

# Technical and Bibliographic Notes / Notes techniques et bibliographiques

The Institute has attempted to obtain the best original copy available for filming. Features of this copy which may be bibliographically unique, which may alter any of the images in the reproduction, or which may significantly change the usual method of filming are checked below.

L'Institut a microfilmé le meilleur exemplaire qu'il lui a été possible de se procurer. Les détails de cet exemplaire qui sont peut-être uniques du point de vue bibliographique, qui peuvent modifier une image reproduite, ou qui peuvent exiger une modification dans la méthode normale de filmage sont indiqués ci-dessous.

- Coloured covers / Couverture de couleur
- Covers damaged / Couverture endommagée
- Covers restored and/or laminated / Couverture restaurée et/ou pelliculée
- Cover title missing / Le titre de couverture manque
- Coloured maps / Cartes géographiques en couleur
- Coloured ink (i.e. other than blue or black) / Encre de couleur (i.e. autre que bleue ou noire)
- Coloured plates and/or illustrations / Planches et/ou illustrations en couleur
- Bound with other material / Relié avec d'autres documents
- Only edition available / Seule édition disponible
- Tight binding may cause shadows or distortion along interior margin / La reliure serrée peut causer de l'ombre ou de la distorsion le long de la marge intérieure.
- Blank leaves added during restorations may appear within the text. Whenever possible, these have been omitted from filming / Il se peut que certaines pages blanches ajoutées lors d'une restauration apparaissent dans le texte, mais, lorsque cela était possible, ces pages n'ont pas été filmées.
- Additional comments / Commentaires supplémentaires: Pagination is as follows: [i]-vii, [1]-152, 152\*, 153-217 p.

- Coloured pages / Pages de couleur
- Pages damaged / Pages endommagées
- Pages restored and/or laminated / Pages restaurées et/ou pelliculées
- Pages discoloured, stained or foxed / Pages décolorées, tachetées ou piquées
- Pages detached / Pages détachées
- Showthrough / Transparence
- Quality of print varies / Qualité inégale de l'impression
- Includes supplementary material / Comprend du matériel supplémentaire
- Pages wholly or partially obscured by errata slips, tissues, etc., have been refilmed to ensure the best possible image / Les pages totalement ou partiellement obscurcies par un feuillet d'errata, une pelure, etc., ont été filmées à nouveau de façon à obtenir la meilleure image possible.
- Opposing pages with varying colouration or discolourations are filmed twice to ensure the best possible image / Les pages s'opposant ayant des colorations variables ou des décolorations sont filmées deux fois afin d'obtenir la meilleure image possible.

This item is filmed at the reduction ratio checked below /  
Ce document est filmé au taux de réduction indiqué ci-dessous.

10x		14x		18x		22x		26x		30x							
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>						
12x			16x			20x			24x			28x			32x		

1871

17

CONFIDENTIAL

(5307.)

1/ Great Britain  
2/ L. Thacker

**FURTHER CORRESPONDENCE**

RESPECTING THE

5/ **TERMINATION OF THE FISHERY ARTICLES**

OF THE

3/ **TREATY OF WASHINGTON**

OF THE

4/ <sup>May, 8, 1871</sup>  
**8TH MAY, 1871.**



6/ **(January to June 1886.)**

**CONFIDENTIAL**

---

(5307.)

**FURTHER CORRESPONDENCE**

**RESPECTING THE**

**TERMINATION OF THE FISHERY ARTICLES**

**OF THE**

**TREATY OF WASHINGTON**

**OF THE**

**8TH MAY, 1871.**

---

**January to June 1886.**

TABLE OF CONTENTS.

No.	Name.	No.	Date.	SUBJECT.	Page
1	Colonial Office ..	..	Dec. 31, 1885	Fishery Commission. Satisfaction at reference to in President's Message. Question presses	1
2	To Sir L. West ..	Treaty	Jan. 5, 1886	Substance of No. 1 .. ..	1
3	" " ..	Telegraphic	5,	Extends No. 2 .. ..	1
4	Sir L. West ..	No. 2, Treaty	16,	Refers to No. 2. Records conversation with Mr. Bayard .. ..	2
5	Colonial Office ..	Confidential	29,	Temporary arrangement. Copy of Sir W. Whiteway's objections to, as regards Newfoundland .. ..	2
6	Sir L. West ..	21 Commercial	16,	Joint Resolution for renewal of commercial relations with the British possessions in North America. Copies of, as introduced in United States' House of Representatives ..	3
7	" " ..	No. 3, Treaty	16,	Proposed Fishery Commission. Refers to No. 3. Articles from press for and against.	4
8	" " ..	No. 4, Treaty	20,	Fishery Commission. Précis of debate in United States' Senate, with copy of official Report (not printed) against appointment of.	8
9	" " ..	No. 6, Treaty	Feb. 2,	Refers to No. 8. Congress unlikely to take action on fishery question .. ..	9
10	" " ..	No. 7, Treaty	5,	Refers to No. 8. Report of proceedings in Senate; copy of. Records conversation with Senator Allison .. ..	9
11	Colonial Office ..	..	18,	Refers to Nos. 6, 7, and 8. Remarks. Suggests conference with Sir C. Tupper and Sir A. Galt at the Colonial Office ..	10
12	To Colonial Office .	..	23,	Answers No. 11. Concurs in .. ..	11
13	" " ..	Confidential	25,	Draft telegram and despatch to Sir L. West, for approval. Instructions to Admiral on North American Station should be promptly and carefully considered .. ..	11
14	Sir L. West ..	No. 11, Treaty	19,	Refers to No. 9. Records conversation with Mr. Bayard, who regrets animus shown by Congress .. ..	12
15	Sir L. West ..	No. 12, Treaty	20,	Refers to No. 14. Article from "New York Times" in regard to fisheries question ..	13
16	Colonial Office ..	Confidential	Mar. 5,	Acknowledges No. 13. Refers to speech of Governor-General of Canada. Propose alterations in accordance with, in telegram to Sir L. West. Copies of despatches from Canada .. ..	14
17	To Colonial Office .	Confidential	10,	Refers to No. 16. Amended draft telegram to Sir L. West .. ..	16
18	Colonial Office ..	..	13,	Concur to No. 16 .. ..	16
19	Mr. Helyar ..	No. 13, Treaty	4,	Article from "New York Tribune" attacking Mr. Bayard and the Democratic Administration for their action on fishery question ..	16
20	To Sir L. West ..	Treaty	18,	As Commission seems abandoned, does United States' Government propose to issue warning notice to fishermen .. ..	17
21	" " ..	No. 11, Treaty	18,	Extends No. 20. .. ..	18
22	Sir L. West ..	Treaty	24,	Answers No. 21. Secretary of State does not deem it necessary to repeat notification given in President's Proclamation of the 31st January, 1885 .. ..	18
23	Colonial Office ..	..	29,	Flying of blue pendant by Canadian police vessels. Copies of correspondence with Admiralty .. ..	18
24	Sir L. West ..	No. 14, Treaty	19,	Refers to No. 21. Views of Canadian Government as regards exclusive right of fishing in Canadian waters under Treaty of 1818. Communicated to Mr. Bayard ..	20
25	Colonial Office ..	..	31,	Joint Commission. Extract from speech of Governor-General of Canada respecting ..	23
26	Sir L. West ..	No. 15, Treaty	23,	Refers to No. 24. Copy of Article in "Week," Toronto paper, on "Governmental Paralysis" .. ..	24
27	" " ..	No. 16, Treaty	24,	United States' Government do not intend to issue notice to their fishermen .. ..	26

No.	Name.	No.	Date.	SUBJECT.	Page
28	Colonial Office ..	..	Apr. 9, 1886	Flying blue pendant by Canadian police vessels. Further correspondence respecting. Refers to No. 23 .. .. .	27
29	Sir L. West ..	No. 18, Treaty	Mar. 28,	Position of Canada under Treaty of 1818. Governor-General approves Memorandum upon handed to Mr. Bayard (see No. 24) ..	28
30	" "	No. 19, Treaty	31,	Question of licences to United States' vessels to fish in Canadian waters ..	29
31	" "	No. 20, Treaty	Apr. 6,	Canadian Proclamation. Report of debate in United States' Senate, and Resolution in House of Representatives (Mr. Dingley) ..	31
32	" "	No. 22, Treaty	9,	Articles from New York press on preceding ..	35
33	" "	No. 23, Treaty	11,	Reported argument of United States' Consul-General at Halifax relative to provisions of Treaty of 1818. Report of Canadian Privy Council on .. .. .	37
34	" "	No. 24, Treaty	11,	Report of Senator Frye's speech in support of his Resolution against appointment of Commission .. .. .	39
35	Colonial Office ..	..	21,	Instructions to Her Majesty's and Canadian cruisers. Should they be similar to those issued by Admiralty in 1870? Correspondence from Canada .. .. .	58
36	Sir L. West ..	No. 25, Treaty	14,	Resolution in United States' Senate against appointment of Commission (Mr. Frye). Report of. Précis of Mr. Evarts' speech in support of .. .. .	70
37	Colonial Office ..	..	24,	Action of Canada. Telegrams from United States in "Times" and "Standard" of the 6th and 7th instant. Sir L. West to be asked for true meaning of .. .. .	98
38	To Colonial Office..	..	29,	Copies of Nos. 34 and 36 in reply to No. 37..	99
39	Sir L. West ..	No. 26, Treaty	19,	Report of proceedings in House of Representatives on Resolution requesting the President to furnish information as to steps taken to bring "unwarrantable and unfriendly acts of Dominion authorities" to the attention of British Government .. .. .	100
40	Colonial Office ..	..	30,	Argument of United States' Consul-General at Halifax. Approved Report of Canadian Privy Council (see No. 33) .. .. .	106
41	To Sir L. West ..	No. 15, Treaty	30,	Printed correspondence from January 1, 1885, to March 31, 1886 .. .. .	107
42	" "	No. 16, Treaty	May 4,	Copy of Inclosure 1 in No. 40 .. .. .	107
43	To Colonial Office .	..	4,	Copy of Inclosure 1 in No. 40 sent to Sir L. West: other inclosures previously received from him .. .. .	107
44	To Colonial Office..	..	4,	Copy of No. 39.. .. .. .	107
45	Colonial Office ..	..	5,	Report of debate in Dominion House of Commons on protection of fisheries. Important that Her Majesty's Government should be prepared with reply to contention in Mr. Frye's Resolution if officially put forward. Does Foreign Office propose to take opinion of Law Officers .. .. .	108
46	Sir L. West ..	No. 27, Treaty	Apr. 29,	Mr. Mitchell's Report on Mr. Boutwell's Circular of the 16th May, 1870. Approved Report of Canadian Privy Council on (see No. 48) .. .. .	114
47	Colonial Office ..	..	May 11,	Canada's rights questioned. Letter from Lieutenant-Colonel Wainwright, of Canadian militia, inclosing extract of "Halifax Herald" of the 6th April .. .. .	115
48	" "	..	13,	Mr. Mitchell's Report, May 31, 1870 (see No. 46). Copy of despatch from Governor-General of Canada respecting .. .. .	116
49	Marquis of Lansdowne to Earl Granville (communicated the 13th May)	Telegraphic	11,	"David J. Adams." Seizure of. Information respecting .. .. .	118
50	Answer, House of Commons Question (Mr. H. Vincent)	..	13,	"David J. Adams." Substance of No. 49. (Mr. O. Morgan, Colonial Office) .. .. .	118

No.	Name.	No.	Date.	SUBJECT.	Page
50*	Marquis of Lansdowne to Earl Granville (communicated the 13th May)	..	May 1, 1886	"Joseph Story." Detention of Information respecting .. .. .	118
51	Extract from the "Times"	..	14,	"David J. Adams." Remarks on seizure of, by a correspondent, and telegram from Philadelphia .. .. .	119
52	Extract from the "Morning Post"	..	14,	"David J. Adams." Reuter's telegram, Washington, May 13. Resolution of House of Representatives respecting seizure of ..	121
53	Answer, House of Commons Question. (Mr. Baden-Poweli)	..	14,	"David J. Adams." Referred to answer in No. 50 (Mr. Bryce) .. .. .	122
54	Memorandum by Mr. Bergne	Confidential	14,	Right of United States' fishing vessels to buy bait and supplies in Canadian harbours, &c., and instructions to Imperial cruisers ..	122
55	To Sir L. West ..	Treaty Telegraphic	19,	Seizures of United States' vessels in Nova Scotia. Has he received any communications respecting? Can he suggest <i>modus vivendi</i> to remove friction .. .. .	124
56	Sir L. West ..	Treaty Telegraphic	19,	Answer to No. 55. See despatch No. 28, Treaty, posted on the 12th instant (see No. 58) .. .. .	124
57	" "	Treaty Telegraphic	21,	Refers to No. 56. Further note from Mr. Bayard .. .. .	124
58	" "	No. 28, Treaty	11,	"Joseph Story" and "David J. Adams" seizures. Note from Mr. Bayard, May 10, protesting against .. .. .	124
59	" "	No. 29, Treaty	11,	"David J. Adams." Seizure. Resolutions and Bills introduced in Senate and House of Representatives, and extracts from New York papers respecting .. .. .	128
60	" "	No. 30, Treaty Confidential	11,	"David J. Adams." Correspondence with Mr. Bayard respecting .. .. .	133
61	" "	No. 31, Treaty	12,	Memorandum respecting the contention of the United States' fishing interest .. .. .	134
62	" "	No. 33, Treaty	13,	"David J. Adams" (No. 60). Further note from Mr. Bayard respecting .. .. .	134
63	Mr. Phelps ..	..	24,	"Joseph Story" and "David J. Adams." Copy of Mr. Bayard's note of the 10th May (see No. 58) .. .. .	135
64	To Sir L. West ..	No. 20, Treaty	24,	Seizure of United States' vessels in Canadian waters. Conversation with Mr. Phelps ..	135
65	Sir L. West ..	Treaty Telegraphic	25,	Mr. Bayard urges immediate understanding expressive of views of the two parties to the Treaty .. .. .	136
66	Answer, House of Commons Question (Sir F. Stanley)	..	25,	Her Majesty's Government will consider views of United States' Government in a friendly spirit (Mr. O. Morgan, Colonial Office) ..	136
67	To Colonial Office..	Confidential	26,	Copy of No. 58. Propose to defer answer till views of Canadian Government have been received .. .. .	137
68	To Sir L. West ..	Treaty Telegraphic	27,	Refers to No. 65. Private communication sent to Mr. Bayard through Mr. Phelps ..	137
69	Mr. Bayard to Mr. Phelps (communicated the 29th May)	Telegraphic	27,	United States' Government have every disposition to arrive at an amicable and just solution of fishery question .. .. .	137
70	Colonial Office ..	Confidential	28,	Canadian Bill for amending Act as to fishing by foreign vessels about to pass both Houses. Copies of telegrams from Governor-General suggest that assent to should be deferred ..	138
71	To Sir L. West ..	No. 21 A, Treaty	29,	Copy of No. 69. Conversation with Mr. Phelps on provisions of Treaty of 1818 .. .. .	138
72	Sir L. West ..	No. 35, Treaty	18,	Article from New York "Herald" advocating common fishery policy with France .. .. .	139
73	" "	No. 36, Treaty	21,	"David J. Adams." Further note from Mr. Bayard, May 20, respecting, and requesting Her Majesty's Government to issue orders for non-seizure of fishing vessels unless fishing within the 3-miles limit ..	140
74	" "	No. 37, Treaty	21,	"Jennie and Julia." Warning issued to at Digby, Nova Scotia. Note from Mr. Bayard requesting information .. .. .	142

No.	Name.	No.	Date.	SUBJECT.	Page
75	Sir L. West ..	No. 38, Treaty	May 21, 1886	"David J. Adams." Copy of note from Governor-General of Canada respecting, and communicated to Mr. Bayard ..	143
76	" "	No. 39, Treaty	21,	Retaliatory measures. Article from New York "Herald." Senate has passed Bill inclosed in No. 59 ..	144
77	" "	No. 40, Treaty	21,	Conversation with Mr. Bayard as to <i>modus vivendi</i> ..	145
78	" "	No. 41, Treaty	21,	Refers to No. 55. As to <i>modus vivendi</i> ..	146
79	" "	Treaty	31,	Canadian Bill. Note from Mr. Bayard protesting against ..	146
80	Mr. Phelps ..	Telegraphic	June 1,	Canadian Bill and Customs Circular No. 371. Copy of telegram from Mr. Bayard protesting against ..	146
81	To Sir L. West ..	Treaty	1,	Refers to No. 58. Canadian Case not yet received. Cannot furnish definite instructions ..	147
82	" "	Telegraphic	1,	Extending preceding telegram ..	147
83	Colonial Office ..	No. 23, Treaty	2,	Confidential	147
84	To Sir L. West ..	No. 24, Treaty	2,	Refers to No. 70. Canadian Bill. Copy of, with despatch from Governor-General of Canada, and telegram to. Desirable to delay assent ..	147
85	To Colonial Office..	Confidential	2,	United States' statement with regard to seizures being prepared. Conversation with Mr. Phelps ..	150
86	" "	Secret	2,	Canadian "Warning to Fishermen." Inclosure 8 in No. 35. Suggest last paragraph should be amended ..	151
87	" "	Confidential	2,	Canadian Bill. Copies of Nos. 80 and 81 ..	151
88	Memorandum by Mr. Bergne	..	3,	Canadian Bill. Concur in assent to being delayed. Answer to No. 70 ..	151
88*	Memorandum by Mr. Oakes	..	3,	On interpretation of Article I of Convention of 1818. Seizures for obtaining bait, &c., and supplies ..	152
89	To Mr. Phelps ..	..	3,	On Admiralty instructions, 1871 ..	152*
90	To Mr. Phelps ..	..	3,	"Joseph Story" and "David J. Adams" cases. Acknowledges receipt of No. 63. Will receive immediate and friendly consideration of Her Majesty's Government ..	152
91	To Colonial Office..	Confidential	3,	Acknowledges receipt of No. 80 ..	153
92	" "	Very Conf.	3,	"David J. Adams'" seizure. Copy of No. 73. Mr. Bayard's further note of the 20th May. For Canadian observations on by telegraph..	153
93	" "	..	3,	Mr. Bayard's proposal for <i>modus vivendi</i> . Copy of No. 77 ..	153
94	To Sir L. West ..	No. 25, Treaty	4,	Copies of Nos. 54, 59, 60, 61, and 62 ..	153
95	To Colonial Office..	..	4,	"Joseph Story" and "David J. Adams'" seizures. Acknowledges receipt of No. 58. Will receive immediate and friendly consideration of Her Majesty's Government ..	153
96	Colonial Office ..	Confidential	4,	Copies of Nos. 72, 74, 75, 76, and 78 ..	154
97	" "	Confidential	5,	"Joseph Story" and "David J. Adams'" seizures. Copies of despatches and telegrams to and from Canada respecting ..	154
98	Sir L. West ..	Treaty	5,	"David J. Adams'" seizure. Refers to No. 91. Telegram to Canada for Report ..	162
99	To Sir L. West ..	Telegraphic	5,	Newspaper Report. Dispatch of troops to Halifax. May he deny? ..	163
100	To Law Officers ..	Treaty	5,	Answer to No. 98. "Yes" ..	163
101	To Colonial Office..	..	5,	No. 58 in original, with printed papers. For opinion on validity of Mr. Bayard's contention respecting Article I of Convention of 1818 ..	163
102	Sir L. West ..	No. 45, Treaty	May 27,	Copies of Nos. 71 and 84..	164
103	Mr. Phelps ..	Confidential	June 2,	Causes at work to produce ill-feeling ..	164
104	Colonial Office ..	..	7,	"David J. Adams'" seizure. Arguments against ..	165
105	" "	Confidential	9,	Article from Toronto "Globe," an opposition paper ..	171
106	" "	Confidential	9,	Canadian Customs Circular No. 371. Despatch from Governor-General stating purport of. Canadian Government object to unconditional engagement to discontinue seizures. Last paragraph of Circular No. 371 being considered by them ..	172

No.	Name.	No.	Date.	SUBJECT.	Page
107	Colonial Office ..	..	June 9, 1886	Despatches from Governor-General. Correspondence with Sir L. West ..	173
108	" "	..	9,	Bill for amending Canadian Act. Reference to No. 83. Despatch from Governor-General. Observations on ..	174
109	Sir L. West ..	No. 46, Treaty	May 30,	Canadian Bill. Observations on, by Mr. Bayard ..	177
110	" "	No. 47, Treaty	30,	Nova Scotian fishing schooner "Sisters" seized at Portland. Fine remitted ..	178
111	" "	No. 48, Treaty	30,	Seizures of United States' fishing vessels. Mr. Carlyle's opinion on ..	178
112	" "	No. 49, Treaty	June 3,	Canadian proceedings against United States' fishing vessels. Further notes from Mr. Bayard protesting against ..	179
113	" "	No. 51, Treaty	4,	United States' Shipping Bill. Passed Congress. Text of. Section 17, retaliatory clause against Canada ..	180
114	Colonial Office ..	Confidential	14,	Mr. Bayard's notes of May 10 and 20 (see Nos. 58 and 73). Report of Canadian Minister of Justice on ..	184
115	To Mr. Phelps ..	..	14,	"David J. Adams" case. Acknowledges receipt of No. 103 ..	191
116	To Law Officers ..	..	14,	"David J. Adams" case. Copy of No. 103, with Records of Halifax Fishery Commission, for observations ..	191
117	To Colonial Office .	Confidential	14,	Copy of No. 103. Referred to Law Officers for observations ..	192
118	Sir L. West ..	Treaty Telegraphic	15,	Headlands. Mr. Bayard protests against jurisdiction claimed by Canada. Canso to St. Esprit, North Cape to East Point ..	192
119	To Colonial Office .	..	15,	Copy of No. 110 ..	193
119*	To Sir L. West ..	No. 27, Treaty Confidential	16,	Copy of No. 103 for information ..	193
120	To Colonial Office .	Confidential	16,	Copies of Nos. 102, 109, and 111. For copy of Canadian Circular alluded to in No. 109..	193
121	Sir L. West ..	No. 52, Treaty	8,	"Annie M. Jordan." Protest of Mr. Bayard against action of Canadian Customs authorities. Will hold Her Majesty's Government liable for loss and damage ..	193
122	Answer to House of Commons question (Mr. Gourley)	..	18,	Negotiations in progress. Her Majesty's Government cannot make definite statement on at present ..	194
123	Colonial Office ..	..	18,	Copy of telegram from Newfoundland respecting American fishermen ..	194
124	To Colonial Office..	Secret	19,	Headlands. Copy of No. 118 ..	194
125	Sir L. West ..	No. 53, Treaty	8,	Transmits United States' Treasury Circular, ordering returns of statistics of fisheries ..	195
126	To Sir L. West ..	No. 29, Treaty	21,	Answers No. 109. Inform Mr. Bayard that matter will receive careful attention after necessary communication with the Dominion Government ..	197
127	To Law Officers ..	..	21,	No. 114 for Report ..	197
128	To Colonial Office..	Confidential	21,	Acknowledges No. 114. Report sent to Law Officers. Canada has not justified her action as being warranted by existing law. She should do so at once, so as to enable Her Majesty's Government to answer Mr. Phelps ..	198
129	To Colonial Office..	..	21,	"Annie M. Jordan." Copy of No. 121. For Report from Canada ..	198
130	Colonial Office ..	Confidential	22,	Canadian Bill. Refers to No. 83. Despatch from Governor-General reserving Bill for Her Majesty's pleasure ..	198
131	" "	..	24,	"Jennie and Julia." Refers to No. 95. Report from Canada ..	200
132	To Colonial Office..	..	25,	Copy of No. 125 ..	201
133	Sir L. West ..	No. 55, Treaty	15,	Headlands. Copy of note from Secretary Bayard, protesting against Canadian warning to American fishermen ..	201
134	Colonial Office ..	Confidential	26,	Refers to No. 128. Copy of. "David J. Adams." As to justification of seizure by existing legislation. Telegram to Canada ..	202
135	" "	Confidential	26,	Refers to No. 83. "Warning to Fishermen." Copy of despatch from Canada ..	203
136	" "	Confidential	26,	Headlands. Answers No. 124. Lord Granville has no information ..	206



No.	Name.	No.	Date.	SUBJECT.	Page
137	To Colonial Office..	..	June 28, 1886	Refers to No. 117. Presses for Report from Canada on Mr. Phelps' representations ..	206
138	To Law Officers ..	..	29,	Refers to No. 127. Transmits Nos. 130 and 131.. .. ..	206
139	Colonial Office ..	Confidential	29,	Reports from Canada on Mr. Bayard's notes. "David J. Adams" and "Annie M. Jordan." Telegraph respecting .. ..	206
140	To Sir L. West ..	No. 32, Treaty Confidential	30,	Canadian Bill. Copy of No. 130 .. ..	217
141	To Colonial Office..	Confidential	30,	Headlands. Refers to No. 136. To ascertain what instructions Canadian Government has given to Custom officers, &c. .. ..	217
142	„ „ ..	..	30,	Headlands. Copy of No. 133 .. ..	217

CONFIDENTIAL.

Further Correspondence respecting the Termination of the Fishery  
Articles of the Treaty of Washington of the 8th May, 1871.

---

JANUARY 1 TO JUNE 30, 1886.

---

[In continuation of Confidential Paper No. 5289.]

---

No. 1.

*Mr. Meade to Sir J. Pauncefote.—(Received January 1, 1886.)*

Sir,

*Downing Street, December 31, 1885.*

I AM directed by Colonel Stanley to acknowledge the receipt of your letter of the 14th instant, inclosing copy of a telegram from Her Majesty's Minister at Washington, giving the text of that portion of the Message of President of the United States which relates to the appointment of a Commission to settle the Fisheries queries.

Colonel Stanley is of opinion that Sir Lionel West should be instructed to express to Mr. Bayard the satisfaction with which Her Majesty's Government have read that portion of the President's Message which referred to the Fisheries, and their readiness to join in the appointment of the proposed Commission.

Sir L. West might also suggest to Mr. Bayard at the same time the expediency of pressing matters to a conclusion as soon as possible, inasmuch as the fishing season will commence early in the spring.

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

---

No. 2.

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

(Treaty.)

(Telegraphic.)

*Foreign Office, January 5, 1886, 2.15 P.M.*

EXPRESS satisfaction of Her Majesty's Government at reference in President's Message to fisheries and appointment of Commission.

Suggest that matters should be pressed to conclusion as soon as possible, as fishing season commences early in spring.

---

No. 3.

*The Marquis of Salisbury to Sir L. West.]*

(No. 2. Treaty. Ext.)

Sir,

*Foreign Office, January 5, 1886.*

I HAVE to request that you will express to the Government of the United States the satisfaction with which Her Majesty's Government have observed the reference which is made in the President's Message to the Fisheries question, and to the appointment of a Mixed Commission to deal with it.

It would be desirable for you to suggest that this matter should now be pressed to a conclusion as soon as possible, as the next fishing season commences early in the spring.

I have instructed you to this effect by telegraph to-day.

I am, &c.  
(Signed) SALISBURY.

No. 4.

*Sir L. West to the Marquis of Salisbury.\*—(Received January 29.)*

(No. 2. Treaty. Confidential.)

My Lord,

Washington, January 16, 1886.

I HAVE the honour to inform your Lordship that I have duly expressed to the Secretary of State the satisfaction of Her Majesty's Government at the paragraph in the President's Message, in which allusion is made to the Fisheries question, and the appointment of a Commission, as conveyed in your Lordship's telegram of the 5th instant, and that to-day I had an opportunity of pressing upon him the necessity, in view of the approaching fishing season, of urging the decision of Congress in the matter.

Mr. Bayard said that he quite agreed with me, and hoped that the policy indicated in the President's Message would be carried out. He expected, he said, that some steps would shortly be taken to bring up the Fisheries question in Congress, under the President's recommendations, and he had no intention of going back from the policy he had always advocated.

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

No. 5.

*Sir R. Herbert to Sir J. Pouncefote.—(Received January 30.)*

Sir,

Downing Street, January 29, 1886.

WITH reference to previous correspondence respecting the temporary arrangement whereby American fishermen were admitted to the fisheries of Canada and Newfoundland, subsequently to the termination of the Fishery Articles of the Treaty of Washington to the end of the fishing season, I am directed by Colonel Stanley to transmit to you, for the information of the Marquis of Salisbury, an extract from the Minutes of the Executive Council of Newfoundland, dated the 22nd June, 1885, giving the reasons of Sir William Whiteway, then Attorney-General, for his dissent from the decision of the Executive of Newfoundland in regard to this temporary arrangement, so far as concerned that Colony.

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

Inclosure in No. 5.

*Extract from Minutes of the Executive Council of Newfoundland for the Half-year ended June 30, 1885.*

*Minute by Attorney-General dissenting from Arrangement made as to United States' Fishermen.*

THE following are the reasons given by Honourable Attorney-General, Sir William V. Whiteway, for his dissent from the decision of the Executive regarding the temporary arrangement for Americans fishing on Newfoundland coast this season:—

“I dissent from the course adopted for the following reasons:

“It was proved beyond a doubt at the Halifax Fishery Commission, that the concessions made by Great Britain to the United States by the clauses in the Washington Treaty referring to the Newfoundland fisheries far exceeded in value the counter-concessions made by the United States, and, after an exhaustive

inquiry extending over a period of nearly six months, when the fullest evidence was adduced on the part of the United States in support of their case, an award of 1,000,000 dollars was made to this Colony.

"The United States have resolved to terminate this Treaty on the 2nd July next.

"The exports of fish and fish products from this country to the United States have decreased, and stand, in round numbers, as follows:—

"Exports during Reciprocity Treaty (eleven years), average 360,000 dollars per annum.

"During period between Reciprocity Treaty and Washington Treaty (eight years), average 360,500 dollars.

"Exports during Washington Treaty (eleven years), average 272,000 dollars.

"Of the latter about 150,000 dollars is exported from the United States, they retaining for home consumption about 122,000 dollars.

"The right to fish on the American coast is of no value to Newfoundland fishermen. It is never used, and, moreover, the fisheries on that coast have been exhausted.

"The Americans procure all the fresh bait (caplin, herring, squid, &c.), which they preserve in ice, requisite for carrying on the large bank fishery on the Newfoundland coast. They import duty-free into this country a large quantity of small fish which they heretofore threw away as unsaleable in the United States' markets, procuring in return bait fishes, ice, &c.

"There was a concensus of opinion among the United States' fishermen at the Halifax Fishery Commission that they could not prosecute the bank fishery with advantage in the absence of fresh bait, that if no fresh bait was used upon the banks they would obtain fish with salt bait, but that if others used fresh bait in the neighbourhood, the salt bait fishermen would not be successful.

"The Newfoundlanders are embarking largely in the bank fishery. They have the key of those deep-sea fishing grounds on the banks in possessing the bait upon their coasts essential to its successful prosecution. The Americans and the French are alike dependent upon our bait for the very existence of this bank fishery, which are of enormous value to those nations. In surrendering the use of that key to the United States, Newfoundland has enjoyed the so-called privilege of sending 122,000 dollars worth of fish products into the United States, the duty upon which would have been paid by United States' consumers. This, in fact, brings no return. Duty or no duty, these articles the United States' consumer will have, and, as the above statistics evidence, they really consumed more during the period when there was a duty than when there was none.

"To preserve our inshore cod-fisheries it is necessary to protect the bait fishes upon which the cod feeds.

"The large destruction of bait fishes upon our coast to supply United States' and French cod-fisheries, is highly detrimental to the cod-fishery, in lessening the food which attracts the cod inshore.

"To thoroughly advance our fishing interest bait fishes should be prohibited from being exported as well to the French as to the United States.

"For these and other reasons, of equal cogency, I cannot concur in yielding immense privileges to the United States, for which they offer nothing in return—not even the questionable advantage of admitting our fish products duty-free.

"In a word, I cannot concur in a proposal to yield enormous privileges to the United States, for which we are to get not even the semblance of a return."

#### No. 6.

*Sir L. West to the Marquis of Salisbury.\*—(Received February 1.)*

(No. 21. Commercial.)

My Lord,

*Washington, January 16, 1886.*

I HAVE the honour to inclose to your Lordship herewith copies of a Joint Resolution introduced into the House of Representatives for a renewal of commercial relations with the British possessions in North America, which has been referred to the Committee on Foreign Affairs.

I have, &c.

(Signed)

L. S. SACKVILLE WEST.

\* Copy to Colonial Office, February 3.

Inclosure in No. 6.

49th Congress, 1st Session.—H. Res. 40.

IN THE HOUSE OF REPRESENTATIVES.

January 5, 1886.—Read twice, referred to the Committee on Foreign Affairs, and ordered to be printed.

Mr. MAYBURY introduced the following joint Resolution:—

*Joint Resolution for Renewal of Commercial Relations with the British Possessions in North America.*

Whereas the Reciprocity Treaty with Great Britain, regulating commerce and navigation between the United States and the British Colonies of North America, was terminated on the 17th March, A.D. 1866, in virtue of previous notice given by the United States; and

Whereas the provisions of said Treaty providing for mutual rights in certain sea fisheries, and for the free navigation of the Great Lakes, the River Saint Lawrence, and the canals connected therewith, were restored in 1871 by the Treaty of Washington, so called; and

Whereas the circumstances under which the notice of the abrogation of said Treaty of Reciprocity was made have been changed and modified by time, and unfettered trade and commerce between the British possessions in North America and the United States would now be reciprocally beneficial, advantageous, and satisfactory: therefore,

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, that this Congress would look with favour and approval upon any action taken by the executive department of the Government tending to a renewal of commercial relations with the British possessions in North America by compact or Treaty, having in view the reciprocal interests of both nations.

No. 7.

*Sir L. West to the Marquis of Salisbury.\*—(Received February 1.)*

(No. 3. Treaty.)

My Lord,

*Washington, January 16, 1886.*

WITH reference to my preceding despatch, I have the honour to inclose to your Lordship an article from the "New York Tribune" (Republican) on the Agreement come to respecting the fisheries. The object of this article is to cast odium on the Secretary of State for adopting the suggestions of Her Majesty's Government.

This attack has been met, however, by an able article in the "Nation" and one in the "New York Times," of which copies are annexed.

I have, &c.

(Signed) L. S. SACKVILLE WEST.

Inclosure 1 in No. 7.

*Extract from the "New York Tribune" of January 15, 1886.*

**HOW TO PROTECT THE FISHERIES.**—Congress has an easy method of repudiating the diplomatic agreement into which Secretary Bayard was entrapped by the British Minister. The operation of the Fishery Clauses of the Treaty of Washington was extended six months from the 1st July, with the understanding that a formal recommendation for the appointment of a Joint Commission should be made in the President's Message. This suggestion, offered by the British Minister a few days after the inauguration, was adopted by the Administration as its fisheries policy.

\* Copy to Colonial Office, February 4.

The appointment of a Joint Commission for the settlement of this question has been recommended by the Executive in the interest of Canadian fishermen. Congressional action upon that proposal should be indefinitely deferred. American fishermen do not favour either a renewal of the clauses which have been abrogated or the reference to the questions at issue to a Joint Commission.

The abrogation of the Clauses, it is true, curtails rights and privileges of American fishermen in Canadian waters, but it also secures protection in the home market. The fishing fleet of the provinces no longer has duty-free entrance in American ports for their catch as well as the right to the inshore fisheries. This restores the operation of the Customs laws, gives American fishermen the advantage in their own markets, and confers upon them their rightful share in the protective policy of the country. They are satisfied with this arrangement, since the benefits conferred amply compensate them for the privilege of fishing within the disputed 3-mile limit. As a matter of fact, fish are taking more southerly courses off the bank than formerly, and the inshore fisheries have lost much of their value. Congress abrogated the Clauses in the general interests of productive American industries. Secretary Bayard, being a free trader, was indifferent to those interests, and became a willing dupe of the British Minister.

American fishermen have good reason to be alarmed by proposals for a new International Commission. Their interests have never been understood by any of the American Representatives acting on this question through diplomatic agencies. The provincial authorities invariably succeed in appointing more experienced men to represent the interests of their fishermen. The award of 5,500,000 dollars is not by any means the only instance in which Canadian agents have outmanœuvred and outwitted American Representatives before International Tribunals. The entire diplomatic correspondence between the two countries relating to this subject attests the superior resources of the British Foreign Office. Every new Treaty has made inroads upon the unrestricted privileges of fishing on the Grand Banks and in the Gulf of St. Lawrence accorded as an existing right in the Convention by which the independence of the Colonies was recognized. Every Joint Commission or International Tribunal has involved an additional sacrifice of the interests of American fisheries. Those Yankee sailors consider diplomacy a lottery in which the Canadians invariably draw the prizes. They do not desire the intervention of a new Joint Commission. They are willing to take their chances under the 'Treaty of 1818 and the Customs schedules, and only ask to have one or two United States' vessels of war sent to the banks during the fishing season to protect the rights of the American fleet. All they now ask is protection in their calling, protection in home markets, and protection against foreign diplomacy.

---

Inclosure 2 in No. 7.

*Extract from the "Nation" of January 14, 1886.*

MR. BAYARD AND THE FISHERY QUESTION.—Nothing could be more flagitious and unwarranted than the recent attacks, led by a prominent Democrat in Massachusetts, on Secretary Bayard, for his course in relation to the pending Fishery question; and their virulence naturally suggests a suspicion of an intent to forestall anything like a calm discussion of the merits of the case by appealing to and awakening popular prejudices. But what are the facts in the case?

The Fishery Clauses of the Washington Treaty of 1871 having been abrogated on the 1st July last by the action of Congress, the Treaty of 1818 (between the United States and Great Britain), determining the rights and privileges of citizens of the United States engaged in fishing in British American waters, again comes in force. In this Treaty the United States renounced any right to fish "within 3 marine miles of any of the coast, bays, and harbours of His Britannic Majesty's dominions in North America." The interpretation of this limitation—certainly on the part of English diplomatists—has always been "that the 3 miles meant miles to be measured from the headlands or extreme points of land at the entrance of bays or indents of the coast," and, therefore, that American fishermen had no right to enter such bays or indents to take fish, even if the fishing were done at a distance of more than 3 miles from the shore. It is also to be here noted that, in agreeing to such renunciation of fishing rights, the United States

relinquished to Great Britain nothing more than it claims for itself; our Admiralty jurisdiction, by Act of Congress, extending within a marine league from our shores, while, in 1806, our Government thought it not unreasonable that they should have exclusive jurisdiction "within the chambers formed by headlands, or anywhere at sea within the distance of 4 leagues; or from a right line from one headland to another" (see Madison's letter to Monroe and Pinckney, May 17, 1806). Judge Story, in his "Commentaries," also thought that the United States had a right to claim maritime jurisdiction for fiscal and defensive purposes over waters on our coasts, even though included within lines stretching from quite distant headlands, as from Cape Ann to Cape Cod, and from Nantucket to Montauk Point, &c.

But although the United States has by its own legislation clearly acquiesced in the English interpretation of the Treaty of 1818, its fishermen, especially those engaged in the cod fishery off Newfoundland, never have; and ever since the ratification of this Treaty of 1818 the attempt on the part of British colonial authorities to enforce it has led to numberless collisions between our fishing-vessels and the British coastguard cruizers, with arrests and seizures of property, prolonged litigation and diplomatic correspondence; and in more than one instance the two countries, by reason of these disputes, have been led almost to the verge of war. Now, it was under these circumstances that Congress abrogated the Treaty of 1871, and, with a carelessness in respect to detail that is not a little singular, fixed upon the 18th July, 1885, in the midst of the fishery season, as the day on which the abrogation should take effect, and the arrangement for the season's fishing entered in the spring by the American fleet be summarily broken up. It is to be borne in mind that the privileges granted to the Americans by the Treaty covered not only the right of fishing along the shores and within the bays and headlands of the British Colonies, but also the right to land for the purpose of drying and curing fish, for mending and drying nets, for the purchase of ice, bait, wood, and other ship's stores, and for selling and disposing of their "catch," if they found it profitable so to do—as is the case in respect to the catch of cod below a certain size. The result of this would have been that if the Canadian and Newfoundland authorities had insisted upon their rights, and had summarily compelled the American fishermen to desist from fishing in British colonial waters after the 1st July, the business of the American fleet would have been mainly broken up, large losses would have been entailed upon its owners, and a feeling of bitterness engendered which it was clearly the intent of both Governments to avert.

That such a condition of affairs was imminent is shown by the circumstance that during the last winter a Bill was introduced into the Canadian Parliament providing for two armed cruizers to protect the Dominion fisheries from encroachment, consequent upon the abrogation of the Treaty. Accordingly, early during the last year, at the promptings mainly (it is understood) of the authorities of Newfoundland, who had no desire to have their shores and waters made the scene of turmoil and possible conflict, a proposition was made to the Administration by the British Government, through its Minister at Washington, that the fishing ventures of the American fishermen in British colonial waters, commenced prior to the 1st July, 1885, should be allowed to continue until the end of the fishing season, the same as if the Treaty had not been abrogated, on condition that the President of the United States would call the attention of Congress to the matter at its next Session, and recommend the authorization of a Commission on the part of the United States and Great Britain to consider the subject, and, if possible, settle the questions at issue in an amicable manner. It is for promptly acceding to this friendly proposition, with the sanction of the Executive, that Mr. Bayard is now abused, and accused of having transcended his authority. The last charge rests upon the circumstance that in the Memoranda exchanged between the two Governments it was understood, but not stipulated, that the same immunity accorded by Great Britain to the citizens of the United States engaged in fishing in British-American waters, should be extended to British vessels and subjects engaged in fishing in the waters of the United States; and this, it is claimed, Mr. Bayard had no right to do. But the shallowness of the pretence here set up becomes apparent when it is understood that if there is any fishing by British subjects within American waters, *i.e.*, within 3 miles of the shore, it is probably accidental and exceptional, rather than intentional.

In short, the secret of this whole business—the abrogation of the Treaty, in the first instance, and the opposition to any attempt to settle any pending difficulties relating to the fisheries in a rational manner by another Treaty—grows out of a

desire to increase the price of fish food to the great mass of the American people, by imposing high protective duties on the same. And the parties to this project start with the assumption that the British colonial authorities have not the same right to control their own local waters which this country claims and exercises in respect to its own waters, and scout the very idea that anything like a reciprocity of interest is involved in the controversy. As we seem to learn little in respect to any of the great questions of the day, except through the hard school of experience, it would on some accounts appear to be desirable that no attempt should be made at present to renew the Fishery Treaty, in which case the American "Bank" fishermen would probably, in about six months, be calling for the protection of armed vessels, and the country, in addition to its present business embarrassments, would have the prospect of more or less serious complications with Great Britain to think about.

---

Inclosure 3 in No. 7.

*Extract from the "New York Times" of January 17, 1886.*

**THE FISHERIES QUESTION.**—It is evident that Congress cannot safely avoid some definite action on the old and somewhat tiresome question of the fisheries. Secretary Bayard has received some senseless abuse for having entered into an agreement for the continuance of the arrangement made by the Treaty of Washington for a few months after the abrogation of the Fishery Clauses had taken effect. Congress gave notice in 1883 of the termination of those clauses on the 1st July, 1885, and repealed the Law for giving them effect, and it had failed to do anything to avert possible trouble in consequence of the lapse of the arrangement in the midst of the fishing season. The fishermen had fitted out their vessels and resorted to the banks and bays as usual, and on the 1st July would be using the privileges granted by the Treaty, but after that date could not be protected in them. It was not only proper for the State Department to enter into the understanding for a continuance of the existing agreement through the season, but it was its plain duty to do so. It was not the first to move in the matter, but merely responded to the initiative of the British Minister, whose instructions were due to a desire to avoid troubles that might prejudice a permanent settlement of the Fisheries question. The only act of the Secretary of State open to criticism was the pledge that the appointment of a Joint Commission to devise a permanent settlement of the question should be recommended to Congress. There may be a possible difference of opinion as to the propriety of this, but a pledge of recommendation could do no possible harm, as the discretion of Congress in the matter remained unimpaired.

To our mind the recommendation seems in itself a very proper one. There ought to be, if possible, a permanent settlement of this ancient controversy. The abrogation of the Fishery Clauses of the Treaty of Washington throws us back upon the Convention of 1818, which was the cause of endless trouble all the time it was in force. It excludes our fishermen from the inshore fisheries, allowing them to take fish only beyond the 3-mile limit from the coast of the British Provinces, and permitting them to land only for certain designated purposes, as to repair boats and nets, obtain supplies, &c. There was, of course, a natural tendency to encroach over the 3-mile limit, which could not be visibly staked off, and constant complaint and contention, and sometimes bitter conflicts, were the result. They would be the result again. There would be no possible way of preventing collisions or protecting rights upon both sides without doing injustice to either. The two Governments can hardly keep a naval force employed to watch and protect the fishermen.

The Massachusetts fishermen are opposed to a Joint Commission and apparently to any new settlement. There was, under the old Reciprocity Treaty with Canada, and later under the Washington Treaty, free admission of Canadian fish into our markets. This is what the Gloucester men really object to. They want the privilege of catching fish off the shores of the British Provinces in free competition with Canadian fishermen, and they want to bring their catch home and sell it without any competition from them. It is a mean-spirited confession either that they cannot compete successfully with the Canadians in the business or that they want their countrymen to be compelled by law to pay them a higher price for fish.



than it would command in an open market. They can make no plea for American labour, for most of their crews are, in fact, hired in the British Provinces and paid the wages there prevailing. To get a guarantee of protection and the practical control of the price of fish in our markets, these Massachusetts mariners are quite willing to take the chance of conflicts and collisions, and of embroiling the country in a trouble the cost of which they would not have to pay.

Either affairs must be left as they are and allowed to drift until serious trouble comes, or some new agreement must be made. It is certain, that a new settlement cannot be made by one of the parties in interest on conditions merely satisfactory to itself. It will have to be a mutual affair, and the subject is one upon which the two Governments cannot deal with each other to advantage. There is need of a close inquiry, and of negotiations having reference to many details of a special character, and we can see no practicable way of dealing with it except through a Joint Commission. It is said that in all such negotiations we have heretofore got the worst of the bargain, and it is feared that we would come out second best again. This is not a complimentary view of our diplomacy, and if it justly applies to the past we see no reason why it should be justified in the future. No agreement would be obligatory until ratified and sustained by Congress, and we might safely try our hand at negotiation, and see if we have not "smartness" enough to hold our own with the Britishers.

No. 8.

*Sir L. West to the Marquis of Salisbury.*\*—(Received February 1.)

(No. 4. Treaty.)

My Lord,

Washington, January 20, 1886.

I HAVE the honour to inclose to your Lordship herewith the official Report of a debate in the Senate on the Fisheries question which took place on a Resolution to the effect that the Senate ought not to sanction the appointment of a Commission as recommended by the President.†

The terms of the Resolution indicate the animus of the New England Senators against the policy of the present Administration, and it may almost be said against coming to any amicable agreement whatsoever with Her Majesty's Government.

Their chief arguments were—

1. That the Secretary of State had no right to enter into the temporary agreement without the consent of the Senate.

2. That the fish had, for some unexplained reason, left Canadian waters, and now resorted to American waters, and that, therefore, American fishermen did not require the renewal of fishing privileges, which had cost the country 5,500,000 dollars. This last argument was ably combated by Senator Morgan, who said:—

"We have found out, according to the statement of the Senator from Massachusetts (Senator Hoar), that the fish themselves, by some new instinct, had commenced floating to our Massachusetts shores, and, therefore, we found that it was convenient and proper for us to change the fundamental law between the United States and Great Britain on the subject of the fisheries. "If that," he continued, "is not bringing the Government of the United States down upon its knees in an attitude of humiliation before the other nations of the world, I do not understand the subject. . . . It turns out that the whole trouble is that the mackerel have changed the course of their run, and that we are now making a bad bargain out of what was formerly a good one."

The Resolution has, without further debate, been referred to the Committee on Foreign Relations. On the other hand, the House Committee on Foreign Affairs have informally discussed the Fisheries question. The general sentiment is said to have been that the whole subject of the relations of the United States with Canada should receive the careful consideration of Congress.

I have, &c.

(Signed) L. S. SACKVILLE WEST.

\* Copy to Colonial Office, February 4.

† Not printed.

No. 9.

*Sir L. West to the Marquis of Salisbury.\*—(Received February 16.)*

(No. 6. Treaty.)

My Lord,

Washington, February 2, 1886.

WITH reference to my despatch No. 4, Treaty, of the 20th ultimo, I have the honour to inform your Lordship that, from what I can learn, there is not much probability of any action being taken by Congress on the Fisheries question as recommended by the President in his Message. The majority of the Senate is decidedly opposed to the policy of the Secretary of State, as explained in my despatch No. 44, Treaty, of the 11th December, 1885, while the members of the House Committee on Foreign Affairs are reported to say that there are two obstacles to the appointment of a Commission. One is the fact that the immediate representatives of the fishery interests are opposed to it, and the other is that those who favour a reduction of the Tariff are opposed to any interference with the Tariff through Reciprocity Treaties. So much so is this the case that a Bill has again been introduced to provide for the abrogation of the Treaty with Hawaii. Under these circumstances, it is asserted that the Committee will not report on the subject of the Fisheries Commission or on reciprocity with Canada. The fishermen have given the Committee to understand that they no longer ask for gun-boats to protect them in case they shall fish within the 3-mile limit, and that they are willing to submit all questions that may arise about the inshore fisheries to a Mixed Board.

I may observe that the assertion that the fishery interest is opposed to a Commission is not warranted, as I am credibly informed that the fish interest both in Boston and Chicago is almost unanimous in favour of the Commission as well as of reciprocity. In view, however, of what seems to be the general opinion, I propose, as soon as the Secretary of State is able to see me, to point out to him again that the fishing season will shortly open, that the temporary arrangement may be said to have ceased on the 1st January, and that the provincial Governments will doubtless revert to the stipulations of Article I of the Treaty of 1818, the enforcement of which he has repeatedly deprecated as likely to lead to serious difficulties.

