries Question and the maintenance of the cordial relations between the United States and Canada, under which such vast and mutually beneficial interests have grown up.

I entirely concur in your statement that "we both seek to attain a just and permanent settlement, and that there is but one way to procure it, and that is by a straightforward treatment on a liberal and statesmanlike plan of the entire *commercial* relations of the two countries."

I note particularly your suggestion that as the interests of Canada are so immediately concerned, Her Majesty's Government should be invited to depute a Canadian statesman to negotiate with you "a *modus vivendi* to meet present emergencies, and also a permanent plan to avoid all disputes," and I feel no doubt that a negotiation thus undertaken would greatly increase the prospects of a satisfactory solution.

I say this not because I believe that there has been any disposition on the part of the British Government to postpone Canadian interests to its own, or to retard by needless delay a settlement desired by and advantageous to the people of Canada and of the United States, but because I have no doubt that direct personal communications will save valuable time, and render each side better able to comprehend the needs

and the position of the other. I feel greatly flattered by your kind personal allusion to myself.

The selection of the persons who might be deputed to act as Commissioners would, however, as you are aware, rest with Her Majesty's Government. Our experience has been to the effect that the selection has, in such cases, as far as it concerned the choice of the representatives of the Dominion, been made with careful regard to public feeling in this country.

I have thought it my duty, and also the most effectual manner of giving effect to your suggestion, to make known to Lord Lansdowne the purport of my correspondence with you. He is strongly desirous of facilitating a settlement, and will at once bring the matter before the Secretary of State, with an expression of his hope that no time will be lost in taking steps for establishing, by means of personal communication with your Government, a *modus vivendi* such as you have described, and also for arriving at an understanding in regard to a lasting adjustment of our commercial relations.

In the hope that your proposal for the settlement of this vexed question may result at an early day in a solution satisfactory and beneficial to both countries,

I remain, &c.,
(Signed) CHARLES TUPPER.

11,478.

No. 193a.

Colonial Office to Foreign Office.

Secret and Confidential.

DOWNING STREET,
22nd June, 1887.

SIR,

I am directed by the Secretary of State for the Colonies to transmit to you, for the information of the Marquis of Salisbury, copies of two despatches* from the Governor-General of Canada respecting the visit of Sir Charles Tupper to Washington, and giving the substance of a conversation on the Canadian Fishery Question between him and Mr. Bayard.

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

The Under Secretary of State,
Foreign Office.

12,342.

No. 194.

Governor-General the Most Hon. the Marquis of Lansdowne, G.C.M.G., to the Right Hon. Sir H. T. Holland, Bart., G.C.M.G., M.P. (Received June 27th, 1887.)

GOVERNMENT HOUSE, OTTAWA,
June 14th, 1887.

No. 223.

SIR,

In reply to your despatch, No. 97, of the 30th April last,† transmitting for communication to my Ministers for any observations they might have to offer, a copy of a letter from the Foreign Office forwarding a despatch from Her Majesty's Minister at Washington, in regard to a report that the Canadian cruiser "Vigilant" had fired a blank shot at an American fishing vessel within the three-mile limit, I have the honour to forward herewith a certified copy of a report of a Committee of the Privy Council of Canada, to which is appended the statement of the captain of the "Vigilant" regarding the occurrence in question.

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

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

* Nos. 189a and 190a.

† No. 173.

Enclosure in No. 194.

Certified copy of a report of a Committee of the Honorable the Privy Council for Canada, approved by his Excellency the Governor-General in Council on the 8th June, 1887.

The Committee of the Privy Council have had under consideration a despatch dated 30th April, 1887, from Sir Henry Holland transmitting to your Excellency for communication to your Ministers for any observations which they may have to offer, a copy of a letter from the Foreign Office, forwarding a despatch from Her Majesty's Minister at Washington in regard to a report that the Canadian cruiser "Vigilant" fired a blank shot at an American fishing vessel within the three-mile limit.

The Minister of Marine and Fisheries, to whom the despatch was referred, submits herewith the statement of the captain of the "Vigilant" regarding the occurrence in question.

The Minister observes that it appears that the captain of the "Vigilant" observing a United States fishing vessel hovering in Canadian waters, and apparently overhauling the nets of the shore fishermen, displayed his proper colors, and sailed up with the intention of boarding her.

That the United States vessel paid no attention to the cutter, but made sail for American waters, upon seeing which, Captain M'Lean fired a blank shot as a signal, in order to bring her to, of which, however, as will be observed from Captain M'Lean's report, the vessel took no notice.

The Minister is of opinion that Captain M'Lean in acting as he did was within the scope of his duty.

The Committee recommend that your Excellency be moved to transmit a copy of this Minute, together with a copy of Captain M'Lean's statement, to the Right Honorable the Secretary of State for the Colonies.

All which is respectfully submitted for your Excellency's approval.

(Signed) JOHN J. MCGEE,
Clerk, Privy Council,
Canada.

ST. ANDREWS, N.B.,
April 17th, 1887.

SIR,

In answer to your telegraphic message in relation to officers of "Vigilant" having fired ball shot on an American fisherman in what they term Beaver Bay, I can only state that the report is false.

On the morning of the 1st inst. we were cruising among the fishing fleet off Beaver Harbor, and we saw in the distance a schooner hovering about among the fleet and overhauling their nets. The vessel had the appearance of an American fishing vessel and we thought they were looking for bait. I immediately gave chase intending to board the schooner and see if they had been getting bait or what the vessel had been doing in British waters. On the said vessel seeing us coming toward them she immediately made sail and went toward East Quoddy River. I followed the vessel for a short time (our proper flags were flying) and finding that the schooner did not heave to we fired a *blank shot* as a signal for the vessel to heave to. However, they did not do so, but proceeded toward Eastport. We then hauled up and did not pursue farther.

These are the facts of the case as they occurred.

I could have overtaken this vessel if I had a longer distance to run but as the schooner was so near American waters I allowed her to proceed

Trusting this explanation will suffice,

I remain, &c.,
(Signed) JAMES M'LEAN,
Master of Cruiser "Vigilant."

To John Tilton Esq.,
Deputy Minister of Fisheries,
Ottawa.

12,343.

No. 195.

Governor-General the Most Hon. the Marquis of Lansdowne, G.C.M.G., to the Right Hon. Sir H. T. Holland, Bart., G.C.M.G., M.P. (Received June 27th, 1887.)

GOVERNMENT HOUSE, OTTAWA,
14th June, 1887.

No. 224.

SIR,

With reference to your despatch, No. 91, of the 27th April last,* on the subject of the alleged refusal of the authorities at Halifax to permit American fishing vessels (driven into that port to repair damages) to replace salt lost in a storm, I have the honour to transmit herewith certified copy of a Minute of the Privy Council of Canada, to which are appended copies of the telegrams received and sent on the subject referred to.

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

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

Enclosure in No 195.

Certified copy of a Report of a Committee of the Honorable the Privy Council for Canada, approved by his Excellency the Governor-General in Council on the 8th June, 1887.

The Committee of the Privy Council have had under consideration a despatch, dated 27th April, 1887, from Sir Henry Holland, transmitting a copy of a letter from the Foreign Office, enclosing copy of a telegram left with the Marquis of Salisbury by the American Minister relative to the alleged refusal of the authorities at Halifax, to permit American fishing vessels (driven into that port to repair damages) to replace salt lost in a storm.

The Minister of Marine and Fisheries, to whom the matter was referred, submits copies of the telegrams which were received and sent on the subject referred to.

The Minister submits further that every right to which the vessel in question was entitled was promptly granted. Free access was allowed to the privileges of the port, and all needful facilities were accorded for repairs, and for replacing, by purchase or otherwise, any portion of the vessel, tackle, boats, or other appurtenances thereof which had been lost or damaged in the storm. In attempting to bring within their Treaty rights the purchase of twenty hogsheads of salt (even though it was to replace salt alleged to have been lost) United States fishermen seek to establish an interpretation of the Convention of 1818, incompatible with its terms as fishing supplies are not among the purposes for which they have a right to enter Canadian ports.

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

All which is respectfully submitted for your Excellency's approval.

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

Copies of Telegrams Received and Answers sent.

April 19th, 1887.

FROM HALIFAX, N.S.

American fishing vessel while on the Banks lost rudder, spars, and twenty hogsheads of salt; is now in the port for repairs. Collector will permit all repairs, but that of salt. Fishing materials which include salt, gave this vessel the distinctive character of fishing vessel and place her within the purview of the treaty under which she is entitled to privilege of repairing damages to any and everything necessary to the proper equipment of a fishing vessel.

(Signed) M. H. PHELAN.

* No. 167.

(2566)

2 K

Answer.

OTTAWA,
April 20th, 1887.

To M. H. PHELAN, Esq., United States Consul, Halifax, N.S.

Purchase of salt is not one of the purposes for which United States fishing vessels can use our waters.

(Signed) M. BOWELL.

9,810.

No. 196.

The Right Hon. Sir H. T. Holland, Bart., G.C.M.G., M.P., to Governor-General the Most Hon. the Marquis of Lansdowne, G.C.M.G.

Secret and Confidential.

DOWNING STREET,
June 28th, 1887.

MY LORD,

I have the honour to transmit to you, confidentially, for your own personal information only, a copy of a despatch* received through the Foreign Office, from Her Majesty's Minister at Washington reporting a conversation he had held with Senator Edmunds on the 3rd of last month on the subject of the North American Fisheries Question.

I have, &c.,
(Signed) H. T. HOLLAND.The Marquis of Lansdowne,
&c., &c., &c.

12,884.

No. 197.

*Foreign Office to Colonial Office.*FOREIGN OFFICE,
June 29th, 1887.

SIR,

In reply to your letter of the 14th instant,† I am directed by the Marquis of Salisbury to request you to inform Sir Henry Holland that his Lordship concurs in the letter which it is proposed to address to the Admiralty respecting the instructions to be addressed to Her Majesty's Naval Officers on the North American Station in connection with the fisheries, saving that he would suggest the omission of the memorandum which occurs at pages 7, 8, and 9, of the print.

As, however, the last paragraph of that memorandum may be useful in the present aspect of the question, Lord Salisbury would suggest that if Sir Henry Holland should concur in the omission of the entire memorandum the last paragraph might perhaps be inserted in the body of the letter to the Admiralty in the place of the two last paragraphs thereof, which would be rendered unnecessary by the omission of the memorandum.

The printed enclosures to your letter are returned herewith; and I am to request that a copy of the letter as finally settled may be sent to this office for communication to Sir Lionel West.

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

* Enclosure in No. 184.

† No. 191.

11,932.

No. 198.

Colonial Office to Foreign Office.

Secret and Confidential.

DOWNING STREET,
1st July, 1887.

SIR

With reference to the letter from this department of the 22nd ult.,* relating to the recent visit of Sir Charles Tupper to Washington on matters connected with the Fisheries Question with the United States, I am directed by Secretary Sir Henry Holland to transmit to you, to be laid before the Marquis of Salisbury, a copy of a further despatch from the Governor-General of Canada enclosing copies of a correspondence which had passed between Sir Charles Tupper and Mr. Bayard.

It will be observed that Mr. Bayard has proposed unofficially to Sir Charles Tupper that a Joint Commission should be appointed with a view to arriving at a settlement upon the subject of the entire commercial relations of the two countries, and that the Government of the Dominion have suggested that Mr. Bayard should be invited to embody in a formal proposal the suggestions which he has made unofficially to Sir Charles Tupper.