I have, &amp;c.

(Signed)

L. S. SACKVILLE WEST.

No. 10.

*Sir L. West to the Marquis of Salisbury.†—(Received February 16.)*

(No. 7. Treaty. Confidential.)

My Lord,

Washington, February 5, 1886.

WITH reference to my despatch No. 4, Treaty, of the 20th ultimo, I have the honour to inclose to your Lordship herewith copies of the official Report of the proceedings in the Senate with regard to the Fishery question, and also a Minute of an informal conversation with one of the Republican Senators, which explains the position taken by the Senate in this matter.

This paper I have communicated confidentially to the Marquis of Lansdowne.

I have, &amp;c.

(Signed)

L. S. SACKVILLE WEST.

Inclosure in No. 10.

*Minute of Conversation with Senator Allison (Republican).*

(Confidential.)

THE Senator commenced by saying that the Senate was considering the Fisheries question and the President's recommendations for the appointment of a Commission. Mr. Bayard, he thought, in consenting to the temporary arrangement, had been "outwitted by the Dominion Government and myself, and by promising to insert the paragraph in the President's Message had risked—should Congress assent to it—a repetition of proceedings which led to the Halifax Award." "We cannot with our existing system," he said, "contend with the skilled men which your

\* Copy to Colonial Office, February 25.

† Copy to Colonial Office, February 19.

diplomatic profession supplies for the treatment of such questions whenever they may arise, and it is better, therefore, for us to 'get along' as best we can when they do arise, without any definite arrangement which might compromise us."

I expressed my surprise to Mr. Allison that the Senate should entertain the idea which had been put forward by newspaper paragraphs for political purposes that Mr. Bayard had been "outwitted by the British Minister."

Congress, I said, had precipitately denounced the Fishery Articles of the Treaty of Washington in the middle of the fishery season, and there could be no question of "outwitting" in endeavouring to avoid a precipitate return to the stipulations of Article I of the Treaty of 1818, which, without some understanding, was inevitable, and which would certainly have involved the old disputes respecting headlands and bays and in-shore fisheries.

Mr. Allison replied that he admitted the precipitate action of Congress, both with regard to the Reciprocity Treaty of 1854 and the Fishery Articles in question; and also that if the commercial relations with Canada were placed upon the footing of the inter-State commerce of the Union, great benefit would accrue to the Northwestern States. But the opinion was general that this would sooner or later be obtained by the incorporation of Canada with the United States.

In the meanwhile, said Mr. Allison, why does not Mr. Bayard modify the Treaty of 1818, and present such modifications as deemed necessary to Congress under the Treaty-making power.

To this I replied that I did not see the force of the argument that in view of a possible, and I would add improbable, contingency, the existing political and commercial relations between the two countries should not until it arose be improved and established on a satisfactory basis. With regard to the modification of the Treaty of 1818, I said that such a course was probably considered as likely to meet with more opposition in the Senate than the mere establishment of a *modus vivendi*.

Mr. Allison, notwithstanding what he had said, acquiesced in this view, and ended by saying that he should not object to the appointment of a properly-constituted and efficient Commission of five members on each side with no fixed period for the termination of their labours; and he deprecated any ill-feeling which might be caused by action under the stipulations of the Treaty which must be considered as now in force.

*Washington, February 2, 1886.*

## No. 11.

*Mr. Bramston to Sir J. Pauncefote.—(Received February 19.)*

Sir,

*Downing Street, February 18, 1886.*

I AM directed by Earl Granville to acknowledge the receipt of your letters of the 3rd and 4th instant relative to the North American Fisheries question, and to state that copies have been confidentially communicated to the High Commissioner for Canada. A copy of your letter of the 4th instant, with its first inclosure, has also been transmitted to the Governor-General in a Secret despatch for the information of his Ministers.

Lord Granville has read with care the report of the debate in the Senate, and Sir Lionel West's despatch, and he desires to offer the following observations for the Earl of Rosebery's consideration.

The statement that the United States' fishermen no longer need permission to fish in Canadian waters in consequence of the altered habits of the mackerel, which now prefer the New England coasts, is confidently made; but it may be doubted whether it can be expected to afford much prospect of peace in Canadian waters during the approaching fishing season.

It is to be noted that the objections expressed in the Senate to the proposed Commission appear to be based, principally if not entirely, on fishery considerations. The Resolution, however, introduced into both Houses, on behalf of the United States' Government, was studiously framed so as to propose, not new fishery arrangements, but general arrangements for commercial reciprocity; and the concluding words of Sir L. West's despatch of the 20th ultimo seem to indicate a belief that Congress may not be unwilling, after the Fishery question has been put aside, to consider the relations between Canada and the United States on broad and general grounds.

The question is now becoming urgent; for if, as must be anticipated notwithstanding the statements and opinions of some Senators, even a moderate number of United States' vessels fit out for, and proceed to, the Canadian fishing grounds in April next, it will be necessary that Her Majesty's Government should be fully prepared to deal with the difficulties that will be created.

It is understood that the Canadian Government is inclined to a firm and vigorous exclusion of United States' fishermen from Canadian waters, on the ground that they have no right to be there, and that the maritime provinces of the Dominion will strongly insist on their exclusion, their fishermen possibly even taking the law into their own hands, unless Canadian fish is, as hitherto, admitted duty free into United States' ports. It will probably also be urged that if the fishery is surrendered to the United States without any equivalent, an important element of barter in a general Commercial Treaty will have been sacrificed.

Under all the circumstances, Lord Granville would suggest that it might be desirable that his Lordship and Lord Rosebery should invite Sir C. Tupper (and perhaps, also, Sir A. Galt, who, as having been Her Majesty's Commissioner in 1874, has a great knowledge of these questions), to a Conference at an early date to discuss the whole question.

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

---

## No. 12.

*Sir J. Pouncefote to Sir R. Herbert.*

Sir,

*Foreign Office, February 23, 1886.*

IN reply to your letter of the 18th instant I am directed by the Earl of Rosebery to state that his Lordship concurs in Earl Granville's suggestion that a meeting should be held at the Colonial Office, at an early date, for the purpose of consulting Sir A. Galt and Sir C. Tupper as to the proper course to be pursued in connection with the North American Fisheries question.

I am to request that the necessary arrangements may be made accordingly.

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

---

## No. 13.

*Sir J. Pouncefote to Sir R. Herbert.*

(Confidential.)

Sir,

*Foreign Office, February 25, 1886.*

I AM directed by the Earl of Rosebery to transmit to you a draft telegram and despatch which his Lordship would propose to address to Her Majesty's Minister at Washington concerning the North American Fisheries question; and I am to request that Earl Granville will inform his Lordship whether he concurs therein.

I am further to suggest that the question of the instructions to be given to the Admiral commanding on the North American Station should be promptly and carefully considered.

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

---

Inclosure 1 in No. 13.

*Draft of Telegram to Sir L. West.*

*Foreign Office, , 1886.*

AS Fisheries Commission apparently abandoned, urge that notice may be given to United States' fishermen that they are now precluded from fishing in British North American territorial waters.

---

## Inclosure 2 in No. 13.

*Draft of Despatch to Sir L. West.*

(No. . Treaty.)

Sir,

*Foreign Office, February , 1886.*

FROM the reports which have been received in this country Her Majesty's Government conclude that the Government of the United States will not propose the appointment of an International Commission to settle the North American Fisheries question, as contemplated in the temporary arrangement concluded last summer.

Whilst Her Majesty's Government regret that they will thus be deprived of a favourable opportunity for the settlement of this long-standing question on equitable terms, they desire, by every means in their power, to avoid any friction which might be caused by the cessation of the privileges lately enjoyed by United States' fishermen.

I have, therefore, to request that you will urge upon the Government of the United States the expediency of at once giving ample and public notice to the United States' fishermen that they are henceforward precluded from fishing in British North American territorial waters.

I have instructed you in this sense by telegraph to-day.

I am, &c.

## No. 14.

*Sir L. West to the Earl of Rosebery.\*—(Received March 5.)*

(No. 11. Treaty. Confidential.)

My Lord,

*Washington, February 19, 1886.*

WITH reference to the last paragraph of my despatch No. 6, Treaty, of the 2nd instant, I have the honour to inform your Lordship that, at an interview which I had this day with the Secretary of State, I took occasion to point out to him that the fishing season will shortly open, that the temporary arrangement may be said to have ceased, and that the Provincial Governments will doubtless revert to the stipulations of the Treaty of 1818, the enforcement of which he deprecated.

Mr. Bayard said that he regretted the animus which had been shown by Congress against the policy of the President, as indicated by his recommendation for the appointment of a Commission, and inveighed bitterly against those who had thwarted it.

The temporary arrangement had, he said, of course lapsed, and the New England fishermen, for whose interests he had cared in making it, were the first to repudiate it, and foremost to oppose any satisfactory settlement which it was intended to effect.

It was now necessary to avoid, if possible, the "friction" which might ensue from the action of the Dominion Government under the Treaty of 1818, and he presumed that this could only be done by a conciliatory interpretation of the restrictive provisions of that Treaty on both sides.

He begged to assure me that he had not gone back from what he had always said to me with regard to reciprocity, free fish and free fishing, or from his desire for more intimate commercial relations with Canada; but as Congress seemed to be opposed to reciprocity, while he must be prepared as best he could to face the consequences of its inaction in regard to the fisheries question. I replied that I felt sure that both Her Majesty's Government and that of the Dominion of Canada appreciated his efforts to carry out the policy he had indicated, but at the same time, failure to do so made it incumbent on the Government of the Dominion to give its earnest consideration to the steps which it may be desirable to take for the protection of its interests in the territorial waters of Canada, and to the position in which it is placed under the Treaty of 1818.

Mr. Bayard then asked me whether the legislative Acts of the provincial Governments were controlled by the Government of the Governor-General of Canada, and I replied that I was not competent to answer this question, which involved the right to enforce local regulations.

I have forwarded copy of this despatch to the Marquis of Lansdowne.

I have, &c.

(Signed) L. S. SACKVILLE WEST.

*Sir L. West to the Earl of Rosebery.\*—(Received March 5.)*

(No. 12. Treaty.)

My Lord,

Washington, February 20, 1886.

WITH reference to my preceding despatch, I have the honour to inclose to your Lordship herewith an article from the New York "Times" on the position of Canada and the United States under the provisions of the Treaty of 1818 in regard to the Fisheries question.

I have, &c.

(Signed) L. S. SACKVILLE WEST.

Inclosure in No. 15.

*Extract from the New York "Times" of February 20, 1886.*

TWO SIDES TO THE QUESTION.—Representatives of the Boston Fish Bureau and the Boston Chamber of Commerce are trying to impress upon the House Committee on Foreign Affairs the fact that there is another side to the question of coming to a new understanding with Great Britain on the subject of fisheries besides that presented by the Gloucester fishermen. The latter professed to care for no privileges beyond those secured by the Convention of 1818, and to believe that there was no danger of trouble with the British authorities if the matter was left as it is. They were, in fact, so intent upon a restoration of the duty on fish, which would secure to them, as they think, the United States' market, that they were willing to take the risk of trouble. But the difficulty is that the trouble, if it should come, would not affect them alone. It would have to be dealt with by the Government, and it might lead to serious complications with a friendly Power. It would be ridiculous for the Government to adopt a policy involving such a risk merely to please the fishermen of Cape Ann, and enable them to get a higher price for the product of their industry, by excluding from competition with them the fishermen of the British provinces.

Against their claim that there would be no trouble stands the record of forty years' experience under the Convention of 1818, during which there was almost continual trouble. There also stand the innate probabilities of the case. Under the Treaty of Washington the New England fishermen have been accustomed for the last twelve years to choose their own fishing-grounds along the coasts of the British provinces as well as on the banks and the deep sea. They have been at liberty to follow the fish without reference to distance from the coast-line, and have had the privilege of landing to cure and dry their fish, repair their nets, and obtain bait and other supplies without restriction.

Under the Convention of 1818, with the exception of certain parts of the coast of Newfoundland, Labrador, and the Magdalen Islands, they will be excluded from the inshore fisheries. They will have no right to prosecute their search within 3 marine miles of the coast. Exclusive of the parts of Newfoundland, Labrador, and the Magdalen Islands specially excepted, they may enter the bays and harbours of the provincial coast "for the purpose of shelter and of repairing damages therein, of purchasing wood and obtaining water, and for no other purpose whatever." They will be excluded from their customary supplies of bait, and from landing to cure and dry fish, where alone that privilege is of much value to them.

Under these circumstances, they will certainly be subject to difficulties and disadvantages in their business. There will be a constant temptation to encroach upon the prohibited waters, and in certain states of the weather it may be difficult to keep out of them. It is evident that Canada is determined, if she must fall back upon the Convention of 1818, to see that it is enforced to the letter. Preparations are already being made to reorganize the marine patrol on a scale never before attempted. It is to be in charge of an officer of the Royal Navy, and will be liberally sustained. Fishing-vessels which venture within the prohibited waters, or which unwittingly drift within them, are quite likely to get into trouble, and then we shall hear these same Gloucester fishermen crying aloud for protection and redress. It would be absolute folly to leave the way open for collisions and disputes when we are invited to aid in closing it.

\* Copy to Colonial Office, March 3, 1886.

The wisdom of abrogating the Fishery Clauses of the Treaty of Washington is doubtful. That action was inspired largely by resentment at the unjust decision of the Halifax Commission. But its award of 5,500,000 dollars had been paid, and it was a compensation for the privileges accorded by the Treaty, not for a period of twelve years, but for all the time that the Treaty might remain in force. If the privileges were not worth that sum they were certainly worth something; they were at least worth retaining after they were paid for. But from resentment at what was regarded as unjust in an irrevocable decision they were thrown away, and the only offset to the loss is the privilege of the hardy seamen of Cape Ann to charge their countrymen some 25 per cent. more for their fish. Whether that is such an advantage to the whole country as to justify the risk of international trouble over the fisheries is the question the Government has to decide. Certainly the sensible proceeding is to endeavour to reach an amicable understanding which will exclude all chance of trouble.

## No. 16.

*Sir R. Herbert to Sir J. Pauncefoot.—(Received March 5.)*

(Confidential.)

Sir,

*Downing Street, March 5, 1886.*

I AM directed by Earl Granville to acknowledge the receipt of your Confidential letter of the 25th ultimo, inclosing a draft telegram and despatch which the Earl of Rosebery proposes to address to Her Majesty's Minister at Washington relating to the North American Fisheries question.

Lord Rosebery will no doubt have noticed the telegraphic summary which appeared in the "Times" of the 26th February of the speech delivered by the Governor-General of Canada at the opening of the Dominion Parliament. The Governor-General is reported to have said that, "in the event of the failure of the negotiations with the United States, Parliament would be asked to provide means for the protection of the inshore fisheries of Canada by extending the present system of marine police;" and his Lordship may perhaps think that this is a sufficient notice to all whom it may concern, and that it may be advisable not to cause any avoidable friction between Sir L. West and the United States' Government, by expressly requiring him to urge that notice should be given to United States' fishermen that they are now precluded from fishing in British North American territorial waters. If Lord Rosebery takes this view, Lord Granville would suggest that the case would be met if the telegram to Sir L. West should be altered by the insertion of the words "consider whether we should" after the word "abandoned," with the addition at the end of the telegram of the words "see Governor-General's opening speech."

The draft despatch to Sir L. West would require a corresponding alteration.

I am to inclose copies of two Confidential despatches which have been received from the Governor-General on the subject. These despatches do not appear to Lord Granville to render necessary any modification in the proposed instructions to Her Majesty's Minister at Washington.

I am, &c.

(Signed) ROBERT G. W. HERBERT.

## Inclosure 1 in No. 16.

*The Marquis of Lansdowne to Earl Granville.*

(Confidential.)

Sir,

*Government House, Ottawa, February 18, 1886.*

THE action of the Committee of the United States' Senate on foreign relations in regard to the President's recommendation of the appointment of a Commission to deal with the question of the fisheries has been such as to make it evident that there is for the present no prospect of such a Commission being appointed, nor, as far as I am aware, is the temper of Congress such as to render it desirable that the negotiations which have already taken place should be renewed.

2. Under these circumstances, it becomes necessary for the Government of the Dominion to consider the course which it should adopt in consequence of the

expiration of the Fishery Clauses of the Treaty of Washington, which will no longer be in operation when the fishing season of 1886 commences.

3. The position of the two countries must, in the absence of any further agreement, be governed by the stipulations of Article I of the Treaty of 1818, and, although no formal or public statement has yet been made on the part of the Canadian Government, I am able to inform you that effectual measures will be taken to protect Canadian fishermen in the exercise of their rights within the territorial waters of the Dominion, and to prevent trespass within the limits of those waters by foreign fishermen. Suitable police vessels will be provided for this purpose, and the greatest care will be taken to place in command of them officers upon whose conduct reliance can be placed, and who will avoid the seizure of trespassing vessels except where the circumstances in which they are detected admit of no doubt as to the facts.

4. I have just received from Sir Lionel West a copy of his despatch of the 2nd February, 1886, to the Secretary of State for Foreign Affairs, and I observe that it is stated therein that the Washington Government has been given to understand by the United States' fishermen that they would be "willing to submit all questions that may arise in regard to the inshore fisheries to a mixed Board." The meaning of this suggestion is, I apprehend, that all disputes which may from time to time arise in consequence of trespass or alleged trespass in the territorial waters of Canada should be adjudicated upon by a Tribunal composed of Representatives both of this country and of the States. This suggestion is not one which would be entertained by my Government. Canadian vessels do not resort to any appreciable extent to the territorial waters of the United States, and there would be no prospect of a demand on the part of the Dominion that Canadian vessels, if any should be apprehended in the act of trespassing in American waters, should be tried before a Court upon which the Dominion should be represented.

5. Trespasses by American fishermen in Canadian waters constitute a violation of Treaty rights, which the Canadian Tribunals are competent to deal with, and there does not appear to be any reason for invoking the services of a Mixed Court in such cases, or any justification for the assumption by one Power that the Courts of the other are unworthy of confidence.

I have, &c.  
(Signed) LANSLOWNE.

---

Inclosure 2 in No. 16.

*The Marquis of Lansdowne to Earl Granville.*

(Secret and Confidential.)

My Lord,

*Government House, Ottawa, February 18, 1886.*

IN reference to my despatch of this day's date, marked Confidential, in which I pointed out that in the absence of any further agreement the fishermen of the Dominion and of the United States must be governed by Article I of the Convention of 1818, it will be within your recollection that in my Confidential despatch of the 11th September, 1885, I had the honour to suggest that should the negotiations then in progress not result in an understanding between the two countries, the question of the interpretation of the word "bays" in that Article should be referred to arbitration.

2. I do not anticipate that my Government will be prepared for the present to make any proposal with this object. It has never been admitted on the part of the Dominion that there could be any question as to the true interpretation of this part of the Article, and under these circumstances my Government would be reluctant to treat the question as an open one. I am, however, able to state that special instructions will be issued to officials in command of Canadian police vessels to avoid the seizure of trespassers in cases where the "bays" question would be likely to be raised. I believe, indeed, that prior to the date of the Treaty of Washington no seizures of American vessels took place, except where the trespassers were fishing within 3 miles of the shore upon the open coast. The same practice will no doubt prevail now, and instructions will be issued accordingly to the officers in command of the Canadian police vessels.

I have, &c.  
(Signed) LANSLOWNE.

---



## No. 17.

*Sir J. Pouncefote to Sir R. Herbert.*

(Confidential.)

Sir,

*Foreign Office, March 10, 1886.*

WITH reference to your letter of the 5th instant, I am directed by the Earl of Rosebery to state to you that, on consideration of the observations contained therein, his Lordship would be disposed to word as follows the proposed telegram to Sir L. West relative to the termination of the Fishery Articles of the Treaty of Washington:—

“As Fisheries Commission apparently abandoned, sound Mr. Bayard as to whether it is intended to issue notice to United States’ fishermen that they are now precluded from fishing in British North American territorial waters, as we are considering the issue of a reciprocal notice with regard to British fishermen in American waters.”

His Lordship would be glad to learn whether Earl Granville concurs in the telegram being now dispatched in these terms.

I am, &amp;c.

(Signed) JULIAN PAUNCEFOTE.

## No. 18.

*Sir R. Herbert to Sir J. Pouncefote.—(Received March 15.)*

Sir,

*Downing Street, March 13, 1886.*

I AM directed by Earl Granville to acknowledge the receipt of your letter of the 10th instant, and to state that his Lordship concurs in the terms of the telegram which it is proposed to send to Her Majesty’s Minister at Washington with reference to the North American Fisheries question.

I am, &amp;c.

(Signed) ROBERT G. W. HERBERT.

## No. 19.

*Mr. Helyar to the Earl of Rosebery.\*—(Received March 17.)*

(No. 13. Treaty.)

My Lord.

*Washington, March 4, 1886.*

WITH reference to Sir L. West’s despatch No. 12, Treaty, of the 20th ultimo, I have the honour to transmit herewith an article from the “New York Tribune,” attacking Mr. Bayard and the Democratic Administration for their action in prolonging the Fishery Clauses of the Treaty of Washington.

The tone of the article serves to indicate how little the advantages of a new Treaty are understood in the United States.

I have, &amp;c.

(Signed) H. A. HELYAR.

## Inclosure in No. 19.

*Extract from the “New York Tribune” of March 1, 1886.*

THE FISHERY CONTROVERSY.—The Administration’s pretext for prolonging the operation of the Fishery Clauses was very flimsy. It assumed that the abrogation of the Clauses exposed American fishermen to imminent peril in Canadian waters, and that an international compact was necessary in order to avert hostilities. As the New England fishing industry had importuned Congress to abrogate the Articles, and had known for two or three years the precise date when the Treaty of 1818 would become operative, this pretence of intervention on its behalf was a transparent sham. The diplomatic correspondence itself disclosed the fact that

\* Copy to Colonial Office, March 23.

the State Department had been lured into the negotiations by the British Minister and the Dominion authorities. Mr. Spofford has produced convincing evidence that the American fishing industry was *not consulted*, and that the Administration in its precipitate haste to favour foreign interests went beyond its constitutional rights, and was guilty of flagrant usurpation of power. A direct confirmation of the charge that the Government's action was due to foreign influence is now furnished from Ottawa. The Opposition leaders have been censuring Sir John Macdonald for allowing the Fishery Clauses to lapse without a vigorous effort to secure their renewal. Sir Alexander Campbell, in replying for the Government, has referred to the State Department's promise to have the President recommend the negotiation of a new Treaty. This he considered satisfactory evidence of the Dominion Ministry's active and successful intervention on behalf of the fishermen of the maritime provinces. The Government, he contended, had done all that could be expected of it in obtaining that promise. This was true enough, and the Liberal leaders were unreasonable in their criticisms. The trap had been well baited, and the Democratic Administration walked straight into it, or, to use a more appropriate figure, the gudgeons were seined in at the first swoop.

It is noticeable, however, that public opinion in the provinces is not as flabby as it is in the United States. The Government at Ottawa is censured for neglecting to strengthen the marine police and to send armed cruisers to the fishing-grounds. In the provincial Legislatures there are aggressive proposals for the protection of the inshore fisheries and retaliation against "Yankee poachers." The authorities, perceiving that there is no prospect of duping Congress, are preparing to construe the Treaty of 1818 in the narrowest spirit possible, and to have recourse to all the expedients by which American fishermen have been harassed in the past. This policy is defended on all sides. When negotiations for opening American markets to provincial industries fail, retaliation in some form is favoured as the only alternative. Conflicts with American fishermen are regarded as a useful expedient for hastening the negotiation of a new Treaty, by which Canadian industries will be greatly benefited. The marine police is strengthened, and vessels are armed with a view to opening a vigorous campaign against "Yankee poaching."

To demonstrations of this kind there is only one answer that a self-respecting Government can make, that is, to send to Great Britain a strong remonstrance against the headland pretension, which has no basis in international law; to insist that local Tribunals shall not be allowed to settle questions reserved for the jurisdiction of the Treaty-making Powers; and finally, to dispatch vessels of war to the Banks, if only for purposes of observation. This last measure is perhaps the most important in view of the menaces of the provincial authorities. But as soon as it is proposed the flabby free trade journals begin to sneer at the American navy, and to deprecate what they choose to consider warlike bluster against Great Britain. If these carping critics are familiar with American history they must know that the United States' Government has repeatedly been forced to adopt this course. Mr. Van Buren sent a vessel in 1839 to the Banks; Mr. Pierce ordered not one, but several ships of war to cruise in those waters. Here are Democratic precedents to which the present Administration ought to give heed. If American fishing-vessels are to be seized, searched, and condemned in defiance of international law, as has been done in the past, there ought to be vessels of war on the ground to watch the operations.

## No. 20.

*The Earl of Rosebery to Sir L. West.*

(Treaty.)

(Telegraphic.)

*Foreign Office, March 18, 1886, 5.10 P.M.*

AS Fisheries Commission apparently abandoned, sound Secretary of State as to whether it is intended to issue notice to United States' fishermen that they are now precluded from fishing in British North American territorial waters, as we are considering the issue of a reciprocal notice with regard to British fishermen in American waters.

## No. 21.

*The Earl of Rosebery to Sir L. West.*

(No. 11. Treaty. Ext.)

Sir,

*Foreign Office, March 18, 1886.*

FROM the Reports which have been received in this country Her Majesty's Government conclude that the Government of the United States will not propose the appointment of an International Commission to settle the North American Fisheries question, as contemplated in the temporary Arrangement concluded last summer.

Whilst Her Majesty's Government regret that they will thus be deprived of a favourable opportunity for the settlement of this long-standing question on equitable terms, they desire by every means in their power to avoid any friction which might be caused by the cessation of the privileges lately enjoyed by United States fishermen.

I have therefore to request that you will sound Mr. Bayard as to whether the United States' Government propose to issue a notice warning United States' fishermen that they are now precluded from fishing in British North American territorial waters, as Her Majesty's Government are now considering the propriety of issuing a similar notice with regard to British fishermen in United States' waters.

I have instructed you in this sense by telegraph to-day.

I am, &c.  
(Signed) ROSEBERY.

## No. 22.

*Sir L. West to the Earl of Rosebery.\*—(Received March 24.)*

(Treaty.)

(Telegraphic.)

*Washington, March 24, 1886.*

YOUR Lordship's telegram of the 18th.

Secretary of State does not deem it necessary to repeat notification given in President's Proclamation of the 31st January, 1885.

## No. 23.

*Mr. Bramston to Sir J. Pauncefote.—(Received March 29.)*

Sir,

*Downing Street, March 29, 1886.*

WITH reference to previous correspondence relating to the position of the Canadian Fisheries question on the termination of the Fisheries Articles of the Treaty of Washington, I am directed by Earl Granville to transmit to you, for the information of the Earl of Rosebery, a copy of a correspondence with the Admiralty, relating to an application made by the Governor-General of Canada by telegram to the effect that the police vessels of the Dominion commissioned for the protection of the fisheries may be permitted to fly the blue pendant.

I am to take this opportunity of inclosing a copy of a despatch received from the Governor-General relating to the employment of such vessels on the above service.

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

Inclosure 1 in No. 23.

*The Marquis of Lansdowne to Earl Granville.*

(Confidential.)

My Lord,

*Government House, Ottawa, March 3, 1886.*

WITH reference to my despatch of the 18th ultimo, in which I pointed out that effectual measures would be taken by my Government to protect Canadian fishermen in the exercise of their rights within the territorial waters of the

\* Copy to Colonial Office, March 27.

Dominion, and to prevent trespass within the limits of those waters by foreign fishermen, I have to acquaint your Lordship that authority has now been requested by my Minister of Marine and Fisheries to establish a sufficient marine police force for the purpose of affording efficient protection to the interests of the Dominion within its territorial waters.

2. With this object my Government have determined, besides making use of the Government steamers already available for this purpose, to charter and equip six swift-sailing fore and aft schooners of between 60 and 90 tons measurement for use as fisheries police vessels. For this purpose 50,000 dollars will be placed in the Supplementary Estimates to be submitted to Parliament for the current fiscal year, and a further sum of 100,000 dollars for the fiscal year ending 30th June, 1887.

I have, &c.  
(Signed) LANSDOWNNE.

Inclosure 2 in No. 23.

*The Marquis of Lansdowne to Earl Granville.*

(Confidential.)  
(Telegraphic.)

Ottawa, March 16, 1886, 10:30 P.M.

PLEASE move Admiralty to authorize our fisheries police vessels duly commissioned to fly blue pendant as 1869. Reply at once.

Inclosure 3 in No. 23.

*Mr. Wingfield to the Secretary to the Admiralty.*

Sir,

*Downing Street, March 17, 1886.*

WITH reference to the correspondence noted in the margin,\* I am directed by Earl Granville to transmit to you, to be laid before the Lords Commissioner of the Admiralty, a copy of a telegram from the Governor-General of Canada, asking that the police vessels of the Dominion employed in the protection of the fisheries may be authorized to fly the blue pendant.

Lord Granville would be glad if their Lordships would authorize a compliance with this application, as in the case of that made by the Government of the Dominion in 1870.

I am to explain that it is understood that these vessels are being commissioned for the protection of the fisheries, in consequence of the termination of the Fishery Articles of the Treaty of Washington, 1871.

I am to add that a further communication will be made to the Admiralty in due course as to the instructions which it may be necessary to give to Her Majesty's ships employed in Canadian waters during the approaching fishing season.

I am, &c.  
(Signed) EDWARD WINGFIELD.

Inclosure 4 in No. 23.

*The Secretary to the Admiralty to Sir R. Herbert.*

Sir,

*Admiralty, March 24, 1884.*

I HAVE laid before my Lords Commissioners of the Admiralty your letter of the 17th instant, transmitting a copy of a telegram from the Governor-General of Canada, asking that the police vessels of the Dominion employed in the protection of the fisheries may be authorized to fly the blue pendant.

2. With reference to Admiralty letter of the 12th September, 1884, stating that they were prepared to sanction the use of the blue ensign of Her Majesty's fleet (with the badge of the Colony thereon) and the blue pendant by vessels armed or fitted for harbour defence, police, or other like purposes within the territorial waters of the Colony, provided that such vessels are commanded by officers holding commissions from the Governor or Government of the Colony, I am

\* Colonial Office to Admiralty, July 2; Admiralty to Colonial Office, July 7, 1870.

commanded by their Lordships to request you will move the Secretary of State for the Colonies to cause them to be informed whether the fishery cruisers in question may be considered as vessels in the same category as those mentioned in Admiralty letter above referred to.

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

Inclosure 5 in No. 23.

*Mr. Wingfield to the Secretary to the Admiralty.*

Sir,

*Downing Street, March 27, 1886.*

IN reply to your letter of the 24th instant, relating to the application of the Governor-General of Canada that the police vessels of the Dominion employed in the protection of the fisheries may be authorized to fly the blue pendant, I am directed by Earl Granville to request that you will state to the Lords Commissioners of the Admiralty that the telegram from the Governor-General inclosed in my letter of the 17th instant speaks of these police vessels as to be "duly commissioned;" and, as appears from a despatch from him, dated the 3rd of this month, of which a copy is inclosed, they are intended to protect Canadian fishermen in the exercise of their rights within the territorial waters of the Dominion, and to prevent trespass within the limits of those waters by foreign fishermen.

These vessels, therefore, appear to come within the category mentioned in the letter from the Admiralty of the 12th September, 1884.

This being the case, Lord Granville would be glad if their Lordships would give the authority requested by the Governor-General as soon as may be possible.

I am, &c.  
(Signed) EDWARD WINGFIELD.

No. 24.

*Sir L. West to the Earl of Rosebery.\*—(Received April 1.)*

(No. 14. Treaty.)

My Lord,

*Washington, March 19, 1886.*

WITH reference to my despatch No. 11, Treaty, of the 19th February, I have the honour to inform your Lordship that upon my return from Ottawa I sought an interview with the Secretary of State for the purpose of explaining to him the views as expressed to me by the Marquis of Lansdowne and his Ministers on the actual position of the Dominion Government as regards the exclusive right of fishing in Canadian waters under the Treaty of 1818.

I have the honour to inclose to your Lordship copy of a Memorandum on this subject which I submitted to the Marquis of Lansdowne, as well as a copy of a note by his Excellency on my above-mentioned despatch to your Lordship, commenting also upon my Memorandum.

The views of the Dominion Government, communicated to me at Ottawa, are embodied in another Memorandum, copy of which is inclosed, and copy of which I handed to Mr. Bayard, who silently accepted them as the result of the refusal of Congress to adopt the recommendation of the President for the appointment of a Fishery Commission. I then called his attention to the Dominion Act of 1868, alluded to in the Memorandum, under which power is taken to grant to foreign vessels licences to fish for, take, dry, or cure fish of any kind within the 3-mile limit in British waters, and I said that it seemed to me that friction might be avoided if it was clearly understood that no American vessel would be allowed to fish in Canadian waters within the 3-mile limit without a licence, as provided for under the said Act. Mr. Bayard said that he had not seen the Act to which I referred, and he requested me, therefore, to send it to him, which I have accordingly done.

I have the honour to inclose herewith copy of a despatch which I addressed to the Marquis of Lansdowne after my interview with Mr. Bayard.

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

\* Copy to Colonial Office, April 9, 1886.

## Inclosure 1 in No. 24.

*Memorandum.*

THE position after the denunciation of the Treaty of 1854 seems well defined by Lord Clarendon to Sir F. Bruce, dated the 17th March, 1866. There is, however, this difference, that only one of the "two important rights" which, according to Lord Clarendon, reverted to the British Crown after the cessation of the Treaty of 1854, namely, the "exclusive right of fishing," and the "exclusive navigation of the River St. Lawrence," now revert to it by the termination of the IXth Article of the Treaty of 1871, for Article XXVI of that Treaty, which provides for the free navigation of the River St. Lawrence, is still in force. This fact, therefore, alters the position as described by Lord Clarendon under the Treaty of 1818.

The Government of the Dominion, since the expiration of the Treaty of 1854 up to the conclusion of the Treaty of Washington, have not insisted during this period on their rights to the exclusive navigation of the River St. Lawrence, but on the contrary have ever manifested the most conciliatory disposition as regards the Treaty of 1818, and the rights which reverted to them under it; but this policy has now been met in a contrary spirit by Congress, although not by the President or his Administration, while the existence of Article XXVI of the Treaty of Washington weakens the actual position, inasmuch as the right only of exclusive fishing now reverts.

The position may now become antagonistic by the tacit refusal of Congress to respond to conciliatory overtures, and by the steps which it may be desirable to take for the protection of the interests of the Dominion Government in the territorial waters of Canada. The American fishermen say that they no longer want to fish in Canadian waters, because the mackerel have left them, but they want free fishing nevertheless. The enforcement by Her Majesty's Government of Treaty rights under the Imperial Act 59 Geo. III, cap. 38, and the Acts of the Legislatures of New Brunswick and Nova Scotia, was, according to Lord Clarendon, rendered imperative upon the denunciation of the Treaty of 1854, and would therefore seem to be as imperative now unless those Acts are modified or repealed.

(Signed) L. S. SACKVILLE WEST.

*Washington, February 20, 1866.*

## Inclosure 2 in No. 24.

*Note on Sir L. West's Despatch to the Earl of Rosebery dated February 19, 1886, and Memorandum by Sir L. West dated February 20, 1886.*

THE description contained in Lord Clarendon's despatch to Sir F. Bruce dated the 17th March, 1866,\* and referred to in Sir L. West's Memorandum, is in some, but not in all, respects applicable to the present situation. The exclusive right of fishing in the territorial waters of the British possessions of North America now reverts, as it did on the termination of the Treaty of 1854, to the British Crown. No question, however, as is pointed out in Sir L. West's Memorandum, can arise with regard to the navigation of the River St. Lawrence, which is dealt with by Article XXVI of the Treaty of 1871, which Article has not been abrogated.

The concluding paragraphs of Lord Clarendon's despatch express with great clearness the consequences which were then to be anticipated from the denunciation of the Treaty of 1854, and which must now arise from the abrogation of the Fishery Clauses.

The action of the Dominion Government will probably, in the most important respects, be similar to that indicated by Lord Clarendon. The penultimate paragraph of his despatch applies with singular appropriateness to the situation which has been now created. It is as follows:—

"Her Majesty's Government have the satisfaction of feeling that they have done their utmost to prevent these consequences. They have declared their readiness, and they are still prepared, to come to any arrangement with the United States, either by a continuation or a renewal of the Reciprocity Treaty, or by entering

\* See State Papers, vol. lviii, p. 1186.

into new engagements by which the privileges hitherto enjoyed by American citizens might be still secured to them. The Government of Washington has declined to accede to these proposals."

Steps have already been taken by the Dominion Government for the formation of an effective fisheries police force for the protection of its interests within the territorial waters of Canada, and an appropriation will be immediately asked for that purpose.

Sir L. West's Memorandum concludes with the following paragraph :—

"The enforcement by Her Majesty's Government of Treaty rights under the Imperial Act 59 Geo. III, cap. 38, and the Acts of the Legislatures of New Brunswick and Nova Scotia, was, according to Lord Clarendon, rendered imperative (State Papers, vol. vi, p. 946) upon the denunciation of the Treaty of 1854, and would therefore seem to be imperative now, unless *those Acts are modified or repealed.*"

In regard to this passage, it is to be observed that while the Imperial Act 59 Geo. III, cap. 98, by which effect was given to the provisions of the Treaty of 1818, must undoubtedly be enforced, the operation of the Acts of the Provincial Legislatures referred to in the passage quoted has been materially modified by subsequent legislation. Those Acts, all of which were framed with the object of giving effect to the Treaty of 1818, were passed in the years of 1843 (Prince Edward Island), 6 Vict., cap. 14; 1853 (New Brunswick), 16 Vict., cap. 69; 1864 and 1866 (Nova Scotia), cap. 94 of the Revised Statutes, and 29 Vict., cap. 35.

The British North American Act, which came into operation in 1867, and in which the legislative authority of the Federal and Provincial Legislatures is defined, gives to the Parliament of the Dominion exclusive legislative authority over "sea-coast and inland fisheries," and accordingly in the following year an Act of the Dominion Government (31 Vict., cap. 61) was passed, dealing with foreign vessels fishing in the waters of the Dominion. Under this Act power was taken to grant to foreign vessels licences "to fish for, take, dry, or cure fish of any kind" within the 3-mile limit in British waters, and all vessels found fishing within these limits without such licences were rendered liable to penalties similar to those which had been previously enforced under the Provincial Statutes above referred to. Proceedings under this Act were to take place under any Court of Vice-Admiralty in Canada. A few licences were taken out by American fishermen shortly after the passing of the Act, but applications for them were subsequently discontinued. Under the concluding section of this Statute it is enacted that none of the above-referred-to Provincial Acts "shall apply to any case to which this Act applies, and so much of the said Act as makes provision for cases provided for by this Act is hereby declared to be inapplicable to such cases."

It would therefore appear that Mr. Bayard's question, referred to by Sir L. West in his despatch to Lord Rosebery of the 19th February, 1886, "whether the legislative acts of the Provincial Governments were controlled by the Government of the Governor-General of Canada," may be answered in the affirmative.

*Government House, Ottawa, March 10, 1886.*

---

Inclosure 3 in No. 24.

*Sir L. West to the Marquis of Lansdowne.*

My Lord,

*Washington, March 19, 1886.*

I HAVE the honour to report to your Excellency that at an interview which I had this day with the Secretary of State I placed in his hands copy of a Memorandum which is inclosed, embodying the view taken by your Excellency's Government as expressed to me of the actual position of the Dominion Government under the Treaty of 1818 with regard to the exclusive right of fishery in Canadian waters. I called Mr. Bayard's attention to the fact, as stated in the Memorandum, that the British North American Act, which came into operation in 1867, and in which the legislative authority of the Federal and Provincial Legislatures is defined, gives to the Parliament of the Dominion exclusive legislative authority over sea-coast and inland fisheries, and also to the power taken under the Act 31 Vict., cap. 61, to grant to foreign vessels licences to fish for, take, dry, or cure fish of any kind within the 3-mile limit in British waters, suggesting to him at the same time that all danger of "friction" might perhaps be avoided if it was clearly understood

that no American vessel would be allowed to fish in Canadian waters within the 3-mile limit without a licence as provided for under this Act.

At Mr. Bayard's request I sent him the volumes of the State Papers containing the Act in question, as well as the amending Acts of 1870 and 1871.

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

Inclosure 4 in No. 24.

*Memorandum.*

(Personal.)

THE exclusive right of fishing in the territorial waters of the British possessions in North America now reverts, as it did on the termination of the Treaty of 1854, to the British Crown.

The consequences which were then to be anticipated from the denunciation of that Treaty must now arise from the abrogation of the Fishery Clauses of the Treaty of 1871. Her Majesty's Government have, however, the satisfaction of feeling that they have done their utmost to prevent these consequences. They have declared their readiness to meet the suggestion made by the President in his Message to Congress for the appointment of a Fishery Commission, and even to enter into new engagements by which the privileges hitherto enjoyed by American citizens might be still secured to them, but Congress has declined their overtures, and the Dominion Government is therefore bound to take effective measures for the protection of the fishery interests within the territorial waters of Canada.

The British North American Act came into operation in 1867, and gives to the Parliament of the Dominion exclusive legislative authority over the sea-coast and inland fisheries, and accordingly an Act was passed by the Dominion Government in 1868, which deals with foreign vessels fishing in the waters of the Dominion, and upon the provisions of which the Dominion Government will now act in regard to them.

(Signed) L. S. SACKVILLE WEST.

No. 25.

*Sir R. Herbert to Sir J. Pauncefote.—(Received April 2.)*

Sir, *Downing Street, March 31, 1886.*  
I AM directed by the Secretary of State for the Colonies to transmit to you, for the information of the Earl of Rosebery, with reference to the North American Fisheries question, an extract from the Speech with which the Governor-General of Canada opened, on the 25th ultimo, the fourth Session of the Fifth Parliament of the Dominion.

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

Inclosure in No. 25.

*Extract from the opening Speech of the Marquis of Lansdowne to the Legislature of Canada, on the 25th February, 1886.*

SHOULD the negotiations between Her Majesty's Government and that of the United States for the appointment of a Joint Commission to adjust what is known as "the Fishery question," and to consider the best means of developing our international commerce, fail to secure any satisfactory result, you will be asked to make provision for the protection of our inshore fisheries by the extension of our present system of marine police.



*Sir L. West to the Earl of Rosebery.\*—(Received April 16.)*

(No. 15. Treaty.)

My Lord,

Washington, March 23, 1886.

WITH reference to my despatch No. 14, Treaty, of the 19th instant, I have the honour to inclose to your Lordship herewith an article written by a Washington correspondent of Professor Goldwin Smith's paper the "Week," published in Toronto, on "Governmental Paralysis" in connection with the pending Fisheries question and commercial relations with Canada.

I have, &c.

(Signed) L. S. SACKVILLE WEST.

Inclosure in No. 26.

*Extract from the Toronto "Week" of March 4, 1886.*

Washington, February 27, 1886.

GOVERNMENT PARALYSIS AT WASHINGTON.—What is the real depth and breadth of Canadian interest in the Fisheries and Reciprocity questions? Would any considerable industry or investment in the Dominion yield to despair or actual disaster if the commercial relations of Canada and the United States should remain as they are for another decade? That they will so remain for that period, unless indirectly changed by the operation of some large scheme of polity forced upon this country by its own circumstances, seems reasonably certain. I will endeavour to explain the grounds of this opinion.

The question of the fisheries, or of its multiple, reciprocity, might be settled by a Treaty. So far as such a Treaty depended upon the President, one might be negotiated upon just and rational bases by a reasonable expenditure of time and effort. The necessary concurrence of two-thirds of the Senate would hardly be beyond the bounds of a moderate expectation. The agreement of President and Senate is all that the letter of the Constitution calls for to give validity to a Treaty on the part of the United States. But after a long, and on one part somewhat bitter, struggle, a gloss has been imposed upon the words of the Constitution in such wise as to make them read that the consent of the House of Representatives is necessary to the operations of a Treaty whose provisions affect the revenue. I believe this construction to be contrary to the spirit of the Constitution, and that it is destined to introduce enormous delicacy and difficulty into the future intercourse of this country with foreign Powers; but, for good or evil, it has come, and has come to stay till that uncertain day when it shall be reversed, if ever, under the spur of a national danger or disgrace.

We have now reached the first conclusion from our exposition of facts; which is, that Canadians who, officially or personally, may desire reciprocity in fisheries or commerce should look to direct legislation by Congress, rather than to necessarily abortive Treaties, and should train the legitimate influences at their command upon the House of Representatives, in preference to wasting them upon the always agreeable but utterly impotent Diplomatic Representatives of the Government.

Granted, then, that it is to the House of Representatives we must look for any real settlement of the commercial relations of the Dominion and the Union, in whole or in part, what is the outlook when we turn our eyes towards that body?

The House consists of 325 Members, and of nine territorial Delegates having the privileges of debate and Committee-service. The extra-constitutional duties and powers of a Representative engage the greater part of his time, strength, and effort, and are of such a character that the modes of reaching a seat in the House, and retaining it after it has been won, are, in general, repugnant to men of a reasonably fine sensibility; whence it results that the average tone of the House, intellectually and morally, is below that which would be apt to be found in an equal number taken from all classes—criminals and paupers, of course, excluded. The frequency with which a Representative has to stand for re-election is destructive of his independence, as he fears to take any action which he cannot immediately vindicate to a majority of his constituents.

\* Copy to Colonial Office, April 27, 1886.

The House is provided with Standing Committees, many of which are obsolete or obstructive, but are retained in order that the Speaker may have the more Chairmanships, with their petty patronage, to distribute among his supporters. Capacity for service and the sense of responsibility are weakened by a practice of assigning each Member not provided with a Chairmanship, or a place on Ways and Means, to three Committees, and the Committees are swollen to unmanageable numbers in order to provide the three places. Maimed and shackled as the Committee system is, it produces more projects of legislation than the House can deal with. This impotency of the Legislative Chamber results, first, from the waste of time due to the licence accorded individual Members in the introduction, reference, and printing of Bills and Resolutions; secondly, from the waste of time due to adjournments had for the purpose of enabling Members to ply their non-legislative functions before the Executive Departments; thirdly, from the shortness of the alternate yearly Sessions; fourthly, from the scattering of 334 men behind as many desks occupying an unmanageable area of floor-space; fifthly, from the custom of reporting the proceedings of each sitting *verbatim*, whereby an eagerness is bred in the Members to be perpetually engaging in debate; sixthly, from the absence of any recognized or responsible leadership, either of the majority or minority; seventhly, from the exclusion from debate of the Heads of the Executive Departments, who might otherwise inform the House of the true state and bearings of a measure under consideration, and give some choice and direction to the course of affairs. It has a bearing upon the conduct of the international business between Canada and the United States to reflect that, for all practical purposes, Mr. Cleveland and his Cabinet are almost as far removed from the House of Representatives as are Lord Lansdowne and Sir John Macdonald. The President can put a drag upon legislation actually enacted, but his power to influence the enactment of laws is less than that of any of fifty Members of the House who might be named, while there is hardly a Member of the Senate who would not feel himself disparaged by the denial to him of greater control over the positive side of legislation than is possessed by the President. During the civil war the dire need of the nation conferred an almost despotic influence upon the Executive, and under the Presidency of General Grant, the patronage of the Government, unscrupulously used, supplied the leverage by which the action of Congress was bent to the administrative will; but the present President seems not to have the wish, if he had the power, to pay such a price for control.

Given a Legislative Body in which the individual tone is at least a little below the average standard, and the organization and environment of which are obstructive of legislative action, it follows inevitably that the legislative product will be scanty in volume and of uneven and, on the whole, dubious quality. Supply being the life-blood of Governments everywhere, the annual Appropriation Bills have been usually passed by conferring despotic powers upon the Chairman of the Committee in charge of general appropriations, and a practice grew up, and was followed for several years, of tacking urgent legislation upon these Appropriation Bills as the only way of getting it enacted. This practice accumulated nearly the whole power of legislation in the hands of the Chairman of the Committee named, and Mr. Randal used this authority, on its veto side, so tyrannically in the last Congress that a revolt followed, which swept away tacking as a legislative expedient, and at the same time abolished the more or less wise restraint of a single despot over the public expenditure. This revolt was a deeper plunge into chaos, but the very badness of the situation induces hope of gradual improvement.

Besides the annual appropriation for the support of Government, a yearly combination among the less scrupulous takes from the public coffers a great sum to be spent upon public improvements which are really improvements of the chances of the conspirators for re-election. All other important legislation is of the dynamic sort. A combination is effected by some part of the public, a rush is made upon Congress, and the startled Members, whose electioneering experiences habituate them to reverence numbers and to account only the present moment, hasten to enact what the mob demands, without deliberation and often without opinion. The Pension Laws, which threaten to engulf the resources of the Government, and are a standing menace to the right conduct of the finances and the revenue system, are a case in point. Strange to say, relief from this danger is promised through the growing strength and confidence of organized labour, which holds just now the ear of Congress. For decade after decade the Committee on Education and Labour, originally the Committee on Education alone, went begging for members. Now

the Chairmanship is considered a promising start for the Presidency. As the labour vote comes to the front the soldier vote recedes, and thus one form of demagoguery succeeds another in the incessant struggle between reason and unreason.