Sir Henry Holland proposes, with Lord Salisbury's concurrence, to reply to the Governor-General that Her Majesty's Government would view with satisfaction an amicable adjustment of the commercial relations between Canada and the United States and are prepared to afford every facility for such a settlement, and for the full representation of Canadian interests in any negotiations which may take place; that they approve of the recommendation to invite Mr. Bayard to embody in a formal proposal the suggestions which he has made unofficially to Sir Charles Tupper with the view of securing the meeting of a Conference or Commission for the purpose of dealing with the questions at issue.

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

The Under Secretary of State,
Foreign Office.

13,073.

No. 199.

*Sir A. Shea to Colonial Office.*LONDON,
July 4th, 1887.

DEAR SIR ROBERT,

I think it well to leave with you a copy of a letter from the United States Minister in relation to a separate arrangement with Newfoundland for the settlement of the Fishery Question with that Colony.

In my present position I can, of course, take no further step in the matter except under direction from Her Majesty's Government.

Yours most truly,
(Signed) A. SHEA.

Sir R. G. W. Herbert, K.C.B.

Enclosure in No. 199.

OFFICE OF LEGATION OF UNITED STATES,
LONDON,
June 16th, 1887.

DEAR SIR AMBROSE,

Should the Government of Newfoundland see fit to give notice that American fishermen be admitted to the ports of that Province for the purpose of obtaining supplies, the proposal will be cordially accepted and acted on by the Government of the United States. In that event there would be no objection on the part of the United States' Government to entertaining suggestions for an independent agreement in respect to the fisheries of Newfoundland, if made by the authorised agents of the Imperial Government.

Yours very sincerely,
(Signed) E. J. PHILPS.

13,344.

No. 200.

Foreign Office to Colonial Office.

Confidential.

FOREIGN OFFICE,
July 5th, 1887.

SIR,

I have laid before the Marquis of Salisbury your letter of the 1st instant* transmitting a copy of a further despatch from the Governor-General of Canada, enclosing copies of correspondence which had passed between Sir Charles Tupper and Mr. Bayard, relative to the North American Fisheries Question, and I am to acquaint you, in reply, that his Lordship concurs in the answer which Sir Henry Holland proposes to return to the Governor-General with regard to the Conference or Commission proposed by Mr. Bayard for the purpose of dealing with the questions at issue.

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

The Under Secretary of State,
Colonial Office.

12,884.

No. 201

*Colonial Office to Admiralty.**Downing-street, July 6th, 1887.*

SIR,

I AM directed by Secretary Sir Henry Holland to acquaint you that the question of the instructions which should be issued to the naval officers employed on the North American station, in connection with the protection of the Fisheries, has lately been under the consideration of the Secretary of State for this Department, in conjunction with the Secretary of State for Foreign Affairs. I am now to communicate to you, for the information of the Lords Commissioners of the Admiralty, the conclusions at which they have arrived.

The determination of Articles XVIII. to XXV. and Articles XXX. and XXXII. of the Treaty of Washington, made in 1871 between Great Britain and the United States, revives the first Article of the Convention of the 20th of October, 1818, a copy of which is enclosed.

With a view of ensuring the proper observance of the stipulations of this Article, the Government of Canada have issued instructions to the officers of their vessels engaged as Fisheries Police vessels, copies of which are enclosed.

It is the wish of Her Majesty's Government that the naval officers in command of Her Majesty's ships on the North American station should give support to the officers of the Dominion Government in carrying out the instructions which they have received, but in giving this support it is not desired that the Imperial officers should take any active part against American fishing vessels unless in the case of actual resistance on their part to the legitimate use by the Canadian authorities of the powers with which they are legally invested, with a view to securing the observance of the 1st Article of the Convention of 1818.

In particular Her Majesty's Government desire that the officers of Her Majesty's ships should be instructed that they are not to seize any vessel unless it is evident, and can be clearly proved, that the offence of fishing has been committed and the vessel itself is captured within three miles of land. In such cases, and only in these, they can take the initiative without waiting to be appealed to by the Canadian Government vessels for support.

Her Majesty's Government do not desire that the prohibition to enter British bays should be generally insisted on, except when there is reason to apprehend some substantial invasion of British rights. And, in particular, they do not desire American vessels to be prevented from navigating the Gut of Canso (from which Her Majesty's Government are advised they may be lawfully excluded), unless it shall appear that this permission is used to the injury of Colonial fishermen, or for other improper objects.

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

The Secretary to
The Admiralty.

Enclosure 1 in No. 201.

Article 1 of Convention between His Britannic Majesty and the United States of America Signed at London, October 20th, 1818.

Article 1. Whereas differences have arisen respecting the liberty claimed by the United States for the inhabitants thereof to take, dry, and cure fish, on certain coasts, bays, harbours, and creeks of His Britannic Majesty's dominions in America, it is agreed between the High Contracting Parties that the inhabitants of the said United States shall have for ever, in common with the subjects of His Britannic Majesty, the liberty to take fish of every kind on that part of the southern coast of Newfoundland which extends from Cape Ray to the Rameau Islands, on the western and northern coast of Newfoundland from the said Cape Ray to the Quirpon Islands, on the shores of the Magdalen Islands, and also on the coasts, bays, harbours, and creeks from Mount Joly, on the southern coast of Labrador, to and through the Straits of Belle Isle, and thence northwardly indefinitely along the coast, without prejudice, however, to any of the exclusive rights of the Hudson's Bay Company. And that the American fishermen shall also have liberty for ever to dry and cure fish in any of the unsettled bays, harbours, and creeks of the southern part of the coast of Newfoundland hereabove described, and of the coast of Labrador; but so soon as the same, or any portion thereof, shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such portion so settled without previous agreement for such purpose with the inhabitants, proprietors, or possessors of the ground. And the United States hereby renounce for ever any liberty heretofore enjoyed or claimed by the inhabitants thereof, to take, dry, or cure fish on or within three marine miles of any of the coasts, bays, creeks, or harbours of His Britannic Majesty's dominions in America not included within the abode-mentioned limits. Provided, however, that the American fishermen shall be admitted to enter such bays or harbours for the purpose of shelter and of repairing damages therein, of purchasing wood, and of obtaining water, and for no other purpose whatever; but they shall be under such restrictions as may be necessary to prevent their taking, drying, or curing fish therein, or in any other manner whatever abusing the privileges hereby reserved to them.

Enclosure 2 in No. 201.

Special Instructions to Fishery Officers, ex-officio Magistrates in command of Government Steamers and Vessels engaged as Fisheries Police Vessels in protecting the Inshore Fisheries of Canada.

OTTAWA,
March 16, 1886.

Sir,

In the performance of the special and important service to which you have been appointed you will be guided by the following confidential instructions.

For convenience of reference, these have been divided under the different headings of *Powers, Jurisdiction, Duties, and General Directions*.

The powers with which you are invested are derived from, and to be exercised in accordance with, the following statutes among others:—"The Fisheries Act" (31 Vic., cap. 60, of Canada); "An Act respecting Fishing by Foreign Vessels" (31 Vic., cap. 61, of Canada), and the subsequent statute, entitled: "An Act to Amend the Act respecting Fishing by Foreign Vessels," made and passed the 12th May, 1870 (33 Vic., cap. 15, of Canada); also an "Act to further amend the said Act" (34 Vic., cap. 23, of Canada).

"Chapter 94 of the Revised Statutes (third series) of Nova Scotia" (of the Coast and Deep Sea Fisheries), amended by the Act, entitled "An Act to amend cap. 94 of the Revised Statutes of Nova Scotia" (29 Vic., cap. 35).*

An Act passed by the Legislature of the Province of New Brunswick, entitled "An Act relating to the Coast Fisheries and for the Prevention of Illicit Trade" (16 Vic., cap. 69);*

Also an Act passed by the Legislature of Prince Edward Island (6 Vic., cap. 14), entitled "An Act relating to the Fisheries and for the Prevention of Illicit Trade in Prince Edward Island, and the Coasts and Harbours thereof."

Also from such regulations as have been passed, or may be passed, by the Governor-General in Council, or from instructions from the Department of Fisheries, under "The Fisheries Act" hereinbefore recited.

* Repealed by Dominion Act of 1886.

As Fishery Officer you have full authority to compel the observance of the requirements of the Fisheries Acts and regulations by foreign fishing vessels and fishermen in those parts of the coasts of Canada to which, by the Convention of 1818, they are admitted to privileges of taking or drying and curing fish concurrent with those enjoyed by British fishing vessels and fishermen.

You will receive instructions from the Customs Department authorising you to act as an officer of the Customs, and in that capacity you are to see that the Revenue Laws and Regulations are duly observed.

Your jurisdiction with respect to any action you may take against foreign fishing vessels and citizens engaged in fishing is to be exercised only within the limits of "three marine miles" of any of "the coasts, bays, creeks, or harbours" of Canada.

With regard to the Magdalen Islands, although the liberty to land and to dry and cure fish there is not expressly given by the terms of the Convention to United States fishermen, it is not at present intended to exclude them from these islands.

It will be your duty to protect the inshore fisheries of Canada in accordance with the conditions laid down by the Convention of October 20th, 1818, the first Article of which provides:—

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

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

By this you will observe, United States fishermen are secured the liberty of taking fish on the southern coasts of Labrador, and around the Magdalen Islands, and of drying and curing fish along certain of the Southern shores of Labrador, where this coast is unsettled, or if settled after previous agreement with the settlers or owners of the ground.

In all other parts the exclusion of foreign vessels and boats is absolute, so far as fishing is concerned, and is to be enforced within the limits laid down by the Convention of 1818, they being allowed to enter bays and harbours for four purposes only, viz.—*for shelter, the repairing of damages, the purchasing of wood, and to obtain water.*

You are to compel, if necessary, the maintenance of peace and good order by foreign fishermen pursuing their calling and enjoying concurrent privileges of fishing or curing fish with British fishermen, in those parts to which they are admitted by the Treaty of 1818.

You are to see that they obey the laws of the country, that they do not molest British fishermen in the pursuit of their calling, and that they observe the regulations of the Fishery Laws in every respect.

You are to prevent foreign fishing vessels and boats which enter bays and harbours for the four legal purposes above mentioned, from taking advantage thereof, to take, dry,

or cure fish therein, to purchase bait, ice, or supplies, or to tranship cargoes, or from transacting any business in connection with their fishing operations.

It is not desired that you should put a narrow construction on the term "unsettled." Places containing a few isolated houses might not, in some instances, be susceptible of being considered as "settled" within the meaning and purpose of the Convention. Something would, however, depend upon the facts of the situation and circumstances of the settlement. Private and proprietary rights form an element in the consideration of this point. The generally conciliatory spirit in which it is desirable that you should carry out these instructions, and the wish of Her Majesty's Government that the rights of exclusion should not be strained, must influence you in making as fair and liberal an application of the term as shall consist with the just claims of all parties.

Should interference with the pursuits of British fishermen or the property of Canadians appear to be inseparable from the exercise of such indulgence, you will withhold it and insist upon entire exclusion.