But what of the Fisheries and Reciprocity? Simply this, that if the time should ever come that our Gloucester fishermen must fish in Canadian waters, and they find the preventive service too efficient, Congress will secure to them a free ground and to the Canadian fishermen a free market; and an analogous state of things in our manufacturing industries will produce reciprocity, so far as our side of the question goes. In other words, whensoever either question reaches the explosive stage, our semi-paralyzed legislative machinery will act; meanwhile, there will be nothing but smooth palaver among officials who have to make a show of doing something for their honours and emoluments, and speculative and aimless mention and discussion in the daily prints. We have at this moment crying need of legislation touching the currency, the Tariff, the shipping, the navy, the coast defences, heavy ordnance, bankruptcy, and the public domain; but nothing will be done about any of them, in all probability, unless unexpected external force should suddenly be applied to this or that among them. The President's Message, year after year, is a rehash of old needs unsupplied, for ever lengthening by the addition of new demands to the old arrears.

A word of explanation may not be out of place as to why Congressional inefficiency is so disastrous. The answer is that without Congress the Executive is almost powerless. Independently of legislative action, the President can only receive foreign Ministers, pardon and relieve offenders against the United States, convene Congress or either House in special Session, adjourn Congress if the Houses disagree, and recommend legislative measures. He can make Treaties with the concurrence of the Senate, but not Treaties affecting the revenue. Soberly speaking, the House of Representatives has become as the breath of our nostrils, and we find our life-giver grown stagnant, if not impure.

B.

No. 27.

*Sir L. West to the Earl of Rosebery.\*—(Received April 5.)*

(No. 16. Treaty.)

My Lord,

Washington, March 24, 1886.

WITH reference to my telegram of this day's date, I have the honour to inclose to your Lordship herewith copy of a note which, at the request of the Secretary of State, I addressed to him on the subject of your Lordship's telegram of the 18th instant, as well as copy of his reply thereto, informing me that it is not intended to issue any further notice to the effect that American fishermen are now precluded from fishing in British North American territorial waters.

I have, &amp;c.

(Signed) L. S. SACKVILLE WEST.

Inclosure 1 in No. 27.

*Sir L. West to Mr. Bayard.*

Sir,

Washington, March 19, 1886.

I HAVE the honour to inform you that the Earl of Rosebery has requested me to ascertain whether it is intended to give notice to the United States' fishermen that they are now precluded from fishing in British North American territorial waters, as Her Majesty's Government are considering the expediency of issuing a reciprocal notice with regard to British fishermen in American waters.

I am, &amp;c.

(Signed) L. S. SACKVILLE WEST.

Inclosure 2 in No. 27.

*Mr. Bayard to Sir L. West.*

Sir, *Washington, March 23, 1886.*  
 I HAVE the honour to acknowledge the receipt of your note of the 19th instant, whereby you inform me that you have been requested by the Earl of Rosebery to ascertain "whether it is intended to give notice to the United States' fishermen that they are now precluded from fishing in British North American territorial waters, and to inform you, in reply, that as full and formal public notification in the premises has already been given by the President's Proclamation of the 31st January, 1885, it is not deemed necessary now to repeat it.

The temporary arrangement made between us on the 22nd June, 1885, whereby certain fishing operations on the respective coasts were not to be interfered with during the fishing season of 1885, notwithstanding the abrogation of the Fishery Articles of the Treaty of Washington, came to an end under its own expressed limitations on the 31st December last, and the Fisheries question is now understood to rest on existing Treaties, precisely as though no Fishery Articles had been incorporated in the Treaty of Washington.

In view of the enduring nature and important extent of the rights secured to American fishermen in British North American territorial waters, under the provisions of the Treaty of 1818, to take fish within the 3-mile limit on certain defined parts of the British North American coasts, and to dry and cure fish there under certain conditions, this Government has not found it necessary to give to United States' fishermen any notification that "they are now precluded from fishing in British North American territorial waters."

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

No. 28.

*Mr. Bramston to Sir J. Pouncefote.—(Received April 10.)*

Sir, *Downing Street, April 9, 1886.*  
 WITH reference to the letter from this Department of the 29th ultimo, relating to the application of the Governor-General of Canada, that the police vessels of the Dominion employed in the protection of the fisheries may be allowed to fly the blue pendant, I am directed by Earl Granville to transmit to you, for the information of the Earl of Rosebery, copies of a further correspondence with the Admiralty, and of a telegraphic correspondence between the Secretary of State and the Governor-General of Canada on the subject.

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

Inclosure 1 in No. 28.

*The Secretary to the Admiralty to Sir R. Herbert.*

Sir, *Admiralty, March 29, 1886.*  
 WITH reference to your letter of the 27th instant, and to previous correspondence, relative to the request that the police vessels of the Dominion of Canada employed in the protection of fisheries may be allowed to fly the blue pendant, I am commanded by my Lords Commissioners of the Admiralty to request that you will move Earl Granville to cause them to be informed whether the fisheries which these vessels are to protect are all within the territorial waters of the Dominion, and also whether their use will be limited to these waters.

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

## Inclosure 2 in No. 28.

*The Marquis of Lansdowne to Earl Granville.*

(Telegraphic.)

[No date.]

REFERRING to your telegram of the 5th April, answer is affirmative.

## Inclosure 3 in No. 28.

*Earl Granville to the Marquis of Lansdowne.*

(Telegraphic.)

*Downing Street, April 5, 1886.*

REFERRING to your telegram 16th March and confidential despatch 16th March. Presume vessels will only act within territorial waters.

## Inclosure 4 in No. 28.

*Mr. Bramston to the Secretary to the Admiralty.*

Sir,

*Downing Street, April 9, 1886.*

IN reply to your letter of the 29th ultimo relating to the application that the police vessels of the Government of Canada should be allowed to fly the blue pendant, I am directed by Earl Granville to transmit to you, for the information of the Lords Commissioners of the Admiralty, copy of telegraphic correspondence which has passed with the Governor-General since the receipt of your letter, from which their Lordships will perceive that the fisheries which these vessels are to protect are all within the territorial waters of Canada, and that their use will be limited to these waters.

I am to inclose a copy of a confidential despatch from the Governor-General, upon which was based Lord Lansdowne's telegram inclosed in the letter from this Department of the 17th ultimo, to which Lord Granville proposes to reply by acquainting the Governor-General of the purport of the Law Officers' opinion on the first question submitted to them by the Admiralty in September 1884, as shown by their Report inclosed in your letter of 12th September, 1884, and by informing him that the police vessels in question are governed by local law while within colonial waters.

I am, &amp;c.

(Signed) JOHN BRAMSTON.

## No. 29.

*Sir L. West to the Earl of Rosebery.\*—(Received April 10.)*

(No. 18. Treaty.)

My Lord,

*Washington, March 28, 1886.*

WITH reference to the Memorandum on the position of the Dominion Government under the Treaty of 1818, which, as reported in my despatch No. 14, Treaty, of the 19th instant, I placed in the hands of the Secretary of State, I have the honour to inclose copy of a despatch which I have received from the Marquis of Lansdowne, stating that it is in accordance with the views of his Government upon the subject.

I have, &amp;c.

(Signed) L. S. SACKVILLE WEST.

## Inclosure in No. 29.

*The Marquis of Lansdowne to Sir L. West.*

Sir,

*Government House, Ottawa, March 24, 1886.*

I HAVE the honour to acknowledge the receipt of your despatch of the 19th instant, inclosing a Memorandum recently handed by you to the Secretary of

\* Copy to Colonial Office, April 27, 1886.

State upon the subject of the position of the Dominion Government under the Treaty of 1818 in regard to the exclusive rights of fishery in Canadian waters. The Memorandum is in accordance with the views of my Government upon this subject.

I have, &c.  
(Signed) LANSDOWNE.

## No. 30.

*Sir L. West to the Earl of Rosebery.\*—(Received April 10.)*

(No. 19. Treaty. Confidential.)

My Lord,

*Washington, March 31, 1886.*

WITH reference to my despatch to the Marquis of Lansdowne, copy of which was inclosed in my despatch to your Lordship No. 18, Treaty, of the 28th instant, I have the honour to inclose herewith copy of a despatch which I have received from his Excellency, as well as copy of my reply thereto, and copy of a Memorandum which, in consequence of his Excellency's observations, I sent privately to Mr. Bayard.

I may state to your Lordship that, in talking over the provisions of the Treaty of 1818, both Mr. Bayard and myself were in ignorance of the existence of the Order in Council which discontinued the licensing system for American vessels fishing in Canadian waters; and when I suggested to him that under the provisions of the Treaty itself all danger of friction might, perhaps, "be avoided if it was clearly understood that no American vessel would be allowed to fish in Canadian waters within the 3-mile limit without a licence from the Dominion Government," he did not interpret my remark as a suggestion on the part of Her Majesty's Government, of which there was no question, but as affording a possible means of avoiding the difficulties which we both saw surrounded the situation.

I may further state to your Lordship that in discussing the question at Ottawa I was not made aware that the practice of granting licences under the Treaty had been deliberately renounced in 1870.

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

## Inclosure 1 in No. 30.

*The Marquis of Lansdowne to Sir L. West.*

(Confidential.)

Sir,

*Government House, Ottawa, March 27, 1886.*

I HAD the honour of receiving from you a despatch, dated the 19th March, inclosing copy of a Memorandum handed by you to the Secretary of State, and describing the position of my Government under the Treaty of 1818 in regard to the inshore fisheries of the Dominion; and I had the honour, on the 24th instant, of acknowledging receipt of that despatch, and of informing you that the Memorandum was in accordance with the views of my Government.

I understand, from your despatch above referred to, that, after calling Mr. Bayard's attention to the Canadian Statutes affecting this question, and more especially to the Act 31 Vict., cap. 61, under which the Governor is empowered to grant licences to foreign vessels, for a period not exceeding one year, to fish within 3 marine miles up the coasts, bays, creeks, or harbours of Canada not included in the limits specified in Article I of the Convention of 1818, you suggested to Mr. Bayard that "all danger of friction might, perhaps, be avoided if it was clearly understood that no American vessel would be allowed to fish in Canadian waters, within the 3-mile limit, without a licence."

A statement to the above effect might possibly be interpreted as a suggestion on the part of Her Majesty's Government that the system of granting licences, which obtained between the expiration of the Reciprocity Treaty of 1854 and the beginning of the year 1870, should be again resorted to, and I therefore take this opportunity of making you aware that, in the opinion of my Government, it would not be desirable that any such suggestion should be made.

\* Copy to Colonial Office, April 27, 1886.

It will be within your knowledge that while these licences were taken out by a considerable number of American fishermen in the first two years during which the system of issuing licences was in existence, the practice of applying for them was subsequently almost entirely discontinued by American fishermen, although it was notorious that large numbers of their vessels frequented Canadian waters. The failure of the system was so complete, and the embarrassment which it occasioned so serious, that it was terminated by an Order in Council of the Dominion Government dated the 8th January, 1870, under which it was decided "that the system of granting licences to foreign vessels under the Act 31 Vict., cap. 61, be discontinued, and that henceforth foreign fishermen be not permitted to fish in the waters of Canada."

It was in consequence of this decision on the part of the Dominion Government that Mr. Boutwell's Circular, dated the 16th May, 1870, was issued for the purpose of notifying to American fishermen the effect, in regard to the inshore fisheries of the Dominion, of the Convention of 1818 and of the Canadian Act of 1868 respecting fishing by foreign vessels.

It would, under the above circumstances, clearly be undesirable that anything should be said which might produce upon Mr. Bayard's mind the impression that it was now open to American fishermen to avail themselves of fishing licences similar to those issued between 1866 and 1869, or that a renewal of the system in force between those years would be acceptable to my Government.

I have, &c.  
(Signed) LANSDOWNE.

Inclosure 2 in No. 30.

*Sir L. West to the Marquis of Lansdowne.*

My Lord,

*Washington, March 31, 1886.*

I HAVE the honour to acknowledge the receipt of your Excellency's despatch, Confidential, of the 27th instant, informing me that any suggestion for the renewal for the licensing system for American vessels fishing in Canadian waters under the Treaty of 1818, and which was discontinued by the Order in Council of the 8th January, 1870, would not be acceptable to your Excellency's Government, and that it was clearly undesirable that anything should be said which might produce upon Mr. Bayard's mind the impression that it was now open to American fishermen to avail themselves of fishing licences similar to those issued between 1866 and 1869.

In order, therefore, to prevent any misunderstanding of the position taken by the Government of the Dominion as described in your Excellency's above-mentioned despatch, and which your Excellency seems to think may arise from the language I used in conversation with Mr. Bayard, I sent to him a confidential Memorandum, copy of which I have the honour to inclose, based upon it, and embodying the views expressed therein.

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

Inclosure 3 in No. 30.

*Memorandum.*

(Confidential.)

IN connection with "The Dominion Fisheries Act, 1868" (31 Vict., cap. 61), and the issue of fishing licences under it, communication was made to the United States' Government in April 1870 of an Order in Council of the Governor-General to the following effect:—

"That the system of granting licences to foreign vessels under the Act 31 Vict., cap. 61, be discontinued, and that henceforth all foreign fishermen be prevented from fishing in the waters of Canada."

In consequence of this decision, the Secretary of the Treasury issued the Circular of the 16th May, 1870, notifying to American fishermen the effect, in regard

to the inshore fisheries of the Dominion, of the Convention of 1818 and of the Canadian Act of 1868 respecting the fishing by foreign vessels.

The failure of the system of licences was so complete, and the embarrassment which it occasioned so serious, that the Dominion Government are, under present circumstances, opposed to any suggestion for its renewal, and they point out that the Order in Council above referred to makes it clear that it is not now open to American fishermen to avail themselves of fishing licences similar to those issued between the years 1866 and 1869.

*Washington, March 31, 1886.*

No. 31.

*Sir L. West to the Earl of Rosebery.\*—(Received April 19.)*

(No. 20. Treaty.)

My Lord,

*Washington, April 6, 1886.*

I HAVE the honour to inclose to your Lordship herewith the report of a debate in the Senate on the Fisheries question, as well as copies of a Resolution in the House of Representatives thereupon.

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

Inclosure 1 in No. 31.

*Extract from the "Congressional Record."*

CANADIAN FISHING REGULATIONS.—Mr. Dingley also submitted the following Resolution; which was read, and referred to the Committee on Rules:—

"Whereas the Minister of Marine of the Dominion of Canada has issued a Proclamation directing the enforcement of an Act of the Dominion Parliament which prohibits any fishing-vessel of the United States from entering any Dominion harbour except for the purpose of shelter, repairing damages, and purchasing wood and obtaining water; and

"Whereas press despatches announce that, under this Proclamation, Dominion officers have denied to fishing-vessels of the United States the right to enter ports of entry in said Dominion for the purpose of purchasing supplies or landing fish caught in deep water for shipment in bond to the United States, or doing other acts which Canadian and other British vessels are freely permitted to do in ports of the United States; and

"Whereas these acts of the authorities of the Dominion of Canada are in contravention of the principles which regulate the intercourse of friendly civilized nations and in direct conflict with a legislative arrangement between the Governments of the United States and Great Britain which went into effect the 1st day of January, 1850, by which Great Britain, in view of similar privileges conditionally conceded to her vessels by the United States, placed the vessels of the United States on the same footing in British ports, including British Colonies, as that on which British vessels are placed in the ports of the United States, the coasting trade only excepted: Therefore,

"Resolved, That the President be request to furnished the House, if compatible with the public interests, with any information in his possession relative to the exclusion of American fishing-vessels from the ports of entry of the Dominion of Canada for the purpose of trading, purchasing supplies, or landing fish caught in deep water for shipment in bond to the United States, or doing other acts which Canadian and other British vessels are freely permitted to do in ports of the United States; and also to inform the House what steps have been taken or are proposed to bring such unwarrantable and unfriendly acts of the Dominion authorities to the attention of the British Government."



## Inclosure 2 in No. 31.

*Extract from the "Congressional Record."*

*Mr. Frye.*—Mr. President, I desire to submit a few remarks hardly in line with those which have been made to the Senate this morning, and yet which look a little bit toward war. I reported a Resolution touching a Commission recommended by the President on fisheries two months ago. It was made a Special Order, 16th February for the 22nd February. It was postponed on account of the Educational Bill about a month, and of the political discussion about three weeks, and now the Army Bill and the Washington Territory Bill have interposed. I regard it as very essential that that matter shall be discussed in the Senate and determined at the earliest day possible. I think that good reasons will appear from the suggestions and facts I shall briefly present for early and decisive action.

Mr. President, I wish to read the following Resolution adopted by the Fishing Exchange in Portland a week ago:—

"Whereas information has been received through the Assistant Secretary of State that American fishing-vessels have no right to enter Canadian bays or harbours, only for shelter, damage, and purchasing wood and water:

"Therefore we memorialize Congress to take some immediate action that shall deprive Provincial fishermen of the same privileges of entering American bays and harbours that are denied by the Dominion Government to American fishermen; and

"Whereas there are several Provincial vessels in our port purchasing bait for the purpose of carrying on their cod fisheries;

"Therefore we ask that the same restrictions be placed upon their vessels which enter American ports for bait that the Canadian Government has imposed upon American vessels; and

"Whereas the Canadian Government has already fitted out cruizers ostensibly to keep American vessels outside the 3-mile limit, so called:

"Therefore we pray that our Government send a sufficient number of armed vessels to look after and protect the rights of American vessels."

I wish to say further that the Minister of Marine in Canada has issued a Proclamation in which he declares that no American fishing-vessel shall be permitted to enter Canadian ports for the purchase of bait or ice, or for the purpose of shipping crews, or for the purpose of landing freight from their vessels for transmission across the Canadas into the States. I understand further that they have fitted out their cruizers, and that there is one to-day in British waters giving directions to our fishermen not to enter a Canadian port for any purpose except shelter, to buy wood or water, or to repair damages, under the Treaty of 1818, and I know they claim that to-day we are living under the Treaty of 1818, under the terms of which we had no commercial privileges in Canadian ports whatever, and in fact we never had any from the day we became independent up to the Treaty of 1818.

The President of the Fishery Union sent to the State Department, 25th March, a communication calling the attention of that Department to what was going on in those waters, and calling upon the Department to take some action touching the premises. I took up the New York "Tribune" this morning and found that Captain Whitten, a Portland man, telegraphed to know whether sailing-vessels he had just fitted out and for which he had engaged crews in Canada would be permitted to enter Canadian waters and take those crews on board, and I read the despatch in reply from the State Department, dated Washington, D.C., 27th March, 1886. Here is what the State Department says:—

"American vessels of any character have a right to enter any port which is not actually blockaded for the purpose of shipping a whole or a part of a crew. But the right does not carry with it any other privilege."

(Signed)

"JAMES D. PORTER."

The very same day—27th March—came another telegram from the State Department:—

"Department informed since sending telegram of this morning that American fishing-vessels can only enter Canadian bays and harbours for shelter, damages, purchasing wood, and obtaining water. This is under the concession of 1818."

(Signed)

"JAMES D. PORTER, *Assistant Secretary.*"

Amazing difference in the two telegrams; one free entry to Canadian ports, the other no entry at all except for the bare rights of hospitality!

Now, the State Department needs education further. I declare that we have a right to enter Canadian ports and harbours for any purpose we please, except for piracy or for fishing within the shore-line. I contend that an American fishing-vessel licensed and with a permit to trade in foreign countries has a well-settled right to go into any port in Canada she may desire to go to buy bait or ice, or flour or bread, or anything else, or to ship crews.

Why, Sir, look at it for one moment. You may examine all the Treaties we ever made with Great Britain and you cannot find commercial privileges mentioned in one of them. Go back to the beginning of 1783, and follow them through to to-day, and there are no commercial privileges provided for in a Treaty except incidentally in the Treaty of 1854. These commercial privileges are creatures of law and nothing else, and you turn to our Statutes and you will find that we commenced proffers to open our ports in 1820, then by a Statute of 1823, then by a Statute of 1830, and Andrew Jackson, after the Statute of 1830, issued his Proclamation, which I desire to call the attention of the Senate to for a moment. This is the closing paragraph of it:—

“Now, therefore, I, Andrew Jackson, President of the United States of America, do hereby declare and proclaim that such evidence has been received by me”—

That is, as to the opening of British ports—

“and that by the operation of the Act of Congress passed on the 29th day of May, 1830, the ports of the United States are, from the date of this Proclamation, open to British vessels coming from the said British possessions, and their cargoes, upon the terms set forth in the said Act, the Act entitled ‘An Act concerning Navigation,’ passed on the 18th day of April, 1818, the Act supplementary thereto, passed the 15th day of May, 1820, and the Act entitled ‘An Act to regulate the Commercial Intercourse between the United States and certain British Ports,’ passed the 1st day of March, 1823, are absolutely repealed; and British vessels and their cargoes are admitted to an entry in the ports of the United States from the islands, provinces, and colonies of Great Britain on or near the American continent, and north or east of the United States.”

And by Parliamentary Acts our vessels were admitted to their ports. But go one step further. There is a Law which seems to have escaped entirely the attention of the State Department. The United States had been proffering for years to Great Britain a repeal of our Navigation Laws to induce Great Britain to repeal hers, and in 1849, June 26th, Great Britain did repeal her Navigation Laws to the extent we asked. I have the Act here before me. It proceeds under a “whereas” to repeal a score or more of restrictive laws touching navigation and trade, and “so as,” in the language of section 10, “to place the ships of such country,” referring to the country making similar modifications of their Navigation Laws, “on the same footing as nearly as possible in British ports as that in which British ships are placed in the ports of such country.”

And there is further in the Law touching the same thing. Now I call attention to the Message of President Taylor in 1849, recognizing this action on the part of Great Britain:—

“Our relations with Great Britain are of the most friendly character. In consequence of the recent alteration of the British Navigation Acts, British vessels, from British and other foreign ports, will (under our existing laws), after the 1st day of January next, be admitted to entry in our ports, with cargoes of the growth, manufacture, or production of any part of the world, on the same terms, as to duties, imposts, and charges, as vessels of the United States with their cargoes; and our vessels will be admitted to the same advantages in British ports, entering therein on the same terms as British vessels. Should no Order in Council disturb this legislative arrangement, the late Act of the British Parliament, by which Great Britain is brought within the terms proposed by the Act of Congress of the 1st March, 1817, it is hoped will be productive of benefit to both countries.”

Shortly after that President Taylor issued a Proclamation in which, in consideration that the ports of Great Britain had been opened to our vessels, our ports were all opened to the vessels of Great Britain. Now, what has the Treaty of 1818 to do with that? Is there any repeal of the Law of 1849? Is there any repeal or modification of our Law since 1849? Is there any withdrawal or modification of the Proclamations of Great Britain and of the President of the United States

opening all the ports of both countries to the vessels of the other? None can be found, and I contend that we do not go back to the Treaty of 1818 for our commercial privileges. We go back to the Law of 1819 and the Proclamations of Great Britain and of the United States issued in consequence of that Law, and we have as free entry for our vessels under their terms into Canadian ports to buy ice or bait or flour, or ship goods, as we have to go into the port of New York for the same purposes. They are coming into our ports under that Law and buying whatever they please. They are buying bait to-day in the city of Portland. Four vessels were there last week, four vessels in Gloucester the day before yesterday, I saw by a telegram, buying bait; and we, forsooth, are not to be permitted to go into their ports to ship seamen or buy bait or ice, and English cruizers are to prey on our fishermen as they have for fifty years past if we undertake to do it!

*The Presiding Officer* (Mr. Hawley in the chair).—The Senator will suspend for a moment. It is the duty of the Chair to lay before the Senate the unfinished business, which is the Bill (S. 67) to provide for the formation and admission into the Union of the State of Washington, and for other purposes. Under the agreement previously referred to it will be laid aside informally to proceed with the Army Efficiency Bill.

*Mr. Frye*.—I will go on only one minute.

Mr. President, I am only waiting for one single American vessel to be seized, and there will be one or more within a week I greatly fear, taken into a Canadian port, tried in a colonial Court, and condemned on the evidence of colonial witnesses, who perhaps guess that she was within the 3-mile shore-line, and then I propose to introduce a Bill—it need not take more than ten lines—to close the United States ports against all British colonial fishing, freight, and passenger vessels, and see how long Canada will carry on this operation she has entered upon now.

Mr. President, I am exceedingly anxious that the Resolution to which I have alluded, reported from the Committee on Foreign Relations unanimously, shall be adopted by as nearly a unanimous vote as possible. Canada to-day is only repeating her history for the last twenty, thirty, forty years. She is only by outrage undertaking to drive us into a new Treaty, and I want the Senate of the United States to put itself on record against any such Commission as Canada has driven us into by seizing our vessels before. I ask unanimous consent that that Resolution may be taken up for consideration to-morrow morning immediately after the morning business. It will not occupy more than three hours' time, in my judgment.

*The Presiding Officer*.—The Senator now asks unanimous consent—

*Mr. Logan*.—I feel as much interested as the Senator from Maine in that matter; but I cannot agree, after having had this Bill laid aside so often, that any business shall interpose until it is completed. That was the agreement made unanimously and made by order of the Senate; and I cannot agree to anything which may disturb it.

*Mr. Frye*.—Will you get through with this Bill to-day?

*Mr. Logan*.—I will if we can. We cannot if we are to discuss the fisheries.

*Mr. Frye*.—Then I give notice that to-morrow morning, after the morning business, I will move to proceed to the consideration of the Resolution relative to the fisheries.

*Mr. Morgan*.—Mr. President, it is quite a surprise to me, as I have no doubt it is to the Senate, that we should have the discussion of the fisheries controversy between the British possessions and the United States on the Military Bill. I suppose in the present opinion of the Senate it was supposed that a proposition to add to the force of the army of the United States and to reorganize it gave an opportunity to the Senator from Maine to express his belligerent views on a matter of commerce between the United States and Canada.

This question is one that is capable of being handled without the interposition of an army or a navy either. It is a question of commerce, a question of mutual relations between two adjacent countries upon the delicate matter in regard to their fishery rights, which involves some very grave questions of international law, and I am quite surprised that the discussion of it should have been interjected here. At an opportune moment I shall request the Senate to ask the Secretary of State what new complications have arisen within the last day or two between Canada and the United States on this very delicate topic. I do not know that I shall be able to find an opportunity to introduce a Resolution of that kind, but at all events I will try and address myself personally to the State Department to know whether there is any new fact in this case of an alarming nature. The prognostication is made

here this morning that in a short time there will be a vessel seized and probably confiscated in the Admiralty Courts of the Dominion, and that that will bring on a controversy of a very unpleasant and trying character between these two Governments. I do not wish to force any controversy. I wish, and I carry it out by my votes in this body, to do all that I can to sustain every American right, and that means, so far as I am concerned, that I will avail myself of every power of the Government of the United States within my reach to maintain and protect the very slightest right of any American citizen against foreign invasion, or foreign interruption, or against discredit in a foreign port or elsewhere.

My view of the general topic coincides, I think, with that of the Senator from Maine, but I must insist that we ought to discuss this question not upon the Military Bill, but with deliberation and coolness and quietness, so that the whole subject may have an investigation upon its actual merits.

No. 32.

*Sir L. West to the Earl of Rosebery.\*—(Received April 18.)*

(No. 22. Treaty.)

My Lord.

*Washington, April 9, 1886.*

I HAVE the honour to inclose to your Lordship herewith articles from the New York press on the Fisheries question. It is worthy of remark that the Tariff Reform Bill now under discussion provides for placing fish on the free list.

I have, &c.

(Signed) L. S. SACKVILLE WEST.

Inclosure 1 in No. 32.

*Extract from the New York "Evening Post" of April 5, 1886.*

WE are pained to observe that the Gloucester fishermen are not taking their medicine so manfully as might be desired. They held a public meeting at the Parker House in Boston on Friday to denounce the unfriendly action of the Dominion authorities in preventing them from shipping Canadian sailors in Canadian ports in the customary way for the season's work. Protection to American industry requires an unrestricted supply of foreign labour. What is a duty on fish good for if our captains are to be taxed 3 or 4 dollars per head for all the men they hire in Nova Scotia to work their vessels? The meeting demanded retaliatory legislation to prohibit Canadian vessels from coming into our ports. They called on the President to send "a sufficient number of armed vessels" to the fishing-grounds to "look after and protect American vessels." In regard to the headland dispute, they proposed to make a test question at once by having an American vessel seized by a Canadian cruiser and then calling on the Government to demand satisfaction. This unseemly preparation for hostilities, for which the American people are to pay the costs, is on foot, as the Resolutions of the meeting state, "for the reclamation of their home markets to the uses of American fishermen." Instead of peace and goodwill among men, which have ruled for more than ten years along the north-eastern boundaries and waters, we are to have cruisers making seizures of fishing-smacks, upon our own procurement, in order to make a test case for claims for damages, and we are to get into as great a snarl as possible, and as speedily as possible, over a duty of 1 per cent. per lb. on dried fish. But that is not all. It was the opinion of Mr. R. S. Spofford that a similar duty should be imposed on fresh fish, and that a delegation should be sent to the lake fishermen to induce them to combine for the purpose of bringing influence to bear upon Congress to this end. An American Fishery Union should be formed to promote the taxation of fish.

\* Copy to Colonial Office, April 27, 1886.

## Inclosure 2 in No. 32.

*Extract from the New York "Times" of April 9, 1885.*

**THE FISHERIES TROUBLE.**—The down-cast fishermen have been "dead set" against any renewal of the reciprocal relations between this country and Canada on the subject of the fisheries. They have professed entire willingness to give up the privilege of fishing within the 3-mile limit and to fall back on the protection afforded by the Treaty of 1818, provided the duty on Canadian fish is maintained. There is a significant commentary on the former claim of Canada, that the privileges granted to Americans under the Treaty of 1870 were far more valuable than those granted to Canadians, in the manner in which the latter have taken the abrogation of the Fishery Clauses of that instrument. While the Americans have claimed that it would be a benefit rather than an injury to them, the Canadians have acted in a spirit which showed that they believed they had lost material advantages. They have exhibited a wholly unnecessary amount of bluster about protecting their fisheries from American encroachments, and armed cruisers have been fitted out to seize American vessels that venture within 3 miles of the shore.

The provisions of the Treaty of 1818 permit our fishing-vessels to enter Canadian ports for shelter, fuel, water, and repairs, and for no other purposes. It would be a delicate matter for a Canadian cruiser finding an American fishing-vessel within the 3-mile limit on the way to a port to decide whether it was on a legitimate errand or not, and its arbitrary decision in the premises might lead to serious trouble. The Minister of Marine of the Dominion of Canada has issued a Proclamation directing the enforcement of the prohibition of the Treaty of 1818, and the position of the Dominion Government is understood to be that our fishing-vessels have no right to enter Canadian ports to ship seamen, to obtain bait or supplies, or to land fish for the purpose of transportation in bond to the United States. Under the Treaty they have clearly no such right. But a Legislative Arrangement between this country and Great Britain was entered into in 1849, whereby reciprocal privileges were granted to the vessels of one country or its Colonies entering the ports of the other for the purpose of trade. Under this our trading vessels are entitled to all the rights in Canadian ports that British or Canadian vessels are allowed in our ports.

Whether this was intended so far to qualify the Treaty of 1818 as to cover the case of fishing-vessels seeking for supplies or wishing to land fish for transportation is doubtful. At that time the operation of the old Treaty had been practically displaced by the Reciprocity Treaty between the United States and Canada, and probably the bearing of the "Legislative Arrangement" on this question was not thought of. But, whatever the intention, it is claimed by the champions of our fishermen that the effect of the Arrangement of 1849 is to give any American vessel, whether engaged in the fisheries or not, the right to enter Canadian ports for any legitimate purpose of trade, including the shipping of seamen, the purchase of bait and supplies, and the landing of fish for transportation to this country, precisely to the extent that the same right is accorded in our ports to the vessels of Canada.

This situation is likely to lead to a lively dispute, and if the rash down-easters have their way, it may lead to serious difficulty with Canada, if not with Great Britain. Representative Dingley, of Maine, introduced a Resolution in the House yesterday reciting the claims of the fishermen, calling on the President for information regarding the exclusion of any American vessel from the right to enter Canadian ports for purposes of trade, and asking what steps have been taken to bring the matter to the attention of the British Government. Senator Frye contrived to drag the matter into the discussion on the Army Bill in the Senate, and announced that he was only waiting for one vessel to be excluded from Canadian ports to offer a Bill closing our lake and Atlantic ports against all British and Colonial vessels of whatever character.

All the conflicting claims and the bluster and threats on either side show the utter folly of leaving this matter to drift, as has been done. We were invited by the British Minister at Washington to enter upon negotiations for the amicable settlement of the whole matter in advance of any chance of dispute. It did not matter that the New England fishermen believed, or claimed to believe, that they had all the rights they wanted under existing Treaties and Laws, and only needed protection in them. It was certain that what they claimed as rights would not be conceded, and

that their interpretation of Laws and Treaties would not be accepted. Even if they were right in their claims, it was the part of wisdom to avoid all dispute by a definite understanding. In fact, it did not matter at all what the fishermen claimed or what they demanded. The trouble, if it came, would involve the Government, and if protection was needed, the Government would have to give it. Portland and Gloucester have no international relations with Great Britain, and their Fishing Associations should not be permitted to dictate what negotiations the Government of the United States shall undertake for the purpose of settling disputes or avoiding complications with a friendly Power. The Government alone was responsible, and would have to meet any difficulty that might arise.

The Secretary of State is reported to be in accord with the view of Senator Frye and Mr. Dingley in regard to the rights of American vessels in Canadian ports, and it may appear that the Dominion Government is acting with undue haste. In fact, there is more haste than prudence on both sides. It is senseless to talk about retaliation and closing ports before the matter has been taken up between the two Governments of the United States and Great Britain. They alone are competent to settle the question involved, and to regulate the whole business. There is no reason why they should not do it in the most amicable spirit. If an American fishing-vessel is seized by a Canadian cruiser, as is pretty likely to be the case, it will not be an occasion for an embargo against all Canadian vessels, but for an international understanding as to what the mutual rights of the two countries really are under the Treaties and Laws, which are differently construed by the able fishermen of Gloucester and Halifax. In the meantime, it is best not to get unduly excited over the cod-fish and mackerel question.

No. 33.

*Sir L. West to the Earl of Rosebery.—(Received April 24.)*

(No. 23. Treaty.)

My Lord,

*Washington, April 11, 1886.*

I HAVE the honour to inclose to your Lordship herewith copy of a despatch which I addressed to the Marquis of Lansdowne, calling attention to the reported argument of the United States' Consul-General at Halifax in relation to the provisions of the Treaty of 1818, as well as copy of his Excellency's reply thereto, together with copy of the Report of a Committee of the Privy Council of Canada setting forth their views on this point.

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

Inclosure 1 in No. 33.

*Sir L. West to the Marquis of Lansdowne.*

My Lord,

*Washington, March 29, 1886.*

I HAVE the honour to inform your Excellency that the American Consul-General at Halifax is reported to have argued that there is nothing in the Treaty of 1818 to prevent Americans, having caught fish in deep water and cured them, from landing them in marketable condition at any Canadian port and transshipping them in bond to the United States either by rail or vessel, and that, moreover, a refusal to permit the transportation would be a violation of the general bonding arrangement between the two countries.

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

## Inclosure 2 in No. 33.

*The Marquis of Lansdowne to Sir L. West.*

(Confidential.)

Sir,

*Government House, Ottawa, April 7, 1886.*

I CAUSED to be referred to my Government your despatch of the 29th March, in which you informed me that the United States' Consul-General at Halifax was reported to have argued that there was nothing in the Convention of 1818 to prevent American fishermen from landing at any Canadian port, cured and in a marketable condition, fish which had been caught by them outside the territorial waters of this country, and transshipping the same in bond to the United States by rail or otherwise, and that any refusal to permit such transportation would be a violation of the general bonding arrangement existing between the two countries.

2. I have now the honour to forward herewith, for your confidential information, copies of an approved Report of a Committee of the Privy Council, setting forth the views of my Government upon the point raised by the Consul-General, and of a despatch which I have sent to Earl Granville upon the same subject.

I have, &amp;c.

(Signed) LANSDOWNE.

## Inclosure 3 in No. 33.

*Report of a Committee of the Honourable the Privy Council for Canada, approved by his Excellency the Governor-General in Council on the 6th April, 1886.*

THE Committee of the Privy Council have had under consideration a despatch, dated the 29th March, 1886, from Her Majesty's Minister at Washington, informing your Excellency that the United States' Consul-General at Halifax was reported to have argued that there is nothing in the Convention of 1818 to prevent Americans, having caught fish in deep water and cured them, from landing them in a marketable condition at any Canadian port and transshipping them in bond to the United States either by rail or vessel, and that any refusal to permit such transshipment would be a violation of the general bonding arrangement between the two countries.

The Sub-Committee to whom the despatch in question was referred report that if the contention of the United States' Consul at Halifax is made in relation to American fishing-vessels, it is inconsistent with the Convention of 1818.

That they are of opinion, from the language of that Convention—"Provided, however, that the American fishermen shall be permitted to enter such bays or harbours for the purposes of shelter and of repairing damages therein, of purchasing wood, and of obtaining water, and for no other purpose whatever"—that, under the terms of the Convention, United States' fishermen may properly be precluded from entering any harbour of the Dominion for the purpose of transshipping cargoes, and that it is not material to the question that such fishermen may have been engaged in fishing outside of the "3-mile limit" exclusively, or that the fish which they may desire to have transhipped have been taken outside of such limit.

That to deny the right of transshipment would not be a violation of the general bonding arrangement between the two countries.

That no bonding arrangement has been made which, to any extent, limits the operation of the Convention of 1818, and, inasmuch as the right to have access to the ports of what is now the Dominion of Canada for all other purposes than those named is explicitly renounced by the Convention, it cannot with propriety be contended that the enforcement of the stipulation above cited is contrary to the general provisions upon which intercourse is conducted between the two countries.

Such exclusion could not, of course, be enforced against United States' vessels not engaged in fishing.

The Sub-Committee in stating this opinion are not unmindful of the fact that the responsibility of determining what is the true interpretation of a Treaty or Convention made by Her Majesty must remain with Her Majesty's Government, but in view of the necessity of protecting to the fullest extent the inshore fisheries of the Dominion according to the strict terms of the Convention of 1818, and in view of the failure of the United States' Government to accede to any arrangements for the mutual use of the inshore fisheries, the Sub-Committee recommend that the

claim which is reported to have been set up by the United States' Consul-General at Halifax be resisted.

The Committee concur in the foregoing Report and recommendation, and they respectfully submit the same for your Excellency's approval.

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

No. 31.

*Sir L. West to the Earl of Rosebery.—(Received April 24.)*

(No. 24. Treaty.)

My Lord,

Washington, April 11, 1886.

I HAVE the honour to inclose to your Lordship herewith the report of Senator Frye's speech on the Fisheries question in support of his Resolution against the appointment of a Commission, and in which he claims for American vessels, under the commercial arrangements of 1849, to enter Canadian ports for the purchase of ice and bait.

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

Inclosure in No. 34.

*Report of Mr. Frye's Speech on the Fisheries Question.*

*The President (pro tempore).*—The Resolution reported by the Senator from Maine (Mr. Frye) from the Committee on Foreign Relations, the 3rd February, 1886, is now before the Senate. It will be read.

The Chief Clerk read the Resolution as follows:—

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

*Mr. Frye.*—Mr. President, I propose to submit a few practical suggestions touching the question of the fisheries. It is a matter of very profound interest in the country now, and that interest will increase rather than diminish, I greatly fear. I feel justified in making rather a common-place speech for the information which I hope it may contain, which may be of use in various discussions about this subject.

The President of the United States, in his annual Message, says:

“I recommend that the Congress provide for the appointment of a Commission in which the Governments of the United States and Great Britain shall be respectively represented, charged with the consideration and settlement, upon a just, equitable, and honourable basis, of the entire question of the fishing rights of the two Governments and their respective citizens on the coasts of the United States and British North America.”

And this brings Congress to the consideration of a question of the greatest importance not only to our fishermen, but to the nation. I confess that I feel a profound interest in its determination, for the State I in part represent will be largely affected by it for good or for ill. By the last census the interests of the State of Maine in the sea fisheries are second only to those of Massachusetts. Permit me to give the statistics:

Persons employed	..	..	..	..	..	..	11,071
Vessels employed	..	..	..	..	..	..	606
Tonnage of same	..	..	..	..	..	..	17,632·65
Fishing-boats	..	..	..	..	..	..	5,920
Capital dependent on the fishery industries	..	..	..	..	..	..	3,375,994 dollars.
Sea products as they come from the water	..	..	..	..	..	..	202,048,449 lbs.
Value of sea products as they come from the water	..	..	..	..	..	..	1,790,849 dollars.
Sea products after being prepared for the market	..	..	..	..	..	..	116,122,048 lbs.
Enhancement of value in process of preparation	..	..	..	..	..	..	1,823,329 dollars.
Value of sea products in marketable condition	..	..	..	..	..	..	3,614,178 dollars.



But, Sir, this industry is not confined to my State nor to New England, as is frequently asserted. It extends down the whole Atlantic coast into the Gulf of Mexico, up the Pacific coast into the Alaskan waters, and along the great lakes. It is, too, an industry susceptible of an enormous growth. Freezing processes, refrigerators on vessels and cars; railroads touching 2,290 counties of our forty-four states and territories, affording facilities for the safe transportation of fresh fish thousands of miles into the interior, and enabling the market-men to sell in the remotest cities for prices less than are paid for beef, or mutton, or pork, make the United States the best market in the world for the products of the sea and the lake. Unobstructed, without bounty or subsidy or special privileges, secured against the aggressions of Treaties with England, there is no reason why our fishing fleet shall not in ten years number 15,000 vessels, manned by 200,000 of the hardiest, most skilled, and bravest sailors in the world—sailors who, at the bugle-call of the Republic, will promptly respond and make us invincible on the ocean. And yet, notwithstanding the marvellous increase in the demand for the products of the fisheries, we are compelled to witness a phenomenal increase in the fishing fleet and men of the Dominion of Canada and a mortifying decrease in our own. At the opening of the struggle for our independence we had in the New England fleet alone 665 vessels—about one-third as many as now—while the consumption of fish in the country is twenty times greater than then. Why, sir, during the last ten years the fishing fleet of Massachusetts has fallen off 270 vessels, or 29 per cent., while Maine has lost even a larger proportion—70 vessels in 1884 alone. The census of 1880 shews as follows:—

“The number of persons employed in the fishery industries of the United States was 131,426, of whom 101,684 were fishermen and the remainder shoresmen. The fishing fleet consisted of 6,605 vessels (with a tonnage of 208,297·82) and 44,804 boats; and the total amount of capital invested was 37,955,349 dollars, distributed as follows:—Vessels, 9,357,282 dollars; boats, 2,465,393 dollars; minor apparatus and outfits, 8,145,261 dollars; other capital, including shore property, 17,987,413 dollars.

“The value of the fisheries of the sea, the great rivers and the great lakes, was placed at 43,046,053 dollars, and that of those in minor inland waters at 1,500,000 dollars—in all, 44,546,053 dollars.

“The fisheries of the New England States are the most important. They engage 37,043 men, 2,066 vessels, 14,787 boats, and yield products to the value of 14,270,393 dollars.

“Next to New England in importance are the South Atlantic States, employing 52,418 men, 3,014 vessels (the majority of which are small, and engaged in the shore and bay fisheries), 13,331 boats, and returning products to the value of 9,602,737 dollars.

“Next are the Middle States, employing in the coast fisheries 14,981 men, 1,210 vessels, and 8,293 boats, with products to the amount of 8,676,579 dollars.

“Next are the Pacific States and Territories, with 16,803 men, 56 vessels, 5,547 boats, and products to the amount of 7,484,750 dollars. The fisheries of the great lakes employ 5,050 men, 62 vessels, and 1,594 boats, with products to the amount of 1,784,050 dollars. The Gulf States employ 5,131 men, 197 vessels, and 1,252 boats, yielding products to the value of 545,584 dollars.”

Mr. President, is this an industry that should be recklessly destroyed? From the day Peter said, “I go a-fishing,” to now, it has been regarded by every country at any period of time powerful on the seas absolutely indispensable, not only to protect the rights of fishermen, but to foster and encourage their industry in every possible way. No nation has ever, in all history, become commercially important whose success cannot be clearly traced to the encouragement afforded its fisheries. In 1563 England, by an Act of Parliament, provided—

“That as well for the maintenance of shipping, the increase of fishermen and mariners, &c., it shall not be lawful to eat meat on Wednesdays and Saturdays unless under the forfeiture of 2*l.* for each offence.”

This Act, with the rules of the then-prevailing Church, dedicated three days in each week to the benefit of the fishermen. Again, I assert—and history will justify me in it—that every nation in the past which has permitted her fisheries to decline through neglect, or has destroyed them by adverse legislation, has lost its prestige and rapidly declined in power and influence. This nation recognized these facts of history, took to heart the lessons taught, and in its very infancy, in poverty and weakness, enacted bounty laws for the encouragement of our fisheries. In 1819

they were revised, and still more valuable advantages were conferred. Why, then, is it that this industry seems now to have caught on to our fast-disappearing foreign carrying trade? There is nothing occult about the problem, and no alchemist is needed for its solution.

A brief review of our negotiations with Great Britain reveals the true cause. As her Colony we had for our fishermen the use of the seas, and fished wherever we pleased. There was no limitation whatever upon our right; and in 1783, after the war was over, we made our first Treaty with Great Britain. John Adams, the persistent, determined friend of the fishing interests of the United States, was one of the Commission; and we owe the Treaty of 1783 very largely to him. I call the attention of the Senate to its terms:—

“ARTICLE III.

“It is agreed that the people of the United States shall continue to enjoy unmolested the right to take fish of every kind on the Grand Banks, and on all other banks of Newfoundland, also in the Gulf of St. Lawrence, and at all other places in the sea where the inhabitants of both countries used at any time heretofore to fish.”

To be sure, England's assumption is apparent even here, in her concession to us of the right to fish on the “banks.” Why, these conceded fishing-grounds are from 30 to 200 miles from the coast-line of her possessions!

What magnanimity! It is characteristic of England to deal generously with rights and privileges never hers, but she never yields one jot or one tittle really belonging to her without the most extravagant compensation; and in her ceaseless quest for trade, in her tireless endeavour to extend her commerce, to build up her manufactures, she indulges in no sentiment, wastes no liberality. For half-a-century she stood on a lofty moral plane, and missed no opportunity to taunt us as the defenders of slavery; but the moment the dissolution of the Republic seemed possible she became active and zealous to make it certain, though she knew if success crowned her efforts slavery would be for ever perpetuated in one-half of our divided country. She thought she knew, too, that her commercial power would be equally perpetuated there. This unscrupulous purpose to aggrandize her power regardless of the rights of others brought on the war of 1812, and after its close impelled her to make the declaration that we, by reason of the war, had forfeited all the rights in the fisheries we ever had as her Colony, or had acquired under the terms of the Treaty of 1783. Our Commissioners stoutly resisted this claim, and threatened to discontinue all negotiations if this declaration was persisted in. The result was entire silence as to fishery rights in the Treaty of 1814.

I call attention now, Mr. President, to the Treaty of 1818, the provisions of which, I suppose, have been in force since the abrogation of the fishery clauses of the Treaty of Washington. In the negotiation of this England evinced neither magnanimity nor sentiment, and our Commissioners neither sagacity nor courage. The times were not propitious for us. Waterloo had been fought, the allies had entered Paris, Napoleon had abdicated, and England was arrogant. We deliberately surrendered all of our fishery rights, and a blow was dealt that industry from which it has never recovered. By its terms England laid the foundation for ceaseless demands, and invited her Colonies to the enactment of penal laws and the commission of outrages in their name which would disgrace any civilization.

I call attention to Article I: “And the United States hereby renounce for ever any liberty heretofore enjoyed or claimed by the inhabitants thereof to take, dry, or cure fish on or within 3 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;” with a proviso that our fishermen might enter these bays, &c., for shelter or to repair damage, to purchase wood and take water, but for no other purpose whatever. We reserved to ourselves only the commonest rights of hospitality, and renounced all commercial privileges whatsoever. But to be accurate, I ought not to say “renounced all commercial privileges,” for up to that time, under England's peculiar colonial policy, we had enjoyed no such privileges.

*Mr. Coke.*—May I ask the Senator who were the American Commissioners in the negotiation of the Treaty of 1818?

*Mr. Frye.*—I did know, but I have forgotten who they were.

In 1819 the English Parliament passed an Act construing this Article, making it an offence if our vessels had fished, were then fishing, or preparing to fish within

the shore-line; and the colonial Courts held that when a vessel within the shore-line was preparing to fish outside of it she was liable to seizure and condemnation.

Further, England claimed that this 3-mile line was to be measured outside of a line drawn from headland to headland, which would include gulfs half as large as the Gulf of Mexico. It is true that on the protest of our Government she subsequently instructed her officers not to enforce the law under this claim, but she has never renounced it. For several years we had but little trouble under this Treaty; then it came in a perfect avalanche. England and her Colony coveted our increasing market, and as usual, without a scruple, went for it. They seized vessel after vessel, condemned them in colonial Courts on the testimony of colonial witnesses, refused them shelter, drove them to sea in storms, seized and searched on the high seas, broke up voyages—until, in fact, the perils of the sea on the “banks” were not greater than the dangers of the law within the shore-line. Our Government interfered again and again. Mr. van Buren sent the “Grampus” into those waters in 1839; Mr. Pierce ordered a fleet there; the “Kearsarge” and the “Mississippi” cruized there; and in the presence of our armed vessels our fishermen were undisturbed; but immediately on their withdrawal the outrages were renewed.