United States fishermen should be made aware that, in addition to being obliged, in common with those subjects of Her Majesty with whom they exercise concurrent privileges of fishing in Colonial waters, to obey the laws of the country, and particularly such Acts and Regulations as exist to ensure the peaceable and profitable enjoyment of the Fisheries by all persons entitled thereto, they are peculiarly bound to preserve peace and order in the *quasi* settled places to which, by the liberal disposition of Canadian authorities, they may be admitted.

Wheresoever foreigners may fish in Canadian waters, you will compel them to observe the Fishery Laws. Particular attention should be directed to the injury which results from cleaning fish on board of their vessels while afloat, and the throwing overboard of offals, thus fouling the fishing, feeding and breeding grounds. "The Fisheries Act" (Section 14) provides a heavy penalty for this offence.

Take occasion to enquire into and report upon any modes of fishing, or any practices adopted by foreign fishermen, which appear to be injurious to the Fisheries.

You will accost every foreign fishing vessel within the limits described, and if that vessel should be either fishing, preparing to fish, or should obviously have been fishing within the prohibited limits, you will, by virtue of the authority conferred upon you by your Commission, and under the provisions of the Acts above recited, seize at once (resort to force in doing so being only justifiable after every other effort has failed) any vessel detected in violating the law and send her or take her into port for condemnation.

Copies of the Acts of Parliament subjecting to seizure and forfeiture any foreign ship, vessel, or boat which should be either fishing, preparing to fish, or should obviously have been fishing within the prohibited limits, and providing for carrying out the seizure and forfeiture, are furnished herewith for your information and distribution.

Should you have occasion to compel any foreign fishing vessels or fishermen to conform to the requirements of the "Fisheries Act and Regulations," as regards the modes and incidents of fishing, at those places to which they are admitted under the Convention of 1818, particularly in relation to ballast, fish, offals, setting of nets, hauling of seines, and use of "trawls" or "bultows," more especially at and around the Magdalen Islands, your power and authority under such cases will be similar to that of any other fishery officer appointed to enforce the Fishery Laws in Canadian waters (*vide Fisheries Act*).

If a foreign ship, vessel, or boat be found violating the Convention or resisting consequent seizure, and momentarily effects her escape from the vicinity of her capture or elsewhere, she remains always liable to seizure and detention if met by yourself in Canadian waters, and in British waters everywhere if brought to account by Her Majesty's cruisers. But great care must be taken to make certain of the identity of any offending vessel to be so dealt with.

All vessels seized must be placed, as soon as possible, in the custody of the nearest Customs Collector, and information, with a statement of the facts, and the depositions of your sailing master, clerk, lieutenant, or mate, and of two at least of the most reliable of your crew, be despatched with all possible diligence to the Government. Be careful to describe the exact locality where the violation of the law took place, and the ship, vessel, or boat was seized. Also corroborate the bearings taken, by soundings, and by buoying the place (if possible) with a view to actual measurement, and make such incidental reference to conspicuous points and land-marks as shall place beyond doubt the illegal position of the seized ship, vessel, or boat.

Omit no precaution to establish on the spot that the trespass was or is being committed within three miles of land.

As it is possible that foreign fishing craft may be driven into Canadian waters by

violent or contrary winds, by strong tides, through misadventure, or some other cause independent of the will of the master and crew, you will consider these circumstances, and satisfy yourself with regard thereto before taking the extreme step of seizing or detaining any vessel.

On capture, it will be desirable to take part of the foreign crew aboard the vessel under your command, and place some of your own crew, as a measure of precaution, on board the seized vessel; first lowering the foreign flag borne at the time of capture. If your ordinary complement of men does not admit of this being done, or, if because of several seizures, the number of your hands might be too much reduced, you will in such emergency endeavour to engage a few trustworthy men. The portion of foreign crew taken on board the Government vessel you will land at the nearest place where a Consul of the United States is situated, or where the readiest conveyance to any American Consulate in Canada may be reached, and leave them there.

When any of Her Majesty's vessels about the fishing stations or in port are met with, you should, if circumstances permit, go on board and confer with the Naval Commander, and receive any suggestions he may feel disposed to give, which do not conflict with these instructions, and afford him any information you may possess about the movements of foreign craft; also inform him what vessels you have accosted and where.

Do not fail to make a full entry of all circumstances connected with foreign fishing vessels, noting their names, tonnage, ownership, crew, port, place of fishing, cargo, voyage, and destination, and (if ascertainable) their catch. Report your proceedings as often as possible, and keep the Department fully advised, on every opportunity, where instructions would most probably reach you at stated intervals.

Directions as to the stations and limits on which you are to cruise, and any further instructions that may be deemed necessary, will from time to time be conveyed to you.

Considerable inconvenience is caused by Canadian fishing vessels neglecting to show their colours. You will draw the attention of masters to this fact, and request them to hoist their colours without requiring to be hailed and boarded.

It cannot be too strongly urged upon you, nor can you too earnestly impress upon the officers and crew under your command, that the service in which you and they are engaged should be performed with forbearance and discrimination.

The Government relies on your prudence, discretion and firmness in the performance of the special duties entrusted to you.

I am, &c.

Minister of Marine and Fisheries.

Enclosure 3 in No. 201.

The Minister of Marine and Fisheries to Captain Scott.

(Confidential.)

OTTAWA,
March 23rd, 1886.

SIR,

Adverting to the letter of my Department of the 18th instant, enclosing your Commission as a Fishery Officer in the Dominion, I have now the honour to send you the instructions by which you are to be guided in the performance of the special duties to which your instructions refer.

In addition thereto, I have to direct that until otherwise ordered you will strictly confine the exercise of your authority within the limit of three marine miles of any of the coasts, bays, creeks, or harbours of Canada, with respect to any action you may take against American fishing vessels and United States citizens engaged in fishing. Where any of the bays, creeks, or harbours shall not exceed six geographical miles in width you will consider that the line of demarcation extends from headland to headland, and the three marine miles are to be measured from this line outward.

In cases where such bay, creek, or harbour is more than six (6) geographical miles in width at its mouth or entrance you will consider the line of demarcation to be drawn between the first points from the mouth or entrance to such bay or harbour at which the width shall not be more than six (6) geographical miles, and the three marine miles will be measured from this line outward, and you may exclude foreign fishermen and fishing vessels therefrom, or seize, if found in violation of the Articles of the Conven-

tion, within three marine miles of the coast. In all other respects you will be guided by the instructions herewith.

You will, for the present, proceed with the Government steamer "Lansdowne" to cruise in the Bay of Fundy, or such adjacent Canadian waters as you may deem expedient, reporting from time to time by telegraph or otherwise as may be necessary.

All these instructions you are to consider of a strictly confidential character.

The Government relies upon your judgment to perform with a spirit of forbearance and moderation the delicate and important duties with which you are entrusted.

I am, &c.,

(Signed) GEORGE E. FOSTER,
Minister of Marine and Fisheries.

Captain P. A. Scott, R.N.,
St. John, N.B.

Inclosure 4 in No. 201.

Special Instructions to Fishery Officers in Command Fisheries Protection Vessels.

DEPARTMENT OF FISHERIES, OTTAWA,

April 16th, 1887.

SIR,

In reference to the letter of this Department, dated March 16th, 1886, I have to intimate to you that during the present season, and until otherwise ordered, you will be guided in the performance of the duties entrusted to you by the instructions contained in that letter.

I have every reason for believing that these have been executed with efficiency and firmness, as well as with discretion and a due regard to the rights secured by Treaty to foreign fishing vessels resorting to Canadian waters.

I desire, however, to impress upon you that in carrying out those instructions and protecting Canadian inshore fisheries, you should be most careful not to strain the interpretation of the law in the direction of interference with the rights and privileges remaining to United States fishermen in Canadian waters under the Convention of 1818.

To this end the largest liberty compatible with the full protection of Canadian interests is to be granted United States fishing vessels in obtaining in our waters shelter, repairs, wood, and water.

Care should be taken that while availing themselves of these privileges, such vessels do not engage in any illegal practices and all proper supervision necessary to accomplish this object is to be exercised, but it is not deemed necessary that in order to effect this an armed guard should be placed on board or that any reasonable communication with the shore should be prohibited after the vessel has duly entered unless sufficient reasons appear for the exercise of such precautions.

In places where United States fishing vessels are accustomed to come into Canadian waters for shelter only, the captain of the cruiser which may be there is authorised to take entry from and grant clearance to the masters of such fishing vessels without requiring them to go on shore for that purpose. Blank forms of entry and clearance are furnished to the captains of cruisers; these, after being filled in, are to be forwarded by the captain of the cruiser to the Customs Officer of the port within whose jurisdiction they have been used. In cases of distress, disaster, need of provisions for homeward voyage, of sickness or death, on board a foreign fishing vessel, all needful facilities are to be granted for relief, and both you and your officers will be carrying out the wishes of the Department in courteously and freely giving assistance in such cases.

The above special instructions, while designed with regard to the fullest recognition of all lawful rights and reasonable liberties to which United States fishermen are entitled in Canadian waters, are not to be construed as authorizing a lax enforcement of the provisions of the laws for the protection of the Canadian Fisheries. Fishing, preparing to fish, procuring bait, trading or transshipping of cargoes, by United States fishing vessels within the three mile limit, are manifest violations of the Convention of 1818, and of Imperial and Canadian Statutes, and in these cases your instructions, which are explicit, are to be faithfully followed.

I have, &c.,

(Signed) GEORGE E. FOSTER,
Minister of Marine and Fisheries

12,884.

No. 202.

The Right Hon. Sir H. T. Holland, Bart., G.C.M.G., M.P., to Governor-General the Most Hon. the Marquis of Lansdowne, G.C.M.G.

Secret.

DOWNING STREET,
July 7th, 1887.

MY LORD,

With reference to previous correspondence respecting instructions to the Naval Officers in command of Her Majesty's ships employed on the North American Station in connection with the protection of the fisheries, I have the honor to transmit to you, for communication to your Ministers, a copy of a letter* which has been addressed by my direction to the Admiralty on the subject.

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

The Marquis of Lansdowne.

13,344.

No. 203.

The Right Hon. Sir H. T. Holland, Bart., G.C.M.G., M.P., to Governor-General the Most Hon. the Marquis of Lansdowne, G.C.M.G.

Secret.

DOWNING STREET,
July 7th, 1887.

MY LORD,

I have the honour to acknowledge the receipt of your despatch marked "Confidential" of the 9th ult.,† enclosing copies of a correspondence which had passed between Sir Charles Tupper and Mr. Bayard, relating to the Fisheries Question, and to that connected with the general commercial relations between Canada and the United States.

In reply to your despatch, I have to inform you that Her Majesty's Government would view with satisfaction an amicable adjustment of the commercial relations between Canada and the United States, and are prepared to afford every facility for such a settlement, and for the full representation of Canadian interests in any negotiations which may take place. They approve of the recommendation to invite Mr. Bayard to embody in a formal proposal the suggestions which he has made unofficially to Sir Charles Tupper with the view of securing the meeting of a Conference or Commission for the purpose of dealing with the questions at issue.

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

The Marquis of Lansdowne.

12,343.

No. 204.

Colonial Office to Foreign Office.

DOWNING STREET,
7th July, 1887.