The records of the Halifax Commission are full of evidences of illegal seizures; of seizures and condemnations on complaints of the most trivial and inconsequential character; of every conceivable outrage and wrong; of every violation of the rights of hospitality and friendly intercourse. In the pursuit of these unjustifiable methods England and her Colony had but one purpose—to force open our markets; and in 1854 their efforts were crowned with success in the ratification of the so-called “reciprocity Treaty”—reciprocal, however, largely only in name. They opened their fisheries to us, and we our markets to them. I am confining myself, Mr. President, strictly to the question in issue, and therefore do not discuss the other features of that Treaty. Its effects upon our fisheries are indicated clearly and unmistakably by the statistics of this industry. In 1854 we had employed in this industry a tonnage of 470,000. In 1867, when the Treaty was abrogated, our tonnage was 165,000. By reason of a change in the method of measurement this last amount should be increased to 250,000, or thereabouts, to make a fair comparison. It must be borne in mind that during the whole life of this Treaty we were paying a bounty of 4 dollars a-ton to our fishermen.

At the earliest possible moment under its terms we gave the required notice for the abrogation of this Treaty, and I believe there was found no man in Congress poor enough to do it reverence. Immediately following this abrogation Canada resorted to the licence system, imposing upon our fishermen the first year a tonnage tax of 50 cents a-ton for the privilege of fishing in their waters; the second year, 1 dollar; the third, 2 dollars; and our fishermen declined to avail themselves of the dearly-purchased privilege. This experiment proving a failure, she promptly resorted to the old and hitherto successful tactics of outrage, seizure, condemnation, and denial of commercial rights, until the patience of our Government was exhausted, and Congress indicated, by its reception of “a Memorial of the fishermen of the United States,” that retaliatory legislation was imminent, when, unfortunately for our interests, we threw ourselves once more beneath the triumphant wheels of Great Britain’s diplomatic chariot, and ratified the Treaty of Washington in 1871.

Under its terms a Commission was to be appointed—for what? To settle the fishery rights as between the United States and the Colonies of Great Britain, precisely what the President of the United States recommends in his Message to us to do. The Commission was appointed. It was made up of the brightest man in all Canada, a man too old to be bright or efficient on the part of the United States, and a mere dependent on Great Britain for the third one. What was the result?

Under the terms of that Treaty, and by the finding of a Commission, we secured the right to fish within the shore-line of Canada, the right of “wood, water, and shelter,” of drying fish, under limitations. We paid for these worthless rights and privileges 5,500,000 dollars, and gave Canada once more our market. We remitted, during the life of the Treaty, in duties nearly 6,000,000 dollars, as the annexed Table shows—

TABLE showing the value of dutiable fish admitted free of duty under the Reciprocity Treaty with the Dominion of Canada and the estimated amount of duties remitted for the years ending the 30th June, 1874, to 1885, inclusive.

Year ending June 30—					Values.		Estimated Duties remitted.	
					Dol.	c.	Dol.	c.
1874	..	..	..	..	1,587,234	01	392,882	21
1875	..	..	..	..	1,847,684	48	477,042	34
1876	..	..	..	..	1,555,860	23	363,563	68
1877	..	..	..	..	1,118,109	11	260,015	82
1878	..	..	..	..	1,859,772	07	431,563	95
1879	..	..	..	..	1,539,073	22	411,274	83
1880	..	..	..	..	1,557,667	44	475,537	57
1881	..	..	..	..	2,179,863	40	597,961	22
1882	..	..	..	..	2,148,724	54	537,088	46
1883	..	..	..	..	2,735,603	62	553,575	41
1884	..	..	..	..	3,147,716	48	635,677	68
1885	..	..	..	..	2,706,831	16	689,602	25
Twelve years					23,984,139	76	5,825,785	42

How do they estimate the value of our market? There was recently published "special correspondence of the Boston Post," dated St. John, New Brunswick, the 5th January, 1886, containing interviews with leading men engaged in the fisheries. George L. Young, who controls the finnan haddie manufacture, says—

"In other words, the heaviest parts of our fishing business will have to go down unless we can obtain a Treaty of some kind, so that we can use the American markets without having to pay duties on our fish.

"A Treaty is very much more necessary to our fishing interests now than when the Washington Treaty was entered into, for the reason that other markets are very much poorer, and we have much more fish to sell. Look for a moment and see how our fisheries prospered under the late Treaty. First, we will take the islands in the Bay of Fundy—Briar Island, Grand Manan, Campobello, and Deer Island—where the inhabitants are dependent entirely upon fishing for a livelihood. Before the Treaty (not including a slight advancement during the American rebellion) they were for years about holding their own, making a living and nothing more, when they had all the advantages of a good West India market for the small amount of fish caught. During the existence of the Treaty, although the population has not greatly increased, the wealth of the four islands has more than doubled. As for Nova Scotia, they could hardly count one good banker, while to-day they have as fine a fleet and nearly as many as the United States, and have commenced to build a few seiners. The Treaty built those industries up, which will have to tumble down unless another of a similar kind is made."

Messrs. Barbour Brothers, a firm which handles a large quantity of fish. Said the head of the firm :

"The present fishery arrangement between Canada and the United States is altogether a one-sided affair from which the United States' fisherman reap all the benefit. True it is only temporary, and it is well for Canada that it is so, as a lengthened continuation of it would either starve our fishermen or drive them into rebellion. The provincial fishermen are deeply agitated over the present state of affairs, and well they might be, for it strikes right home to their pockets. By the present condition of things the business is practically taken out of the hands of our fishermen, and American bottoms are doing what ought to be done by provincial vessels. If this condition of things continues it will not be difficult to see the result. Either our fishermen will have to change their vocation or starve or emigrate. Quite a number of fishermen belonging to down the bay have already taken the oath of allegiance to the United States. We do not feel the effects of the present arrangement so much in St. John as do the fishermen of Grand Manan, Letete, Deer Island, St. Andrews, and other places down the bay. Their only market is the United States, and they are very much handicapped by the heavy duty and the excessive entrance fees demanded of them. With regard to the export of fish from this province to the United States, I am quite safe in saying that since the fishery clause of the Treaty expired it has decreased fully one-third."

Enoch B. Colwell, another large dealer, says :

"In my opinion we should have a renewal of the Washington Treaty, as it would be of more advantage to Canada to have the Treaty and be able to send her fish into the United States' markets duty free than to put cutters on to drive the Americans out of our waters. I have not felt any serious effect from the expiration of the Treaty so far, as sufficient had been shipped for home consumption before the Treaty expired, and what we send in now to the United States is placed in bond. Next season, unless the Treaty is renewed or some similar arrangement made, we will feel the effects of it very much. In 1884 I handled a large quantity of fish for smoking purposes. In 1885 I didn't touch a single barrel, as I couldn't do it and compete with the Eastport people. Believe me, what is wanted is a renewal of the Treaty. Our fishermen are a unit in favour of it, as it is a market for their fish they want."

Mr. J. V. Ellis, a journalist of considerable experience and ability, who also represents the city of St. John in the New Brunswick Legislature, and is a member of the St. John Board of Trade, was asked for his views on the fishery question:

"What will be the effect on us if we do not get some concession?"

"I do not care to go into that. If I was a member of the Canadian Government for one of these maritime provinces I would get some concession and consideration from the United States for what we can give them. It only requires earnestness and determination. But I have no faith in the desire of the present Government to pursue this business. On this you may depend—these maritime provinces must have a very large measure of reciprocal trade with the United States, and they will have it some way or other before long, or——"

"What will happen?"

"Oh, well—the deluge."

Why, Mr. President, the Report of the Commissioner of Marine and Fisheries for the Dominion shows that Nova Scotia, Prince Edward Island, New Brunswick, and Quebec had, in 1882, 786 vessels, 6,486 men; 11,225 boats, with 23,446 men—an increase of at least two-thirds under the influence of a free United States' market.

The Dominion had, in 1873, 402 vessels and 9,009 boats in the fishery business; in 1884, 902 vessels and 12,772 boats—a gain of 500 vessels and 3,163 boats, and of men employed at least 15,000. The Province of Nova Scotia in a single year, 1883, added 143 schooners, chiefly bankers, to her fleet, affording employment, as her fishery inspector, Mr. Rogers, says, to 1,526 more sailors.

Mr. Saulsbury.—I wish to ask the Senator a question for information, if he will yield to me.

Mr. Frye.—With pleasure.

Mr. Saulsbury.—The Senator perhaps knows more about the subject than any other member of the body, and therefore I propose an inquiry to him. I heard a remark fall from his lips that so and so might be done but for the aggressions of the Treaty-making Power. I should like to know whether he thinks it possible for these rights to be affected without some negotiation in reference to the subject-matter?

Mr. Frye.—Beyond any manner of question this country should put herself into a decent position in regard to these matters. If this country permits Great Britain and Canada by outrages, by violations of all the rights of hospitality, to drive us into the surrender of our market, we never can have peace with Canada; but if Canada understands when she closes her ports, as she is undertaking to do to-day, that the ports of the United States are to be closed against her, you will then have no difficulty and no trouble with Canada.

Mr. Gray.—Will the Senator from Maine allow me to ask him a question?

Mr. Frye.—Certainly.

Mr. Gray.—I should like to ask him what the particular outrages are to which he refers since the termination of the provisional Agreement.

Mr. Frye.—I did not understand the Senator.

Mr. Gray.—I should like to know what the particular outrages are to which he refers on the part of Canada which would demand, as they ought to demand if they are outrages, the attention of the American people.

Mr. Frye.—That would be quite a statement to require of me. I will name one: the Commissioner of Marine of Canada has issued a Proclamation in which he denies the right of an American fisherman to buy bait or ice in a Canadian port.

Mr. Gray.—We are all, I suppose, desirous of maintaining the rights of all the

people of this country. Will the Senator permit me to call his attention to a paragraph that I find in the "New York Tribune," a paper from which he read the other day in regard to that very matter, which tends to show that, so far as the American Government is concerned and its Diplomatic and Consular Agents, the rights of Americans are not being neglected? If it is not interrupting the Senator, I should like to have about ten lines of this article read at the desk.

*The President (pro tempore).*—The Chair hears no objection.

*Mr. Gray.*—The extract is from the same paper from which the Senator from Maine read the other day. Not the same issue, but the same newspaper.

The Chief Clerk read as follows:—

*"Fishing in Dominion waters—Admiral Scott's mistaken notions—The United States' Consul-General instructs him regarding his duties.*

" [Special.]

*"Halifax, April 7.*

"There was an interesting gathering of lawyers and legislators in the Parliamentary library to-day when United States' Consul-General Phelan and Admiral Scott met, the latter undertaking to show the American Representative under what authority he had ordered American fishing vessels out of provincial waters. The various local Statutes were carefully searched by Admiral Scott without finding any warrants justifying his proceedings. Then the good-natured Admiral in his bluff English way declared that 'some duffer had knocked that section out of the Statute Book.' He fell back upon an old Act of George III which he alleged gave him requisite authority. The Consul-General contended that that Act was obsolete and was repealed by the British North American Act, which gave exclusive control of the fisheries to the Canadian Parliament. Admiral Scott then agreed to telegraph the points raised by Consul Phelan to the Dominion Government and await instructions. Therefore the flagship 'Lansdowne' will be idle for some time. Consul-General Phelan contends that American vessels can put into any Canadian port and stay a month if they want to, and the only thing the Canadians can do is to put an officer on board to see that she does not fish or buy bait. It is understood that the result of this little Conference will also be telegraphed to Washington. Meanwhile, it appears that affairs will remain *in statu quo*, as Captain Scott will only hereafter act within the strict letter and spirit of his instructions."

*Mr. Gray.*—I thank the Senator for allowing me to call his attention to that, because it seemed to me it was *apropos* to something he said about executive aggression interfering with the rights of the American fishermen.

*Mr. Frye.*—I referred Mr. President, to the aggression of the Treaty-making Power. I was glad to notice in the Tribune that our Consul-General at Halifax seemed to have been better informed than our Secretary of State at Washington.

*Mr. Gray.*—He seems to have taken the same view precisely as the Secretary of State, so far as anything I have seen from him is concerned.

*Mr. Frye.*—Did not the Senator notice the two despatches, one sent in the morning and the other in the evening, which I read the other day?

*Mr. Gray.*—I did. I will not interrupt the Senator now to say what I think about those despatches; but I think they are entirely consistent with the position taken by Consul-General Phelan.

*Mr. Frye.*—The worst outrage which they can commit is the very one which they contend there they have a right to commit, and that is to prevent our vessels from buying bait and ice. What other commercial privileges, let me ask the Senator from Delaware, do we want of Canada than to let our vessels buy bait and ice there? There is nothing else on earth we want to buy there.

*Mr. Gray.*—I was not talking about commercial privileges. I was talking about the activity of the consular agents.

*Mr. Frye.*—The Consular Agent seems to admit there that we cannot buy bait and ice.

*Mr. Gray.*—He has not said anything about that, I think.

*Mr. Frye.*—That very statement made in the "New York Tribune" says so, that the Canadians can put men on board our vessels, if they stay there a month, and put them there to see to what? To see that we do not fish or buy bait. All on earth we want to buy there is bait and ice.

Now what did we gain by the Treaty of 1871?

*Mr. Gibson.*—I should like the Senator to point out any clause in the Treaty by which the rights of our fishermen to buy bait may be enforced in the Dominion.

*Mr. Frye.*—It is impossible for me to point out any commercial privilege given or yielded in a Treaty between us and Great Britain. We never had any commercial privileges mentioned in such Treaties.

*Mr. Gibson.*—Did we ever relinquish the right, assuming that there was a right, to buy bait or anything else?

*Mr. Frye.*—No, Sir; I contend and shall contend that we have an undoubted right to buy bait and ice there, just as much as they have to buy bait and ice in our ports—to buy anything that we wish to buy.

Observe the increase of Canada's exports of fish to this country since 1871:—

			Dol.	c.				Dol.	c.	
1871	..	..	..	84,742	59	1878	..	..	2,206,445	32
1872	..	..	..	244,856	09	1879	..	..	1,825,036	89
1873	..	..	..	252,650	13	1880	..	..	1,885,841	25
1874	..	..	..	1,939,850	66	1881	..	..	2,559,312	52
1875	..	..	..	2,315,144	65	1882	..	..	2,632,952	65
1876	..	..	..	1,832,298	68	1883	..	..	3,324,832	85
1877	..	..	..	1,435,694	76	1884	..	..	3,886,358	39

I have not the official figures of the great lake fisheries, but am informed that they fairly participate in this gain. In fact, it is beyond dispute, that the life of the Canadian fisheries depends largely upon the freedom of our markets. Now, sir, what advantages have accrued to us from the Washington Treaty?

1. "Wood, water, and shelter." But we had those before, and now, too, under the Treaty of 1818.

2. Of commercial privileges. None, under the Treaty.

3. The right to take fish within the 3-mile limit. What has this been worth to us? The right to take caplin and squid for bait would have been of value, but the moment we undertook to avail ourselves of it we found cables cut, nets destroyed, all manner of damage inflicted, and nothing else could have been expected. The people around those shores, living on the small bays and harbours, have only one resource upon which they can depend for money, the capture of caplin and squid for bait, to be sold to the fishermen. Men, women, and children engage in it with the hook and line. One of our vessels with its huge seine can sweep a little bay clean. Who can blame these people for defending to the bitter end their only source of supply, the sole barrier between them and starvation? Our fishermen speedily gave up this advantage under the Treaty, and have purchased their bait of these poor people at a cost of over 100,000 dollars annually. The shore and gulf fisheries have been absolutely worthless.

Carefully compiled statistics for the whole period of twelve years show an annual average of 96 $\frac{5}{8}$  vessels engaged in the gulf fisheries and within the shore line. The average annual catch in the gulf was worth in our market 194,659 dollars; within the shore line, 64,882 dollars. That would give each vessel in the gulf 2,010 dollars; in the shore line 673 dollars. Now an American vessel in the gulf, to pay expenses of outfit, insurance, depreciation of vessel, crew's share, and master's commission, must take 4,000 dollars' worth of mackerel. So that every mackerel taken either in the gulf or in the shore line actually cost nearly twice what it was worth. During the whole twelve years our vessels took about 750,000 dollars' worth, and they cost them more than 1,200,000 dollars. The statistics of the last half of the Treaty period make a still worse showing. Formerly it was not unusual for us to have 500 mackerel vessels at a time in the gulf, but in 1879 we had 44; in 1880, 34; in 1881, 3; in 1882, 1.

W. A. Wilcox, of the United States' Fish Commission, in his Report for 1885 says:

"The few vessels that fished in the Gulf of St. Lawrence at times found mackerel very scarce, at times very plenty, but they were small, and of poor quality. With the hopes of finding larger and better fish soon, the vessels in many cases forwarded their catch by rail or steamer to Boston or Gloucester, the same selling for 2·12 $\frac{1}{2}$  dollars to 3·50 dollars per barrel, frequently not bringing enough to pay the cost of barrels, salt, freight, insurance, and commission, not mentioning time, labour, and expense of the voyage. The crews fishing on shares in many cases received nothing, and the vessels' expenses exceeded their gross receipts.

\* \* \* \* \*  
 "On the 21st November schooners "Spencer F. Baird," "Wm. McDonald," and

"W. H. Jordan" arrived at Gloucester from a six weeks' cruise in the Gulf of St. Lawrence and off the Nova Scotia shore, none of these vessels having caught a single mackerel during the entire trip.

"Vessels from Gloucester, Massachusetts, are the only ones that entered provincial ports for the purpose of obtaining barrels and supplies. These purchased 9,572 empty fish barrels, valued at 7,425.95 dollars, and paid in addition 9,759.05 dollars for provisions, and 331.26 dollars harbour dues."

It needs no argument outside of these figures to show that the right accorded us to fish in the Gulf of St. Lawrence and within the 3-mile shore line is absolutely worthless.

*Mr. Morgan.*—Is not the right to fish with bait worth something?

*Mr. Frye.*—Within the shore-line?

*Mr. Morgan.*—Yes.

*Mr. Frye.*—No, sir; it is not. How are you going to take your halibut?

*Mr. Morgan.*—I refer especially to mackerel.

*Mr. Frye.*—Mackerel fishing there, I think, is practically worthless to us; but halibut fish can be taken with bait. We wish to buy bait in Canada for that.

Mr. President, why is it that a privilege formerly of immense value has become valueless? Simply for the reason that there has been a radical change in the manner and methods of fishing, as suggested by the Senator from Alabama.

I am speaking now of mackerel fishing, for that is the only one we have ever pursued in these Canadian waters. The cod, haddock, and halibut fishing is conducted in waters Great Britain, fortunately for us, does not own. Formerly we took our mackerel with hook and line, but the introduction of the great purse-seine and the machinery by which it is set has changed this and transferred our mackerel fishery from those Canadian waters to our own. By its use the same number of men can capture five times as many fish; can commence taking them off Hatteras and continue up to the coast of Maine; can use the seine safely in the deep waters, but with difficulty and danger within shore-lines and in the gulfs. This immense mackerel fleet, following relentlessly the fish for 1,000 miles, giving them no rest or peace night or day, has prevented them from seeking the shores in any great numbers, and the shore fisheries have become comparatively useless except for small boats. I do not feel entirely certain but that Great Britain, should we foolishly provide for another commission, will present a claim for damages resulting to the shore and gulf fisheries in the Canadian waters from our new methods of fishing, nor absolutely sure that the commissioners would not allow 5,500,000 dollars. There would be as good reason for such allowance as there was before.

The entire worthlessness to us of the privileges accorded by the Washington Treaty, the gradual but certain destruction of our fishing industry, the alarming decrease of our fishing fleet and of the sailors manning it, were known of all men, and the earliest day it could, under the terms of the Treaty, be done, I introduced a Resolution into the Senate instructing the President to give notice of its abrogation as to the fishing clauses. The Resolution was reported back from the Committee on Foreign Relations unanimously, and passed both Houses of Congress without dissent or division. July 1, 1885, should have released us from this bondage, but months before that long-desired day arrived our fishermen heard with amazement and indignation that Secretary Bayard was making, without the interposition of the Senate, a new Treaty, extending certain provisions of the old one, with a new Agreement that—

"The President will bring the whole question of the fisheries before Congress at its next Session in December, and recommend the appointment of a Joint Commission by the Governments of the United States and Great Britain to consider the matter, in the interest of maintaining good neighbourhood and friendly intercourse between the two countries, thus affording a prospect of negotiation for the development and extension of trade between the United States and British North America."

Now, Mr. President, I am not going to attack the honourable Secretary. My Resolution, as I introduced it, made no reference to him nor to his Agreement. Whether or not he exceeded his authority is immaterial to my purpose. I cheerfully accord to him an honest desire to do that which seemed to him to be for the good of the fishermen and the peace of the Republic. I have no doubt that Sir Ambrose Shea and Mr. West, the British Minister, persuaded the Secretary that the Gulf of St. Lawrence was a great and profitable fishing resort for our fleet; that



very likely Canada would enforce her penal laws as she had before; that our adventures would be broken up; that even the peace of nations might be disturbed.

*The President (pro tempore).*—The Senator will pause a moment. The hour of 2 having arrived, the Chair lays before the Senate the unfinished business, being the Bill (§ 67) to provide for the formation and admission into the Union of the State of Washington, and for other purposes.

*Mr. Platt.*—Ordinary courtesy requires that the Senator from Maine should have the opportunity to conclude his remarks, and I ask that the unfinished business be laid aside informally for that purpose.

*The President (pro tempore).*—If there be no objection that course will be taken and the Resolution of the Senator from Maine will be continued before the Senate.

*Mr. Morgan.*—Does the Senator from Connecticut propose to extend the same privilege to other Senators who may desire to debate the Resolution?

*Mr. Platt.*—I should like to go on with the Washington Bill after the Senator from Maine concludes his speech. I think we can get it out of the way quickly.

*Mr. Frye.*—Mr. President, the fault of the Secretary of State was that he should take counsel only of the enemy; that he should not have consulted Mr. George Steele, President of the American Fishery Union, who wrote him under date of the 28th April, 1885, that “the officers of the Fishery Union desire to present the interests of their pursuits in this emergency to the attention of yourself personally or to the President;” that he should have replied to him under date of the 2nd May, 1885:—

“The interests which your Association represents have, as you can now see, already received, and shall continue to receive, the most earnest and abundant consideration on the part of the President and of this Department; and, knowing this, you will probably see little need for incurring the inconvenience of sending just now a personal delegation to Washington to present your views.”

If this hearing had been reasonably granted, neither the President nor Mr. Bayard would have fallen into the diplomatic traps Mr. West set for them. The President in his annual Message complied with that Article of Mr. Bayard’s Treaty which provided for a recommendation of a new Commission.

*Mr. Morgan.*—As there will be no opportunity to-day to make any reply to the Senator from Maine—

*Mr. Frye.*—I think there will.

*Mr. Morgan.*—It is proper that during his remarks it should be stated that the Secretary of State was very earnestly importuned by important men and important interests to make some regulation or some arrangement that would prevent any collision between the two Governments with regard to this fisheries matter, and would protect the fleet of fishermen then in the waters of the British possessions. I have not thought that it was necessary to obtain from the Secretary of State the communications that were made to him, but I have been assured by him personally that they were very urgent and very numerous. It was the last of his expectations that any outcry would come from that section of the country against an honest effort on the part of the Administration to protect the fishermen in that quarter against any violent collision or apparent irruption on their fishing rights and privileges in the midst of the fishing season.

The Senator from Maine certainly does not wish to do the Administration or the Secretary of State any injustice, and I assure him that the Secretary of State will be able to satisfy him that the importunities from that section of country were, as I have stated, from very important men, and were very urgently made.

*Mr. Frye.*—I thought that I accorded to the Secretary of State entire honesty of purpose in this matter. I complained that he did not give a hearing to the President of the Fishery Union. If he had, neither the President nor the Secretary of State would have fallen into this diplomatic trap which had been set for them here in Washington.

Now, Mr. President, who seeks another Commission? In the light of the history I have sketched, of Treaties with Great Britain touching our fishing interests, of the awards and judgments of Commissioners having hitherto the consideration and settlement of differences between us and our Canadian neighbours, is there a single ray of encouragement for us to enter again upon this dangerous pathway? What have we to gain by it?

I declare that no man in the United States has asked for another Commission, and that no man’s name in the United States can be given who has sought another Commission at the hands of the President or Secretary of State.

*Mr. Morgan.*—I should like to ask the Senator from Maine what he means by another Commission? Does he mean a Commission like that which met at Halifax, or a Commission like that which negotiated and settled the Treaty of 1871?

*Mr. Frye.*—I mean precisely what the President says—a Commission to consider and settle the fishery rights. I mean any Commission.

*Mr. Morgan.*—Let me ask the Senator from Maine, so that we may understand each other, does he hold that it is the duty of the Government from this time forward to abstain from all effort to settle any disputed questions that may arise or have arisen on the construction of the Treaties or the effect of the provincial or British laws upon this subject of the fisheries? Does he intend to close the door against all future negotiations, and leave the matter standing precisely as it is, without any effort on the part of the Government of the United States either to correct it or to participate in bringing the two Governments to a common understanding as to what the rights of our people are?

*Mr. Frye.*—I have no power, and if I had I do not know that I would exercise it, to prevent negotiations being made for a Treaty touching Canada and her trade and our trade through the usual and ordinary channels, where it would take a two-thirds vote of the United States' Senate to ratify any Treaty so made.

*Mr. Morgan.*—Now, I concur with the Senator from Maine, that whatever questions remain unsettled between these two Governments ought to be settled in the ordinary channels of diplomacy, and ought to be settled ultimately by a two-thirds vote of the Senate upon a Treaty submitted to them. I agree to that, but I do not think that it is exactly fair to characterize the suggestion of the President, that we should act through a Commission, as being one entirely parallel with or at all akin to that unfortunate misadventure of our Commission which settled the Halifax difficulty in a manner so extremely distasteful to us. I do not understand the President in his recommendation to propose a Commission which shall by its action in advance conclude all questions between the Governments as to the fisheries, but that it is to negotiate; and I concur with the Senator from Maine, that the proper functionaries of the United States' Government to negotiate Treaties are specified in the Constitution of the country, and they are the Diplomatic Agents, whoever they may be, authorized by law and empowered by the appointment of the President and the confirmation of the Senate to act in the matter of negotiations, and then the Senate of the United States has the power to ratify or to reject their action.

I do not hold to the doctrine, nor do I understand that the President holds to it in his Message, that the Congress of the United States by a mere enactment can empower Commissioners to negotiate unsettled diplomatic questions between these two countries in such a way as that their conclusions will become binding upon the country, although the Senate may never have anything to say about the matter in the ratification of the result of their work.

*Mr. Frye.*—Then the language of the President of the United States was exceedingly unfortunate in his Message; and the Senate will bear me witness that I have as yet said nothing touching a reciprocal Treaty. I have entered as yet no objection to the Treaty-making Power negotiating, because I regard the protection of the two-thirds vote in the Senate as ample.

I said, Mr. President, that nobody in the United States was asking for this Commission. I ought to make an exception. A half-dozen very prominent Commission merchants in Boston came to Washington and spent a considerable length of time here. They appeared before the Committee on Foreign Affairs of the House, and they also appeared before a Sub-Committee of the Senate Committee on Foreign Relations, which unfortunately then only consisted of one person, being myself; and after they had heard my views they concluded not to discuss and argue the question before me, and returned to Boston.

*Mr. Edmunds.*—You appeared before them?

*Mr. Frye.*—Yes; I appeared before them. They were intelligent and undoubtedly honest gentlemen. They wanted a Commission. They wanted Canada to have our markets, and without hesitation they proclaimed it, if we could have a proper *quid pro quo* for the markets. Shortly after their return home one of them wrote to his principals in St. John, New Brunswick. I suspected it when they were here of some of them, and the letter has been reproduced in the "Boston Herald." I have it, and I call the attention of the Senate to the American citizens who, in the interest of the American people, were here for a Commission. I ask the Secretary to read the letter I send to the desk.

The Chief Clerk read as follows:—

“I have been to Washington. If I could see you, I would like to tell you about it, but it is too long a story to put on paper. I feel that we have accomplished some good, which may be apparent at a later date, although the immediate purpose of our visit might be classed as a failure; in other words, I am nearly satisfied that no Commissioners will be appointed this year. The objection is to this form of settlement; the Halifax award still rankles. But after an interview with the Secretary of State, I am sure that the Administration does not intend to let the matter rest. It can negotiate a Treaty with Great Britain to-morrow if it chooses, and I believe that this will be done before long. That Treaty must be ratified by the Senate, and ‘there’s the rub.’ It may not be done this year.

“Mr. Frye will oppose any Treaty with all his might. He told me so. Mr. Frye is a ‘mighty smart man,’ that is, as a politician. He is a very poor statesman in my opinion. If he cannot beat a Treaty, he will try to stave it off as long as he can. So, although it is possible that a Treaty can be put through the Senate during the present Session, which will probably last till July, I think the chances are that nothing will be done until another year. I now hope that Canada will strictly enforce the provisions of the Treaty of 1818. It is policy for her to do so, even if it causes temporary inconvenience to some of her people. One would suppose that the advantages of this course would be apparent. I approved of the extension of privileges by your Government, but the situation has changed. I have not time to explain myself in detail. But some things look as if your Government might not take this course. For instance, I hear that your fishermen are to be allowed to take clam bait in bond. So they will continue to buy it from Portland, which is doing everything in its power to prevent a Treaty. If your people would dig their own clams for a season they would make Portland howl. There is one way in which a damaging blow could be dealt to our vessel-owners, but I have no hope that it will be done. Let the 2,000, 3,000, or 4,000 (I have been unable to find out how many there are) Nova Scotians who fish in the American fleet refuse to do so for a-year. We would have Gloucester and Provincetown on their knees.

“But, as this must be a voluntary act of the individual, and as the individual must get his bread and butter from year to year, I suppose it is hopeless. As our fishing ports could not man their vessels without foreigners (the native American does not go fishing to any extent) this course would be a sure cure. It is too heroic a remedy, I am afraid, to be tried. The 3-mile limit is of insignificance compared with these other privileges, getting fresh bait, sending mackerel home from Prince Edward Island and Canso, &c. I notice that the “Halifax Chronicle” thinks that the Boston Fish Bureau has not been very active. Let me say to you that we have done all that could be done by us, and I now doubt if we could accomplish more, even if we had gone to Washington earlier and spent a good deal more money. That is another thing that I should not have time to explain to you in detail. I have devoted nearly my entire time to the matter for two months, and probably half my time for three or four months previously. What do I gain by it? When I see certain commission merchants of Boston who have not lifted a finger to help me, and who have not manifested the slightest interest in the matter, getting more consignments from Nova Scotia than I am, it makes me swear. I am sick of the whole business. I am seriously considering whether it will not be best for me to leave it and try to get into something else. I can’t go on for many years spending twice as much as I make. Time is too valuable, at my period of life, to waste it in an unprofitable business, and the past season has been worse than I anticipated.”

*Mr. Frye.*—The writer is one of the American citizens who came here.

*Mr. Gray.*—I should like to know what is the name of this enthusiastic admirer of the Senator.

*Mr. Frye.*—I decline to give it.

*Mr. Edmunds.*—What was the date of that letter?

*The Chief Clerk.*—“Sunday morning, Boston, February 28, 1886.”

*Mr. Edmunds.*—That is the date of the paper. What is the date of the letter?

*Mr. Frye.*—It was written after he had been to Washington, about the middle of February, just after his return home.

*Mr. Morgan.*—I think it is rather peculiar that the Senator from Maine would desire to bring a statement of that kind before the Senate in such an anonymous

way and then decline to give the name of the author. I suppose he was reflecting on the President or Secretary of State, a Democratic Administration, or somebody.

*Mr. Frye.*—Oh, Mr. President, it was not read, and the Senator from Alabama will do me the justice to say that it was not read for any such purpose. It was merely to illustrate the fact that the only people in the United States who came here in favour of this Commission were some gentlemen engaged in the commission fish business in the city of Boston, and this was one of the Representative men. That was all I read it for, and they were representing a foreign interest.

*Mr. Morgan.*—There were some very honourable gentlemen here from Boston, and I will bring their names into this debate before we get through, and I will try to separate between those honourable gentlemen from Boston and this dishonourable man who seems to have been trying all he could to circumvent the interests of his own people and the honour of his own country.

*Mr. Edmunds.*—He was doing what he was employed to do.

*Mr. Frye.*—As a matter of fact, what have we to ask of Canada? Wood, water, and shelter? We have them now, under the Treaty of 1818, and if we had not, no civilized nation in this day would dare refuse them. The right to capture bait in their waters? We could not enforce it under the old Treaty, and we would not under a new. The right to fish in their waters? I have shown conclusively that we could not avail ourselves of this right if they would pay us a bounty for encouragement. To dry fish on their shores? This was once of value, when the epicures of New England demanded dun-fish, dried on the shore, without salt, but probably we have not so dried a thousand fish under this Treaty, and shall never again, even if allowed. Commercial privileges would be convenient, and, in my opinion, we are entitled to them, regardless of the abrogation of the Treaty of Washington, even if the Treaty of 1818 is now revived. The Commission merchants of Boston, in their hearing before the House Committee on Foreign Relations, urged with great force the necessity of our fishermen enjoying the right to purchase bait and ice in the ports of the Dominion, and asserted that under the Treaty of 1818, the terms of which now applied, we were no longer entitled to such privilege.

That was why they wanted the Commission, as they said, to settle it and give us the right. The Senator from Vermont says it is not so clear now. We do not require near so much fish for bait now as we once did, and, besides, we can get it at home, we can salt it and carry it with us. Still the right to buy bait and ice in Canadian ports is a valuable privilege to our fishermen to-day, they are so far from home when on those banks. It is not indispensable, to be sure.

Mr. President, the Canadian Government to-day insists that we have no such right. The Commissioner of Marine insists in his Proclamation that we have no such right.

*Mr. Edmunds.*—The Senator does not mean that the Canadian authorities say that a vessel of the United States, not a fishing vessel, may not go to any Canadian port and buy anything that is open to sale in the markets there?

*Mr. Frye.*—They are very careful to say "fishing-vessels."

*Mr. Edmunds.*—Oh, yes.

*Mr. Frye.*—I do not know whether they understand it so well as the Senator from Vermont does, though we could easily get around that by sending one of our ordinary registered vessels there to buy all the bait alongshore and distribute it among our fishermen. Whether they are sharp enough to recognize that that could be done I do not know.

*Mr. Edmunds.*—That under existing Treaties we have a perfect right to do.

*Mr. Frye.*—I contend that we have that right for our fishermen from the fact that under existing laws every fishing-vessel is equipped with a permit from the Government to trade with foreign countries, and that puts her on an equality with a registered vessel.

*Mr. Edmunds.*—Yes. The Canadians do not deny that an ordinary commercial registered vessel of the United States has a right to trade in anything anywhere in the ports of the provinces, and if, therefore, our vessel chooses to go there to buy a few tons of bait, or ice, or anything else, and go to sea with it, it has a perfect right to do so under existing Treaties.

*Mr. Frye.*—Undoubtedly; and I contend further that our fishing-vessels being armed with a permit to trade in foreign countries have thereby conferred upon them all the privileges attaching to a registered vessel, and that they have a right to go into those ports to buy bait and ice, not under Treaty however. I fail to find that any Treaties between the United States and Great Britain have ever taken up the

question of commercial privileges, or that they are the creatures of Treaty power at all. As I said in the Senate the other day, it seems to me they are the creation entirely of law, and I refer the Senate and the Senator from Vermont to the laws of 1820, of 1823, of 1830, and one or two Acts of the British Parliament covering the same period and the Proclamation of Andrew Jackson made in 1830.

The British Colonial system and the Act of Congress of the 18th April, 1818, united to make an absolute non-intercourse of trade and commerce between British North America and the United States. The Acts of 1820 and 1823 modified slightly this non-intercourse. Acts of Parliament, our legislation in 1830, and the Proclamation of President Jackson in October 1830, united to establish commercial intercourse. As a matter of fact, as between Great Britain and us commercial privileges have never been the subject of Treaties, except incidentally in the Reciprocity Treaty of 1854, have always been the creations of law.

Then I call the attention of the Senate, as I did the other day, to one further fact which is of greater importance decidedly, and that is the Act of Parliament of the 26th June, 1849. Senators will remember that for years we had been proffering to the British Government a repeal of our Navigation Laws. It had been our earnest desire to effect that repeal and modification, and over and over again we had made the proffer to Great Britain. The 26th June, 1849, she accepted the proffer in all its fulness, and she opened all her ports to our vessels.

*Mr. Morgan.*—Do I understand the Senator from Maine to say that she accepted that proffer as a matter of negotiation and actual agreement?

*Mr. Frye.*—No, Sir, a proffer by law.

*Mr. Morgan.*—You mean that the enactments of the two countries were on parallel lines?

*Mr. Frye.*—Yes, ours a little ahead of hers.

*Mr. Morgan.*—Similar?

*Mr. Frye.*—Similar, ours a little ahead of hers, so that in effect it was a proffer. Now I say that, excepting the coastwise trade of both countries, for both were excepted, that Act of 1849 of the English Parliament, our law made just prior to it, the Proclamation of the President of the United States, Mr. Taylor, and the Proclamation of the Queen of Great Britain, opened all the ports of the two countries one to the other for trading purposes, and gave us the same commercial privileges and rights in the Canadian ports that the Canadians enjoy in ours.

*Mr. Gray.*—Will the Senator give us a more specific reference to the Proclamation of President Taylor?

*Mr. Frye.*—I have not it here.

*Mr. Gray.*—I should like very much to hear it.

*Mr. Frye.*—I have not got it here.

*Mr. Edmunds.*—It is in the Statutes at Large undoubtedly.

*Mr. Frye.*—No, it is not there. I have tried to find it. I read the other day the Message of Zachary Taylor in which he alludes to it, and alludes to the effect of the enactment of these two provisions of law on the part of Great Britain and the United States, which he says have fortunately for both countries opened up all the ports of the two countries to these commercial rights and privileges.

*Mr. Gray.*—I did not want to interrupt the Senator, but merely in the line of argument he was making I thought it was important to those not familiar with the whole business to see that Proclamation.

*Mr. Butler.*—Let it be inserted in the Senator's remarks.

*Mr. Frye.*—If I can get it I will insert it in my remarks. I read the other day the Message of President Taylor alluding to it.

I contend that under those Laws and Proclamations Canada is entirely mistaken in the position which she assumes to-day, and that we have the same rights in her ports that she has in ours, and within a week she has had a dozen vessels in our ports buying bait at Portland and Gloucester.

*Mr. Morgan.*—The same commercial rights, you mean?

*Mr. Frye.*—Yes, the same commercial rights, not the same fishing rights. I am glad the Senator made the suggestion. I do not claim that we have any fishing rights at all within the 3-mile shore-line, because we are living under the Treaty of 1818, and, as I have undertaken to show, we do not want them, they are good for nothing; but the right to purchase bait and ice in the Canadian ports is ours to-day if they have any such right in ours; and if they close their ports against us for bait and ice, all that we have to do is to close our ports against them. It will be the first and highest duty of the Congress of the United States to do it.

*Mr. Morgan.*—Can not that be done by a Proclamation of the President?

*Mr. Frye.*—Whether it must be by an Act of Congress, I am not prepared to say. Congress can authorize the President undoubtedly to make Proclamation.

*Mr. Morgan.*—Has not Congress already authorized the President to do so?

*Mr. Edmunds.*—They have no right to do it at all except as to what their laws may say about fishing-vessels, under the existing Treaties. The right to free commercial intercourse, the incoming and outgoing for commerce and trade, is complete.

*Mr. Frye.*—So I do not know of anything we want of Canada. I know of no market of hers that we desire. She has had a protective Tariff for five or six years now, and has built up her manufacturing industries under it, so that she is buying comparatively little of us or of Great Britain in the way of manufactured products. We sold her refined sugar to the extent of millions of dollars a few years ago, but she has built up her own refineries now, and buys comparatively nothing of us.

The right of our fishermen to-day to buy bait and ice rests on precisely the same basis as the right to purchase any other article they have to sell; and should this right be denied, Congress can promptly and effectually retaliate by excluding British colonial shipping from our ports. In these regards our intercourse with these Colonies depends entirely on legislation, not on Treaties. There is not the slightest danger of Great Britain assenting to any interruption of these privileges, to any interference with this intercourse. Newfoundland, a few years since, passed a law prohibiting the sale of bait and ice to our fishermen, but Great Britain refused her assent to the legislation.

Mr. President, I assert, without fear of contradiction by any man engaged in the fishing business—I do not mean importer of fish—that we have nothing to ask of Canada. She has no control over, nor exclusive interest in, any waters where we desire to fish for cod, haddock, halibut, or mackerel. Then what is there for a Commission to settle, so far as we are concerned? Canada, I admit, does seek something of us. Our market is to her an absolute necessity. But, under a recent ruling of the Secretary of the Treasury, that solidly-frozen halibut, frozen for weeks, brought into Gloucester by the vessel-load, were “fish fresh for immediate consumption,” and not dutiable, a market is opened up to Canada for at least 600,000,000 lbs. of fish annually. I said we asked nothing of Canada, but we do demand of our Secretary of the Treasury that in construing our Tariff Laws, if he is in doubt, we and not Canada shall have the benefit of the doubt. Since that item was put into our Tariff Law the whole method of preserving fish fresh has changed. Then they must be consumed at once, or cured by salt or smoking, but now with freezing processes, refrigerators on fishing-vessels, on steamers, on cars, and in every great market, fish are kept fresh as long as they are preserved good by curing. If the Secretary will wisely reconsider this decision, and find some way to rule that small herring, brought in fresh to-day, and to-morrow boiled in oil and made sardines, shall be admitted free of duty, his conclusions will be much more beneficent for his countrymen.

*Mr. Morgan.*—Can we not get the decision of the Supreme Court of the United States to find out whether he is right or not?

*Mr. Frye.*—The Senator from Vermont calls my attention to an Act of 1823, which authorizes the President to issue Proclamation at any time without any further enactment.

*Mr. Edmunds.*—When there is discrimination made against our vessels in British ports.

*Mr. Morgan.*—That is what I understood the law to be. It is not necessary to have any additional Congressional action about it. The President by Proclamation can declare non-intercourse.

*Mr. Frye.*—I have stated the ruling of the Secretary of the Treasury which has opened our markets to all fresh fish. Since that item was put into the Tariff Bill the whole process of curing fish has changed, as has that of taking fish. It meant fish taken to-day and eaten to-morrow when that law was made. Now it may mean fish taken to-day and eaten six months from now. By the modern freezing process you can keep fish fresh as long as you please. You can bring in a cargo of salmon; I have seen them frozen down in the lower province at Campbellton; I have seen 10,000 of them in one single lot frozen by the modern process as solid as lead itself, so that you could not chop it with an axe. They can be brought into our markets in refrigerators on board ship, sent to your market-houses, kept there in refrigerators for six months or a year, and sold for fresh fish.

*Mr. Morgan.*—Did I understand the Senator to say that the process of freezing fish and bringing them into the market fresh has been recent, since the enactment of the Tariff Law?

*Mr. Frye.*—Since the enactment of the Tariff Law. I say the refrigerators on vessels, on steam-boats and cars, and the salmon-freezing process, and other freezing processes, so far as I know, have all come into existence since that item was put into the Tariff.

*Mr. Morgan.*—Then it requires action on the part of Congress to remedy that difficulty arising out of the new discovery.

*Mr. Frye.*—I am not saying that the Secretary of the Treasury is wrong. I am saying that under his construction of the law our market to-day is open to Canada for 600,000,000 lbs. of fish a-year. I wish the Secretary of the Treasury had seen his way clear to have given a doubt, if he had one, in favour of the American citizen rather than in favour of the Canadian.

*Mr. Morgan.*—I did not understand the Senator from Maine as complaining of the Secretary of the Treasury, but I understood him as making the point in favour of the Canadians that they had beaten Congress at a game of freeze-out.

*Mr. Frye.*—Oh; no, not at all. Mr. President, I want to tackle a practical question now. Ought Canada to have our market? Is there any good reason why she should have it?

*Mr. Morgan.*—Does that mean whether we ought to repeal the Tariff on fish? Is not that the question the Senator is about to discuss?

*Mr. Frye.*—Yes, Sir, in a little different way, perhaps, than what the Senator suggests. I simply want to know if Canada ought to have our market, and I propose to show reasons why she ought not to have it unless she pays for it, as the Senator from Georgia (Mr. Brown) suggests. That can only be done in another way; by a Commission, probably.

Mr. President, ought the Canadian in justice to have free access to our markets? Consider for a moment the advantages he enjoys over our fishermen. He pays no Federal taxes, nor State, nor county, nor municipal. He helps build no school-houses, nor roads, nor does he participate in the support of our schools, nor our poor, nor our police. In the event of war he owes us no allegiance and gives us no service. If the war is with England he mans the ships of the enemy. His Government pays him bounties, amounting in 1882 to 172,309 dollars, about 2 dollars a-ton to vessels engaged in the fisheries and 5 dollars to each man employed in the boat fisheries. His vessels, built largely of the softer woods, cost him only a little more than one-half as much as ours. There is no duty on his cordage, his supplies, or his nets. The men are content with wages and a living costing a quarter less than ours.

Allow me, Mr. President, to illustrate a few of these differences. The pay, last year, of men hired on Canadian vessels was from 75 to 82 dollars for the trip, while the wages of the American crew for the voyage of about four months were from 120 to 190 dollars. The Canadian crew were obliged to prepare the vessel for sea, discharge her, wash the fish caught on return to port, and await the sale of the cargo for payment; while the American crew do nothing of the kind, and are promptly paid on arrival at home port. The Dominion owners employ women and girls to handle, cure, and dry their fish at 25 cents a-day, or 6 cents an hour, while the Americans employ men for the same work at from 20 to 30 cents an hour.

One of their vessels belonging to Yarmouth made last year two trips to the banks and returned with 2,400 quintals of cod, while an American vessel, owing to the greater distance from the grounds, made but one trip and took 1,400 quintals. The cost of the Canadian vessel referred to, prepared for sea, was 4,000 dollars; of the American, 12 tons less in measurement, was 5,500 dollars. The outfit of the Canadian was from 1,900 to 2,000 dollars, of the American 3,000 dollars. "The Dominion Report of Fisheries" shows that their fishing-vessels, prepared for sea, classed in British or French Lloyds, cost from 40 to 50 dollars a ton, while our best vessels cost from 90 to 110 dollars a ton.

Mr. President, I submit that with all these advantages they ought not to have our market without paying an adequate compensation for it. Again, the duty on fish is the lowest duty in the Schedule; a duty for revenue only, only half the duty that the Canadians put upon fish as against us and have kept upon our fish going there.

Again, I say that these men are the hardest worked, the poorest paid, the most exposed of any men in the United States who labour for a living.

*Mr. Morgan.*—Do you mean our fishermen or the Canadian fishermen?

*Mr. Frye.*—Our fishermen.

*Mr. Morgan.*—The Canadian fishermen are not so badly off, then?

*Mr. Frye.*—What account I have given of them indicates they are badly off.

*Mr. Morgan.*—I understood the Senator to say they only got about half the pay of ours.

*Mr. Frye.*—I did not say that. The proportion is about two-thirds.

*Mr. Morgan.*—Ours are the worst paid men in the United States?

*Mr. Frye.*—Yes, Sir.

*Mr. Morgan.*—And the Canadians are paid only two-thirds of what our men get, and yet they are increasing their fleet all the time.

*Mr. Frye.*—I say to the Senator from Alabama that in an average good year our fishermen do not average 300 dollars a-piece, and last year they did not average 150 dollars.

*Mr. Morgan.*—How long is the season?

*Mr. Frye.*—From four to six months, and sometimes it goes the year through. They start mackerel fishing in March now. But perhaps the Senator will agree with the gentleman from Massachusetts who wrote the letter to his principal in St. John's, that the American people want cheaper fish, and that, therefore, the Canadian should have our market in order to make them cheaper.

*Mr. Morgan.*—I have no doubt the Americans want cheap fish except those who catch them. Whether they ought to have it is a question that I did not suppose was a material question in this debate, but I find that it is. I find that the whole debate hinges on the question of what the Tariff ought to be, whether it ought to be increased or maintained at what it is.

*Mr. Frye.*—I have said no such thing. I have said that the Canadians want our market. They do not want it by paying duties to get it, but still I am willing to accept the other issue at any time and to discuss that. But let me say to the Senator from Alabama that carefully prepared statistics show that the price of fish in our market has been no less when Canada had free access to it than before Canada had access to it without a duty, but, on the contrary, a little higher.

Our Government used to pay bounties to our fishermen, but repealed them all in 1866. Our vessels are built of the best white oak. Equipment and supplies are subject to a Federal tax. The men assist in the support of all of our institutions and help pay all of our taxes. Is there any justice in exposing them to a free and open competition in their own markets? Ought not the Canadian fishermen to pay some equivalent for his exemptions? But, it is urged, the people are interested in obtaining cheaper fish. The statistics do not prove that the payment of our small duty increases the price received by the fishermen for their fish. It must be remembered that he receives only two-fifths of the cost of his fish to the consumer, while transportation and the middlemen share the other three-fifths. Besides, these fishermen in the best seasons do not average in earnings more than 300 dollars each, and last year the average was not quite 100 dollars. Surely no man would ask that his fellow-man should expose himself to the dangers and hardships of the fisherman's life for smaller compensation than this. Why, Sir, common humanity, a decent regard for the rights of others, would compel him to say: "If eating free fish offend my brother fishermen, then I'll eat no more free fish while the world lasts."

But, Mr. President, I said that I could not admit that the price of fish was enhanced by the duty, and I produce the statistics sustaining my opinion.



AGGREGATE Average Prices of Mackerel and Codfish, in Gold, during a Period of Twelve Years before the Reciprocity Treaty, Thirteen Years during that Treaty, Six Years between that Treaty and the Commencement of the Washington Treaty, and Twelve Years under the Washington Treaty, the Basis being the Price of Mackerel and Codfish on the 1st September, each Year, in Gloucester (Massachusetts) Market, Averaged for each Period.

Period.	Time.	Average Price of No. 1 Mackerel, per Barrel.	Average Price of No. 2 Mackerel, per Barrel.	Average Price of No. 3 Mackerel, per Barrel.	Average Price of Codfish, per Quintal.	Remarks.
	Years.	Dol. c.	Dol. c.	Dol. c.	Dol. c.	
1842 to 1853*	12	10 42	7 56	5 06	3 08	Imported fish paid duties.
1854 1866	13	13 57	9 76	6 37	5 18	Imported fish free.
1867 1872*	6	14 16	8 35	6 21	5 50	Imported fish paid duties.
1873 1884	12	15 17	8 54	5 94	5 19	Imported fish free.

PRICES of Mackerel in Massachusetts the First Week in September, from 1830 to 1884.

	No. 1.	No. 2.	No. 3.		No. 1.	No. 2.	No. 2.
	Dol. c.	Dol. c.	Dol. c.		Dol. c.	Dol. c.	Dol. c.
1830 .. ..	5 00	4 50	2 62	1861 .. ..	8 50	4 50	2 75
1831 .. ..	5 75	4 75	2 62	1862 .. ..	8 25	6 00	4 50
1832 .. ..	5 00	4 00	2 75	1863 .. ..	14 00	9 25	6 50
1833 .. ..	5 72	4 72	2 85	1864 .. ..	30 00	20 00	..
1834 .. ..	5 72	4 72	3 35	1865 .. ..	22 00	15 00	9 75
1835 .. ..	7 00	6 00	4 00	1866 .. ..	22 75	13 25	..
1836 .. ..	9 00	8 00	5 00	1867 .. ..	17 00	12 25	7 50
1837 .. ..	7 75	6 50	4 12	1868 .. ..	17 00	13 00	..
1838 .. ..	11 00	9 25	5 50	1869 .. ..	23 00	11 50	..
1839 .. ..	12 50	10 50	7 00	1870 } bay ..	21 50	11 00	..
1840 .. ..	12 75	10 50	5 50	1870 } shore ..	23 00	9 75	..
1841 .. ..	12 00	10 00	6 00	1871 } bay ..	10 50	7 50	5 50
1842 .. ..	9 00	6 00	4 00	1871 } shore ..	11 25	7 25	6 25
1843 .. ..	10 12	8 12	6 00	1872 } bay ..	11 50	9 25	7 00
1844 .. ..	9 50	7 50	5 50	1872 } shore ..	14 50	9 50	..
1845 .. ..	13 00	10 50	6 87	1873 } bay ..	14 75	12 25	9 00
1846 .. ..	9 12	6 25	3 87	1873 } shore ..	20 00	12 25	..
1847 .. ..	12 75	8 25	4 25	1874 } bay ..	15 00	8 00	7 00
1848 .. ..	9 00	6 00	3 37	1874 } shore ..	13 25	9 00	7 00
1849 .. ..	12 00	7 00	3 50	1875 } bay ..	14 00	11 00	..
1850 .. ..	10 12	8 12	5 00	1875 } shore ..	16 25	10 25	7 50
1851 .. ..	10 00	6 50	5 12	1876 .. ..	15 00	6 75	5 50
1852 .. ..	9 00	7 00	5 75	1877 .. ..	16 50	12 50	8 00
1853 .. ..	11 50	9 50	7 50	1878 .. ..	18 00	8 00	5 00
1854 .. ..	15 00	12 25	5 00	1879 .. ..	16 00	5 00	3 00
1855 .. ..	19 00	11 00	6 25	1880 .. ..	14 00	7 00	4 00
1856 .. ..	13 00	8 00	6 00	1881 .. ..	14 00	6 00	4 00
1857 .. ..	15 00	12 50	8 50	1882 .. ..	18 00	11 00	8 00
1858 .. ..	15 50	12 50	8 50	1883 .. ..	20 00	14 00	10 50
1859 .. ..	14 50	12 59	8 50	1884 .. ..	14 00	10 00	3 50
1860 .. ..	16 00	8 50	5 00				

The duty is so low that demand and supply regulate the market prices rather than the law, but free access to our markets on the part of the Canadian fishermen introduces an additional uncertainty in the business, already so full of hazard. The custom of sailing on shares, that is, the vessel, outfit, &c., receiving one-half of the catch, the captain and crew the other half, was formerly almost universal; but latterly the crews very frequently insist upon wages rather than chances, and should this become the rule it would be a fatal blow to the business, for the owners will be slow to take the additional risk of wages, and, besides, it would have a tendency to lower the standard of the service rendered.

\* Duties 2 dollars per barrel for mackerel, and 56 cents per quintal for codfish, were paid during these periods on imported fish.

Mr. President, the Republic itself has a deep and an abiding interest in this fishing industry. Can it see with indifference its gradual decay, and regard without lively concern its certain extinction? Will it enter no protest against the deadly blows struck by its own Treaty-making Power? During the last thirty years it has been exposed to twenty-four of unrestricted competition with a foreign Power, and in that time the Government has withdrawn all friendly bounties. In a quarter of a century its fleet has decreased about 125,000 tons and 1,000 vessels, while the demand for the products of the sea has increased tenfold. Has it forgotten that its proud position was largely won by the endurance, skill, courage, and fidelity of these sailors; that Louisburg was wrested from the French by their valour, and that these very waters, now in contention, were secured to Great Britain by their courage? Can she be unmindful of their conspicuous services in the war for our independence? Listen to the testimony of General Knox, then a member of the Massachusetts Legislature. Marblehead had petitioned for a bank-charter, and the opposition was pronounced. General Knox said:

“I am surprised that Marblehead should ask so small a privilege as that of banking, and that there should be opposition to it. Sir, I wish the members of this body knew the people of Marblehead as well as I do. I wish that they had stood on the banks of the Delaware River in 1777, in that bitter night when the Commander-in-chief had drawn up his little army to cross it, and had seen the powerful current bearing onward the floating masses of ice, which threatened destruction to whosoever should venture on its bosom. I wish that when this occurrence threatened to defeat the enterprise they could have heard that distinguished warrior demand, “Who will lead us on?” and seen the men of Marblehead, and Marblehead alone, stand forward to lead the army along the perilous path to unfolding glories and honours. There, Sir, went the fishermen of Marblehead, alike at home upon land or water, alike ardent, patriotic, and unflinching wherever they unfurled the flag of the country.”

Who will deny that the glories we won in 1812 on lake and on sea were their achievement? Who does not know that in our last terrible struggle for life there was not a deck of our fleet unmoistened with their blood? If we ever have another war, which God forbid, it will be on the sea. Who shall man our fleet? It is asserted, and I believe truly, that 85 per cent. of the sailors employed in our ocean foreign-carrying trade are foreigners, owing our country no allegiance and inspired by no love for our flag. They surely would be a broken reed in the hour of national peril. Of the 100,000 men in our fishing fleet 88 per cent. are American citizens, 65 per cent. of American birth. Inured to every hardship, exposed to constant danger, fighting a ceaseless battle with wind and wave, loving freedom for freedom's sake, and ready on call to defend their rights; courageous, skilled, and patriotic, they are to-day the best and most reliable sailors in the world, and to a man would promptly respond to their country's call.

“Why, then, should these men be selected for sacrifice, and their rights be surrendered to the tender mercies of British diplomacy? Of all our industries this alone is left unprotected, and the men employed in it are the most exposed, the hardest worked, and the poorest paid. The duty which England seeks to repeal is the lowest in the list of duties, less than that on any agricultural products, not one-half so great as that on any manufacture; two-thirds lower than that on sugar and rice; lower than that on beef, or mutton, or pork. Outside of England no one seeks its repeal other than a few of our city importers of fish, who are practically nothing more than agents of Canada. From the people of our country no such demand comes to us; on the contrary, the protests from the Atlantic, the Gulf, the Pacific coasts, and from the great lakes are pouring into Congress.

Now, Sir, what do these fishermen ask? In this emergency, when England is demanding one more sacrifice and the Administration seems to have been beguiled by the allurements of the British Minister and Sir Ambrose Shea, their first and most earnest prayer is “to be let alone.” Tossed about for a century by the winds and waves of English diplomacy, buffeted by Canadian penal laws, stripped and dismantled in provincial Courts, it seems to them if only their country would say to this tempestuous sea, “Peace be still,” their cup of content would be full. The Resolution now under consideration answers this demand. But, Mr. President, the Republic should demand more than this of Congress. It should insist:—

1. That Great Britain must abstain from the assumption of “a territorial or any other jurisdiction over the vessels of the United States navigating or

harbouring in the open seas under the flag of the United States, whether within or without 3 miles of the shore.

2. Upon the ordinary rights of hospitality, 'wood, water, and shelter,''' regardless of Treaties.

3. Upon the same commercial privileges in the ports and harbours of the Dominion of Canada as she enjoys in ours.

If these are not accorded, then that Congress should promptly resort to retaliatory legislation, and our Government send into those waters armed cruisers, not to perpetuate any wrongs upon or do any injustice to our neighbours, but to protect our own citizens from outrage. As to legislation otherwise, very little is required. Our fishermen are not asking for bounties or subsidies. They ought, however, to be included in all the benefits conferred by the Statute on our ocean-going tonnage, especially the right to withdraw from bond, free of duty, supplies and equipment. They ask no increase of duty, though the Canadian duty is double of ours both on fresh and cured fish. It should either be provided by law or determined by a decision of the Secretary of the Treasury that fish preserved by artificial freezing shall not be admitted to our markets free, under the clause of the Tariff, "fish fresh for immediate consumption;" that small herring to be converted into sardines, capelin, and squids for bait shall be admitted free; that all fish of every kind taken by vessels of the United States licensed for the fisheries in any waters, or by the crews of said vessels, or by any person, means, or method employed by the masters of said vessels, and which are delivered fresh on board such vessels and cured or preserved thereon and brought to the United States by such vessels, shall be deemed the product of the American fisheries and entitled to free entry. It being understood that the above liberty shall not apply to the employment of vessels under foreign registry or to their crews, boats, seines, nets, or other appurtenances belonging to such foreign vessels.

Mr. President, these are not serious demands, and I trust that the importance of the industry urging them upon Congress will be regarded as a complete justification for their favourable consideration. But, Sir, the first and absolutely necessary condition to stop the progress of decline and decay is an emphatic declaration of the Senate against the recommended Commission, and as this is a question into which no politics nor partisanship can intrude, I sincerely hope that the vote recorded for this Resolution shall be so decisive in its majority as to allay all excitement, and remove all apprehension from the minds of the intelligent, brave, and loyal sailor-fishermen of the Republic.

[No. 35.]

*Mr. Bramston to Sir J. Pauncefote.—(Received April 24.)*

Sir,

*Downing Street, April 21, 1886.*

WITH reference to your letter of the 27th ultimo, and to previous correspondence arising out of the termination of the Fishery Articles of the Treaty of Washington, I am directed by Earl Granville to transmit to you, to be laid before the Earl of Rosebery, copies of despatches on the subject which have been received from the Governor-General of Canada, with their inclosures.

The points which appear to require attention are: (1) the instructions under which Her Majesty's cruisers should now act; and (2) the steps which may appear desirable in order to bring the Canadian instructions into harmony with those issued to Her Majesty's cruisers.

Lord Granville would be glad to be informed whether Lord Rosebery is of opinion that the Imperial instructions to be issued on the present occasion should be similar to those issued by the Admiralty in 1870, on the occasion of the determination of the Reciprocity Treaty of 1854, as in that case it would seem necessary to move the Dominion Government to modify in certain respects the instructions of which copies are inclosed in Lord Lansdowne's two despatches of the 25th ultimo, and to bring them into conformity with the views which Her Majesty's Government may adopt.

On this point I am to refer you to the letter from this Department of the 24th March, 1871, transmitting a draft of the special instructions issued by the Canadian Government to the Commanders of the Dominion cruisers, which had been drawn

up with the view of harmonizing with the instructions already issued to the Commanders of Her Majesty's cruisers.

It appears to Lord Granville that the point on which more particularly the instructions now to be issued require careful consideration is the proposal to renew the prohibition to American fishermen from frequenting colonial ports and harbours for other purposes than those allowed by the Convention of 1818.

Lord Granville gathers, from telegrams which have appeared in the press, that it is contended by some persons in Congress that such a prohibition is no longer justifiable; but on what ground this contention is based does not appear. His Lordship assumes that it has not the support of the United States' Government, and has no doubt that the Canadian Government would object to any modification, without sufficient reason, of the British claims enforced in 1871. Still, the question is one which should not be left unnoticed, and perhaps Lord Rosebery may think it desirable to ask Sir L. West for information as to the arguments used in the recent debate in the Senate, and as to the views of the United States' Government on the point.

It also appears to be deserving of consideration whether the proposal in the confidential letter of instructions to Captain Scott (23rd March), to draw a line 3 miles to seaward from another line between points on the coasts 6 miles apart, is not one which the Canadian Government might fairly be asked to modify, and whether, with the view of avoiding a fruitful source of dispute, that Government should not be invited to waive its strict rights, and to allow United States' fishermen to go anywhere not within 3 miles of any part of the shore.

Here, again, Lord Granville has no reason to suppose that the Dominion Government would think it desirable to modify their instructions, and if it could be ascertained that the United States' Government are not likely to object to this instruction, his Lordship would prefer to leave it as it stands.

It will be observed that a Memorandum (Personal) which accompanied the Governor-General's despatch of the 24th ultimo, and two inclosures accompanying the further despatch of the 31st ultimo, are not forwarded, as copies of these documents have been already received from the Foreign Office in your letter of the 9th instant.

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

Inclosure 1 in No. 35.

*The Marquis of Lansdowne to Earl Granville.*

(Confidential.)

My Lord,

*Government House, Ottawa, March 10, 1886.*

SIR LIONEL WEST, who is at present staying in Ottawa, has communicated to me, confidentially, a despatch addressed by him on the 19th February to Lord Rosebery, on the subject of the situation which has been created by the abrogation of the Fisheries Clauses of the Treaty of Washington. He has also submitted to me a Memorandum, of which a copy is inclosed, upon the same subject.

2. I thought it desirable to furnish Sir Lionel West with a written statement dealing with some of the points referred to in the despatch and the Memorandum, and I have now the honour to inclose herewith a copy of a note which I have handed to him. It embodies the substance of a statement which I made verbally to Sir Lionel West in reply to his request for information upon the subject.

3. The note has been seen by Sir John Macdonald.

I have, &c.  
(Signed) LANSDOWNE.

Inclosure 2 in No. 35.

*Memorandum, dated February 20, 1886.*

[See Inclosure 1 in No. 24.]

## Inclosure 3 in No. 35.

*Note on Sir L. West's Despatch to the Earl of Rosebery dated February 19, 1886, and Memorandum by Sir L. West dated February 20, 1886.*

[See Inclosure 2 in No. 24.]

---

## Inclosure 4 in No. 35.

*The Marquis of Lansdowne to Earl Granville.*

(Confidential.)

My Lord,

*Government House, Ottawa, March 24, 1886.*

WITH reference to previous correspondence relating to the position created by the expiration of the Fisheries Clauses of the Treaty of Washington, I have the honour to forward herewith, for your Lordship's information, a copy of a despatch which I have received from Sir Lionel Sackville West, inclosing a copy of a Memorandum on this subject which he placed in the hands of the Secretary of State for the United States on the 19th instant.

2. I also inclose a copy of the reply which I have sent to Sir Lionel West.

I have, &c.  
(Signed) LANSDOWNE.

---

## Inclosure 5 in No. 35.

*Sir L. West to the Marquis of Lansdowne, March 19, 1886.*

[See Inclosure 3 in No. 24.]

---

## Inclosure 6 in No. 35.

*The Marquis of Lansdowne to Sir L. West, March 24, 1886.*

[See Inclosure in No. 29.]

---

## Inclosure 7 in No. 35.

*The Marquis of Lansdowne to Earl Granville.*

(Confidential.)

My Lord,

*Government House, Ottawa, March 25, 1886.*

I HAVE the honour to forward, for your Lordship's information, a copy of the confidential instructions which have been issued by my Minister of Marine and Fisheries for the guidance of Fishery Officers and *ex officio* Magistrates in command of the vessels which will be employed for the protection of the inshore fisheries of the Dominion.

These instructions are substantially the same as those which were issued under similar circumstances in 1870.

Your Lordship will observe that while the officers in command of the fisheries police vessels are required to take the necessary steps for strictly upholding the Treaty rights of the Dominion, they are specially enjoined to carry out their instructions in a conciliatory spirit, and with forbearance and discrimination.

I inclose a copy of a "warning" notice which was published in reference to the same subject by the Department of Fisheries.

I have, &c.  
(Signed) LANSDOWNE.

---

## Inclosure 8 in No. 35.

*Warning.*

To all whom it may concern.

THE Government of the United States having by notice terminated Articles XVIII to XXV, both inclusive, and Article XXX, known as the Fishery Articles, of the Washington Treaty, attention is called to the following provision of the Convention between the United States and Great Britain, signed at London on the 20th October, 1818:—

“Article I. 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 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 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 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 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 manner whatever abusing the privileges hereby reserved to them.”

Attention is also called to the following provisions of the Act of the Parliament of Canada, cap. 61 of the Acts of 1868, “An Act respecting Fishing by Foreign Vessels.”

2nd. “Any commissioned officer of Her Majesty’s navy, serving on board of any vessel of Her Majesty’s navy, cruizing 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 harbour in Canada, or hovering (in British waters) within 3 marine miles of any of the coasts, bays, creek, or harbours in Canada, and stay on board so long as she may remain within such place or distance.”

3rd. “If such ship, vessel, or boat be bound elsewhere, and shall continue within such harbour 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 dollars; 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 3 marine miles of any of the coasts, bays, creeks, or harbours of Canada not included within the above-mentioned limits, without a licence, or after the expiration of the period named in the last licence 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."

4th. "All goods, ships, vessels, and boats, and the tackle, rigging, apparel, furniture, stores, and cargo liable to forfeiture under this Act, may be seized and secured by any officers or persons mentioned in the second section of this Act, and every person opposing any officer or person in the execution of his duty under this Act, or aiding or abetting any other person in any opposition, shall forfeit \$00 dollars, and shall be guilty of a misdemeanour, and upon conviction be liable to imprisonment for a term not exceeding two years."

Therefore be it known, by virtue of the Treaty provisions and Act of Parliament above recited, all foreign vessels or boats are forbidden from fishing or taking fish by any means whatever within 3 marine miles of any of the coasts, bays, creeks, and harbours in Canada, or to enter such bays, harbours, and creeks except for the purpose of shelter and of repairing damages therein, of purchasing wood, and of obtaining water, and for no other purpose whatever; of all of which you will take notice and govern yourself accordingly.

(Signed)

GEORGE E. FOSTER,  
*Minister of Marine and Fisheries.*

*Department of Fisheries, Ottawa, March 5, 1886.*

Inclosure 9 in No. 35.

*Special Instructions to Fishery Officers, ex-officio Magistrates, in command of Government Steamers and Vessels engaged as Fishery Police Vessels in protecting the Inshore Fisheries of Canada.*

(Confidential.)

Sir,

*Ottawa, March 16, 1886.*

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."

*Powers.*

The powers with which you are invested are derived from, and to be exercised in accordance with, following Statutes, among others:—

The Fisheries Act (31 Vict., cap. 60 of Canada), "An Act respecting Fishing by Foreign Vessels" (31 Vict., 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 Vict., cap. 15 of Canada), also an "Act to further amend the said Act" (34 Vict., 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 Chapter 94 of the Revised Statutes of Nova Scotia" (29 Vict., 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 Vict., cap. 69).

Also an Act passed by the Legislature of Prince Edward Island (6 Vict., 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 cited.

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 authorizing 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.

*Jurisdiction.*

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 "3 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.

*Duties.*

It will be your duty to protect the inshore fisheries of Canada in accordance with the conditions laid down by the Convention of the 20th October, 1818, the 1st 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 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 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 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 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 insure 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 inquire into and report upon any modes of fishing, or any practices adopted by foreign fishermen, which appear to be injurious to the fisheries.

#### *General Directions.*

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 dispatched 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 3 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 cruize, 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 intrusted to you.

I am, &c.  
*Minister of Marine and Fisheries.*

---

Inclosure 10 in No. 35.

*The Marquis of Lansdowne to Earl Granville.*

(Secret and Confidential.)

My Lord,

*Government House, Ottawa, March 25, 1886.*

IT will be in your Lordship's recollection that in my despatch marked Secret and Confidential, of the 18th February last, I mentioned to your Lordship that I did not anticipate that my Government would be likely for the present, at all events, to make any proposal with the object of having the interpretation of the word "bays" in the Convention of 1818 referred to arbitration.

2. I added that special instructions would be issued to officers in command of Canadian police-vessels to avoid the seizure of trespassers in cases where the "bays" question was likely to be raised.

3. I have now the honour to inclose a copy of a secret letter of instructions which has been addressed to Captain Scott, R.N., in command of the "Lansdowne" steamer, which will be specially employed upon this service. Your Lordship will observe that, in the case of bays, creeks, or harbours not exceeding 6 geographical miles in width, Captain Scott is desired to consider that the line of demarcation

extends from headland to headland, and to measure the 3 marine miles from that line outwards; but that where the bay, creek, or harbour is more than 6 miles in width at its mouth he is instructed that the line is to be considered as drawn between the first points at which the width of the said bay, creek, or harbour shall be not more than 6 miles, and the 3-mile limit measured from this line outward.

4. These instructions have been issued with the object of avoiding a premature discussion of the question involved, but my Government trusts that it will be clearly understood that in issuing them it has no intention of departing from the position which it has always maintained in regard to the "bays" question, or of admitting that, under the terms of the Convention of 1818, foreign fishermen have a right of fishing in bays of which the mouth is wider than 6 miles.

5. It would, in view of the possibility of a future reference of this matter to arbitration, be very undesirable that the Government of the United States should be made aware of the existence of the instructions referred to in this despatch.

I have, &c.

(Signed) LANSDOWNNE.

Inclosure 11 in No. 35.

*Mr. Foster to Captain Scott.*

(Confidential.)

Sir,

*Ottawa, March 23, 1886.*

ADVERTING to the letter of my Department of the 18th instant, inclosing 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 3 marine miles of any of the coasts, bays, creeks, or harbours of Canada, with respect to any action you may take against American fishery vessels and United States' citizens engaged in fishing. Where any of the bays, creeks, or harbours shall not exceed 6 geographical miles in width, you will consider that the line of demarcation extends from headland to headland, and the 3 marine miles are to be measured from this line outward.

In cases where such bay, creek, or harbour is more than 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 6 geographical miles, and the 3 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 Convention within 3 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 cruize 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 intrusted.

I am &c.

(Signed) GEORGE E. FOSTER,  
*Minister of Marine and Fisheries.*

Inclosure 12 in No. 35.

*The Marquis of Lansdowne to Earl Granville.*

My Lord,

*Government House, Ottawa, March 31, 1886.*

I HAVE the honour to forward herewith, for your Lordship's information, copies of two despatches which I have received from Her Majesty's Minister at

Washington relating to the issuing of notices to American and Canadian fishermen as to their exclusion from fishing in the territorial waters respectively closed to them by the expiration of the Fishery Articles of the Treaty of Washington.

2. Your Lordship will observe that, in view of the formal notification in this connection given in the President's Proclamation of the 31st January, 1885, no further action is deemed necessary by the United States' Government.

3. I also forward a copy of a despatch which I have addressed to Sir Lionel West, inclosing, for his information, a copy of the confidential instructions issued by the Fisheries Department to the officers employed in the protection of the Canadian inshore fisheries, and of the "Warning" published by the Minister in consequence of the termination of the Fishery Articles of the Treaty of 1871.

I have already sent your Lordship copies of these papers in my despatch marked Confidential of the 25th instant.

I have, &c.  
(Signed) LANSDOWNE.

Inclosure 13 in No. 35.

*Sir L. West to the Marquis of Lansdowne.*

My Lord,

*Washington, March 20, 1886.*

I HAVE the honour to inform your Excellency that I received on the 18th instant a telegram from the Earl of Rosebery, instructing me to ascertain whether it is intended to issue a notice that American fishermen are now precluded from fishing in British North American territorial waters, in view of the issue of a similar notice with regard to British fishermen in American waters on the part of Her Majesty's Government.

After having spoken to Mr. Bayard on the subject, I addressed a note to him, at his request, copy of which is inclosed, in the sense of Lord Rosebery's telegram, to which he promised me a speedy answer.

In the meanwhile, however, a notice, which I inclose, has appeared in a Washington evening newspaper, stating that the Department of Fisheries has already issued such notice.

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

Inclosure 14 in No. 35.

*Extract from the Washington "Evening Star," of March 20, 1886.*

A CANADIAN STEAMER'S SECRET MISSION.—*St. John's (N.B.), March 20.*—Captain Scott, Commander of the Government steamer "Lansdowne," received sailing orders yesterday, and will sail from here this morning. The destination of the steamer and the plan of action are carefully concealed. She has a month's supplies and full armament. By direction of the Department of Fisheries, Captain Scott has issued a warning to American fishermen to observe the provisions of the Treaty of 1818.

Inclosure 15 in No. 35.

*Sir L. West to the Marquis of Lansdowne.*

My Lord,

*Washington, March 24, 1886.*

WITH reference to my despatch of the 20th instant, I have the honour to inclose to your Lordship herewith copy of a note which I have received from the Secretary of State,\* informing me that, as full and formal public notification in the premises has already been given by the President's Proclamation of the 31st January, 1885, it is not deemed necessary to repeat it.

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

\* See Inclosure 2 in No. 27.

Inclosure 16 in No. 35.

*The Marquis of Lansdowne to Sir L. West.*

Sir,

*Government House, Ottawa, March 25, 1886.*

I HAVE the honour to acknowledge the receipt of your despatch of the 20th March relating to the issuing of notices to American and Canadian fishermen as to their exclusion from fishing in the territorial waters now closed to them by the expiration of the Fishery Articles of the Treaty of Washington.

The "Warning" to which reference is made in the newspaper extract inclosed in that despatch is no doubt that of which I now forward a copy herewith, for your information.

It will be within your knowledge that in 1870 a Circular, dated the 16th May of that year, calling the attention of American fishermen to the restrictions imposed by Article I of the Convention of 1818, and to the Canadian Statutes affecting the inshore fisheries of the Dominion, was issued by the United States' Government, and I am glad to learn from your despatch that the Secretary of State has now under his consideration the propriety of issuing a similar notice.

I take this opportunity of acquainting you that the Fisheries Department has issued confidential instructions, of which a copy is also inclosed, for the guidance of its officers employed in the protection of the inshore fisheries of this country.

You will observe that these officers, while directed to take all necessary steps for maintaining the Treaty rights of the Dominion, are specially instructed to perform the duties intrusted to them with forbearance and discrimination.

I have, &c.

(Signed) LANSDOWNE.

Inclosure 17 in No. 35.

*The Marquis of Lansdowne to Earl Granville.*

(Confidential.)

My Lord,

*Government House, Ottawa, March 29, 1886.*

IN reference to my Confidential despatch (A) of the 24th March, forwarding a copy of Sir Lionel West's despatch of the 19th instant, I have the honour to inclose herewith copy of a further despatch which I addressed on the 27th instant to Sir Lionel West, defining with more precision the position of my Government in regard to clause 1 of the Act of 1868, 31 Vict., cap. 61, under which power is taken to grant licences to foreign fishing-vessels frequenting the territorial waters of the Dominion.

2. Although the terms of the Memorandum handed to Mr. Bayard by Sir Lionel West, and inclosed to me in his despatch above referred to, were strictly in accordance with the views of my Government, it appeared to me that the concluding portion of the despatch inclosing the Memorandum was so worded as to leave the impression that, in Sir Lionel West's belief, it was still open to American fishermen at any moment to apply for and obtain licences to use the inshore fisheries of the Dominion.

3. Your Lordship is fully aware of the circumstances under which the issue of these licences was discontinued by the Dominion Government in 1870, and I thought it desirable to explain to Sir Lionel West that at the present time my Government would not be disposed to depart from the decision at which it then arrived, or, as at present advised, to regard with favour any suggestion for a return to the practice of granting licences.

I have, &c.

(Signed) LANSDOWNE.

Inclosure 18 in No. 35.

*The Marquis of Lansdowne to Sir L. West, March 27, 1886.*

[See Inclosure 1 in No. 30.]

## Inclosure 19 in No. 35.

*The Marquis of Lansdowne to Earl Granville.*

My Lord,

*Government House, Ottawa, March 30, 1886.*

I HAVE the honour to inclose herewith a certified copy of a Report of a Committee of the Privy Council, approved by me to-day, recommending that a copy of the Order in Council passed on the 3rd instant, authorizing the establishment of a fisheries police force, together with a copy of the special instructions approved by the Order in Council of the 25th instant should be forwarded to your Lordship for the information of Her Majesty's Government.

2. The special instructions above mentioned have already been forwarded by me for your Lordship's information, and a copy of the Order in Council of the 3rd instant is inclosed herewith. I have now only to call your attention to the concluding passage of the Order of this day's date, in which I am requested to submit to Her Majesty's Government the propriety of taking "such steps as are deemed necessary to sustain the Canadian fisheries police-vessels in the full enforcement of the provisions of the Convention of 1818."

3. I may state, in explanation of the wishes of my Government, that while it fully recognizes that the duty of enforcing Police Regulations affecting the fisheries is one which belongs to the Canadian authorities, it believes that those Regulations can be more effectually enforced, and will command greater respect at the hands of those against whom they are directed, if they are supported by the presence of one or more of Her Majesty's ships.

4. The mere fact of that presence would certainly be calculated to create the impression that, in insisting upon its Treaty rights, the Dominion had the approval, and would, if occasion arose, command the assistance, of Her Majesty's Government.

5. This consideration would deserve additional weight if, as is possible, the Government of the United States should send a ship or ships of war to cruize off the Canadian coast for the protection of American vessels fishing in those waters.

6. I have only to add that I believe it was the case that, after the expiration of the Reciprocity Treaty of 1854, a similar request was made on the part of the Dominion Government, and acceded to by that of Her Majesty.

I have, &c.  
(Signed) LANSDOWNE.

## Inclosure 20 in No. 35.

*Report of a Committee of the Honourable the Privy Council for Canada, approved by his Excellency the Governor-General in Council on the 30th day of March, 1886.*

THE Committee of the Privy Council, on the recommendation of the Minister of Marine and Fisheries, advise that, for the information of Her Majesty's Government, a copy of the Order in Council passed on the 3rd instant, authorizing the establishment of a fisheries police force for the protection of the Canadian inshore fisheries, be transmitted to the Colonial Secretary, as also a copy of the special instructions, &c., approved by Order in Council of the 25th instant, to the end that, having been advised of the action of the Canadian Government, Her Majesty's Government may take such steps as are deemed necessary to sustain the Canadian fisheries police-vessels in the full enforcement of the provisions of the Convention of 1818.

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

## Inclosure 21 in No. 35.

*Report of a Committee of the Privy Council, approved by his Excellency the Governor-General on the 3rd March, 1886.*

ON a Memorandum dated the 22nd February, 1886, from the Minister of Marine and Fisheries, stating, with reference to the termination of the Fishery Articles of the Washington Treaty on the 1st day of July last, and the subsequent correspondence between Her Britannic Majesty's Minister at Washington and the Secretary of State for the United States, resulting in an arrangement by which United States' fishing-vessels are permitted to fish in Canadian waters, and enjoy the same privileges as under the Treaty up to the 31st December last, and further stating that this arrangement was reached with the understanding that the President of the United States would bring the whole question of the fisheries before Congress at its then next Session, and recommend the appointment of a Commission in which the Governments of the United States and of Great Britain should be respectively represented, which Commission should be charged with the consideration and settlement upon a just and equitable and honourable basis of the entire question of the fishing rights of the two Governments and their respective citizens on the coasts of the United States and British America :

The Minister observes that the period for which this arrangement existed expired on the 31st December last, and it appears from the official records of Congress that the Committee of the Senate on Foreign Relations has reported adversely upon the recommendation of the President in his annual Message for the appointment of the Commission suggested by the arrangements referred to, and the question therefore reverts to the position which it occupied prior to the adoption of the Treaty of Washington.

The Minister, with a view to the vigilant and efficient protection of the fisheries, recommends that he be authorized to establish a sufficient marine police force for the purpose thereof, to use such of the Government steamers as may be available, and to charter and equip at least six swift-sailing fore and aft schooners, of between 60 and 90 tons measurement or thereabouts, to be called the fisheries police-vessels; that for the purpose of defraying the cost of this force the further sum of 50,000 dollars be placed in the Supplementary Estimates to be submitted to Parliament at its approaching Session for the current fiscal year, and an additional sum of 100,000 dollars for the fiscal year ending the 30th June, 1887.

The Committee submit the same for your Excellency's approval.

## No. 36.

*Sir L. West to the Earl of Rosebery.—(Received April 26.)*

(No. 25. Treaty.)

My Lord,

*Washington, April 14, 1886.*

I HAVE the honour to inclose to your Lordship herewith the report of the debate in the Senate on the Resolution against the appointment of a Commission for the settlement of the Fisheries question as recommended by the President in his Message to Congress. The Resolution was adopted by a vote of 35 to 10.

I have, &c.

(Signed) L. S. SACKVILLE WEST.

P.S.—I subjoin a précis of Senator Evarts' speech in support of the Resolution.

L. S. S. W.

## Inclosure 1 in No. 36.

*Extract from the "Congressional Record" of April 14, 1886.*

*Fishing Rights of the United States.*

*The Presiding Officer.*—The Senate now resumes the consideration of the unfinished business, being the Resolution relative to the appointment of a Commission charged with the consideration and settlement of the fishing rights of the United States and Great Britain.

*Mr. Frye.*—Two or three very distinguished Senators are to address the Senate on the Resolution, whose word as to law will be regarded by the country as law, and therefore I wish to call their attention to one or two matters, so that they may discuss them.

The discussion already in Canada and here has had a good deal of effect. Canada started out with a declaration that our vessels had no rights in their waters except those of hospitality. She has since modified that by admitting that they have a right to ship crews there, and according to Consul-General Phelan, at Halifax, the further right to land cargoes at the port of entry and tranship them across the country in bond, and the further right according to the same authority to lie at any port as long as they please, the Canadians exercising police duty over them. The Secretary of State of the United States has assumed to-day the position which I was very greatly in hopes he would assume, entirely different from that which he assumed some weeks ago in his telegram to Captain Whitten, of Portland. The Secretary of State received a despatch dated the 9th April, 1886, which I shall read, and his reply thereto:—

*Portland, April 9, 1886.*

“To Honourable Secretary of State, Washington, D.C.,

“Having several fishing-vessels ready for the banks, we desire to know if they can enter Canadian ports for men and be protected in so doing.

(Signed) “CUSHING AND MCKENNEY.”

*Washington, D.C., April 9, 1886.*

“To Cushing and McKenney, Portland, Me.,

“The question of the right of American vessels engaged in fishing on the high seas or entering the Canadian ports for the purpose of shipping crews may possibly involve construction of Treaty with Great Britain. I expect to attain such an understanding as will relieve our fishermen from all doubt or risk, in the exercise of the ordinary commercial privileges in friendly ports, to which, under existing laws of both countries, I consider their citizens to be mutually entitled free from molestations.

(Signed) “T. F. BAYARD.”

Now, Mr. President, I want to call the attention of Senators, and especially the Senator from Alabama (Mr. Morgan), to that Treaty about which a construction may be required. It is the Treaty of 1818. It is that provision which says:—

“And the United States hereby renounce for ever any liberty heretofore enjoyed or claimed by the inhabitants thereof to take, dry, or cure fish on or within 3 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.”

For rights of hospitality; I do not use the language; “and for no other purpose whatever.” Canada claims that that phrase “no other purpose whatever” means precisely that you shall have no longer commercial privileges there for a fisherman. I ask the Senator from Alabama in considering this question to look at the Laws of 1823 and of 1830, the Proclamation of 1830, the Acts of the Parliament of Great Britain, the Act of the Parliament of 1849, and the Act of the United States of 1849, wherein commercial privileges have been conferred by law upon our vessels, and all of our vessels, and to the additional fact that in 1818, when that Treaty was made, there was no such thing as a commercial privilege known to our Treaties, and it was utterly unknown to the Commissioners who negotiated that



Treaty. When they put that language in it could not by implication be referred to commercial privileges, because such things were absolutely unknown between us and Great Britain.

Now, I call the attention especially of the Senator from Alabama to another thing. A fishing-vessel licensed to fish cannot be permitted to enjoy the ordinary commercial privileges granted to other vessels. Under our law character is given to our vessels in two ways—one registry, the other enrolment. Under the early Law of 1792 or 1793, a registered vessel alone was permitted to engage in foreign trade, and an enrolled vessel was confined to the coastwise trade. But that was simply a matter of law, and we could just as well have provided by law then that enrolled vessels should engage in foreign trade and registered vessels in the coastwise trade as to provide as we did; or we might provide to-day by law that no vessel of the United States should be required to have anything but a register. That is the law of Great Britain, and we could require the same to-day by our law. We can give an enrolled vessel to-day the privileges of the foreign trade by law.

I call the attention of the Senate to this, that neither Great Britain nor Canada has any sort of right to question what we do touching these rights conferred upon our vessels. They are not permitted to call them in question. The only question is whether those vessels have been armed and equipped by our law for foreign trade; and if they have that must content Great Britain.

I call the attention of the Senate now to section 4318 of the revised Statutes:—

“Any vessel of the United States navigating the waters on the northern, north-eastern, and north-western frontiers, otherwise than by sea, shall be enrolled and licensed in such form as other vessels; such enrolment and licence shall authorize any such vessel to be employed either in the coasting or foreign trade on such frontiers, and no certificate of register shall be required for vessels so employed. Such vessel shall be, in every other respect, liable to the regulations and penalties relating to registered and licensed vessels.”

There by law we have taken a whole class of enrolled vessels on the great lakes and have conferred on them the right to trade in foreign ports, and nobody in Canada ever dreamed of questioning the right of those vessels to trade with Canadian ports. The moment the Act of 1849 opened all those ports they were entirely free and open to that law which was passed in 1864. It is the law of the land to-day, and from that day to this enrolled vessels on the lakes have been engaged in foreign trade. Now, I call attention to another section, 4364, of the revised Statutes. Here is where I plant myself, on the section of the Statutes:—

“Section 4364. Whenever any vessel, licensed for carrying on the fishery, is intended to touch and trade at any foreign port, it shall be the duty of the master or owner to obtain permission for that purpose from the Collector of the district where such vessel may be, previous to her departure, and the master of every such vessel shall deliver like manifests, and make like entries, both of the vessel and of the merchandize on board, within the same time, and under the same penalty, as are by law provided for vessels of the United States arriving from a foreign port.”

So that we have by law conferred upon fishing-vessels the same rights to trade in foreign ports that we conferred on those vessels on the great lakes, and all that the fisherman has to do is to go to the Collector for a permit, and when he is armed with a permit to touch and trade, that fishing-vessel, in my opinion, is just as much entitled to free entry into the ports of Canada or the ports of Great Britain as a registered vessel.

I call these points to the attention of Senators, because upon them rests this whole practical question. The only question left to-day between us and Canada is whether or not we shall be permitted to buy bait or ice. That is important to us. Canada sees its importance. She uses it as a lever to pry open our market; but I contend we have it now, and all that a fishing-vessel has to do is to take out her permit, and she has the right to buy all the bait and ice she pleases. If that is maintained, it is all we have to ask. The telegram of the Secretary of State intimates that that is his opinion.

One word more. I want to call the attention of the fishing-vessels of the country to the absolute necessity, if they would be safe and secure, of taking from the Collector whenever they sail a permit to touch and trade.

Now, Mr. President, I yield with a great deal of pleasure to the Senator from Alabama.

*Mr. Morgan.*—Mr. President, my difficulty in the discussion of the questions

which have been mooted by the Senator from Maine (Mr. Frye) arises mainly from the fact that there is nothing before the Senate upon which any definite judgment of the Senate can be taken in regard to these matters. The President of the United States, for the purpose of a temporary arrangement with the British Government after the expiration of the Treaty of Washington of 1871, entered into a certain Agreement with that Government of rather an original nature, the object of which appears to have been, and was intended, to prevent any collision between the people of British America and the people of the United States in the exercise of their commercial rights or of their fishing rights. The termination of that Treaty in the middle of the fishing season, about the 1st July of last year, was considered by a number of the fishermen on the north-eastern coast, as well as by other persons, and also by the British authorities, as presenting a rather dangerous category; that men in the attempt to execute rights they had obtained under the Treaty of Washington might be drawn into collision, and the Governments thereby involved in strife with each other. Whether these apprehensions were fully justified by the facts or not, they were honestly entertained on both sides, for the British Minister brought this subject to the attention of our Government as one that might lead to some unpleasant complications. Our Government responded, and assured the British Government that it had no authority to create a Treaty, no authority to renew an Arrangement; but that the executive Heads of the two Governments could unite for the time being, and by common consent, not to exert themselves in the enforcement of the demands that might be made by their people on either side. And that led the President to make the recommendation to the Congress of the United States which I will read:—

“In the interest of good neighbourhood, and of the commercial intercourse of adjacent communities, the question of the North American fisheries is one of much importance. Following out the intimation given by me when the extensory Arrangement above described was negotiated, I recommend that the Congress provide for the appointment of a Commission, in which the Governments of the United States and Great Britain shall be respectively represented, charged with the consideration and settlement, upon a just, equitable, and honourable basis, of the entire question of the fishing rights of the two Governments and their respective citizens on the coasts of the United States and British North America. The fishing interests being intimately related to other general questions dependent upon contiguity and intercourse, consideration thereof in all their equities might also properly come within the purview of such a Commission, and the fullest latitude of expression on both sides should be permitted.”

In listening to the remarks of the Senator from Maine, and also in what investigation I have been able to give this subject, I am unable to ascertain that there is really any unsettled question between the United States and Great Britain in regard to the fisheries of the north-eastern coast. I have inquired of Senators who have had long experience in the diplomatic affairs of the country, to ascertain, if I could, whether there was any open question of damages, any claim of damages arising between the Governments respectively out of any supposed breach of our fisheries Treaties or our fisheries Laws; and I can hear nothing of that kind. The Halifax Commission seems to have settled for good and all every controversy, sounding in damages at least, which has been promoted or urged by the citizens of the countries on either side.

Those considerations out of view, the next question would be whether there is any want of certainty in our Treaty relations with Great Britain upon this subject. I conceive that there is no want of certainty in our Treaty relations, and there is scarcely room for a difference in interpretation of what our Treaty relations actually are. The two Treaties which have settled the actual, and what we might term the permanent, rights of the people of the United States and of the Dominion country in regard to the fisheries are the Treaties of 1783 and 1818. No other Treaties we have made at all in respect to the fisheries have undertaken to define the permanent, enduring rights either of the British people or of our people in respect of the fisheries. We have had two other Treaties on this subject—the Treaty of 1854 and the Treaty of 1871; but they were both temporary in their character, and both made liable to be suspended by the action of either Government after they had run for ten years, and both have been abrogated. So that the field is entirely clear in respect of the actual state of Treaty relations between the United States and Great Britain, and those Treaty relations rest upon the Treaties of 1783 and 1818.

Now, the question arises, of course, whether the Treaty of 1783 has been

entirely superseded by the Treaty of 1818, and I believe that the better opinion of the publicists and of those who have been officially connected with the discussion of this subject, on our side at least, is that all the rights we acquired under the Treaty of 1783 were repeated in a different form in the Treaty of 1818; and when we wish to know what are the real Treaty rights of the people of the United States in respect of these fisheries we go to that Treaty, and to no other place. Perhaps, to make this proposition a little clearer, it is better that I should read from these two Treaties the text, to see exactly what the modification has been. I will premise, however, by drawing attention to the fact that the Colonies, before their separation from the British Crown, were sister communities, all under the same dominion, members of the same great realm; and the rights of the Colonies were mutual and reciprocal in respect to the subject of the fisheries and a great many other questions. Throughout the whole extent of the British possessions in America there was no distinction between persons who held fishery rights in Canada and persons who held fishery rights in South Carolina or Georgia. It was a common inheritance of right in which they all participated equally, and in respect to which there was neither distinction nor discrimination.

I read from the Treaty of 1783:—

“It is agreed that the people of the United States shall continue to enjoy unmolested the right to take fish of every kind on the Grand Bank, and on all the other banks of Newfoundland—”

“Continue to enjoy.” That means that they had, before that time, as Colonies, been in the full enjoyment of, and this plenary right was merely continued under the IIIrd Article of the Treaty of 1783; and it goes on—

“also in the Gulf of St. Lawrence, and at all other places in the sea, where the inhabitants of both countries used at any time heretofore to fish.”

A sort of common-law right that belonged to the Colonies was put into operation, and continued, notwithstanding the severance of a portion of the Colonies from the British Crown,—

“and also that the inhabitants of the United States shall have liberty 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); and also on the coasts, bays, and creeks of all other of His Britannic Majesty’s Dominions in America, 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.”

That was all that was said about it. A broader right of fishery than that can not be conceived of; no restriction or restraint upon it at all, except that in conducting their business they should not trespass or intrude on private property on the shore in drawing their fish or mending their nets or whatever other use they might have for the shore.

Some controversies arose—it is not at all necessary to refer to the character of them, or the description of them, or the subjects involved—in regard to this Treaty, what the privileges of the people of the different countries might be under it, but the war of 1812 supervened, and after the declaration of peace this subject was again taken up, and the British Government acted upon the hypothesis or theory that all Treaty rights which had been secured to us before that time had been abrogated by the war, and that it required a reinstatement of all the fundamental rights as well as of all the commercial privileges we might thereafter enjoy, by some express agreement between the two countries. So our diplomatists went to work to revamp the Treaty relations between the United States and Great Britain. Various Treaties were signed in rapid succession. In 1814, in 1815, in 1817, and in 1818, Treaties were formed. The latest of these Treaties, until we get down to 1822, related almost exclusively to the subject of the fisheries. We took the subject up *de novo*, and in that Treaty of 1818 we yielded certain very important rights, which I have just called to the attention of the Senate, and we had parceled out to us some other rights in perpetuity. I will call attention to Article I of that Treaty to show exactly what we yielded and what we retained; we did not gain anything.

“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 Bay to the Rameau Islands, on the western and northern coast of Newfoundland."

That appears to be a grant in perpetuity.

"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 Bay Company."

All these rights were granted to us in perpetuity on that boundary, that definition of the limit—

"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 as 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."

That was what was granted to us, or rather it was what was left of our rights under the Treaty of 1783. Now comes the part that we yielded:—

"And the United States hereby renounce for ever any liberty heretofore enjoyed or claimed by the inhabitants thereof to take, dry, or cure fish on or within 3 marine miles of any of the coasts, bays, creeks, or harbours of His Britannic Majesty's dominions in America not included within the above-mentioned limits, provided, however, that the American fishermen shall be admitted to enter such bays or harbours for the purpose of shelter and of repairing damages therein, of purchasing wood, and of obtaining water, and for no other purpose whatever. But they shall be under such restrictions as may be necessary to prevent their taking, drying, or curing fish therein, or in any other manner whatever abusing the privileges hereby reserved to them."

That I consider the Treaty foundation in regard to the fisheries between the United States and Great Britain. It seems to me a very clear one. I can scarcely understand how it is the subject of misconstruction or misunderstanding at all. It will be observed that in this proviso the language employed and the evident purpose of it was to extend to our fishermen a peculiar privilege in the bays, harbours, inlets, and creeks into which they might resort, in favour of our fishermen. There is nothing in that Article which I have just read to indicate that the fishermen of the United States were considered in any sense a piratical people or a people who were intruding upon the rights of the people of the British American provinces; that their traffic was in any sense an unlawful traffic or injurious to the people with whom we traded. On the contrary, this very privilege and licence of entering into their bays was given to us for the purpose of promoting the welfare of the people along the coast of the British possessions. Here it is seen now that we have a very large area, commencing at the point I have just mentioned, and running by the lines I have read, reaching indefinitely north along and through the Straits of Belle Isle and along the coast of Labrador, where it was supposed then, and where it is true now, that there are immense fisheries, and very valuable fisheries. That was left to us in perpetuity. We renounced, however, the liberty that we had enjoyed theretofore to take and dry and cure fish on or within 3 marine miles of any of the coasts not included in the former exception included in the other part of the Dominion.

Then for the purpose of encouraging our traffic with them, of encouraging us to go in there and do all such dealing with them as was necessary for carrying on a fishing adventure, this proviso was put into the Treaty. It was a privilege given to our fishing ships that was not then enjoyed by any of our commercial ships. At the date of that Treaty it was the settled policy of Great Britain, enforced with great vigour and care, that we should not have any direct trade with her British American provinces. She intended to monopolize that trade entirely for Great Britain, and we were excluded from that trade by the greatest possible diligence. The first relaxation that was ever made in the British policy in respect of our trade with her Colonies was with the East India Colonies, and then after a while they

made a relaxation in favour of the West India Colonies, and finally they made a relaxation in favour of the British North American possessions, but never by Treaty with us. We have no engagement, as the Senator from Maine well said the other day, with Great Britain in respect of our traffic with the people of the British possessions considered as such.