SIR,

With reference to the letters from this department of the 17th of May last and 11th ult.,‡ relating to the alleged refusal of the authorities at Halifax to permit American fishing vessels (driven into that port to repair damages) to replace salt lost in a storm, I am directed by Secretary Sir Henry Holland to transmit to you, to be laid before Lord Salisbury, a copy of a further despatch§ with its enclosures from the Governor-General of Canada on the subject.

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

The Under Secretary of State,
Foreign Office.

* No. 201.

† No. 193.

‡ Nos. 182 and 190

§ No. 195.

9,890.

No. 205.

The Right Hon. Sir H. T. Holland, Bart., G.C.M.G., M.P., to Governor-General the Most Hon. the Marquis of Lansdowne, G.C.M.G.

DOWNING STREET,
7th July, 1887.

No. 185.

MY LORD,

I have the honour to acknowledge the receipt of your despatch No. 140 of the 27th of April last* enclosing an approved Minute of your Privy Council with a copy of the special instructions issued for the present season to the officers in command of vessels employed in the protection of the Canadian Fisheries on the Atlantic coast.

I have to request that you will convey to your Ministers the expression of the satisfaction of Her Majesty's Government at the purport of these supplementary instructions.

In my despatch Secret of the 7th instant† I have communicated to you copies of the instructions which the Lords Commissioners of the Admiralty have been requested to give to the officers of Her Majesty's ships on the North American Station in regard to the Fisheries Question.

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

The Marquis of Lansdowne.

12,342.

No 206.

Colonial Office to Foreign Office.

DOWNING STREET,
July 8th, 1887.

SIR,

With reference to your letter of the 23rd of April last‡ enclosing copy of a despatch from Her Majesty's Minister at Washington relative to a report that the Canadian cruiser "Vigilant" fired a blank shot at an American fishing vessel, I am directed by Secretary Sir Henry Holland to transmit to you herewith, for the information of the Marquis of Salisbury, a copy of a despatch§ on the subject, with enclosures, received from the Governor-General of Canada.

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

The Under Secretary of State,
Foreign Office.

12,884.

No. 207.

Colonial Office to Foreign Office.

DOWNING STREET,
July 8th, 1887.

SIR,

I am directed by Secretary Sir Henry Holland to acknowledge the receipt of your letter of the 29th ultimo,|| relating to the instructions proposed to be addressed to Her Majesty's Naval Officers employed on the North American Station in connection with the fisheries.

Sir Henry Holland agrees in the amendments in the instructions which have been suggested by the Marquis of Salisbury, and he desires me to enclose for his Lordship's information a printed copy of the letter¶ which has been addressed to the Admiralty on the subject, as well as copy of a despatch** which has been sent to the Governor-General of Canada.

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

The Under Secretary of State,
Foreign Office.

* No. 178a.

† No. 202.

‡ No. 161.

§ No. 194

|| No. 197.

¶ No. 201.

** No. 202.

13,772.

No. 208.

Foreign Office to Colonial Office.

Confidential.

FOREIGN OFFICE,
July 11th, 1887.

SIR,

With reference to your letter of the 1st instant,* I am directed by the Secretary of State for Foreign Affairs to transmit to you, to be laid before Sir Henry Holland a copy of a telegram which Lord Salisbury has addressed to Her Majesty's Minister at Washington, expressing the willingness of Her Majesty's Government to appoint a Commission to consider the Fisheries Question.

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

The Under Secretary of State,
Colonial Office.

Enclosure in No. 208.

TELEGRAM.

To Sir L. West, Washington.

"July 9, 1887, 5.30 p.m.—Fisheries. Inform Mr. Bayard that if he will formally propose the appointment of a Commission as suggested in his correspondence with Sir Charles Tupper, Her Majesty's Government will agree with great pleasure."

13,772.

No. 209.

The Right Hon. Sir H. T. Holland, Bart., G.C.M.G., M.P., to Governor-General the Most Hon. the Marquis of Lansdowne, G.C.M.G.

Secret.

DOWNING STREET,
July 14th, 1887.

MY LORD,

With reference to my despatch marked "Secret" of the 7th instant,† respecting the proposed appointment of a Commission to consider the question of the North American Fisheries and that of the commercial relations between Canada and the United States, I have the honor to acquaint you for the confidential information of your Ministers that a telegram was sent by the Secretary of State for Foreign Affairs to Her Majesty's Minister at Washington on the 9th instant, desiring him to inform Mr. Bayard that if he will formally propose the appointment of a Commission as suggested in his correspondence with Sir Charles Tupper, Her Majesty's Government will have great pleasure in agreeing.

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

The Marquis of Lansdowne.

13,073.

No. 210.

Colonial Office to Foreign Office.

Confidential.

DOWNING STREET,
July 16th, 1887.

SIR,

I am directed by Secretary Sir Henry Holland to transmit to you, to be laid before the Marquis of Salisbury, a copy of a letter‡ from Sir Ambrose Shea, enclosing copy of

* No. 198.

† No 202.

‡ No. 199.

one from the United States Minister at this Court relating to the question of the possibility of separate arrangements being made with Newfoundland on the subject of the Fisheries.

I am also to enclose a copy of a despatch* which Sir Henry Holland proposes, with his Lordship's concurrence, to address to the Officer Administering the Government of Newfoundland upon this subject.

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

The Under Secretary of State,
Foreign Office.

17,411.

No. 211.

Governor-General the Most Hon. the Marquis of Lansdowne, G.C.M.G., to the Right Hon. Sir H. T. Holland, Bart., G.C.M.G., M.P.

Confidential.

CASCAPEDIA, NEW RICHMOND,
21st July, 1887.

SIR,

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

“Intelligence has reached us from Newfoundland that the Government of that Island has been allowed to begin to negotiate directly for a reciprocity treaty which would involve the Fisheries with the United States. The position of Canada might be seriously compromised by any negotiations of this character. I hope therefore that until this Government has been communicated with you will not permit matters to go further. Sir Charles Tupper, who sailed for England on the 13th instant, will be able to explain matters fully to you.”