In 1818—the time this fundamental and last real Treaty was made between the United States and Great Britain about the fisheries—our vessels of commerce that were not fishing-vessels had no right to resort there, had no right to go there, had no right to enter for the purpose of any traffic whatever with the people of the Dominion of Canada or the people of the British possessions; but our fishermen had the right to go there by the express terms of the Treaty. They had the right to go there then for certain purposes and certain restricted purposes; that is to say, “We give you a very large liberty of coming in here, not a universal commercial privilege, for we do not intend to extend that to your people, but because you are fishermen, and because your traffic is beneficial to our coast, because you come here to take our bait”—they did not have any ice to sell then, I believe—“because you come here to get your supplies from our people, because you run in here for the purpose of shelter, we intend to extend to you certain privileges; the only qualification we make is that you shall not do anything while you are in there for the purpose of taking fish, drying, or curing fish.”

*Mr. Gray.*—May I interrupt the Senator?

*Mr. Morgan.*—Certainly.

*Mr. Gray.*—I want to ask if the Senator’s construction of that proviso is quite as broad as he has just stated, and whether under it all American fishermen are not excluded from the bays, harbours, &c., except for four purposes—shelter, repairing, damages, purchasing wood, and obtaining water? And then does not the last clause, “and for no other purpose whatever,” negative any idea that there was any privilege to take bait or to carry on a general trading venture?

*Mr. Morgan.*—At that time it did certainly negative the idea of carrying on a trading venture, carrying on general commerce with that people in 1818.

*Mr. Gray.*—I call the Senator’s attention to the force of the last clause, “and for no other purpose whatever.”

*Mr. Morgan.*—I have that in my mind. I repeat that this was a privilege guaranteed to our fishermen as one of the benefits of the concession which we made in giving up the rights we had under the Treaty of 1783, and it was a right that no commercial vessel of the United States at that time enjoyed, for no commercial vessel of the United States at that time could enter a Canadian harbour for any purpose, unless it might be driven in by stress of weather and might throw itself on the general hospitality of the people under the laws of nations; but there was no legislative right to go there guaranteed to us by the Government of Great Britain; there was no Treaty provision, and therefore we had nothing to go on.

I will express the conviction again that this proviso in the Treaty was a large indulgence to our fishermen far beyond that enjoyed by any of the commercial vessels of the United States, and was so intended. It was a restrictive advantage, I grant you, but still the only one that was enjoyed by any class of vessels of the United States at that time.

As I remarked before, afterwards the policy of Great Britain changed, and she began to open up the trade of her Colonies to us; first the East Indies, then the West Indies, and after a while she came around and opened up her North American possessions to us for general traffic. That was done entirely by Statute, various enactments moving on the general line until the final enactment, made at a time almost contemporaneous with our laws on the same subject, opened the ports of the British possessions in America freely to our ships of commerce, our vessels of every kind. Those Statutes do not discriminate against fishermen, nor do they discriminate in favour of vessels engaged in commerce other than fishing-vessels. It is a broad, sweeping Statute of Great Britain, admitting our vessels of whatever kind or character freely into those ports, whereupon, or at least almost contemporaneously with it, we passed a Law of a similar character permitting British vessels to come here. Every vessel of the United States is included in that privilege granted by British law, without exception and without qualification. Every vessel that has a register or an enrolment under the flag of the United States, and that has papers which authorize that ship to go to sea for traffic, is a vessel that may go into any Canadian port to do anything that any other ship may do there.

The Treaty of 1818 is totally perverted in its application to this state of the

case. A certain class of the provincial lawyers seem to assume that the Treaty of 1818 gives to the fishermen the only rights they have got, and because those rights are restricted in the Treaty, therefore they cannot do anything except what the Treaty itself conferred upon them the power to do, when the fact is that the British Statute, making no discrimination against them at all, permits them to go in equally with all the vessels of commerce of every kind and character that go into their ports.

Now, why should we take a class of vessels that in the Treaty of 1818 had this great beneficial arrangement made in their favour—a class of vessels that were encouraged to trade in the British possessions, and when a general Law is passed, without any discrimination against them, you presume to hold that that class of vessels, which were originally favoured and have never met with disfavour at all, are excluded from the effects of this Law because there was a Treaty in 1818, in which they got a certain privilege or favour in advance of the rights of commercial ships? It reverses the whole theory of proper construction of the existing arrangements between the Government of the United States and Great Britain. The question between us and the British Government is whether or not they have any Law that excludes a fishing-ship from their ports. They have no Law that excludes a fishing-ship from their ports; they have not put it into any Statute. If they had done any such thing as that, their fishermen would not have been buying fish and recruiting their crews and getting their supplies, everything of that kind, in our harbours. We passed a Law for the purpose of conferring upon the British people an equivalent in right to that which they had conferred upon our fishermen. Their own people construed their Law by coming here. They are here every day. They are in the ports of the north-east to-day buying their bait and their supplies and trafficking with our people at will and pleasure.

The Treaty of 1818 is to be construed always in respect of the law as it stood at the time of its adoption, as well the laws of the United States as the laws of Great Britain; but when both Governments place all the vessels of each country upon entirely a different footing, and do not denounce the fishing-vessels of either country, and when the people go on and practice upon that legislation, having perfect freedom of intercourse, the one set of people with the other, they have no right to turn around now and say, "In 1818 you were excluded from coming for any other purpose than for shelter and for wood and water." We say that might have been in 1818, and a commercial ship at that time was excluded for all things; but now, in 1886, we find under your laws that we have the privilege of going there, because our Statutes have given to your people the privilege of coming here. That is the situation, and it is impossible to get back to the Treaty of 1818 as a limitation upon the right of an American fisherman to go into British waters, unless we here intend to undo by some concessions we are about to make the whole effect of the British Statutes giving us the privilege of going there.

*Mr. Gray.*—What has been the practice under the Act of Parliament in regard to fishing-vessels?

*Mr. Morgan.*—I am not prepared to say exactly what the practice under the Act of Parliament has been, for the reason that nearly the whole period of time since 1818, or a large portion of the period of time since the passage of our several parallel systems of Statute Law, has been covered by special arrangements—the Treaties of 1854 and 1871—which have regulated in a different form altogether the fishery rights of the two countries admitting us to free fishing privileges within the 3-mile limit, and in the bays, harbours, gulfs, and so on.

*Mr. Gray.*—What I was getting at was whether there had been any practical construction by any Department of the two Governments of the effect of the Laws on the fishermen.

*Mr. Morgan.*—I can cite instances, I think, in which there was action on the question. The Government of Newfoundland enacted some Laws prohibitory of our people, and which were considered as violative of the general commercial policy of the Government of Great Britain in respect to our fishing-vessels, and that Government refused to give its sanction to those Laws, and, therefore, they fell. What I meant to say with regard to the precedent that may be drawn from actual practice is that the fact had been that a very large portion of the time since questions of this character arose has been covered by the two Conventions I have spoken of, each of which put the fishing rights of the American people, and also of the British people, in our waters on grounds of a peculiar character, taking them out of the operation of the ordinary laws of commercial intercourse, but giving us and giving them

mutually certain privileges that did not belong to the nations of the world at large, certain privileges within what might be called the inland seas of these different countries. So I have not attempted, nor do I think any person can justly attempt, to settle this question at all upon precedent, for these Conventions came in to interrupt the course of precedent as far as the law is concerned.

But every day a precedent is being made. The British people have not any doubt at all of their right to come here with any ship of commerce, whether a fisherman or what not, and go into Boston Harbour, or Gloucester, or anywhere else, and trade fully and freely for anything they wish to buy in that market. They are just as welcome there as our own ships; they have as much liberty of action as our own ships; they construe the law every day as authorizing their ships to come into our ports; we construe it in the same way by going to their ports; occasionally we meet with some impediment, some obstruction, but we find from the remarks of the Senator from Maine, and certain information that is given us to-day, that they are rapidly relaxing their obstructions and objections, and coming to the true interpretation of this matter.

I do not think any sound-minded British lawyer can contend that Acts relating to commerce passed years and years after the Treaty of 1818 are to be construed by reference to the language of that Treaty. The rights of the American fishermen are not left to be controlled by the Treaty of 1818, because an American fisherman that has his enrollment, or has his registry, and his trading licence, is a ship of commerce, and has a right to go to any place in the world where the American flag can float, and because he is on a fishing mission he certainly is not a pirate, he certainly does not endanger the peace, he does not threaten any harm to any person, and there would be no reason for discriminating against him and excluding him from the benefits of British legislation that authorizes our ships of commerce to go into British ports, whether colonial or otherwise, for traffic as well as for shelter, wood, and water; and when we get to that proposition the whole case is answered, because if we can go in there to buy a barrel of flour, or a barrel of sugar, or 100 pounds of lard or bacon, we can for any purpose. We cannot fish within the 3-mile limit any more, except north of that point which has been fixed by perpetual grant to us under the Treaty of 1818. Our people are not claiming it at all. But south of that point we go in for the purpose, not of fishing, and not under any claim of right to fish, but we go in for commerce. While our ships are there, whether they are commercial ships, or whether they are fishermen, they are prohibited from fishing in those waters. Suppose that a steam-yacht were to run into any port in the British possessions and happen to have a harpoon on the yacht and a yawl-boat and a row, and all the necessary equipment happened to be there for the purpose of whaling, some amateur perhaps, and they find a whale in one of those harbours and they harpoon him. They violate the law, not because they take the harpoon, rope, and tackle into the harbour, but because they use them there in violation of law. Suppose you have got a seine purse-net upon a ship that you intend to send off fishing on the southern banks of Newfoundland, or any of the islands we are permitted to fish about under the 1st Article of the Treaty of 1818, you go into port with all the tackle, and apparel, and furniture necessary for a fishing outfit, and your purpose is to fish. If while you are within the 3-mile limit you do not use your tackle, your seine, and do not fish, or attempt to fish, you do not violate the Treaty of 1818, nor do you deny any British right. You go there and get your supplies in a commercial ship, intending to go back to the banks of Newfoundland, and there to equip a fleet, if you please, of fishermen who are ready to cast their nets into the sea for mackerel, or their lines into the sea for cod or for halibut. That is no violation of any law of Great Britain, and certainly not a violation of the Treaty of 1818.

Why is it, let me ask, that a ship that goes in there with all the tackle necessary for fishing for mackerel, but being a purely commercial ship, not having a crew shipped for the purpose of fishing, not having any fishermen aboard, can go into one of the ports of the British possessions, buy what it chooses to buy, and go out again without obstruction; and yet if a fisherman goes in there, a man whose business it is to fish, he is condemned if he undertakes to buy anything but wood and water or claims anything but shelter. The argument is not reasonable; it is not a proper construction of the British law, and when we have said that, we have said all that can be said about it. If there was no Law but the Treaty of 1818, then our fishermen could not go there, except for shelter, for wood, and for water, but the British Government has enlarged that by granting to us the commercial

privilege in a sense of reciprocity for certain like privileges that we have granted to them. That is the state of the law of this case.

If that is so, it seems to me there is no difficulty at all either in construing or in handling this matter. As I remarked before, I cannot see that there is any difficulty in the construction of the Treaty of 1818 taken by itself. All the rights that are guaranteed there and that have not been enlarged by Statute of Great Britain obtain, and there is no difficulty in the construction of them. There is no difficulty in the construction of the British Statutes on this subject. But, then, we are not called upon to construe them. What we are called upon to do is to protect our people against any wrong construction that they may put upon their own Laws, by a power that we reserve expressly in the hands of the United States. That is, when the President of the United States is satisfied that the British people have legislated in hostility to our commerce or that they have construed their own Laws in hostility to our commerce, we have the right to suspend intercourse with them absolutely or partially. That power is given to the Executive, and he does it by a Proclamation. That is an indispensable power, for the reason that there is no diplomatist, no set of diplomatists who have ever lived who can arrange between themselves all the rights of the people of two different States or nations in respect of a subject that is so intricate, so involved, that has so many instances about it as this subject of conducting the fisheries. It must necessarily and naturally be left to the Legislative Power of the respective countries, left to the United States to say what privileges they will admit the British people to in our own waters, and left to the British people to say what privileges they will admit us to in their waters; and then if they discriminate against us, or if by the construction of their own Laws they inflict what we conceive to be an injustice to us, whether they think it is right or wrong, we reserve the power in the hands of our Chief Executive by Proclamation to stop the intercourse till they come to their senses or until we come to some agreement. That is the situation. There is no other, there cannot be any other.

I do not wish to volunteer any opinions about this subject before a question gets before the Senate and I am compelled to act upon it; but my convictions are very strong; they are fixed; indeed I may say that we can get along with the people of Great Britain on this subject without any further Treaty at all and without any further legislation. If any one were to ask me what provision of a Treaty I would frame to compose and settle any question of fundamental law between us and Great Britain in respect of the fisheries, I could not suggest it, or if I was asked to propose an amendment to the Statutes of the United States so as to put the control of this intricate subject more completely in the hands of our own Government, I could not frame the amendment to the Statutes. I would not know how to do it. I believe that both the Treaty stipulations and the situation under the Statutes are about as complete as we are ever able to make them. There may be other interests, and there are other interests lying between the people of the British possessions and the United States that I would like very much indeed to see promoted by further negotiation, but I cannot call to mind, there is no suggestion to my mind of, any improvement that we could make under existing conditions of our rights in the fisheries of that north-eastern coast.

*Mr. George.*—Will the Senator from Alabama allow me to ask him a question?

*Mr. Morgan.*—Yes, Sir.

*Mr. George.*—Do the British Government and our Government differ as to the rights of fishermen under the law?

*Mr. Morgan.*—I really believe they do not. I have seen no evidence of it.

*Mr. George.*—What is the trouble then?

*Mr. Morgan.*—I do not think there is any.

*Mr. George.*—Do the colonial Legislatures and authorities deny the right of our people under the Municipal Laws of England?

*Mr. Morgan.*—The Senator from Maine has suggested that they have been denying us some rights, that some Governor up there has issued a Proclamation in which he has made a statement of the law, but I believe he has taken that back and referred the subject to the mother Government. There was a denial of the right of one ship to ship a crew, and of another ship to buy bait, but they have not resulted, so far as I understand, in anything.

*Mr. George.*—I understand the Senator that we have a right under the Treaty to buy ice and bait in the provincial ports. Is that right denied? How is that?



*Mr. Morgan.*—I understood the Senator from Maine to say a moment ago that they had conceded that.

*Mr. Frye.*—They have yielded all but the ice and bait, which are the most important for us.

*Mr. Morgan.*—Everything but that?

*Mr. George.*—Then what question is at issue between the two Governments? The right claimed is asserted, as I understand, purely under the Municipal Law of Great Britain, not under the Treaty. Is that so?

*Mr. Morgan.*—Certainly not under the Treaty, but under the Municipal Law of Great Britain, under the Law giving us the right to trade there.

*Mr. George.*—What prevents Great Britain from putting her own construction on her own Statutes?

*Mr. Morgan.*—Nothing in the world. She can put it on any moment she pleases, and all we have to do then is to put our construction on our Statutes and retaliate. That is all we can do. You may frame the Laws and amend them as much as you please, you will come back to that every time.

*Mr. Frye.*—Allow me. The Senator understands, does he not, that there is a Law to-day, a Law of 1823, under which the President is not only authorized, but directed, to make Proclamation under certain circumstances?

*Mr. Morgan.*—I referred to that a moment ago.

*Mr. Frye.*—The Senator understands that to be the law now?

*Mr. Morgan.*—Yes.

*Mr. George.*—How is that? I was diverted. Will the Senator from Maine repeat his statement?

*Mr. Frye.*—I read the Statute the other day. I was not certain it had ever been repealed or modified. Does the Senator from Alabama understand that it remains precisely as enacted?

*Mr. Morgan.*—Yes, Sir; no question of that. I called attention to it the other day when the Senator from Maine was debating about it. That is the solution of the whole matter, and that is the power we have over the subject, and it is the only power we can ever get over it. If we expect to improve our advantages or powers in respect to this commercial intercourse, we had better go to our own Statute and amend it, if it needs amendment, but I do not know how to amend it.

*Mr. George.*—Would it not be well to base the right to buy ice, bait, and all that sort of thing on the interpretation of the law?

*Mr. Morgan.*—Ice and bait are not mentioned in this Treaty.

*Mr. George.*—I know they are not.

*Mr. Morgan.*—Ice and bait are therefore to be treated as articles of commerce. If we have any right to get ice and bait there, it is under the commercial privilege extended to us by the Statute of Great Britain.

*Mr. George.*—Which Great Britain has a right to interpret for herself.

*Mr. Morgan.*—Interpret for herself until we come to our right to interpret, and then we say, "If you interpret it in that way we interpret our Statute so and so."

*Mr. George.*—That is retaliation.

*Mr. Morgan.*—And it is all you can make of it.

*Mr. George.*—It does not come to any agreement.

*Mr. Morgan.*—It would hardly be expected, I think, that the diplomatic powers of two great Governments should enter into a negotiation to determine the distinction between ice and bait on one side, and bacon and flour on the other as articles of commerce; neither of them is mentioned in the Treaty, but I should think it was unfortunate for the civilization of this age, especially I should think it unfortunate for the character of the publicists of this age, if they should find it necessary to interpret the meaning of ice and bait so as to exclude them within the commercial list, when everybody would admit that flour and bacon are included in the commercial list.

Whatever is legitimate traffic, whatever is not contraband, is lawful traffic in any port to which you have the lawful right of access; and if it is ice and bait it is just as much commerce as if it was flour and bacon. You cannot claim ice and bait under the Treaty, you cannot claim flour and bacon under the Treaty, but beyond question a merchant-ship has the right to go there and buy flour and bacon, and a fisherman has the right to go there and buy flour and bacon if also he is a commercial ship, for a fisherman may have two characters, and every one of them I believe has two characters. One is a business or vocation of catching fish, and the other is of dealing in freights or in merchandize, traffic, barter, or exchange, just

as they wish. We do not send any ships out of our ports, as I understand, exclusively for the purpose of fishing, but we arm every one of them with a sea pass and give them the protection of an enrolment or a registry, so that they are American ships in every sense of the word and commercial ships in every sense of the word.

Now, Mr. President, I beg to call attention again to the Treaty of 1818, and to insist that the proviso which is found in the latter part of Article I was never intended for the purpose of discriminating against American ships and denouncing American fishermen or putting them under any bad character, casting any imputation or reproach upon them, but it was intended to provide for them privileges that at that time did not exist in the hands of ordinary commercial vessels—a favoured class of ships under the Treaty, a class of ships favoured because of the advantages which they brought to the people living upon that northern coast. The passage of laws afterwards by Great Britain did not change that construction, did not put them under the ban; and there could be no stronger evidence of the intention of the British Government that they should have enlarged privileges of traffic more than could be imputed by those Statutes in reference merely to ships of commerce. Ships of commerce came in possession of their rights in 1823, not before that. Fishermen came in possession of their rights in 1818 under the Treaty. It was an easy matter, therefore, for us or for them to put our fishermen upon the commercial basis and to give them the advantage of the commercial Regulations and Laws of the country. That is where our fishermen get the right to buy bait and buy anything else that is not contraband.

*Mr. George.*—The Senator from Maine says that right is denied, as I understand him. The right to buy bait and the right to buy ice is denied by the Colonial authorities.

*Mr. Morgan.*—I understand that while it was denied by some of the British people there, the authorities of Great Britain are not denying it. At all events, whenever it is authentically notified to the President of the United States that that right is denied, and he believes that is a right secured to us under the reciprocal advantages, as I will call them, of parallel legislation between the two countries, he has nothing to do but resort to that act of Congress and say, "I proclaim, as President of the United States, a suspension of trade until this matter is rectified."

*Mr. George.*—He has that power under the law now.

*Mr. Morgan.*—He has that power now. I was speaking of the legal situation. I was trying to state to the Senate that I did not know how to improve it either in putting the matter to new negotiation to define our Treaties, or in putting it to new legislation to define or to protect our rights. It would take a great deal of negotiation to go over the whole field and to prescribe everything that a fisherman might do and that any other class of ships might do. Therefore I think that the Government should leave the matter just where it is, and I do not think Congress can be persuaded to repeal that Act. I have not heard yet from any source whatever a suggestion with regard to its amendment.

Mr. President, so far as I know, that covers the whole case. With this view in my mind, I did not believe that it was necessary that the Congress of the United States should create a grand Joint Commission to negotiate about the matter. If the President of the United States, or the Secretary of State, thought that, by a negotiation with Great Britain, they could remove out of controversy any of the questions which have been mooted between the people of the different countries, that is well enough; let them proceed and do it. So far as I am concerned, I am entirely content with the state of the law as it is, both as expressed in the Treaty and in the Statute; but still, as has been suggested here, some contention might be modified, or, perhaps, might be relieved entirely by a negotiation between the two Governments which should settle expressions in regard to some of these disputed matters. If that is so, let it go on; but I confess I cannot see any reason for a great Joint Commission between the two countries for that purpose. The truth is that all the suggestion about a Joint Commission or a High Commission had reference entirely to the re-establishment of some form of reciprocity between this country and Canada.

I am in favour of reciprocity. There the Senator from Maine and myself differ, I daresay. I am in favour of making reciprocal agreement with our neighbouring nations—I would not go very far abroad to do it—for the purpose of easing up the friction of commercial irritation. I would be very glad, indeed, if it could be

accomplished, to see every State in the Western Hemisphere, in North and South America, upon a footing of commercial intercourse almost as free as that between the States of this Union. I believe it would redound greatly to the advantage of all the people in this hemisphere, and I think the aggregated power that would be accumulated in this way would make this Western Hemisphere something that men would be incapable of conceiving the power, grandeur, and force of.

*Mr. George.*—I wish to ask the Senator, is there not some danger, with the different interpretation of the rights of our fleets, of a collision being brought about?

*Mr. Morgan.*—I think there is; but I do not think we can relieve it by negotiation. I think we can relieve it by enforcing the law on both sides. I think there is some danger because there are enterprising citizens on both sides who would be willing to get up a fuss between the two countries.

*Mr. George.*—May there not be something done to avoid it?

*Mr. Morgan.*—I do not know how you can do it unless by an arbitration Law, such as is proposed between the Railroad Companies and the strikers. If difficulty actually exists, and is formulated by either Government, then I should say that would lead to a negotiation of some kind for the purpose of relieving it. Irresponsible men, as far as diplomacy is concerned, who are getting up these troubles, can not very well be restrained by our action.

I will suppose a case. I am not aware that it exists, but I will suppose that some of the Gloucester fishermen desire to intensify American feeling a good deal just at this time for the purpose of holding on to the existing Tariff on fish, and knowing that some thick-headed official in some Canadian port would deny to them the right to buy a barrel of flour or a barrel of sugar, or to buy bait or something else under the Treaty of 1818, if we should go back to that, and the moment they go there and make the request, this official comes out and says, "If you do not leave these coasts in your piratical enterprise of buying ice from our people we will have you arrested." Thereupon the Yankee gets his back up because he started out to get it; there is a capture made; they take him into Court, libel his ship, put an officer on board, take him into a provincial Court and condemn him. I do not believe the provincial Court has any jurisdiction of it under the Treaty at all. We can see that, by a manœuvre of this kind, it is very easy to startle the American people, very easy to arouse them, and a speech against free bait made in the Senate of the United States with the background of a little flurry of that kind, by some smart fellow who went there for the purpose of getting up a row, would more than likely prevent any change of the duties on fish.

*Mr. Gray.*—That is just the case the Senator from Maine told us was probable about a week ago, that within a week's time there would be a ship seized there.

*Mr. Morgan.*—I was supposing the case as one probable because I had not heard anything like it.

*Mr. Frye.*—The Tariff Bill has not got over here yet.

*Mr. Gray.*—But the Senator from Maine said that was entirely probable within a week.

*Mr. Morgan.*—The Senator from Mississippi asks me if there is not difficulties. I am expecting difficulties all the time, not between the Governments, but I am expecting difficulties between private enterprising men who want to raise rows and whose business interests lie in the direction of getting up a fuss. I rather look for them, and I do not see any way in the world to prevent them unless we had some Law on our Statute Book which would punish a man for undertaking to bring his country into turmoil and discontent with other Governments. But so far as I have heard yet in the matter of buying ice and buying bait and shipping crews, or buying anything else, our American fishermen have got a right to go there and get these things although they are fishermen, for that is conceded to them under British law.

Mr. President, I would not hesitate a moment in protecting a man in the assertion of his rights, even though he went upon an enterprize of the kind which I have intimated. We cannot restrain all human nature; we cannot curb and control the passions and selfishness of men in advance so as to prevent turbulence, prevent irruption, prevent strife between neighbouring countries. What we have got to do is to observe a cool, quiet, honest, sincere policy towards the people of other countries, insisting upon all that is due to us and demanding nothing that is not due to us.

*Mr. Gray.*—I should like to ask the Senator what in his opinion is the duty of

the Government of the United States in the supposititious case which he puts of a vessel having been seized for attempting to buy bait in a provincial port.

*Mr. Morgan.*—I think then it would be a good occasion for the Secretary of State to ascertain all the facts in the first place, and whether or not the Government of Great Britain espoused the cause of that official, and whether in making the espousal of his cause the Government of Great Britain violated its own plain laws or violated its laws as we understand them; and if the question grew into that magnitude that the Government of Great Britain had determined through the instrumentality of this man to inflict a wrong upon us as a people, I do not know where I would go. I know there is one direction I would not go; I would not back out of it. I would try to have it settled peaceably according to the American spirit.

*Mr. Gray.*—There all agree. The Senator takes the position that we do not want to back out of it; but carrying the proposed case a little further, the vessel having been condemned by a provincial Court by proceedings *in rem*, and the Judge of that Court having interpreted the Municipal Law not to have enlarged the privileges given to American fishermen by reason of their having a commercial licence, and that being the authoritative interpretation by the Courts of the provinces, and so far of the Courts of Great Britain, that this Treaty stipulation was not enlarged by the Statute Law, what proper remedy have we, except to say that we must fall back on the Treaty of 1818? Inasmuch as the Municipal laws of Great Britain have failed us, can we put an interpretation upon them and insist upon it?

*Mr. Morgan.*—Unquestionably we can do that. Our men in going there do not go under the licence of the Treaty of 1818; they go under the licence of the British Statute, and if the Statute is in existence at the time they go there we should not hesitate to resent any wrong done to our people, any of them, for the performance of any innocent act, innocent at the time. What might be the result of it after we had had our controversy, I do not know. We might be forced back to the Treaty of 1818, because they might repeal their laws and we repeal ours, and thereby proclaim again non-intercourse between the British provinces and the United States. That might be the result of it. But all this is now answering a beneficial purpose. It shows the impolicy of discussing any question of this kind as a mere problem, not upon an existing state of facts, not upon an issue made up between us and Great Britain, but upon a supposititious state of facts, conjectural entirely, and so far as I can understand this whole business we are dealing from beginning to end with it as a conjectural matter, and not something that actually exists, and not something that actually claims the attention of the Government, at least this branch of it.

Now notice the embarrassment here in speaking about what we should do in a certain case. Here are Senators who have to vote upon all the Treaty relations that become Laws between this and other countries; here we are debating a question that is not upon a state of facts that is only imaginary, and we are quoting very gravely propositions of law and tracing out their analogies and their history, and we are saying also in this state of case, "I would do thus and so," and some other Senator says, "In this state of case I would do thus and so." All this debate has been brought before the Senate of the United States by what I conceive to be a mistaken call upon the Congress of the United States for its assistance in conducting this matter. The Congress of the United States has no assistance to grant in this case, and ought not to be called upon to grant it. If we are settling the issues of a war, as we were in 1871, and if we were settling questions of damages that were still open between ourselves and foreign countries growing out of alleged breaches of Treaty obligations, then it might become necessary for Congress, in order, perhaps, to give emphasis or some direction, or make some ancillary provision of law, to indulge in anticipation for the purpose of creating a great Commission to go out and settle the question. Nevertheless, when we came to settle that most important question that we have ever had since the war of 1812, the question of the Alabama claims, connected with which, by British ingenuity, was some almost indefinite claim in respect of the breach of the Fisheries Treaty, we did not come to the Congress of the United States and ask them to enact a Law creating a great High Commission. There were ten Commissioners who negotiated the Treaty of Washington, five on a side, but there was no Statute and no joint Resolution authorizing the making of that great Commission.

The President, under his Constitutional power, created and organized that Commission. The law stood here, empowering him to do it. The Constitutional power of the President was sufficient, but we have provisions of law by which the

President may appoint Ambassadors and other public Agents, and we limit the number, the only limit being that Congress shall grant the money for the purpose of executing the commission which he puts in their hands. In that great trial and struggle—for it was one of the most intense and dangerous character to the American people—Congress was not called upon to create a Commission.

So, in this case, I really do not see that there is any occasion for a Commission. I cannot so consider it. This is not a subject out of the ordinary course of affairs. Admit that the American fishermen and the Canadian fishermen are in some sort of controversy about their respective rights—yet I do not believe they are at much controversy about them—is not that a matter which the ordinary Agencies of the diplomatic organization of our Government can deal with, without bringing the subject into Congress and asking that it shall be debated—that opinions shall be stated, grounds taken, committals made, policies foreclosed? Really, I do not see the reason for it.

But the Resolution presents not one of these questions. They come *arguendo* simply; and I think it takes a pretty lively imagination to get a proper foothold on which to discuss the questions we have engaged in discussing upon this Resolution. The Resolution is—

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

If such a Commission is to be provided for at all, let it be done under the Constitutional powers of the President. He can appoint Ambassadors to go there if he wishes, or the Secretary of State, along with the British Minister, can negotiate the whole question here, or it can be referred to London and negotiated between our Representative there and the Head of the British Foreign Office. There is no lack of agencies, no lack of power, no lack of authority, and therefore there is no occasion for this discussion in the Senate about it. Still, I hope that the discussion of it will lead the people of Great Britain to understand that whatever rights we have under the Treaty of 1818 we consider are perfectly clear, and what rights we have under the British Statute we consider entirely clear; and that if we should unfortunately differ in our opinion with them about what our commercial rights are, we have the power in our own hands to rectify it; and that is the whole case. Therefore, I am in favour of this Resolution; but I put it on the ground that Congress ought not to provide by law for a Commission. I do not want Congress to do it.

Now, make your question as broad and as important as you can state it, and let it relate to a subject of negotiation, of Treaty relation between this Government and Great Britain in respect to the fisheries, or to any other matter—not a question relating to the settlement of damages, or the private rights of individuals who may be mutual claimants against the one Government or the other, but, as in this case, a question entirely free from all such considerations and all such involvements—a pure question of diplomacy as to what shall be the future relations of this country with Great Britain in respect of our fisheries, whether they shall be changed or whether they shall not be changed, whether they shall be interpreted in one way or whether they shall be interpreted in a different way. Under such circumstances, I deny the right of Congress to raise a Commission to settle a question of that kind, under the Constitution of the United States.

If Congress has the right to raise a Commission, Congress has the right to instruct the Commission. We have raised several Commissions, or authorized their being raised by the President of the United States, for the purpose of settling mutual claims between citizens of different Governments; and, so far as I remember, we have never hesitated at all to put certain limits upon the powers of the Commission. “You shall meet at a certain time; you shall sit so long; you shall hear so much evidence. In the event of a difference between the two regular Commissioners, you may select an Umpire, or we will provide a means for getting an Umpire. And the decision of these gentlemen, or of the Umpire siding with one or the other, shall be final and conclusive.” That is a Commission in its proper sense; that is the business of a Commission. That is not a business of negotiation, but it is a business of settling damages growing out of some previous negotiation; and so we give instructions and limitations, and put boundaries upon the authority of Commissions of this kind. But when, as in the case before the Senate at this moment of

time, everything that is to be done relates to some disputed proposition of law, merely some disputed proposition as to what shall be the future policy of the two countries in regard to fisheries or reciprocity, then I submit that it is an improper exercise of power by Congress to raise a Commission. If Congress can raise a Commission, I insist that it can instruct it, and therefore it should not do it.

I believe in holding to the rights and powers of the Senate of the United States upon this question and upon a good many others that Senators seem to be willing to run off and throw them to the winds. The Constitution of the United States makes us the Constitutional advisers of the President in respect to the matter of negotiating Treaties with foreign Powers. There is no occasion for going to Congress to ask its authority, because the Senate and President have the power to act. The President and the Senate in respect to the relations between themselves and foreign Governments can make the supreme law of the land, whether the other House participates in it or not, and no President can veto it in the nature of a veto; he may refuse to negotiate, and that is the end of it. Therefore I would leave this subject entirely in the hands of the ordinary diplomatic functionaries of the Government, supplied as they are with every ample facility for conducting any negotiation that can possibly touch this subject. I suppose there is no misunderstanding about what we are doing here. The honourable Senator from Maine introduced his Resolution. It had a "whereas" to it, and it went to the Committee on Foreign Relations. It read thus:—

"Whereas the President in his late Message recommends 'that the Congress provide for the appointment of a Commission in which the Governments of the United States and Great Britain shall be respectively represented, charged with the consideration and settlement, upon a just, equitable, and honourable basis, of the entire question of the fishing rights of the two Governments and their respective citizens on the coast of the United States and British North America;' and

"Whereas 'the fishing rights' were settled for ten years by a Commission appointed under the Treaty of Washington at a cost of 5,500,000 dollars, paid in money, and a remission of duties amounting in the ten years to about 6,000,000 dollars more; and

"Whereas the effect of the terms agreed upon by the said Commission was further an increase in the Canadian fishing fleet of 500 vessels, and of seamen 10,000, with a corresponding decrease in our own fleet and sailors, without any appreciable benefits to the people of the United States: therefore,

"Be it resolved by the Senate of the United States, that in the opinion of the Senate the appointment of a Commission clothed with such powers ought not to be provided for by Congress."

The Committee have reported back without any recital at all the simple Resolution which presents merely and only the question whether this is a case in which Congress should be called upon to provide a Commission; and although we are acting negatively upon it and acting against what appears to be the recommendation of the President of the United States, I do not hesitate to say, as a friend of the powers of this body, and conceding that I am one of the number in which every other Senator is only my equal charged with the duty of preserving the Constitutional powers of this body, I am not willing upon an occasion like this to ask the intervention of the Congress of the United States to raise a great Commission or any Commission for the purpose of settling a question that seems, after all, to be scarcely a question at all.

*Mr. Evarts.*—Mr. President, as it is the purpose, I believe, of the Senate to proceed to vote on this question, I will detain them from the vote for some very brief observations which I think it suitable that I should make.

I regret that important engagements before the Judiciary Committee have detained me there in important matters; and I had supposed that I should have an opportunity to-morrow to present perhaps more fully, and certainly more usefully if I could have heard the observations of the Senator from Alabama, the views I entertain. It is, however, I think, important that we should understand what our relations are toward Great Britain and the provinces on this subject of the fisheries, and on this other subject, the intercourse of commerce and trade.

So far as the Resolution itself is concerned, I should not regard it as suitable to be originated in the Senate if no communication had been made to us from the President on this subject. But as that communication has been made, and we have seen the basis upon which that communication is rested and the interchange of

notes between the State Department and the British Minister that have led up to an agreement in regard to the management of the fisheries of the two countries *ad interim*, and including in that the purpose of engaging this Government in a new Convention, a new arrangement, a new comprehensive settlement of the matters regarding intercourse with the provinces and the fishery enjoyments, I think it is important that this body should express its mind on this topic.

As I understand it, Mr. President, the relations of this Government towards Great Britain and toward the provinces on the subject of the fisheries and on the subject of intercourse of trade, are two independent subjects; that of the fisheries rests entirely upon Treaties; that of intercourse of trade or commerce rests either upon the general Conventions of Commerce, or upon legislation that has proceeded in the enactments of the Parliament of England and of the Congress of the United States in the same intent and with the same results towards free, convenient, and amicable intercourse in trade.

As it has seemed to me, there had been some inattention or some want of circumspection on the part of the State Department in not observing this discrimination. All the Treaties that we have had on the subject of the fisheries are embraced in the first Treaty of Peace and partition of Empire, so to characterize it, between Great Britain and ourselves after the revolution. As we all know, the fishing grounds and fishing coasts up to our revolution had been enjoyed by all the people of the Colonies as a part of the British Empire; and when after the successful prosecution of our revolution, and its success recognized by Great Britain, we had before us nothing but the drawing of lines between the possessions of the new-made nation and the mother country after this severance was completed, the lines of territory were drawn, and then there came to be a partition of this fishery, which had been one possession before, but now was to become one of a joint interest. And there the lines were drawn firmly, that we were to have the rights of fishery there as we had theretofore enjoyed them.

Now, besides the fishery itself, that is the occupation and pursuit as upon the water alone, there came to be in connection with the useful prosecution of the fishery a certain right to resort to the land. The whole region was desolate and unoccupied, and the then method of fishing made it quite necessary that there should be a constant, or certainly a frequent, resort from the vessels occupied to the land in the curing of their fish, and the curing then was in the simple method of the uses of drying, as it was called, and such sustenance for the crews and protection against the severity of weather as was required. So the provision in regard to access to the coast or use of the coast was but a part of the execution of the fishery right and its enjoyment, and in itself formed no part of the access given to us, for the purpose of trade. The word "trade," or "purchase," or the idea of intercourse by trade, did not enter into that Treaty, and no more is it in the later Treaties. The use of firewood was the use of the forest, and the use of the coast was for the exposure of the fish to drying by the sun.

Afterwards, from the war of 1812 having interrupted our relations with Great Britain, the pretension was set up by Great Britain that this division as to the fishery was not a division of Empire between us and Great Britain in that regard as a permanent establishment of our independence, and its lines drawn, fixed, permanent, and subject to no possible disturbance, but that this part of the division of Empire was treated as a concession or privilege resting upon Convention that was separable and made no longer permanent and secure.

We were not in a condition to cope with this great adversary upon as high terms as we now should be able to do. My own opinion has been, so far as I understand it the prevalent opinion of the public men of this country has always been, that it was a very severe and a very unjust treatment of us in regard to the fishery that when peace was restored our rights were not the same in that regard as they had been before the interruption of peace. But we did enter into the Treaty of 1818. That follows very much in the line of the original Treaty except in the limitations, but the traits of that relation were preserved the same, that it was not a question of trade nor a question of hospitality, but as a part of the fishing rights and interests, and with the same rights of resort to the coast as had prevailed in the earlier arrangement of the first Treaty of 1783.

In each of these Treaties it was provided that whenever this use of the shores in connection with our fishery brought us in contact with settlers, in occupation in severalty or otherwise of the coast, we, under this general right of our fishery

purposes, by our own authority and permission, should not interfere with the local occupation and local interests, except by agreement with them.

*Mr. Edmunds.*—That included the fishery within the 3-mile waters as well.

*Mr. Evarts.*—Yes; I am drawing no line between the 3-mile limit and the other waters. All this had nothing to do with trade and with purchase, and the question of bait not being mentioned, nor ice, nor any of these circumstances of intercourse by trade acquiring for money and contract, these topics do not appear at all.

When, therefore, we were approaching a larger and larger occupation and interest of population there, still it was the same question. You do not find in the Treaty of 1818 the least regulation of the question of our right to buy bait, or our right to buy ice, or any circumstances of trade. Our right in regard to bait there under the Treaty was the right to catch bait as covered by the fishing right we had; and whenever we had only the fishing right then bait already caught and separated from the sea was like any other item of exchange and commerce that the occupants of those distant shores might have occasion to find to their advantage in dealing with us.

But we have changed our system of fishing, and by reason of that change this whole matter of our catching the bait-fish has disappeared from any uses to our enjoyment. Our method of fishing now is so changed that we no longer practise our allurements or deceits upon the individual fish we are pursuing; our distribution of bait is to spread it upon the waters as if the gift of good Providence for the fish, and to entice and hold them there, and while they are enjoying this their greedy pursuit, without any hood appearing, our new method of larger strategy upon the fish is to surround them with our seines and then, as if they were outcasts upon an inhospitable shore, place them on the decks of our schooners. That method we cannot carry on by catching the fish, which was the simple one of catching a herring and putting it on a hook and then catching a codfish. Of course it became very valuable to these provincials if they could sell us bait at prices satisfactory to themselves and we could pursue our deep-sea fishing in the manner I have suggested. As the Senator from Maine has stated, I believe we paid 125,000 dollars a-year in the purchase of bait.

There was trouble under the 3-mile exclusion accomplished by our Treaty of 1818. Of course, a line upon the surface of the water not nearer than 3 miles may readily be honestly obscure to the opposing interests, and it may be made the occasion of annoyance much beyond any such honest difference of opinion. To a certain extent, it was desirable for us that this line of disturbance between the two countries should be removed; and when we came to the Convention of 1854, by which the reciprocity arrangement was completed, we then introduced this matter of the in-shore fishing. There were many other exchanges of interest in that Reciprocity Treaty, but the right for us to fish without any limit was met by an equivalent right on their part to fish in our waters without any such limit.

Our experience under the twelve years that the Reciprocity Treaty was in force gave us very definite and very trustworthy evidence of what was useful and valuable in regard to this in-shore fishing. It ought to have advised—it gave, in my judgment, advice to the provincials—what the value of that in-shore right to us without any limit of line was, and of how much to them was the value of intercourse by trade.

Our Government, with entire unanimity, as I am advised, on the part of the two Houses of Congress, gave notice of the termination of the Reciprocity Treaty as soon as we had an opportunity to do so; and that indicated, not only the judgment of the interests of our fishermen, and of all interested in that pursuit, of how much or little importance there was in it, but it was evidence of the attitude of our Government that we were not asking for or desiring any renewal of that privilege. We had had the privilege.

No notice came from Great Britain to dissolve that right, she having an equal power to terminate it on her part; but we, with entire unanimity, had put an end to this enjoyment in the fishery. True, there were other considerations of interchange of commodities between the provinces and ourselves; but from the experience of that twelve years' enjoyment under the Reciprocity Treaty, and the alacrity and the unanimity with which we dissolved that enjoyment of fishing as soon as we had an opportunity, no public man could have imagined that it was our interest or our disposition to take an attitude of inviting or desiring for our own interests to have a renewal of that authority.



After an interval of several years—in which, to be sure, there was no very great disturbance—we came to the great Treaty of 1871, the Treaty of Washington—a Treaty, as we all know, for its large and principal subject furnishing the motives and the inducements, and which furnished the great frame of the Treaty, had regard to the “Alabama” claims. Another great interest was to be settled, and was settled, under that Treaty, and that was our north-western boundary at Vancouver’s Island and Puget Sound.

When we approached the subject of the fisheries, what had we of instruction as to the estimate which the British Government and the provincial interests placed upon the Treaty so far as they were interested in having it negotiated? Manifestly always, and so distinctly avowed, what Great Britain desired, what Great Britain for the provinces demanded as the principal, if not the absolute and only proposition upon which they would enter into this arrangement, was the gain of our market for their fishery products in the consumption of our people. Our people were not at all disposed to opening this market. At no stage were we in that attitude, and certainly our fishermen never had a desire that their markets should be parted with in any reference to their expectation of benefit to them thereby. Lord Elgin stated this very distinctly when the negotiations for the Reciprocity Treaty of 1854 were approaching. I read now from p. 302 of the “Foreign Relations of the United States for the Year 1878,” in which these words of Lord Elgin, as Governor-General of Canada, to Sir Henry Bulwer, British Minister here, written in 1851, are cited:—

“Her Majesty’s Government are prepared, on certain conditions and with certain reservations, to make the concession to which so much importance seems to have been attached by Mr. Clayton, namely, to throw open to the fishermen of the United States the fisheries in the waters of the British North American Colonies, with permission to those fishermen to land on the coast of those Colonies for the purpose of drying their nets and curing their fish; provided that in so doing they do not interfere with the owners of private property or with the operations of British fishermen.

“Her Majesty’s Government would require, as the indispensable condition in return for this concession, that all fish, either fresh or cured, imported into the United States from the British North American possessions, in vessels of any nation or description, should be admitted into the United States duty free, and upon terms in all respects of equality with fish imported by citizens of the United States.”

Thus, as early as 1851, prior to the Convention of 1854, we had announced to us that the *sine qua non*, the absolute need of interest to be consulted on the part of the provinces, was this free market for their fish here. No negotiations could be entertained in regard to the fisheries that we were to gain of getting within the 3 miles, whatever importance we might attach to it, that could not be considered unless they had this market, without which, as was very apparent, their fishery interests would languish and shrivel and shrink away. With that experience, then, this original view was confirmed by their enjoyment of our market during the twelve years of the Reciprocity Treaty. Now, how did Great Britain approach us in reference to this market when the Treaty of 1871 was on the carpet and was to be disposed of? That our market was indispensable to them, that that equivalent was for them all that was important and desirable, or, at least, without it nothing was valuable enough.

We had this experience about the fishery during the twelve years of the Reciprocity Treaty, that our fishing within the 3 miles was of no great importance to us. These new methods of fishing had developed themselves, and we did not regard it as valuable to us. We did, however, repeat in the Treaty of 1871 substantially the equivalent Article in regard to the inshore fishery for us on their coast, and gave them the inshore fishery upon our coast, and then we gave the free market for their fish.

Seeing the attitude in which the negotiators of this Treaty on our part had a right to look at this question of the value of our acquired fishing inshore as compared with what we had conceded to them in our free market, we had a right to consider that, under the statement of Lord Elgin before the Reciprocity Treaty was negotiated, and the experience on both sides of its twelve years, we having our fishing inshore on their coasts, and they having our market, the inshore fishing was trivial and the market was inestimable.

Then came about a negotiation as to what should happen in regard to what might be called an owelty of partition. The provinces, it was said, would not be

satisfied until and unless there had been some ascertainment by some impartial Tribunal of what the comparative value of these exchanged equivalents on the one side and the other was. We offered to say, "We pay you more in this market than all that you give to us, but we are willing, in order for convenience and good neighbourhood, to obliterate that line, and we will pay you 1,000,000 dollars in perpetuity for that line over and above what we have given in the free market for the twelve years, or the ten years." They must have a valuation, and our negotiators seem to have been the victims of too great confidence in two great nations looking at the same subject in the same way before the negotiations, that it would be maintained after they came to the arbitration and ascertainment of these values.

Out of this grew the Fishery Commission at Halifax, and the fishery award there; and as the Commissioners kept no Protocols in which they took and expressed the evidence concerning the value of the fishery on the one side or the other, after the astounding award of 5,500,000 dollars was announced, we had no mode of exhibiting to Great Britain our conviction that the very matter which had been submitted under the arbitration to the Commission had been transcended, that the submission had been transcended by the award, and therefore we were not bound by it. But this Government had made up its mind on this subject, and notwithstanding the gravity of the situation by which questions should be raised in regard to settlements that had been accomplished under arbitration, the appropriation of the 5,500,000 dollars was granted and placed at the power of the President to make that payment only upon condition that after a correspondence between our Government and that of Great Britain, the President should still find it his duty to make the payment. Under that necessity and duty, a correspondence was opened by the State Department with the Foreign Secretary of Great Britain, and the following is a portion of the despatch which I addressed to Mr. Welsh on the 27th September, 1878, to be communicated to Lord Salisbury:—

"Fortunately, there are trustworthy criteria for determining the value of the concession of Article XVIII, as I have defined that concession to be. They are resorted to, upon one side and the other, and confessedly furnish the material upon which the appraisement, if confined to the subject as truly defined, must turn. If, then, upon the evidence, if found conflicting or divergent, the largest measure of valuation deducible therefrom be given in favour of the concession of Article XVIII, and that extreme value shall show no rational or approximate relation to the sum awarded, there would seem to be no escape from the conclusion that the concurring Commissioners accepted some other subject for their appraisement than that submitted to them.

"It happened that before the Halifax Commission had concluded its labours, five fishing seasons of the Treaty period had already elapsed, and the actual experience of the enjoyment by the United States fishermen of the privilege conceded replaced any conjectural estimate of its value by reliable statistics of its peculiar results. These statistics disclosed that the whole mackerel catch of the United States for these five seasons in the Gulf of St. Lawrence, both within and without the 3-mile line, was 167,944 barrels. The provincial estimates claimed that three-quarters of this catch was within the 3-mile line, and so to be credited to the privilege conceded by Article XVIII. The United States' estimate placed the proportion at less than a quarter. Upon the provincial claim of three-quarters, the product to our fishermen of these five years of inshore fishing would be 125,961 barrels. It was established, upon provincial testimony, that the price which mackerel bore in the provinces, cured and packed ready for exportation, was 3.75 dollars per barrel, and this would give as the value, cured and packed, of the United States inshore catch for five years, the sum of 472,353 dollars. But in this value are included the barrel, the salt, the expense of catching, curing, and packing, which must all be deducted before the profit, which measures the value of the fishery privilege, is reached. Upon the evidence, a dollar a barrel would be an excessive estimate of net profit, and this would give a profit to our fishermen, from the enjoyment for these five seasons of the fishery privilege conceded under Article XVIII, of but 25,000 dollars a-year, or for the whole Treaty period of twelve years of 300,000 dollars.

"Although there would seem to be no reason for distrusting this commercial and pecuniary measure of the privilege in question, yet if it should be pretended that the provincial value should not be taken, but the value in the market of the United States; and, further, that an extravagant rate of 10 dollars per barrel should be assumed as that value, and, again, beyond all bounds of even capricious estimate,

a conjectural profit of 50 per cent. should be assigned to the fishing adventures, we should have but 125,000 dollars a-year, or 1,500,000 dollars for the entire twelve years of the Treaty, for the gross valuation of the concession to the United States by Article XVIII, undiminished, by a penny, for the counter-concessions of the United States of Articles XIX and XXI. Yet this sum, thus reached, is but little more than one-quarter of the award of the concurring Commissioners, after taking into account the deductions required for the privileges of Articles XIX and XXI.

"The proofs disclose another wholly independent criterion of the value of the privilege conceded to our fishermen by Article XVIII of the Treaty, drawn from the experience of some years intervening between the abrogation of the Reciprocity Treaty and the negotiation of the Treaty of Washington. The Provincial Government in these years adopted a licence system by which vessels of the United States were admitted to the inshore fishery upon the payment of fees for the season, rated by the ton. The experience of this system showed that under an exaction of 50 cents per ton our fishing fleet generally took out licences; that when the fee was raised to 1 dollar per ton, the number of licences fell off about one-half; and when a fee of 4 dollars per ton was exacted, but few licences were taken out. The fairness of this measure of the value of the privilege is obvious. It furnishes a compensatory rate between opposing interests, suggested and acted upon by them without coercion, and by concurring consent.

"The tonnage, taking out licences under the first and lowest rate, was about 32,000 tons. Assuming, contrary to experience, that this tonnage would have borne the highest rate of 2 dollars per ton, the sum of 64,000 dollars per annum would have measured the value of the privilege in question, and would have yielded for the Treaty period of twelve years 768,000 dollars. By this method the valuation of the privilege of Article XVIII (without deducting a penny for the counter-privileges of Articles XIX and XXI) would be but about 14 per cent. of the award of the concurring Commissioners, after they had taken into account these privileges.

"You will say, then, to Lord Salisbury, that with every anxiety to find some rational explanation of the enormous disparity between the pecuniary computations of the evidence and the pecuniary measure announced by the concurring Commissioners, this Government has been unable to do so upon any other hypothesis than that the very matter defined in Article XVIII, and to which the proofs on both sides were applied, and the very matter measured by the award of the concurring Commissioners, were not identical nor even similar, and that such award, upon this reason, transcends the submission.

"The demonstration at which I have aimed appears so conclusive upon the mere consideration of the concession of Article XVIII as to supersede, so far as the immediate argument goes, an exhibition of the reduction even of the moderate sum above assigned as the true appraisal of the concession of that Article by the pecuniary value, as laid before the Commission, of the counter-concessions of Articles XIX and XXI. But a brief statement of the views of this Government on the treatment of these counter-concessions in the deliberations of the Halifax Commission is requisite both to the completeness and frankness of this exposition.

"In brief, it may be said that Her Majesty's Government formally insisted in their "case" and in their "reply," laid before the Commission, that the concession of Article XIX, whereby British subjects are admitted to the freedom of our coast fisheries north of the 39th parallel, is, to quote the language of the "case," "absolutely valueless" and that the concession of Article XXI, admitting fish and fish-oil, the product of the provincial fisheries, to our markets duty free, to quote the language of the "reply," "has not resulted in pecuniary profit to the British fishermen but on the contrary to the American dealer or consumer."

"If I have been at all successful in showing the enormous disproportion between the sum of 5,500,000 dollars announced as their award by the concurring Commissioners and the pecuniary value which the evidence assigns to the concessions of Article VIII, by itself considered, I need spend little time in showing that these Commissioners must have accepted the views of Her Majesty's Government that nothing was to be allowed for countervailing value to the concessions of Articles XIX and XXI, or that these Commissioners had in their minds a measure for the concession of Article XVIII still more inconsistent with the true Treaty definition of the subject described in that Article and submitted to the appraisement of the Commission.

"If the Concession of Article XIX was held by these Commissioners to be

'absolutely valueless,' as asserted in the 'case' of Her Majesty's Government, it must have been because the pecuniary profit to the provincial fishermen of the privilege, as actually enjoyed by them, was the true measure of estimation of the value of the concession. In this view, the immense value of these fisheries, as shown in the evidence, all went for nothing, because the population, capital, or enterprise in the provinces could not carry on what to them were remote fisheries in competition with our own coast population. Without insisting upon the unreasonableness of measuring the value of our fishing grounds by the incapacity of provincial resources to engage in the fishery opened to them, this disposition of the value of the concession of Article XIX recognizes the whole force and result of the reasoning by which I have assigned the true criteria of value for the privilege of Article XVIII, under the experience of the actual five years' enjoyment thereof by our fishermen, who were able to take advantage of the privilege, and did so to the furthest extent compatible with profit. The vice of the reasoning by which a right of fishing, valuable in its own capacity, is measured by the tenant's incapacity to fish is obvious. It furnishes no true criterion of the rent value of a fishery, which is what is needed to be got at both under Article XVIII and Article XIX. Under Article XVIII we furnished a true criterion by the experience of a tenant, confessedly willing and able to improve the fishery to the utmost, and actually doing so.

"I now desire you to present to Lord Salisbury's attention the subject of the concession of a free market in the United States for the products of the provincial fisheries as made by Article XXI. The value of this privilege to the provinces was required by the Treaty to be measured by the Halifax Commission and deducted from their appraisalment of the concession of Article XVIII in favour of the United States.

"The statistics of the importation under this privilege showed that, at the rate of duty prevalent before that concession, a revenue of about 200,000 dollars per annum on mackerel alone, and of more than 300,000 dollars on all kinds of fish (mackerel included) and fish-oil, would have accrued to the United States. For the purpose of argument, conceding that but one-half of this annual sum of 300,000 dollars should be set down as pecuniary profit to the provincial interests, the sum of 1,800,000 dollars would need to be deducted on the score of Article XXI from the true valuation of the privilege conceded by Article XVIII. If I have assigned correctly the highest possible measure of the privilege of Article XVIII, upon the evidence as being not more than 1,500,000 dollars, this low valuation of the privilege of Article XXI more than extinguishes it.

"Whatever disposition the concurring Commissioners made of this countervailing concession of Article XXI—whether they gave it a value commensurate with the statistical evidence of the revenue loss to the United States and market gain to the provincial interest, or considered it absolutely valueless—the matter is one of much moment.

"If these concurring Commissioners gave the sum of 5,500,000 dollars as the appraisalment of the concession of Article XVIII, after deducting some 2,000,000 dollars for the countervailing concession of Article XXI, the argument, as it seems to this Government, adequate before, becomes still more conclusive that the measurement, thus enhanced to some 7,500,000 dollars, was not applied and confined to the very subject submitted to the appraisalment of the Commission by Article XVIII.

"But, it may be said, these concurring Commissioners may have treated the concession of Article XXI as absolutely valueless to the provincial interests, and it was competent to them to do so. But this alternative is little consistent with the whole tenour of the views of Her Majesty's Government as maintained by successive Cabinets and insisted upon in responsible negotiations, by their most eminent Representatives, through a long course of years. Certainly, ever since 1851, when Lord Elgin, as Governor-General of Canada, communicated through the British Minister at Washington, Sir Henry Bulwer, to Mr. Webster, Secretary of State, the opinion of the British Government that the admission of the product of the provincial fisheries duty free to our market was the one indispensable condition to our participation in the inshore fisheries of the provinces, down to the negotiation of the Treaty of Washington, the attitude of the British Government on this point has been explicit and unequivocal.

"Lord Elgin declared:—

"Her Majesty's Government are prepared, on certain conditions and with

certain reservations, to make the concession to which so much importance seems to have been attached by Mr. Clayton, namely, to throw open to the fishermen of the United States the fisheries in the waters of the British North American Colonies, with permission to those fishermen to land on the coast of those Colonies for the purpose of drying their nets and curing their fish; provided that in so doing they do not interfere with the owners of private property, or with the operations of British fishermen.

“Her Majesty’s Government would require, as the indispensable condition in return for this concession, that all fish, either fresh or cured, imported into the United States from the British North American possessions, in vessels of any nation or description, should be admitted into the United States duty free, and upon terms in all respects of equality with fish imported by citizens of the United States.’

“The deliberations of the Joint High Commission, as presented in the Protocols of their conferences on the fisheries, exhibit with perfect distinctness the British opinion as to a free market for the product of the provincial fisheries being a value to provincial interests which could not be missed, or replaced by a pecuniary substitute, in any settlement of the question. Thus, our High Commissioners stated ‘that if the value of the inshore fisheries could be ascertained, the United States might prefer to purchase for a sum of money the right to enjoy, in perpetuity, the use of those inshore fisheries in common with British fishermen, and mentioned 1,000,000 dollars as the sum they were prepared to offer.’ The British High Commissioners replied ‘that this offer was, they thought, wholly inadequate, and that no arrangement would be acceptable of which the admission into the United States, free of duty, of fish the produce of the British fisheries, did not form a part.’

“After a consideration of commercial equivalents, in which the offers of our High Commissioners were not accepted by the British High Commissioners, all such propositions, on our part, were withdrawn, and our Commissioners renewed their proposal to pay money equivalent for the use of the inshore fisheries, and further proposed that, in case the two Governments should not be able to agree upon the sum to be paid as an equivalent, the matter should be referred to an impartial Commission for determination.’ To this the British High Commissioners replied ‘that it would not be possible for them to come to any arrangement except one for a term of years, and involving the concession of free fish and fish-oil by our Commissioners; but that if free fish and fish-oil were conceded, they would inquire of their Government whether they were prepared to assent to a reference to arbitration as to money payment.’ Our High Commissioners replied ‘that they were of opinion that free fish and fish-oil would be more than an equivalent for those fisheries, but that they were also willing to agree to a reference to determine that question and the amount of any money payment that might be found necessary to complete an equivalent.’ Hereupon, as stated in the Protocol, ‘the British Commissioners having referred the last proposal to their Government and received instructions to accept it,’ the Fishery Articles of the Treaty were agreed to.

“These opinions of Her Majesty’s Government were entirely in accord with the views of the leading provincial statesmen. Mr. Stewart Campbell, of Nova Scotia, declared that, ‘under the Reciprocity Treaty, the total exemption from duty of all fish exported from the maritime provinces to the markets of the United States was also a boon of inestimable value to the very large class of British subjects directly and indirectly connected with our fisheries and its resulting trade.’ Sir John MacDonald said, in the Parliament of the Dominion, ‘the only market for the Canadian No. 1 mackerel in the world is the United States. That is our only market, and we are practically excluded from it by the present duty. The consequence of that duty is that our fishermen are at the mercy of the American fishermen. They are made the hewers of wood and the drawers of water for the Americans. They are obliged to sell their fish at the American’s own price. The American fishermen purchase their fish at a nominal value, and control the American market. The great profits of the trade are handed over to the American fishermen or the American merchants engaged in the trade, and they profit to the loss of our own industry and our own people.’

“It may be that Her Majesty’s Government has surrendered these opinions, and that the statesmen of the Dominion and the people of the provinces now think that the possession of our market for the products of the provincial fisheries is of no pecuniary advantage to these provincial interests. In such case, in any future negotiations respecting the fisheries, this Government would expect no stress to be laid upon this question of the possession of our own markets.

"If Her Majesty's Government accepts the award of these concurring Commissioners as carrying the necessary consequence that the concession of Article XXI is of no value to British or provincial interests, that element of calculation will disappear from any possible exchange of equivalents that the exigencies of any future friendly negotiations may need to find at their service. A privilege that is valueless when granted to and enjoyed by a beneficiary may well be reserved and withheld without the charge of its being even ungracious to do so.

"If, on the other hand, Her Majesty's Government adheres to the views of the value of our market for the product of the provincial fisheries, so often and so earnestly pressed upon the attention of this Government, and asserts that the award of the concurring Commissioners must be held, upon necessary reasoning, to have measured and deducted this great value of free market from the appraisalment of the concession of free fishing to us, made by them under Article XVIII, this Government will expect the more ready acceptance by Her Majesty's Government of the proposition, that these concurring Commissioners, in their award, mistook the subject submitted by Article XVIII to their pecuniary measurement, and exceeded the authority under which the Commission acted.

"You will, however, very earnestly press upon Lord Salisbury's attention in advance of any declaration from Her Majesty's Government of their present views of the value of our markets for the products of the provincial fisheries, that this Government has not changed or at all modified its opinions on this subject. To dissemble or conceal from Her Majesty's Government this fact would be uncandid, and, by silence on our part now, breed mischief for future contentions or negotiations. This Government holds now, as it did by the mouth of its High Commissioners in the Conferences on the subject of the fisheries which produced the pertinent Articles of the Treaty, 'that free fish and fish-oil would be more than an equivalent for those fisheries.' The measure of pecuniary value which I have drawn from the revenue loss to the United States, calculated with extreme moderation is an inadequate expression of the benefit to provincial interests and injury to our own from free importations.

"It is still the opinion of this Government that the possession of our market is of vital importance to the maritime provinces, and such possession a formidable menace, if not a fatal wound, to our own fishing interests. I do not think that I misunderstand or misrepresent those interests when I say that standing, as we now do, midway in the Treaty period, it would be better for those interests to surrender the enjoyment of the fishing privilege of Article XVIII for the remaining six years of the twelve, upon a resumption by this Government of the control of our own market for this unexpired period. If Her Majesty's Government and the provincial statesmen are firm in the opinion that the concession of Article XVIII parts with so much to us, and in the concession of Article XXI is valueless to British and provincial interests, it may well be worth while for the two Governments to consider whether a mutual resumption of these exchanged interests may not be desirable."

I think it is demonstrable there, and no answer was ever made by the British Government to it, that the value of this fishery of ours upon the most liberal form of concession, the widest and most benevolent interpretation of the most favourable evidence that was offered on the part of the British Government before the Commission at Halifax—the overwhelming superiority of the advantage to Great Britain from our market over any possible view of our inshore fishery advantage to ourselves, was an inevitable conclusion from a mere examination of the evidence.

We had two criteria. One was of the fishing product of the mackerel, for that was the only inshore fishery; our deep-sea fishery of the cod was outside the line. Our fishing interests there came to but a very trivial sum upon any estimate. The largest at which it could be put, and on the most favourable view that I gave to it, was 125,000 dollars a-year. Really that was an exorbitant and argumentative statement which I made for the purpose of demonstrating that the award must have transcended anything that was submitted. But beside that, we had the criterion of what the value to the fishery interests or the government of the provinces was during the period in which we did not enjoy the inshore fisheries, that is, the interval between the expiration of the term of the Reciprocity Treaty and the commencement of our new fishing under the Treaty of 1871.

The provinces established a licence tax of 50 cents a ton on our vessels for the first year, 1 dollar for the second year, and 2 dollars for the third year. For the

first year, under the lower tax of 50 cents a ton, our fishermen for the most part, as I understand (and the Senator from Maine will correct me if I am wrong), took out the licence of 50 cents. That itself measured what our people could get that privilege for and what it amounted to. I think something like sixty odd thousand dollars was produced to the Treasury of the provinces. The second year, when they would tax us a dollar, but very few took out a licence, and the revenue of the provinces was reduced, and when it came to 2 dollars a-ton, not a single licence was taken out.

Then we had an opportunity of measuring what was possibly an estimate of the value of the inshore fishing to us as understood and measured by them when we came to this market, which at the lowest statement is put at 300,000 dollars a-year duty that we lost. Treated in the rough manner that economists sometimes do, that when it is a duty laid one-half only is the profit of the importer that is saved, the difference between being free and being taxed; in other words, that if 300,000 dollars was parted with, they lost but 150,000 dollars, and we gained, if you please, the other 150,000 dollars in the cheapness of food for our people, that made 1,800,000 dollars for the twelve years.

There was a distinct proposition to that Commission to ascertain first what under the XVIIIth Article was the value of their inshore fishery to us; then what under the XIXth Article was the value of their inshore fishery upon our coasts; and then the value under the Article providing for free fishing. It was a simple matter of computation to find out in dollars and cents what was the value under the XVIIIth Article, what was the value of the counterpart under the XIXth Article, and what was the value under the free market. All that was neglected and omitted, and the whole matter was swamped in an award that 5,500,000 dollars was the difference between what was accorded to us and that which we had accorded to them.

Now I come to the attitude which we took as we were approaching and reached the term of the Treaty of 1871, and the fixed term of ten years was to be exhausted, and finally was exhausted. Just as soon as we had the power of giving notice that we would forego the advantage of the fishery and other Articles under the Treaty of 1871, I think by an Act or Resolution of the two Houses of Congress on the 3rd March, 1883, it was done with entire unanimity, as I understand, from the Senator who was then in Congress.

That was the attitude which this Government took in its correspondence with the British Government which I have adverted to, it was the action of this Government with entire unanimity. Now, two things happen: first, this Treaty privilege came to an end. It came to an end on the 1st July last, and the British Minister seems to have taken it into his head that this would be an unforeseen and abrupt termination, which would come down as a surprise to the fishermen, and find them in uncompleted voyages and investments that were suddenly cut short. Therefore the suggestion was made with a benevolent aspect on the part of the British Government that they would continue this in order to save these abrupt injuries.

How was this an abrupt injury to our fisherman? With the universal approval, by their promotion as early as the 3rd March, 1883, as early as we had an opportunity, we had given notice that we would terminate this Fishery Treaty, and we knew by fixing it for the 1st July, 1885, our people knew that it was to be terminated then. Further, when the time had arrived for the action of this Government, the President of the United States, President Arthur, issued a Proclamation, I think dated on the 31st January, 1885, giving distinct notice of the termination of this business of the fishery.

The fishermen being the only persons interested in the prosecution of the fishery, were they the only people who were to find out in the waters of the provinces in the middle of July, and in the middle of their voyages, that their fishing rights had abruptly been terminated? It would occur to me that the Government had been inattentive to that element, and that the British Minister and the British Government, if they had felt this uneasiness in regard to an abrupt disturbance of the enjoyment of our fishermen, were not circumspect in their observation of the preliminary arrangements that we had made for its termination, and certainly had been unobservant of the character of our people.

Besides this *ad interim* arrangement, the letters show that the British Government desired this, and that our Government also looked at it as an arrangement that should fairly contemplate a renewal of the subject of a restoration in some

form or degree of the fishing interest which had thus been terminated willingly, gladly, by all the people of the United States acting through the two Houses of Congress. All through the letters it will be found that if our Government would appoint a Commission which should undertake to settle these topics of the fisheries and such others connected in the way of intercourse between the conterminous portions of our country and of the provinces of Great Britain, it would be an element by which this concession would be made to us by Great Britain, that the rights of fisheries should not be enforced against us. It was part of the understanding, and so expressed by the President of the United States to Congress as soon as might be after the meeting of Congress. Accordingly, the President addresses us in that sense, that this Government wishes to commit itself by its own wish and purpose to have a renewal of—I do not say upon the terms and in the form and manner of previous arrangements, but in some substance, efficacy, value, and service to us—of a restoration of the previous existence of things.

It is in that view, and in that view alone, it seems to me, that the attitude of this Government, as disclosed in this correspondence with Great Britain, the attitude which it took in abrogation of the Reciprocity Treaty, and enjoyments and of our termination of the Treaty of 1871 as applicable to the fisheries and to free market, should be understood, and our Government should not be put in any doubtful attitude. On this subject the people of this country and the Houses of Congress representing them have come to a conclusive determination; therefore the Senate, at the earliest opportunity, should express its opinion against the desirableness, the fitness, or the propriety of pursuing the subject of a Commission or other restoration of these matters in negotiation between the two nations.

If there are any interests that touch the provinces or touch the interests of Great Britain towards a new consideration of our free market, and an appreciation of it instead of a denunciation of it as being worthless, as was the whole argument of the British counsel before the Halifax Commission, it is for Great Britain and the provinces to understand that we meant, when we said that we desired to terminate the two successive arrangements we have had of reciprocity and of fishery arrangement under the Treaty of Washington, to terminate them as soon as an opportunity was given, and that it was inconsistent with the public conduct and attitude of this Government to suddenly assume the position of asking, of inviting, or even encouraging a renewal of those subjects.

I will add now, however late the hour, a few observations in regard to what I consider the situation in regard to trade. This matter of ice and this matter of bait, and all other subjects of outfit, including those of crews for fishing, rest entirely upon the basis of commercial intercourse, and only commercial intercourse. As early as 1793, we having an establishment by which fishery-vessels took out papers of a certain description of enrolment, and that gave them only the fishing rights, this authentic documentation of a fishing-vessel as such gave it nothing but the fishery rights, and gave it no mercantile or trading rights whatever. But as early as the year 1793 (found in 1 Statutes, p. 305), there is a provision that—

“When any ship or vessel, licensed for carrying on the fishery, shall be intended to touch and trade at any foreign place or port—”

Application shall be made and permission given by the Collector, and regulations as to manifests, &c., shall apply; in other words, a permit to trade which put the vessel carrying that permit on a ground other than that of a mere fishing-vessel, section 34 establishing as an item of permit fees, 25 cents for every such permit.

Now, how did we stand as regards trading with these neighbouring provinces? The colonial system of Great Britain was maintained by her, established in the time of Charles II, which precluded other nations from intercourse with her Colonies except through the mother country. When we became free and independent we were put upon the same footing with all other foreign nations, and we had no commercial intercourse. Gradually through years following, in 1818, when we made the Treaty, there came to be a relaxation of the system of Great Britain, and Statutes were passed by our Congress recognizing these changes in 1820, in 1822, in 1823, and later still, till in 1830, by a Proclamation made by General Jackson, it was understood that there was a great and general relaxation. But in 1849 a Statute was passed by Great Britain which gave to the Queen the right to close ports with such nations and trading parties as closed their intercourse and commerce upon this or that ground, with a right to revoke it at her will when the



change of circumstances required it. In 1850, in view of that Statute of Great Britain, and bearing upon the subject, we passed a Law (found in volume 9, p. 469 of the Statutes), with this arrangement:—

“That the Secretary of the Treasury, with the approbation of the President, provided the latter shall be satisfied that similar privileges are extended in the Colonies hereinafter mentioned, is hereby authorized to permit vessels laden with the products of Canada, New Brunswick, Nova Scotia, Newfoundland, and Prince Edward Island, to lade or unlade at any port or place within any collection district of the United States which he may designate.”

This Statute, you will notice, does not pursue the phrases of similar Regulations by Statute, which generally assign to the President the duty of a Proclamation, as the Statute of 1830 required, and which was followed and pursued by President Jackson. Thinking that this Proclamation must be necessary to bring about this concordance between British legislation and our legislation of opening the trade of our ports to the provincials and the provincial ports to ourselves, it must necessarily have been evidenced by a Proclamation; and one would look on it that there must have been some obscurity, or concealment, or accident, about it; but, on looking at the Statute, I think we shall see that nothing but a Treasury recognition of it was necessary, because the Statute itself pursues those terms; that the Secretary of the Treasury, with the approval of the President, if the President is satisfied, shall open our ports.

It seems to me that, in all this subject of buying and selling bait and ice and other commodities, we do not need to look for support for enjoyment to any of these Treaties about fishing, but in common with the whole substance and mass of intercourse of trade between friendly nations like Great Britain and ourselves, and including now the freedom of intercourse with the provinces which was so long denied by Great Britain in the earlier days as the basis, I shall anticipate no firm or protracted insistance on the part of any of the authorities in the provinces against our enjoyment of what is the common possession now of friendly nations in the intercourse in all commodities that are useful to them.

My attention has been called to the term of the warning as put out from the Minister of Marine and Fisheries in the provinces, and it will be observed in this language that it is not restricted at all to fishing-vessels or to the fishing trade. Let me read this operative clause of the warning:—

“Therefore, be it known that, by virtue of the Treaty provisions and Act of Parliament above recited, all foreign vessels or boats are forbidden from fishing or taking fish by any means whatever within 3 marine miles of any of the coasts, bays, creeks, and harbours in Canada, or to enter such bays, harbours, and creeks except for the purpose of shelter and of repairing damages therein, of purchasing wood, and of obtaining water, and for no other purpose whatever.”

That is to say, all foreign vessels are precluded from access to their ports for any purposes of trade and traffic. For that there is confessedly no support; and an attention to this discrimination between the rights that come by the power to fish and the rights that come by the power to trade will soon, as I hope, dispel all the disturbances of interest that now for the moment interrupt the true and harmonious intercourse which should characterize us between our great nation and the Canadian possessions.

*The President (pro tempore).*—The question is on the adoption of the Resolution.

*Mr. Frye.*—I desire the “yeas” and “nays” on the adoption of the Resolution.

The “yeas” and “nays” were ordered.

*Mr. Brown.*—Let the Resolution be read.

*The President (pro tempore).*—The Resolution will be read.

The Chief Clerk read as follows:—

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

*The President (pro tempore).*—The Secretary will call the roll on agreeing to the Resolution.

The Secretary proceeded to call the roll.

*Mr. Frye* (when Mr. Hale’s name was called).—My colleague (Mr. Hale) is absent from the city, and is paired with the Senator from Kentucky (Mr. Beck). If my colleague was present he would vote “yea.”

*Mr. Harrison* (when his name was called).—Upon this question I am paired with the Senator from Arkansas (*Mr. Jones*). If he were present I should vote "yea."

*Mr. Cullom* (when *Mr. Logan's* name was called).—My colleague (*Mr. Logan*) is paired with the Senator from Louisiana (*Mr. Gibson*). My colleague would vote for the Resolution if he were present.

*Mr. Miller* (when his name was called).—I am paired with the Senator from North Carolina (*Mr. Ransom*). If he were here I should vote "yea."

*Mr. Spooner* (when his name was called).—I was paired generally with the Senator from Maryland (*Mr. Wilson*), but I understood he was to be here by Monday. As I observe that he is still absent, I refrain from voting.

*Mr. Teller* (when his name was called).—I am paired generally with the Senator from Arkansas (*Mr. Berry*), who is indisposed and has left the Chamber. I do not know how he would vote. If he were present I should vote "yea."

The roll-call was concluded.

*Mr. Blair*.—My colleague (*Mr. Pike*) is paired with the Senator from Mississippi (*Mr. George*). If my colleague were present he would vote "yea."

*Mr. Cockrell*.—My colleague (*Mr. Vest*) is paired with the Senator from Kansas (*Mr. Plumb*). I do not know how my colleague would vote on this question.

The result was announced—Yeas, 35; Nays, 10—as follows:—

#### YEAS—35.

Allison,	Edmunds,	Jones of Nevada,	Platt,
Blair,	Evarts,	McMillan,	Plumb,
Brown,	Fair,	McPherson,	Riddleberger,
Butler,	Frye,	Mahone,	Sabin,
Cameron,	Gorman,	Maxey,	Sawyer,
Chace,	Harris,	Mitchell of Oreg.,	Sewell,
Conger,	Hawley,	Morgan,	Sherman,
Cullom,	Hoar,	Morrill,	Wilson of Iowa.
Dawes,	Ingalls,	Payne,	

#### NAYS—10.

Call,	Colquitt,	Pugh,	Walthall.
Cockrell,	Eustis,	Vance,	
Coke,	Gray,	Voorhees,	

#### ABSENT—31.

Aldrich,	Gibson,	Kenna,	Saulsbury,
Beck,	Hale,	Logan,	Spooner,
Berry,	Hampton,	Manderson,	Stanford,
Blackburn,	Harrison,	Miller,	Teller,
Bowen,	Hearst,	Mitchell of Pa.,	Van Wyck,
Camden,	Jackson,	Palmer,	Vest,
Dolph,	Jones of Arkansas,	Pike,	Wilson of Md.
George,	Jones of Florida,	Ransom,	

So the Resolution was agreed to.

## Inclosure 2 in No. 36.

*Précis of Senator Evarts' Speech on Fishing Rights in the United States.*

MR. EVARTS would have objected to the Resolution originating in the Senate had no communication been made to that body on the subject by the President; but as such communication has been made, and an interchange of notes between the State Department and the British Minister has taken place, which led to an *ad interim* agreement in regard to the management of the fisheries, including a new arrangement, he thought it important that the Senate should express its mind on this topic.

He understood that the relations of the United States towards Great Britain and towards the provinces on the subject of the fisheries and on the subject of the intercourse of trade are two independent subjects: that of the fisheries rested entirely upon Treaties; that of intercourse of trade or commerce rested either upon the general Conventions of Commerce or upon legislation that has proceeded in the enactments of the English Parliament and Congress in the same intent and with the same results towards free, convenient, and amicable intercourse in trade.

He maintained that all the Fishery Treaties were embraced in the first Treaty of Peace (1783). Fishing rights were to be enjoyed by both parties, and involved free access to the coast.

There was no question of trade or commerce in this access.

He complained that after the war of 1812 the fishery rights of the United States were not the same as they had been previous to the interruption of peace; nevertheless, the Treaty of 1818 was made. But this Treaty follows very much in the same lines as the original one.

There was no question of trade or hospitality.

The right to resort to the coast was part of the fishing rights.

There was nothing in the Treaty of 1818 about buying bait or ice, or any circumstances of trade.

The right of American vessels to catch bait was covered by the fishing right.

There was trouble, however, under the 3-mile limit in the Treaty of 1818, which the Reciprocity Treaty of 1854 did away with. This Treaty, however, was more advantageous to Canada than to the United States, and therefore was denounced, to be succeeded by the Treaty of 1871.

Then came the Fishery Commission and the Halifax Award. It was plain what the British Government wanted, They wanted the restoration of the previous existence of things which the State Department had given in to. The House of Representatives had come to a conclusive determination against such a policy, and he hoped the Senate would do so likewise.

## No. 37.

*Mr. Bramston to Sir J. Pouncefote.—(Received April 26.)*

Sir,

*Downing Street, April 24, 1886.*

I AM directed by Earl Granville to request that you will draw the attention of the Earl of Rosebery to the accompanying telegrams from the United States which appeared in the London "Standard" and "Times" of the 6th and 7th instant respectively, in connection with the Fisheries question and the alleged action of Canada; and I am to request that you will move his Lordship, should no objection exist, to obtain from Sir L. West, as soon as possible, explanations as to the true meaning to be attached to the information which they contain.

I am, &c.

(Signed) JOHN BRAMSTON.

## Inclosure 1 in No. 37.

*Extract from the "Times" of April 7, 1886.*

*Philadelphia, April 6, 1886.*

THE Canadian Fisheries question is assuming a difficult phase. Senator Frye (Maine) yesterday made a speech in which he complained of the conduct of the Canadians in excluding American fishermen. He said these fishermen had a right to enter Canadian ports for all commercial purposes under the Treaty of 1849. Mr. Frye added that this involved matter looking like war. He was only waiting for a single American vessel to be seized, and then he proposed to introduce a Bill closing the United States' ports against all British colonial fishing, freighting, and passenger vessels along the whole line of the lakes and the Atlantic coast. They would then see how long Canada would carry on this operation which she had begun.

*Later.*

In connection with the fisheries dispute, Mr. Secretary Bayard is reported to be preparing a communication for presentation to the English Government protesting against the injuries done to the fishermen, and asking that the action of the Canadians may be stopped. He takes the view that the Treaty of 1818 has been superseded, the whole idea of modern intercourse between the two countries being hostile to the narrow views of Canada, that the Agreement of 1850, made under the American Law giving vessels of other nations the full privileges of American ports on condition that their Governments did the same went into effect by virtue of the Proclamations of both nations, based on the Order in Council of 1849; that it has been enforced ever since, and that it is not a regular Treaty, but it is regarded as having the force of one.

The general belief is that this correspondence with England will settle the difficulty.

Newfoundland in 1870 passed certain hostile Fishery Laws, which upon the receipt of an American protest the English Ministry revoked.

## Inclosure 2 in No. 37.

*Extract from the "Standard" of April 6, 1886.*

*New York, Monday night.*

THE Fisheries question has assumed an international dignity. Mr. Dingley, from Maine, has proposed a Resolution in the House of Representatives requesting the President to inform the House what measures will be taken to call the attention of the British Government to the violations by Canada of the Anglo-American legislative arrangement for reciprocal trade privileges. He contended that by virtue of this arrangement American fishermen can do in Canadian ports whatever British vessels can do in American ports. The Americans therefore claim the right to land ocean fish in Canadian ports for shipment in bond to the United States. They also claim general rights of trade, including the right to buy bait, ship seamen, &c., the Treaty of 1818 being superseded by the Act of Parliament of 1849. Mr. Dingley says Mr. Secretary Bayard takes this view.

No. 38.

*Sir P. Currie to Sir R. Herbert.*

Sir,

*Foreign Office, April 29, 1886.*

I HAVE laid before the Earl of Rosebery your letter of the 24th instant, inclosing extracts from the "Standard" and "Times" of the 6th and 7th instant respectively, in connection with the Fisheries question and the alleged action of Canada; and I am, in reply, to transmit to you, to be laid before Earl Granville, copies of despatches from Her Majesty's Minister at Washington,\* inclosing copies

\* Nos. 34 and 36.

of speeches made and Resolutions passed in the United States' Senate, which appear to answer the question raised in your letter.

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

No. 39.

*Sir L. West to the Earl of Rosebery.—(Received April 30.)*

(No. 26. Treaty.)

My Lord,

*Washington, April 19, 1886*

I HAVE the honour to inclose to your Lordship herewith the report of the proceedings in the House of Representatives on a Resolution requesting the President to furnish information as to what steps have been taken to bring the "unwarrantable and unfriendly acts of the Dominion authorities in regard to the fisheries to the attention of the British Government."

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

Inclosure in No. 39.

*Extract from the "Congressional Record" of April 17, 1886.*

*Order of Business.*

*Mr. Willis.*—Regular order.

*The Speaker.*—The regular order is called for.

*Mr. Clements.*—Mr. Speaker, I rise to present a privileged Report. I am instructed by the Committee on Foreign Affairs to submit the Report which I send to the clerk's desk, and to ask its present consideration.

The Report was read, as follows:—

*"In the House of Representatives, April 5, 1886.*

"Whereas the Minister of Marine of the Dominion of Canada has issued a Proclamation directing the enforcement of an Act of the Dominion Parliament which prohibits any fishing-vessel of the United States from entering any Dominion harbour except for the purpose of shelter, repairing damages, and purchasing wood and obtaining water; and

"Whereas press despatches announce that, under this Proclamation, Dominion officers have denied to fishing-vessels of the United States the right to enter ports of entry in said Dominion for the purpose of purchasing supplies or landing fish caught in deep water for shipment in bond to the United States or doing other acts which Canadian and other British vessels are freely permitted to do in ports of the United States; and

"Whereas these acts of the authorities of the Dominion of Canada are in contravention of the principles which regulate the intercourse of friendly civilized nations and in direct conflict with a legislative arrangement between the Governments of the United States and Great Britain, which went into effect the 1st January, 1850, by which Great Britain, in view of similar privileges conditionally conceded to her vessels by the United States, placed the vessels of the United States on the same footing in British ports, including British Colonies, as that on which British vessels are placed in the ports of the United States, the coasting trade only excepted; therefore,

*"Resolved.*—That the President be requested to furnish the House, if compatible with the public interests, with any information in his possession relative to the exclusion of American fishing-vessels from the ports of entry of the Dominion of Canada for the purpose of trading, purchasing supplies, or landing fish caught in deep water for shipment in bond to the United States, or doing other acts which Canadian and other British vessels are freely permitted to do in ports of the United States; and also to inform the House what steps have been taken or are proposed to bring such unwarrantable and unfriendly acts of the Dominion authorities to the attention of the British Government."

For which the Committee propose the following substitute :—

*Resolved*,—That the President be requested to furnish the House, if compatible with the public interest, with any information in his possession relative to the exclusion of American fishing-vessels from the right of entering ports of entry of the Dominion of Canada for the purpose of trading, purchasing supplies, or landing fish caught in deep water, for shipment in bond to the United States, or doing other acts which Canadian and other British vessels are freely permitted to do in ports of the United States, and also to inform the House what steps have been taken to bring such unwarrantable and unfriendly acts of the Dominion authorities to the attention of the British Government."

*Mr. Dingley*.—Mr. Speaker, the pending Resolution of inquiry was offered by myself for the purpose of bringing before the House and the country the unwarrantable and unfriendly course of the Canadian authorities towards American fishing-vessels, and emphasizing the fact that our Government entered its protest against such proceedings and intends to follow up the protest until the vessels of the United States are accorded the same privileges in Canadian ports that are freely conceded to Canadian vessels in the ports of this country. The following correspondence shows that the Secretary of State is in accord with this view :—

*Portland, April 9, 1886.*

"To Honourable Secretary of State, Washington, D.C.,

"Having several fishing-vessels ready for the banks, we desire to know if they can enter Canadian ports for men and be protected in so doing.

(Signed) "CUSHING AND MCKENNEY."

*Washington, D.C., April 9, 1886.*

"To Cushing and McKenney, Portland, Me.,

"The question of the right of American vessels engaged in fishing on the high seas, or entering the Canadian ports for the purpose of shipping crews, may possibly involve construction of Treaty with Great Britain. I expect to attain such an understanding as will relieve our fishermen from all doubt or risk in the exercise of the ordinary commercial privileges in friendly ports, to which, under existing laws of both countries, I consider their citizens to be mutually entitled free from molestations.

(Signed) "T. F. BAYARD."

The right of an American fishing-vessel, provided with a Custom-house permit to touch and trade, as authorized by section 4364 of the revised Statutes of the United States, to enter and purchase supplies of all kinds offered for sale, and ship fish in bond to the United States, is as clear as the right of any other American vessel. This right to touch and trade and buy whatever may be offered for sale in a Canadian port has nothing to do with the fishing rights under the Treaty of 1818. We claim no right to fish within the 3-mile limit of Canadian shores, although we decline to accede to the Canadian construction of that limit.

The present difficulties, however, have nothing to do with any dispute as to the proper line of demarkation between fishing grounds exclusively belonging to Canada and fishing grounds open to us and to the world. Canada has undertaken to exclude American vessels intending to fish in waters beyond even Canadian jurisdiction from Canadian ports for the purpose of purchasing supplies, including bait and ice, landing fish caught in deep water to be shipped in bond to the United States, and doing other acts which Canadian fishing and other vessels are freely permitted to do in our ports.

The following Proclamation of the Minister of Marine of the Dominion of Canada shows what is the unwarrantable and unfriendly course which the Dominion authorities have mapped out :—

*Proclamation by the Canadian Minister of Marine and Fisheries.*

"The Government of the United States having by notice terminated Articles XVIII and XXV, both inclusive, and Article XXX, known as the Fishery Articles of the Washington Treaty, attention is called to the following provision of the Convention between the United States and Great Britain, signed at London on the 20th October, 1818 :—

"Article I. 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 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 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 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 manner whatever abusing the privileges hereby reserved to them.”

“Attention is called to the following provisions of the Act of the Parliament of Canada, chapter 61 of the Acts of 1868, an Act respecting ‘fishing by foreign vessels’:—

“Art. 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 of 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 any ship, vessel, or boat, within any harbour in Canada, or hovering (in British waters) within 3 marine miles of any of the coasts, bays, creeks, or harbours in Canada, and stay on board so long as she may remain within such place or distance.

“Art. 3. If such ship, vessel, or boat be bound elsewhere, and shall continue within such harbour, 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 dollars; 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 3 marine miles of any of the coasts, bays, creeks, or harbours of Canada, not included within the above-mentioned limits, without a licence, on or after the expiration of the period named in the last licence 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.

“Art. 4. All goods, ships, vessels, and boats, and the tackle, rigging, apparel, furniture, stores, and cargo liable to forfeiture under this Act, may be seized and secured by any officers or persons mentioned in the second section of this Act, and every person opposing any officer or person in the execution of his duty under this Act, or aiding or abetting any other person in any opposition, shall forfeit 800 dollars, and shall be guilty of a misdemeanour, and upon conviction be liable to imprisonment for a term not exceeding two years.”

“Therefore be it known that by virtue of the Treaty provisions and Act of

Parliament above recited, all foreign vessels or boats are forbidden from fishing or taking fish by any means whatever within 3 marine miles of any of the coasts, bays, creeks, and harbours in Canada, or to enter such bays, harbours, and creeks except for the purpose of shelter and of repairing damages therein, of purchasing wood, and obtaining water, and for no other purpose whatever; of all of which you will take notice and govern yourself accordingly.

(Signed)

“GEORGE E. FOSTER,  
“Minister of Marine and Fisheries.

“*Department of Fisheries,*  
“*Ottawa, March 5, 1886.*”

Canada undertakes to justify her unfriendly acts towards American fishing vessels by reference to a provision of the old Treaty of 1818, in which it is provided that—

“American fishermen shall be admitted to enter Canadian 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.”

Whatever may have been intended by this provision in 1818, when all American vessels were excluded from the commercial privileges enjoyed by British vessels in Canadian ports, and all Canadian and other British vessels from the privileges enjoyed by American vessels in the ports of the United States, it should be borne in mind that since that time there has been reciprocal legislation by both countries, culminating with a reciprocal legislative arrangement which took effect the 1st January, 1850, having all the force of a solemn Treaty, by which Great Britain and the United States have placed the vessels of each nation, respectively, on the same footing in all their ports, including the Colonies of Great Britain.

Granting that the Treaty of 1818 did exclude American fishing-vessels from Canadian ports except for the four purposes named, yet these legislative arrangements and reciprocal agreements have swept away the discriminations of both nations against each others vessels, and placed American fishing-vessels, which have all the privileges of touching and trading at foreign ports accorded to other American vessels, on the same footing in Canadian ports that Canadian vessels are placed in the ports of the United States. Canadian fishing-vessels are freely permitted to enter our ports to purchase whatever they may want, including bait and ice, to ship fish in bond to Canada, and to do other acts which national comity permits.

The United States demands of Great Britain that the reciprocal arrangements as to the rights of vessels of either nation in the ports of the other shall be faithfully observed by her Canadian dependency. I cannot doubt that Great Britain, on representation which will be made to her by our Government, will recognize the reciprocal rights of American fishing-vessels, and put an end to the vexatious and unwarrantable course of the Canadian authorities toward them. If she should refuse to do so, then I trust we shall act promptly in withdrawing from Canadian vessels in our ports privileges which she refuses to vessels of the United States. Without further legislation the President is authorized by the Act of 1823 to issue his Proclamation withdrawing the privileges now granted the vessels of any foreign country which discriminates against American vessels in her ports.

The object of the Canadian authorities in their vexatious and unwarrantable treatment of American fishing-vessels which have no intention of fishing in Canadian waters, is so plain that no one can fail to understand it. They are seeking to force the American people and the American Congress to admit Canadian fish free of duty into the United States. The Canadian market wants but a small portion of the fish caught by Canadian fishermen. The United States has a most valuable market, and the Canadians desire the privilege of bringing their fish here and selling them without paying a duty. The exports of Canadian fish to the United States rose from 84,500 dollars in 1871 to 3,750,000 dollars in 1884. Twice have they driven the United States to enter into a Treaty admitting Canadian fish free of duty—in 1854, and again in 1871—by vexing and troubling our fishing-vessels until our Government was wheedled into making bargains which seriously damaged American fishing interests. To be sure, the Treaty of 1871, which admitted American fishermen to Canadian waters for the purpose of fishing, was thought at the time to be favourable to our fishing interests, but the result proved far otherwise.

On the 1st day of July last the United States got rid of the last bad bargain,



and since that time Canadian cured fish have been charged a duty when brought into our markets. Before even the last arrangement terminated, the Canadians set to work to secure a Commission to make another arrangement by which their fish should be admitted to our markets free of duty. They even persuaded the President and Secretary of State to recommend such a Commission, but the protests of the fishing interests of the country have been so earnest and strong against another sacrifice of our fishermen, that it is now evident that Congress will not carry out the plan. The emphatic vote of the Senate on Senator Frye's Resolution disapproving a Commission settles this point.

Angered by our refusal, the Canadian authorities have commenced the vexatious course toward our fishing-vessels to which I have alluded. They have sent an armed schooner to the fishing grounds to annoy and seize our fishing-vessels on various pretexts, and they have warned our vessels not to enter Canadian ports for commercial purposes, to purchase bait or ice, or for other objects, which their vessels are freely permitted to pursue in our ports.

When it is borne in mind that American fishing-vessels are not seeking to fish in Canadian waters, but in waters in which it is admitted they have a right to pursue their calling, and that their visits to Canadian ports have reference only to purchasing supplies for their legitimate business, the attempt of the Canadians to deprive them of ordinary commercial privileges in their ports in order to annoy our fishermen and make this legitimate business impracticable is not only inexcusable but unfriendly. If Canada persists in this course, and Great Britain declines to interfere, nothing remains but to take the remedy into our own hands. We prefer to avoid retaliation, but nothing else would be left to us. If American fishing-vessels, duly authorized to touch and trade and pursuing a legitimate business in waters outside of Canadian jurisdiction, are not to be permitted to enter Canadian ports for the purpose of purchasing supplies of any kind offered for sale, and shipping fish in bond to the United States, then Canadian vessels should be denied similar privileges in the ports of the United States.

It cannot be admitted for a moment that Canada has any right to interfere in the Tariff policy of this country so long as we impose no higher duties on her products than we do on the similar products of any other foreign country. We claim no right, on the other hand, to interfere in the Tariff policy of Canada, and she would justly regard any such interference on our part as an impertinence.

The policy of this country, except in the periods when so-called reciprocal Treaties have provided otherwise, has always been to impose duties on imported fish as a measure of protection to our own fishermen. So long as the general policy of the country has been protective, simple justice has demanded that the fishing interests should receive the same measure of protection as other industries. The hardy fishermen who man our fishing-vessels deserve our protection and encouragement.

But there has been a reason beyond this which had led our Government in the past to have special regard for our fishing interests. The sea fisheries have ever been the nursery of seamen, the school in which have been trained the men who have manned our cruisers in time of war. The value of this school has been attested in every war in which we have been engaged. It was New England fishermen who manned our naval vessels in the war of 1812, and wrung victory from British cruisers in many a bloody contest. Every naval nation has encouraged the sea fisheries as a resource in time of war. For many years we gave a large bounty to encourage the fishing interests. That bounty was withdrawn twenty years ago, but we cannot take away the inducement to maintain the fisheries offered by exclusive possession of our markets without destroying the sea fisheries and depriving the country of an invaluable school for seamen to man our vessels in time of war.

In view of these considerations it is to me a matter of great surprise that the majority of the Committee on Ways and Means have reported a Bill to admit all imported fish free of duty. If such a step was contemplated it should be done by a reciprocal Treaty, which would give us something from Canada in return. She stands ready to-day to give us a bonus for a privilege which makes her fisheries prosperous.

But such a step should not be taken on any consideration. It would assuredly destroy our sea fisheries; it would do grave injustice to the hardy fishermen who pursue a calling so hazardous and yet so beneficial to the country. It would deprive us of the most valuable school for seamen to man our vessels in time of war

that any nation can possess. I cannot believe that Congress will adopt so unjust and unwise a policy.

Instead of placing all kinds of imported fish on the free list, as is proposed, a Law should be enacted imposing a duty upon fresh fish of all kinds, herring only excepted, which are now admitted free of duty when intended for immediate consumption, or at least a Law giving a proper construction to the term "fresh fish." Under the present Law the Treasury Department has ruled that fish preserved by freezing and ice are still "fresh fish." Under this construction fish preserved by freezing and ice are being brought into our markets by Canadians in large quantities free of duty. With modern methods of freezing and preserving, this decision is seriously interfering with our fishing interests. Obviously, instead of placing all fish on the free list, a measure should be passed, as I have already proposed, to construe fresh fish as not including frozen fish or fish preserved by the use of ice, salt, freezing, smoking, or other preservative process.

I trust, Mr. Speaker, that the Secretary of State will not only at once bring to the attention of the British Government the unwarranted course of the Canadian authorities in endeavouring to deprive American fishing-vessels of the rights in Canadian ports which belong to us under reciprocal "legislative arrangement," but will also follow this up by securing a just settlement of the disputed question of the proper construction of the 3-mile limit within which only Canadian vessels are entitled to fish. I take it for granted that a just decision of this controversy will dissipate the absurd headland claim under which Canadians have sometimes endeavoured to claim the exclusive right to fish in waters of great gulfs and arms of the ocean. This claim is so preposterous that British Ministers have repeatedly declined to enforce it. It is important, however, that the line of demarcation between Canadian fishing grounds and those that belong to us and the world should no longer be in doubt, and thus give to Canada a pretext for annoying American fishing-vessels in deep water on the false claim that they were fishing in Canadian waters.

It is time that the interests of American fishermen should be as scrupulously and persistently guarded as the similar interests of other nations are guarded by them. In 1880, according to the last census, the number of persons employed in the fisheries of the United States was 131,426, of whom over 100,000 were schooled in the management of boats and other vessels; and 80 per cent. of those were American citizens. There were employed 6,605 vessels and 44,804 boats, with a capital of nearly 40,000,000 dollars invested. The value of the products of the fisheries was 44,546,063 dollars. The value of the products in a marketable condition of the 606 fishing vessels and 5,920 boats of the State of Maine, which I have the honour to represent in part on this floor, was 3,614,178 dollars.

It will be seen, therefore, that, considered simply as an industry supplying food to our people, our fisheries are of great importance. But important as is their commercial value, their value as a nursery of seamen for our merchant marine and for our navy, especially as a resource in time of war, cannot be overestimated. I appeal confidently to the sense of justice and the patriotism of the House to protect and encourage the fishing interests of the United States.

*Mr. Randall.*—Mr. Speaker, for myself I have no objection to the suggestion that this legislative branch of the Government shall indicate by its action in favour of this proposition that we mean, so far as the power rests here, to watch carefully and to maintain firmly all the rights of the American fishermen who are engaged in the trade to which the Resolution relates.

*Mr. Clements.*—I desire to state that many recitals contained in the preamble of the original Resolution are not embodied in the substitute, which is merely a Resolution of inquiry in regard to this question. Seeking for information, looking to the protection of the rights of American fishermen in Canadian waters, I do not deem a discussion of the question necessary in advance of the official information sought.

The question being taken, the substitute proposed by the Committee was agreed to, and the Resolution as amended adopted.

*Mr. Clements* moved to reconsider the vote by which the Resolution was adopted, and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

*Mr. Bramston to Sir P. Currie.—(Received April 30.)*

Sir,

*Downing Street, April 30, 1886.*

WITH reference to the letter from this Department of the 21st instant, and to previous correspondence respecting the North American Fisheries question, I am directed by Earl Granville to transmit to you, to be laid before the Earl of Rosebery, a copy of a further despatch, with its inclosures, from the Governor-General of Canada on the subject.

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

Inclosure 1 in No. 40.