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

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

14,515.

No. 212.

Foreign Office to Colonial Office.

Confidential.

FOREIGN OFFICE,
July 22nd, 1887.

SIR,

In reply to your letter of the 16th instant,† I am directed to acquaint you that his Lordship concurs in the despatch which Sir Henry Holland proposes to address to the Officer Administering the Government of Newfoundland on the subject of a proposed separate arrangement between the United States and Newfoundland on the Fisheries Question.

I am, &c.,
(Signed) JAMES FERGUSSON.

The Under Secretary of State,
Colonial Office.

50. Secret.

No. 213.

The Right Hon. Sir H. T. Holland, Bart., G.C.M.G., M.P., to Governor-General the Most Hon. the Marquis of Lansdowne, G.C.M.G. (Canada), and the Officer Administering the Government of Newfoundland.

TELEGRAPHIC.

26th July, 1887. [Yours 21st]. Following telegram sent this day to Officer Administering the Government of Newfoundland:—§

A letter from United States' Minister to Sir Ambrose Shea, touching possibility of

* No. 213.

† No. 210.

‡ See No. 211

§ To Canada only.

separate arrangements being made with Newfoundland respecting fisheries, has been sent here by Shea. Inform your Government that no action should be taken in this direction without full previous communication with Her Majesty's Government. [End of telegram.*] Despatch follows.

14,515.

No. 214.

The Right Hon. Sir H. T. Holland, Bart., G.C.M.G., M.P., to Governor-General the Marquis of Lansdowne, G.C.M.G.

Secret.

DOWNING STREET,
July 28th, 1887.

MY LORD,

With reference to your telegram of the 21st of July, and to my reply of the 26th instant,† relating to the question of separate arrangements being made between the Newfoundland and the United States Governments respecting the Fisheries, I have the honour to transmit to you, for the confidential information of your Ministers copies of the correspondence noted below.‡

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

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

14,515.

No. 215.

The Right Hon. Sir H. T. Holland, Bart., G.C.M.G., M.P., to Administrator Sir F. B. T. Carter, K.C.M.G. (Newfoundland).

Confidential.

DOWNING STREET,
July 28th, 1887.

SIR,

I have the honour to transmit to you herewith, confidentially, for your information a copy of a letter,§ from Sir Ambrose Shea, enclosing a communication from the United States Minister at this Court relating to the question of separate arrangements being possibly made with Newfoundland on the subject of the fisheries.

You will be careful to bear in mind that it is the wish of Her Majesty's Government that no separate action should be taken by the Newfoundland Government in the direction suggested without full previous communication with Her Majesty's Government.

I informed you to this effect by my telegram of the 26th instant.||

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

The Officer Administering the Government.

15,154.

No. 216.

Foreign Office to Colonial Office.

Confidential.

FOREIGN OFFICE,
July 28th, 1887.

SIR,

I am directed by the Secretary of State for Foreign Affairs to transmit to you, to be laid before Sir Henry Holland, a copy of a despatch from Her Majesty's Minister at Washington, reporting that Mr. Phelps will make a communication respecting the proposal to appoint a Commission to consider the Fisheries question.

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

The Under Secretary of State,
Colonial Office.

* To Canada only. † Nos. 211 and 213. ‡ Nos. 199, 213, and 215. § No. 199. || No. 213.

Enclosure in No. 216.

Treaty, No. 66.

WASHINGTON,
July 13th, 1887.

MY LORD,

With reference to your Lordship's telegram of the 9th instant, I have the honour to enclose copy of a note which I have received from the Secretary of State informing me that he would make instant reply to your Lordship's proposition respecting a Fishery Commission through the United States Minister in London.

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

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

DEPARTMENT OF STATE, WASHINGTON,
July 12th, 1887.

SIR,

I have communicated to Mr. Phelps, our Minister at London, the purport of the Marquis of Salisbury's telegram to you, of which you personally delivered me a copy yesterday afternoon, and through the same channel I shall make instant reply to his Lordship's proposition as contained therein.

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

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

15,300.

No. 217.

Foreign Office to Colonial Office.

FOREIGN OFFICE,
July 29th, 1887.

Confidential.

SIR,

I am directed by the Secretary of State for Foreign Affairs to transmit to you, to be laid before Sir Henry Holland a copy of a telegram which his Lordship has this day addressed to Her Majesty's Minister at Washington relative to the proposed appointment of a Commission to consider the Fisheries Question.

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

The Under Secretary of State,
Colonial Office.

Enclosure in No. 217.

Telegram sent to Sir L. West, July 29th, 5 p.m., 1887 (in cypher).

Fisheries.—Mr. Phelps proposes Commission. I have expressed willingness of Her Majesty's Government, but doubt whether one Plenipotentiary each side would be enough.

14,515.

No. 218.

Colonial Office to Foreign Office.

DOWNING STREET,
July 29th, 1887.

SIR,

With reference to your letter of the 22nd instant,* respecting the question of separate action being taken between Newfoundland and the United States in the matter of the fisheries, I am directed by Secretary Sir Henry Holland to transmit to you herewith, to be laid before the Marquis of Salisbury, a copy of a telegram† received from the Governor-General of Canada in reference to this matter. I am also to enclose copies of telegrams‡ which were addressed to the Governor-General and to the Officer Administering the Government of Newfoundland on the subject, dated the 26th instant, together with despatches§ addressed to those officers respectively, to follow the telegrams.

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

The Under Secretary of State,
 Foreign Office.

* No. 212.

† No. 211.

‡ No. 213.

§ Nos. 214 and 215.