*The Marquis of Lansdowne to Earl Granville.*

My Lord,

*Government House, Ottawa, April 6, 1886.*

I HAVE the honour to inclose herewith a copy of an approved Report of a Committee of the Privy Council upon a despatch which I received on the 2nd instant from Her Majesty's Minister at Washington (and of which a copy is herewith inclosed), informing me that the United States' Consul-General at Halifax was reported to have argued that, under the Convention of 1818, it was open to American fishermen to land—cured and in a marketable condition—fish which had been caught outside the 3-mile limit at any Canadian port, and to tranship the same in bond to the United States by rail or vessel, and that any refusal to permit such transhipment would be a violation of the general bonding arrangement between the two countries. It does not appear from Sir Lionel West's despatch that this statement was made officially or that it has been supported by the Government of the United States. As, however, the matter is one to which further reference may be made, it is desirable that the views of my Government in regard to it should be placed on record.

2. The Report of the Privy Council contains an explanation of the reasons for which it is believed that, under the terms of the Convention, American fishermen are absolutely excluded from admission to Canadian bays or harbours, except for the purposes of shelter and repairing damages therein, or of purchasing wood and obtaining water. The arrangements in force between the two countries for the transhipment of goods in bond—arrangements which depend in the main upon the Customs Laws of the two countries—cannot, therefore, be regarded as in any sense restricting the operation of the Convention. It should, moreover, be remembered that these bonding arrangements are the same as those which obtained between the two countries after the expiration of the Reciprocity Treaty of 1854, and I am not aware that between that date and the date of the Treaty of 1871 any claims such as those now made by the Consul-General at Halifax were preferred on the part of the United States' Government.

3. Your Lordship will, however, clearly understand that, although it is thought necessary to enforce strictly against American fishing-vessels a restriction which was framed with the express purpose of affording protection to the fisheries of the British Colonies, that restriction would not be applicable to vessels not themselves engaged in fishing, but visiting Canadian ports in the ordinary course of trade.

I have, &c.  
(Signed) LANSDOWNE.

Inclosure 2 in No. 40.

*Sir L. West to the Marquis of Lansdowne, March 29, 1886.*

[See Inclosure 1 in No. 33.]

## Inclosure 3 in No. 40.

*Report of a Committee of the Honourable the Privy Council for Canada, approved by his Excellency the Governor-General on the 6th April, 1886.*

[See Inclosure 3 in No. 33.]

## No. 41.

*The Earl of Rosebery to Sir L. West.*

(No. 15. Treaty.)

Sir,

*Foreign Office, April 30, 1886.*

I TRANSMIT to you, for your information, a copy of the Confidential Print respecting the termination of the Fishery Articles of the Treaty of Washington for the year 1885 and for this year up to the 31st ultimo.\*

I am, &c.

(Signed) ROSEBERY.

## No. 42.

*The Earl of Rosebery to Sir L. West.*

(No. 16. Treaty.)

Sir,

*Foreign Office, May 4, 1886.*

WITH reference to your despatch No. 23, Treaty, of the 11th ultimo, I transmit to you herewith, for your information, a copy of a letter from the Colonial Office inclosing a copy of a despatch from the Governor-General of Canada, on the subject of the reported argument of the United States' Consul-General at Halifax respecting the provisions of the Treaty of 1818.†

I am, &c.

(Signed) ROSEBERY.

## No. 43.

*Sir P. Currie to Sir B. Herbert.*

Sir,

*Foreign Office, May 4, 1886.*

I AM directed by the Earl of Rosebery to acknowledge the receipt of your letter of the 30th ultimo, inclosing a copy of a despatch from the Governor-General of Canada on the subject of the North American Fisheries question, and I am to acquaint you, in reply, for the information of Earl Granville, that a copy of the despatch has been forwarded to Sir Lionel West for his information.

I am to add that copies of the inclosures to the Governor-General's despatch had been already received from Washington.

I am, &c.

(Signed) P. CURRIE.

## No. 44.

*Sir P. Currie to Sir B. Herbert.*

Sir,

*Foreign Office, May 4, 1886.*

WITH reference to my letters of the 27th and 29th ultimo, I am directed by the Earl of Rosebery to transmit to you, for the information of Earl Granville, a copy of a despatch from Her Majesty's Minister at Washington, inclosing a Report of the proceedings in the United States' House of Representatives on Mr. Dingley's Resolution, on the subject of the action taken by the Canadian Government with regard to the Fisheries question.‡

I am, &c.

(Signed) P. CURRIE.

*Mr. Bramston to Sir P. Currie.—(Received May 5.)*

Sir,

*Downing Street, May 5, 1886.*

I AM directed by Earl Granville to acknowledge the receipt of your letter of the 29th ultimo, with its inclosures, respecting the North American Fisheries question.

Lord Granville gathers from the discussion in the United States' Senate on Mr. Fry's Resolution, that it is contended that the Convention of 1818 must be read in conjunction with the Legislation of 1849, and that although under the Convention American fishing-vessels may not fish within the 3-mile limit, they are at liberty, as the result of the subsequent Legislation, to enter Canadian ports for all trading purposes.

It appears to Lord Granville to be of importance that Her Majesty's Government should be prepared with a reply to this contention, should it be officially put forward, and I am to inquire whether the Earl of Rosebery proposes to take the opinion of the Law Officers on the subject.

I am to take this opportunity of transmitting, for Lord Rosebery's perusal, a copy of a despatch from the Governor-General of Canada, inclosing a Report of a debate in the Dominion House of Commons on the subject of the protection of the fisheries; and I am to request that the printed inclosure to the despatch may be returned when done with.

The other debate referred to in Lord Lansdowne's despatch is not transmitted with this letter.

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

Inclosure 1 in No. 45.

*The Marquis of Lansdowne to Earl Granville.*

My Lord,

*Government House, Ottawa, April 7, 1886.*

I HAVE the honour to forward herewith, for your Lordship's information, extracts from the debates of the Dominion House of Commons containing a Report of a debate on two motions of the Honourable Peter Mitchell in reference to the Fisheries Police Force of Canada.

2. It will be within your Lordship's knowledge that Mr. Mitchell was Dominion Minister of Marine and Fisheries between the years 1867 and 1874.

I have, &c.  
(Signed) LANSDOWNE.

Inclosure 2 in No. 45.

*Extracts from the Debates of the Dominion House of Commons.*

*Mr. Foster.*—I am sorry my honourable friend took so unseasonable a time as this appears to be to bring up this matter in the way in which he has brought it up. I doubt very much if what information he has asked for, judging by what he has outlined in his speech, if rigidly adhered to, will prove to be the information that he desires. However, I may say this, that not only what he has asked for shall be brought down, but that all the papers in connection with the matters of which he has spoken, so far as they can be, will be brought down; and I think that the honourable gentleman will find that he has preferred charges before the information has been before the House, which, if the information had been before the House, he would not have preferred. It has always appeared to me to be rather singular that honourable gentlemen should make a motion for papers asking for information, and then should build up, without that information, certain charges about the truth of which they are not fully informed, concerning information for which they are at the moment asking. I have no doubt at all that it will be found

that the United States' fishermen and foreign fishermen, under this Treaty, fishing in Canadian waters, were considered to be, as they are considered to be, under the Rules and Regulations which govern our own fishermen. I have no doubt it will be found, as indeed it is, that they are subject to all reasonable municipal Regulations. However, it is a matter both with our own people and with others fishing within our limits as to how these regulations shall be enforced. I think my honourable friend said enough to lead this House to see that in this case the Regulations were not attempted to be enforced by the proper officers, but that certain persons took the law into their own hands, and probably the claim for damages arose largely on account of that circumstance. My honourable friend is very anxious for the integrity and the good name of Canada with reference to the protection of our fisheries. So, I am sure, is the Government, and so, I am sure, is every Member of this House; and although he has taken the opportunity on this occasion, and a preceding occasion, to warn the Government and to say what he thinks the Government ought to do, it is probably within the memory of the House that what he warns the Government to do, and advises them to do, is in the exact line of what he already knows they have done. For instance, the other evening he warned and advised the Government that the proper kind of vessels were sailing-vessels, and that steamers were a very wrong kind of vessel. Well, the honourable gentleman must have read before that that the Government were advertising for these same fast-sailing schooners, and I think it will be in the memory of honourable gentlemen that the first fishing protection fleet which was organized by my honourable friend also contained one of these objectionable steamers. However, I shall not prolong the discussion to-night. After these papers are brought down, and other papers as well, probably several honourable gentlemen will wish to speak on these different matters, and we will have a more seasonable discussion and a better opportunity of giving our views and arriving at our conclusions.

*Mr. Vail.*—I merely wish to remark that my honourable friend the Minister of Marine and Fisheries (Mr. Foster), misunderstood the Member for Northumberland. I did not understand him to make any charge against the Government, but he was merely warning the Government that in case of any arrangements hereafter being made between the two Governments, they should bear in mind that certain steps were taken by the American Government, and that they were acknowledged to a certain extent to have been right in consequence of the British Government having paid a sum of money for that right. I think the honourable Minister of Marine and Fisheries (Mr. Foster) should be obliged to the honourable Member for bringing this matter before the House, and not only the Minister but the whole House. It is certainly a matter which has attracted a good deal of attention, and notwithstanding the Minister of Marine says that the Member for Northumberland has stated that he has called the attention of the Government to certain things which he knows have been carried out. If my memory serves me right, these Americans were driven out of the harbour of Newfoundland for drying their seines or nets on a Sunday. I think the Newfoundland people objected and drove the Americans off the coast. The Americans made a demand, and it shows the value they set on our inshore fisheries, that they made a demand for something like 25,000 dollars for one day for the two or three vessels that were driven out. The British Government took the matter into consideration, and I am inclined to think, though I do not know for certain, that they settled the matter by agreeing to pay a certain amount, without consulting the Dominion Government here. If they did not consult them, they certainly acted, I think, without waiting for an answer or for the consent of the Dominion Government. I know it was the intention of the British Government at that time to call upon the Dominion Government to pay the amount. I do not know whether that was paid or not; but it shows plainly that the British Government felt at that time that they had a right to settle this matter without consulting the Dominion Government. Now I think it quite proper, in any arrangement to be made hereafter in regard to the fisheries, that the Americans should be made to understand that they will be bound to respect the municipal laws as well as our own fishermen. When the Americans had a right to come into our waters, they seemed to set a considerable value on our fisheries, but after the Treaty was abrogated they pretended to regard them as valueless. If they are of no value, all we ask of them is to remain outside of the 3-mile limit, but if they do come within that limit they must be dealt with as the law directs. I do not believe the American Government will for one moment uphold their people in violating the laws of the Dominion, or in violating a solemn Treaty entered into between the two Govern-

ments, and I sincerely hope that all necessary steps will be taken to show the Americans that we are determined to carry out the law in every respect.

*Mr. Mitchell.*—I did not expect that I was going to get a lecture from the honourable Minister of Marine and Fisheries when I rose to perform what is my undoubted right as a citizen of the country and a representative of the people. I brought forward a motion which is of great importance to this country. I brought no charges against the Government. I stated distinctly that I did not know who was to blame, but if the principle was recognized that American fishermen should be paid claims for damages when fishing illegally in our waters, I thought it was wrong, and I said I did not know whether it was done by the authority of the Canadian Government or the British Government, and I wanted to know whether this Government protested against it, or whether they were *particeps criminis* in this matter. Now, the honourable Minister said that I gave advice that fast-sailing schooners were preferable to steamers after I knew that the Government had advertised for schooners. I gave that advice a year ago, before the honourable gentleman dreamed of being in the position he now occupies, and a year before I thought that any steps would be taken in anticipation of the abrogation of the Treaty I advised the Government to take the steps they have taken to-day, but taken too late. Therefore, I am not open to the charge of giving advice after the event. I gave it last year and the year before, as "Hansard" will prove. I do not care who it is that fishes illegally in our waters. The citizens of a country have a right to prevent men breaking the law, assuming that the facts stated by my honourable friend are correctly stated; but I think a number of questions arose, particularly in the Newfoundland case. The Americans were not only fishing on Sunday, and violating the municipal law against desecrating the Sabbath, but they were using nets and fishing across from bay to bay. These were the grounds on which the fishermen drove them off. In any case, the citizens of a country have a right to prevent any person fishing illegally or violating the law, and I was not wrong in my assumption. The honourable gentleman said I should wait until the papers are before the House. That is something like what was said last year, when the Government was urged to take a vote of 50,000 or 100,000 dollars, in order to provide against the termination of the Washington Treaty. If that had been done, it would have given moral effect to the efforts of our friends in the United States' Congress who are favourable to a renewal of the Treaty. But what was done with the fisheries last year? They were given away; the Americans were begged to take them, and to take them for what? For nothing; although they were advised at that time to put on fast-sailing schooners to protect them. The honourable gentleman was a Member of Parliament at that time, and he ought to have known, when he said that I spoke after the event, that he stated what was not strictly accurate.

At the same time I went on and stated this principle which I stated to the House to-day, and the First Minister then said: "Well taken, a good point." *Mr. Speaker*, it is a good point, and it is a very important point, for if we have 500 fishermen round the shores of the bay of the county which I represent restricted to certain limitations as to nets, perhaps 10, 20, or 30 fathoms to a particular manner of disposing of the refuse from their fish, and if we find three or four American fishermen with 1, 2, or 3 miles of nets, which are prohibited by our Regulations, and if we have to compete with them, and the principle is recognized as settled by the Aspy Bay decision, the sooner this House knows it and takes the necessary steps to protest, the better, in order that Canadian fishermen shall not be placed at any disadvantage as compared with foreign fishermen, and that a law shall not be applied to one as against the other. I am satisfied the acting leader of the House is anxious to adjourn, and I shall not take up the time of the House further, but simply move the Resolution, and at the same time read the recommendation I made in the last Report I signed as Minister of Marine and Fisheries, shortly after the adoption of the Washington Treaty:—

"The admission of the United States' citizens and American fishermen to our inshores, in pursuance to the Washington Treaty, will necessitate the constant employment of cruisers to maintain order and regulate the fishing. It will be necessary to protect our own fishermen from injury and molestation, and to enforce the observance of our fishery laws. Also, it will be desirable to adopt some general system of regulation to prevent or correct any such abuses in the common pursuit as are calculated to inflict permanent damage to our estuary and river fisheries. A comprehensive Code of rules was adopted under the Fishery Convention between

Great Britain and France in 1839, to obviate collisions and disputes between the vessels and subjects of the respective Powers. These Regulations were framed by Mixed Commission, analogous it is presumed to that contemplated by Article XX of the present Treaty. In the meantime, the existing fishery laws, supplemented, if necessary, by Regulations of the Governor-General in Council, may suffice to avert any present injury from improper or unseasonable fishing; and for the present, at least, two marine police-vessels should be kept on active duty."

What I advised at that time and what I contend for now is this: We should have had, and we should have now, protection for our fishermen in the exercise of those rights which the law gives them and to which they are entitled; and I make this remark more with a view to the future than to the present. It is true the Fishery Treaty has come to an end, but there is an anxiety in Canada, notwithstanding the course taken by the American fishermen, as there is amongst a large body of men interested in the fisheries of the United States that the renewal of that Treaty, if it does occur, should occur within a reasonable time. I have brought forward the motion with a view of warning our Government that if they renew that Treaty with that Newfoundland decision, that Aspy decision standing in their face, we will find the contention of the American fishermen, as was stated during the existence of the Washington Treaty, that they were not bound by the 3-mile limit. I have brought this matter before the House for the purpose of endeavouring to find out how we stand in relation to it; first, if this demand has been made; next, if it has been made, by whose authority it has been made. If it has been made purely on the responsibility of the British Government, then I want to know whether our Government has protested against it so as to prevent its being acknowledged as a precedent if future arrangements are made. I bring forward the motion not with any desire to censure the Government, but to find out the facts, and then if we find ourselves in a false position, to warn the Government and to bring to the notice of the House the importance of putting ourselves right in the matter, with a view of preventing decisions which may have been made by the British Government on the responsibility of the British Minister at Washington, perhaps on the direction of the Foreign or Colonial Minister in London, being held to bind us in the future. If that has been done, I wish to ask the House to protest against the principle which is pernicious in itself and is detrimental to the future interests of our fishmen.

Motion for adjournment withdrawn.

---

*Adjournment—Protection of the Fisheries.*

*Sir Hector Langevin* moved the adjournment of the House.

*Mr. Mitchell.*—I think that, considering the time that has been taken up with Government matters this Session, the least we can do is to have a little opportunity to present some matters in which private individuals feel some interest. I have had a notice of motion on the paper for nearly a month, and I hope the Minister will allow me to present it to the House. It is a request for papers and information upon a very important subject connected with the fisheries of the country. I beg to move for "copies of all fishery Regulations, and of instructions to fishery officers or others commanding the alleged marine police force of Canada under the Fishery Act of 1868, relative to fishing practices by United States' citizens exercising privileges conceded by the Treaty of Washington in common with Canadian fishermen." Now, Sir, I shall take but a few minutes with this motion, it being so late, and seeing such an anxiety on the part of Members to adjourn. I will state very briefly what the object of the notice is. It is very well known that an international question arose between the United States and the Government of England arising out of some American fishermen going to the Bay of Islands, under the supervision of the Newfoundland Government, for the purpose of catching bait. These American fishermen fished with nets, and fished at a period which was contrary to the municipal Regulation of Newfoundland. They were driven off by the people of Newfoundland. The owners of the vessels made a claim through their Government upon the British Government, and the British Government, notwithstanding that these American fishermen are alleged to have fished in defiance of the municipal Regulations of that country, paid them the damages which were settled upon for having been driven off. Now, with regard to what occurred in Newfoundland it may be thought that this House has very little to do; but, Sir, the same principle that was concerned in the case of Newfoundland, and one of very great importance, affects



the settlement of all questions along the whole coast of Canada. But, Sir, a case arose in our own country, where some American fishermen, during the existence of the Washington Treaty, came within the 3-mile limit in Aspen Bay, off the coast of Nova Scotia, and with illegal nets commenced taking bait, and with illegal traps and nets took bait for the purpose of deep-sea fishing within the 3-mile district, and within the municipal jurisdiction and territory of the Dominion of Canada. We have it from the Blue Books published by the British Parliament that that question was taken up and dealt with at Washington by the British Minister, and was settled. The American fishermen, it was alleged, came within the 3-mile limit, and fished with illegal nets. The fishermen along the coast of Nova Scotia, finding the Americans were fishing with illegal nets, which were prohibited by the municipal Regulations sanctioned by the Fishery Department, and by the fishery Laws passed by this Legislature, drove them out and prevented them using their nets, and the American fishermen went away. They came back the next day and bought bait from the Canadian fishermen, and went on with the fishing as they intended to do if they had caught the bait themselves. They made a claim for damages amounting to 5,000 or 6,000 dollars, through the United States' Government, against the British Government, and they claimed that they had suffered those damages from the illegal act of the Canadian fishermen in driving them out for violating the municipal laws of Canada. The point I want to make is this: I believe it to be a fact that the British Government settled the damages, which were fixed at 600 dollars, and conceded the fact that American fishermen thus violating our laws, and being driven from within the 3-mile limit, were entitled to damages, because they paid 600 dollars damages to American fishermen. Either the contention I make now, that foreign fishermen coming within the 3-mile limit are liable to the Laws and Regulations of this Parliament, which our fishery officers are instructed to carry out, or they are not. If they are liable, then the British Government or somebody else did wrong in establishing a principle, in recognizing as correct the contention of the Americans that they are not bound by the municipal Regulations of Canada when they come within the 3-mile limit over which our territorial rights extend, which may prove a very serious difficulty to us in enforcing any future Regulation should a new Treaty be made. Some one is to blame in regard to this matter. Either the British Government have done this, with or without the consent of the Government of Canada. My own impression is that the British Minister at Washington did it without the consent of the Canadian Government. If he did, I should like to know what correspondence took place between the Canadian Government and the British Government or the British Minister at Washington, and whether the Government of Canada protested against the recognition of that principle. If the Canadian Government have protested, if they have asserted the fact that we have a right to make our own laws and to control all the fishermen, whether American, French, English, or Canadian,—if they have protested against that settlement, then I have nothing further to say about the matter, and I should be very glad if it is so. If they have not done so, if the documents show they have neglected that duty, then I wish to bring the question before this Parliament, and show the absolute duty there is on the part of Parliament of Canada to take such steps as will protest against the recognition of a principle which may in future seriously interfere with the carrying out of, and enforcement of, our Laws and Regulations, and the obtaining for our fishermen those equal rights which, if that principle is recognized, they cannot obtain. It is very well known that within the last few years a system sprung up on the part of the fishermen of the United States when they exercised rights under the Washington Treaty. I stated the other day, when making a motion somewhat analogous to this, as I said last year when I took part in the discussion on the division of the Fishery and Marine Department, what I thought was the duty of the Government in relation to this matter. I said:—

“The honourable the First Minister said that no damage was being done to our fisheries by the Americans fishing within the 3-mile limit. The right honourable gentleman is not well informed on that point.”

The honourable gentleman had stated that he did not think any great damage was being done.

“Within the last three, four, or five years a system of fishing has been established by the Americans which has been most destructive to the fisheries, and will ultimately ruin them, as the Americans have ruined their own fisheries. The Americans come in with schooners and with nets, and with 3; or 4, or 5 miles of

nets, scoop a whole bay, taking all kinds of fish; and for every one marketable mackerel two or three unmerchantable young mackerel are thrown overboard." From interviews I have had with practical fishermen, I find if I had said a hundred I would have been a great deal nearer the truth.

"Complaints have been made by fishermen of my own county of this practice, and they have asked whether any protection can be obtained."

*Mr. McLelan.*—If I understood the honourable gentleman last Session, he approved of the course taken by the Government in suspending the operations for protecting the fisheries pending the decision of the United States' Congress as to the appointment of a Commission. In last year's Estimates there was a sum of 50,000 dollars, I think, voted for the purpose of protecting the fisheries. In respect to this matter, I think the honourable Member for Digby (Mr. Vail) has taken the true view. The large claim made by the Americans was for injury done in Newfoundland waters, and the British Government notified the Newfoundland Government, which sent a Representative to Washington to settle the difficulty. There was no such notice given to us; but after the matter was settled, the British Minister put in a small claim for compensation to American fishermen for injuries suffered at Aspy Bay. He applied to us to settle that; we protested strongly against it, but, owing to subsequent circumstances, and other reasons which I am not prepared, in the absence of the First Minister, to say can be submitted to the House, a vote was taken in Parliament to pay that claim. The Newfoundland Government, I think, was represented at Washington by a Delegate, and assented to the amount fixed for compensation for the disturbance there.

*Mr. Mitchell.*—The honourable Finance Minister has put in my mouth a conclusion I never arrived at. I did not approve of the course pursued last year, and there are gentlemen in the House who recollect the position I then took. I said that the Government should ask for a vote of 50,000 or 100,000 dollars, and provide the means then for protecting our fisheries, so as to let the Americans know that we were determined to protect the rights and privileges we possessed for the benefit of our own people; but I said that in the absence of a determination on the part of this Government to do that, they could not do anything but let the Americans come in and fish. This was what I said in relation to that point, but I never consented; I never thought it was the best course to pursue, to allow the Americans to use our fisheries the rest of the season for nothing. As to the Newfoundland case, we have nothing to do with it, except that it establishes a precedent that would cover any difficulty of the kind which might arise hereafter between the fishermen of Canada and the United States. With regard to the Aspy Bay affair, the honourable gentleman admits Canada was not consulted. If our Government permitted the British Government to deal with the case, and thus establish a precedent, without protesting against it, they did wrong. Some correspondence took place between this and the Imperial Government. We are told it is for the Premier to decide whether that correspondence will be brought down or not. I hold that the Government are bound to bring it down, in order that this Parliament may see whether the Government have taken the proper steps to protect our rights and interests, and prevent precedents being set up which will seriously interfere with our maintaining our rights and standing. The Minister said a few minutes ago that Canada had an undoubted right to protect her interests, and that nobody disputed her right. Well, Sir, the Americans disputed it. For the last three or four years that they have been fishing under the Washington Treaty, they have disputed our right to enforce our municipal laws within the 3-mile limit, and we should not allow, by any improper concession, the Imperial Government to establish a precedent which would prevent us in future from claiming and exercising that right.

*Mr. Thompson.*—The subject is of very little practical importance just now, considering that we are actually discussing what shall be done when the Americans are allowed within our 3-mile limit, at a time when we declare they shall not come within the limits at all. But as honourable gentlemen, especially an honourable gentleman from my own province, got into the prophetic mood, and the discussion appears to throw imputation on the policy of the Government and implies distrust as to what the policy of the Government will be hereafter, I will say, as my honourable colleague has said, that the Parliament of Canada have an undoubted right, not only to make, but to enforce within the 3-mile limit such Regulations as it thinks proper to enact. It will not be pretended that we, or any local Legislature, have the right to pass any Regulations which would, in bad faith, limit unfairly the privileges given to the Americans or to others, but to the extent to

which we would have the right to legislate for our own people, we have the right to legislate, as far as the 3-mile limit is concerned, for all peoples and nations. Nothing whatever has transpired to tie the hands of the Government in dealing with the question when it shall arise. The principle upon which it was thought wise to make compensation to the fishermen of the United States, in respect to the Aspy Bay affair and the Newfoundland affair, was this, that notwithstanding the citizens of the United States may have violated the laws of Canada or Newfoundland, that certainly did not justify the outrage and destruction of property which occurred in those two places. By violating the local Regulations with regard to fishing on Sundays, American fishermen incurred penalty, but not the penalty of a mob destroying their vessels, nets, and other property. If it were necessary to confer the right on Canadian people to go on American soil and carry on business there, our people would be subject to the municipal Regulations of that country; but if they violated those Regulations, the Government of Canada and of Great Britain, while recognizing their liability to suffer penalty, would demand compensation to the fullest extent for any act of violence and destruction of property from which they might suffer in consequence, at the hands of an American mob. There is a marked distinction between enforcing our Regulations and justifying acts of violence. I do not say the latter were such as to warrant the compensation paid by the British Government, and which the British Government may have forced the Colonies to some extent to pay; but even if those Governments were justified in giving compensation, that does not at all involve the principle that we have not the right to enforce within the 3-mile limit our own Laws and Regulations.

*Mr McLelan.*—I do not think the honourable Member for Northumberland understood me. I said this Government did protest against the payment of any amount for the Aspy Bay affair. The British Government paid the money for Newfoundland, and applied to us to recoup them for what they had paid on our account. We protested against the payment. Afterwards circumstances arose, and we came to the House with a vote, and everybody knows what was said when the Estimates were passed. But what I want to say is, that when the application was made, we replied protesting against any amount being paid.

*Sir Hector Langevin* moved the adjournment of the House.

Motion agreed to; and at 11.5 the House adjourned.

No. 46.

*Sir L. West to the Earl of Rosebery.*—(Received May 11.)

(No. 27. Treaty.)

My Lord,

*Washington, April 29, 1886.*

I HAVE the honour to inclose to your Lordship herewith copy of a despatch which I have received from the Marquis of Lansdowne, as well as copy of a Report of a Committee of the Privy Council of Canada, in reply to an inquiry which I addressed to his Excellency on the subject of Mr. Mitchell's Report dated the 31st May, 1870.

Mr. Bayard has frequently alluded to the position taken up by the Canadian Government; but I have not thought it expedient, in the absence of instructions from your Lordship, to make any statement as to the views of Her Majesty's Government thereupon, or with regard to the Marquis of Lansdowne's above-mentioned despatch.

I have, &c.

(Signed) L. S. SACKVILLE WEST.

Inclosure 1 in No. 46.

*The Marquis of Lansdowne to Sir L. West.*

Sir,

*Government House, Ottawa, April 20, 1886.*

IN reply to your despatch of the 31st March last, asking to be informed whether Mr. Mitchell's Report of the 31st May, 1870, pointing out certain errors in Mr. Boutwell's Circular of the 16th May, 1870, is maintained by my Government, I

have the honour to inclose herewith, for your information, a copy of an approved Report of a Committee of the Privy Council containing the views of my Government upon the point referred to.

I have, &c.  
(Signed) LANSLOWNE.

Inclosure 2 in No. 46.

*Report of a Committee of the Honourable the Privy Council, approved by his Excellency the Governor-General in Council on the 15th April, 1886.*

THE Committee of the Privy Council have had under consideration a despatch dated the 31st March, 1886, from Her Majesty's Minister at Washington, requesting information as to whether Mr. Mitchell's Report, dated Ottawa, the 31st May, 1870, pointing out certain errors in Mr. Boutwell's Circular of the 16th May, 1870, is maintained by your Excellency's Government.

The Minister of Marine and Fisheries, to whom the despatch was referred, submits that the above-mentioned Report of Mr. Mitchell was approved by his Excellency in Council the 7th June, 1870, and that a further Memorandum upon the same subject and to the same effect was on the 14th June, 1870, submitted and approved by his Excellency in Council on the 1st July, 1870.

The Committee recommend that your Excellency be moved to inform Sir L. S. West that the views expressed in the Order in Council referred to are those still held by the Canadian Government, and the assurance is repeated that this Government has no intention of interfering in any way with the rights guaranteed to United States' fishermen within the limits laid down by the Convention of 1818.

The Committee respectfully submit the same for your Excellency's approval.

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

No. 47.

*Mr. Wingfield to Sir P. Currie.—(Received May 12.)*

Sir,

*Downing Street, May 11, 1886.*

WITH reference to previous correspondence respecting the North American Fisheries question, I am directed by Earl Granville to transmit to you, to be laid before the Earl of Rosebery, a copy of a letter, with its inclosure, from Lieutenant-Colonel G. Wainwright, of the Canadian Militia, on the subject.

It is requested that the printed extract may be returned when done with.

I am, &c.  
(Signed) EDWARD WINGFIELD.

Inclosure 1 in No. 47.

*Lieutenant-Colonel Wainwright to Earl Granville.*

My Lord,

*Fernleigh, Bedford, Nova Scotia, April 15, 1886.*

IT has struck me that it is worth while to inclose, for your information, the accompanying slip from the Halifax "Herald" of the 6th instant.

It is not impossible that small "Alabama" claims might arise out of the arming and authorization of Canadian cruisers. A great deal can be made out of very small beginnings or bases by American diplomatists, who, witness the Ashburton Treaty, are not troubled with scrupulousness.

Moreover, it is not improbable that, in this case, the American Consul-General is right.

I have no right to doubt that the Colonial Office is early made aware of measures taken by our Government; still, I feel impelled to send the slip inclosed.

I trust your Lordship will not take the trouble to direct the acknowledgment even of what may be a perfectly gratuitous piece of information.

I have, &c.  
 (Signed) G. WAINEWRIGHT,  
*Lieutenant-Colonel, Canadian Militia.*

Inclosure 2 in No. 47.

*Extract from the "Halifax Herald" of April 6, 1886.*

CANADA'S RIGHTS QUESTIONED.

(Halifax despatch to the "Montreal Gazette.")

IN an interview with American Consul-General Phelan to-day, he raised the new and important question that, in his opinion, Captain Scott, in the Lansdowne, while having full authority to enforce any provincial laws regarding the fisheries consistent with Treaty rights, has no authority whatever to enforce the provisions of the Treaty of 1818 without being commissioned by the Imperial Government, and all injury to American citizens or property resulting from any attempt of Canadian officials to usurp the authority of Great Britain would be good grounds for claims for damages against the British Government. He looks upon the Canadian Government as in the same position as regards national existence as the English Government doubtless regards the State of New York, neither being authorized to make or enforce Treaties.

"But has not the Imperial Government authorized Canada to enforce the Treaty provisions?" was asked.

"She may have; but did the United States, as one of the Contracting Parties, consent to this delegation of Imperial authority to a Colony? Suppose the United States delegated the State of Massachusetts authority to enforce federal Treaty obligations against Great Britain, and a village constable under local authority seized a British vessel for an alleged technical violation of the Treaty of 1818, what would the English Government say about it? They would certainly not submit to any such proceeding, and that is the position that, in my judgment, we should take in this same connection. Notwithstanding the increasing abuse of the provincial press in characterizing American fishermen as 'pirates,' 'robbers,' &c., and the many vexatious questions that will inevitably arise growing out of existing affairs, I have no fear of any serious trouble arising with Great Britain, as the latter has no disposition or interest in violating either the letter or spirit of the Treaty, and will not permit it to be done.

No. 48.

*Sir B. Herbert to Sir P. Currie.—(Received May 13.)*

Sir,

*Downing Street, May 13, 1886.*

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 Earl of Rosebery, a copy of a despatch from the Governor-General of Canada, with its inclosures, respecting Mr. Mitchell's Report of the 31st May, 1870, on Mr. Boutwell's Circular of the 16th of the same month respecting the North American fisheries.

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

## Inclosure 1 in No. 48.

*The Marquis of Lansdowne to Earl Granville.*

My Lord,

Government House, Ottawa, April 20, 1886.

I HAVE the honour to forward herewith, for your Lordship's information, copy of a despatch which I have received from Her Majesty's Minister at Washington asking to be informed whether my Government maintained Mr. Mitchell's Report of the 31st May, 1870, on Mr. Boutwell's Circular of the 16th May of the same year relating to the fisheries.

2. I caused Sir Lionel West's despatch to be referred to my Ministers for consideration, and I have the honour to inclose a copy of a despatch which I have addressed to Sir Lionel West, forwarding, for his information, a copy of an approved Report of a Committee of the Privy Council, embodying the views of my Government upon the point in question.

I have, &c.  
(Signed) LANSDOWNE.

## Inclosure 2 in No. 48.

*Sir L. West to the Marquis of Lansdowne.*

My Lord,

Washington, March 31, 1886.

WITH reference to Mr. Boutwell's Circular of the 16th May, 1870, alluded to in your Excellency's despatch of the 27th instant, I have the honour to request your Excellency to inform me whether Mr. Mitchell's Report, dated Ottawa, the 31st May, 1870, pointing out certain errors therein, is maintained by your Excellency's Government.

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

## Inclosure 3 in No. 48.

*The Marquis of Lansdowne to Sir L. West.*

Sir,

Ottawa, April 20, 1886.

IN reply to your despatch of the 31st March last, asking to be informed whether Mr. Mitchell's Report of the 31st May, 1870, pointing out certain errors in Mr. Boutwell's Circular of the 16th May, 1870, is maintained by my Government, I have the honour to inclose herewith, for your information, a copy of an approved Report of a Committee of the Privy Council containing the views of my Government upon the point referred to.

I have, &c.  
(Signed) LANSDOWNE.

## Inclosure 4 in No. 48.

*Report of a Committee of the Honourable the Privy Council, approved by his Excellency the Governor-General in Council on the 15th April, 1886.*

THE Committee of the Privy Council have had under consideration a despatch dated the 31st March, 1886, from Her Majesty's Minister at Washington, requesting information as to whether Mr. Mitchell's Report, dated Ottawa, the 31st May, 1870, pointing out certain errors in Mr. Boutwell's Circular of the 16th May, 1870, is maintained by your Excellency's Government.

The Minister of Marine and Fisheries, to whom the despatch was referred, submits that the above-mentioned Report of Mr. Mitchell was approved by his Excellency in Council the 7th June, 1870, and that a further Memorandum upon the same subject, and to the same effect, was, on the 14th June, 1870, submitted and approved by his Excellency in Council on the 1st July, 1870.

The Committee recommend that your Excellency be moved to inform Sir Lionel Sackville West that the views expressed in the Orders in Council referred to are those still held by the Canadian Government, and the assurance is repeated that this Government has no intention of interfering in any way with the rights guaranteed to United States' fishermen within the limits laid down by the Convention of 1818.

The Committee respectfully submit the same for your Excellency's approval.

(Signed)

JOHN J. McGEE,

Clerk, Privy Council, Canada.

No. 49.

*The Marquis of Lansdowne to Earl Granville.—(Communicated to the Foreign Office, May 13.)*

(Telegraphic.)

Ottawa, May 11, 1886.

SCHOONER "David Adams" was buying bait at Digby. Did not report as required by law to Collector, and concealed her name and port of registry, is now detained at Digby in charge of Collector and will be tried before Vice-Admiralty Court at Halifax for violation of Dominion Fishery Law of 1868, for contravention of Convention of 1818, and for violation of Customs Law by not reporting to Collector. Question of limit of territorial waters not raised.

No. 50.

*Question asked in the House of Commons, May 13, 1886.*

THE "DAVID J. ADAMS."

IN answer to Mr. H. Vincent,

Mr. O. Morgan said,—Upon seeing the statement in the newspapers as to the seizure of the "David J. Adams," Lord Granville telegraphed to Lord Lansdowne for full information on the subject; and yesterday morning the following reply was received by the Colonial Office: "Schooner 'David J. Adams' was buying bait at Digby; did not report, as required by law, to Collector, and concealed her name and port of registry. Is now detained at Digby in charge of Collector, and will be tried before Vice-Admiralty Court at Halifax for violation of Dominion Fishery Law of 1868, for contravention of Convention of 1818, and for violation of Customs Law by not reporting to Collector. Question of limit of territorial waters not raised." The Dominion Fishery Law of 1868 means, I believe, an Act of the Dominion Parliament, passed for the protection of Canadian fishermen and intituled the 31st Vict., cap. 60; but I cannot say which of the numerous provisions of that Act are alleged to have been violated by the American schooner.

No. 50\*.

*The Marquis of Lansdowne to Earl Granville.—(Communicated to the Foreign Office, May 13.)*

My Lord,

Government House, Ottawa, May 1, 1886.

AS I observed that some comments have been made in the London press upon the alleged detention of an American schooner at Baddeck, Cape Breton, for violation of the Fishery Laws of the Dominion, it may be as well that I should submit to you the following statement of the facts of the case with which I have been supplied by my Minister of Marine and Fisheries.

2. On the evening of the 22nd April the American steamer "Joseph Story," Captain J. L. Anderson, of Gloucester, Massachusetts, anchored off the harbour of Baddeck. On the following morning the captain came ashore, bought some supplies, engaged a man, took him on board, and sailed, without reporting to the Customs authorities. The Collector at Baddeck, Mr. L. G. Campbell, upon this telegraphed to the Sub-Collector at Bras d'Or instructing him to detain the vessel, and at the same

time reported his own action in the matter by telegram to the Minister of Customs.

3. In compliance with these instructions the Sub-Collector at Bras d'Or detained the vessel, which proved to have clearance from St. Peters to Aspy Bay on a trading voyage.

4. On the 24th April the Minister of Customs telegraphed to Mr. Campbell that the vessel should be allowed to proceed on condition that the man illegally shipped be put on shore, the captain being formally warned by the Collector not to repeat the offence.

5. Your Lordship will observe that this vessel being an American schooner rendered herself liable to seizure for violation of the Customs Law by not reporting when she touched at Baddeck, as well as of the coasting Laws by plying for trade between Canadian ports. The Collector's first telegram to the Minister of Customs stated that she was a fishing-schooner, and on that information the telegram above referred to was sent, ordering her not to be longer detained, provided the conditions attached were complied with. If it had been known that the case was one of trading illegally, the vessel would without doubt have been held for violation of the Customs Law. By the time, however, when the Minister of Customs had been made aware of the actual facts of the case she had already been released and permitted to proceed on her voyage.

I have, &c.  
(Signed) LANSDOWNE.

No. 51.

*Extracts from the "Times" of May 14, 1886.*

THE CANADIAN FISHERIES AND THE SEIZURE OF THE "DAVID J. ADAMS."

(From a Correspondent.)

THERE seems to be an erroneous view that the seizure of the American fishing-vessel "David J. Adams" by the Dominion authorities puts in issue the slumbering question between this country and the United States whether the 3-mile line inside of which British sovereignty is supreme follows the sinuosities of the coast, or is drawn from a point 3 miles outside one headland to a point 3 miles outside the next. This is not so. That dispute is one which would exist independently of any Treaty, whereas the case of the "David J. Adams" turns merely on the interpretation of the Convention of 1818 between this country and the United States. Whatever were the rights or privileges of American fishermen under the Washington Treaty of 1871, it is now immaterial to regard them, for the Washington Treaty expired on the 1st July, 1885, in accordance with the notice of termination given by the United States' Government on the 1st July, 1883. Consequently, from that date the respective rights and privileges of Canadian and American fishermen have been governed by the Convention of 1818; and upon the terms of that instrument it seems perfectly clear that the seizure was legal, and that the vessel was not, as orators are trying hard to persuade the Senate and Congress, engaged in innocent commerce.

The facts seem to be that the "David J. Adams" was seized in Digby Port, Nova Scotia, where she had put in and bought bait for the purpose of carrying on the cod-fishery in the deep water outside the 3-mile limit. First, it must be remarked that buying bait, although it may sound a trivial transaction, is most essential to American fishing-vessels. Without the privilege of procuring bait in Canadian ports and waters, they are reduced to return to their own ports, and, having purchased it there, preserve it in ice until they reach the fishing grounds. This privilege, in fact, may be classed with others, such as that of transshipping cargoes, outfitting vessels, engaging hands, and general traffic, all of which are comprised in the general term of making the Canadian shore their base of supplies, and all of which, moreover, are withheld from American fishermen by the Convention of 1818. The language of the Convention of 1818 is not only silent as regards such privileges, but is incompatible with the view that they were intended to be included in the general right of fishing thereby granted to Americans. After enumerating certain



coasts, bays, harbours, and creeks along and in which American fishermen were to be allowed to fish, with the privilege of landing for the purpose of drying and curing fish so long as the shores remained unsettled, it provides that, upon such shores becoming settled, the privilege shall cease. It then proceeds:—

“And the United States hereby renounce for ever any liberty heretofore enjoyed or claimed by the inhabitants thereof to take, dry, or cure fish on or within 3 marine miles of any of the coasts, bays, creeks, or harbours of His Britannic Majesty’s dominions in America not included within the above-mentioned limits. Provided, however, that the American fishermen shall be admitted to enter such bays or harbours for the purpose of shelter, and of repairing damages therein, of purchasing wood, and of obtaining water, *and for no other purpose whatever*. But they shall be under such restrictions as shall 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 the Convention of 1818 does not include any privileges of general traffic for fishing purposes was admitted by the United States’ Government themselves in the case submitted by them before the Halifax Commission in answer to the British case. The British Government had contended that in determining what compensation, if any, was to be paid to the British under the provisions of the Washington Treaty, regard must be had to these extra privileges which (as the British counsel then maintained) were conceded by the Washington Treaty to American fishermen. The American case alludes to this contention in the following sentences, the first of which is italicized in the original:—

“*Suffice it now to observe that the claim of Great Britain to be compensated for allowing United States’ fishermen to buy bait and other supplies of British subjects finds no semblance of foundation in the Treaty, by which no right of traffic is conceded.* The United States are not aware that the former inhospitable Statutes have ever been repealed. Their enforcement may be renewed at any moment.”

The British case, as regards the “David J. Adams,” is presumably that, the Washington Treaty having lapsed, the contingency contemplated by the United States’ Government has actually happened, and the “inhospitable Statutes” have again begun to be enforced. It may be observed that Digby Port, Nova Scotia, the harbour in which the “David J. Adams” was seized, is not one of the harbours originally accessible to American fishermen under the Convention of 1818, and even if it were, the purpose for which the vessel resorted thither was illicit.

Now for the argument by the aid of which the Americans wish to drive a coach and horses through the Convention of 1818. They say that the ordinary rights of trading which they accord to British vessels ought to be reciprocated by the Canadians, that these ordinary rights of trading cover the right to purchase bait and other fishing supplies, and they were at first inclined to go so far as to add that the “David J. Adams” was an innocent trader in such supplies. Since it has turned out that the vessel was licensed by the American authorities as a fishing-vessel alone, and held no trading licence, they are disposed to abandon this ground. But their language seems to imply that the master of a vessel carrying a trading licence would be entitled to trade for bait in Canadian ports, and then either use the bait for fishing outside the 3-mile limit or sell it to his compatriots, who would so use it. Against such a straining of the rules of international comity the Canadians would justly expect that a firm stand should be made by the Home Government, for it would amount to nothing less than a tacit abrogation of the Convention of 1818. Possibly, indeed, it may turn out to the mutual advantage of both parties that a fresh Treaty should be entered into, enabling the Americans, who are said to do the chief part of the deep-sea fishing, to come inside the 3-mile limit for the purpose of procuring bait, the sale of this being lucrative to a considerable number of the Canadian fishing population. But so far as the Americans are concerned, this is a privilege which is to be bargained for and not seized, directly or indirectly. The case of the “David J. Adams” may, at all events, have the effect of awakening Congress to the unsatisfactory state of affairs upon the Canadian coast. If, instead of adopting the retaliatory measures introduced by Senator Frye and Mr. Rice, they consent to the appointment of a Commission for the settlement of this controversy and that respecting the 3-mile limit, they will be acting in the best interests of their fishing population who frequent Canadian seas.

## THE CANADIAN FISHERIES QUESTION.

*Philadelphia, May 13.*

The fishing schooner "David J. Adams" has been libelled for forfeiture in the Halifax Admiralty Court for a violation of the Treaty of 1818, and also of various Acts of the Imperial Parliament and the Canadian Parliament. Her master has made a statement describing the seizure, and denying that the vessel's name was covered or concealed, and that any purchases were made at Digby for the purpose of fishing in British waters.

The Committee of the Senate on Commerce to-day ordered a Report to be presented in favour of Senator Frye's Bill relating to the fisheries dispute, which Bill limits the commercial privileges of vessels of foreign countries in American ports to such privileges as are accorded American vessels in the ports of such foreign countries. The Bill will be reported as an amendment to the Shipping Bill.

The House has adopted a Resolution, reported from the Foreign Affairs Committee, requesting the President to inform the House what steps have been taken to investigate the seizure of the "David J. Adams;" and also to communicate, on the earliest practicable day, what were the circumstances under which the seizure was made.

In the Canadian Senate to-day Mr. Alexander called attention to the Fisheries question, and asked for information regarding the present situation. Mr. Dickey replied that it would be extremely inconvenient in the present state of affairs to discuss the matter. He was instructed to state the Government did not expect to be in a position to give definite information on the subject before the end of the Session.

The American fishing schooner "Frank Williams" has arrived at Barrington, Nova Scotia. She has a permit from the Gloucester (Massachusetts) Custom-house to touch and trade at any foreign port, and the captain claims to a right to buy bait.

The officials referred to Ottawa, and have been instructed to-day that such a right cannot be conceded, and that the vessel must leave the port.

No. 52.

*Extract from the "Morning Post" of May 14, 1856*

## THE SEIZURE OF THE "DAVID ADAMS."

[Reuter's Telegram.]

*Washington, May 13.*

THE House of Representatives to-day adopted a Resolution requesting President Cleveland to state what steps have been taken to have the seizure of the "David Adams" by the Canadian authorities investigated, and inquiring also regarding the circumstances under which the seizure took place. Mr. Rice, one of the Members for Massachusetts, referring to the demand for an award on account of the proceedings of the "Alabama," expressed the hope that there would be now an arm as long and a voice as strong as then to exact an indemnity for the injuries which Great Britain's subjects are perpetrating, or seeking to perpetrate, upon American fishermen.

The Cabinet to-day had under consideration the seizure of the "David Adams."

The American Consul at Halifax telegraphs that he has investigated the circumstances and will forward his Report to the Government to-morrow.

The Commerce Committee of the House of Representatives have decided to report favourably on Senator Frye's Bill limiting the commercial privileges of foreign vessels to those accorded to American vessels at the ports of those countries to which the foreign vessels belong.

*Question asked in the House of Commons, May 14, 1886.*

*Mr. Baden-Powell*,—To ask the Under-Secretary of State for Foreign Affairs whether fishermen in a boat belonging to the American fishing-vessel "D. J. Adams" recently entered the basin of Annapolis, and purchased bait while within 3 miles of the shore of Nova Scotia :

Whether Article I of the United States' Convention of 1818, which now regulates all questions of fishery rights on those coasts as between American and British subjects, specifically forbids American fishermen from approaching within the 3-mile limit except for purposes of shelter, repairing damages, and purchasing wood or water :

Whether the "D. J. Adams" has in consequence been arrested by the British authorities :

Whether any other cases of illegal infringement of the existing fishery Agreements have been reported to Government during the past six weeks :

And whether, seeing that Her Majesty's Government promised on the 19th April to spare no efforts to settle any disputes that might arise as to the exercise of fishery rights under the 1818 Convention, steps are now being taken to arrange this particular dispute, and also permanently to terminate so unsatisfactory a state of affairs ?

---

*Answer.*

I beg to refer the honourable Member to the answer given in the House last night to the question of the honourable Member for Central Sheffield by the Under-Secretary of State for the Colonies, to whom questions on this subject had better be addressed.

Another case of seizure occurred last April, in which the United States' vessel was released. Cases occurring would be reported to the Colonial Office, and not to the Foreign Office.

In regard to the last paragraph of the honourable Member's question, Her Majesty's Government are of opinion that until the facts in the case of the "D. J. Adams" have been established it would be premature to consider the question of any diplomatic action.

---

No. 54.

*Memorandum by Mr. Bergne on the Canadian Fisheries Question.*

(Confidential.)

TWO matters require immediate attention :—

1. The question of denying to United States' fishing-vessels in Canadian harbours the right to buy bait and supplies, or to tranship.

The Treaty stipulations affecting this question are as follows :—

Article I of the Convention of Commerce of the 3rd July, 1815, says :—

"The inhabitants of the two countries respectively shall have liberty freely and securely to come with their ships and cargoes to all such places, ports, and rivers in the territories aforesaid (all the territories of Her Britannic Majesty in Europe and the United States) to which other foreigners are permitted to come, to enter the same," . . . . and generally "to enjoy the most complete protection for their commerce, subject to the Laws and Statutes of the two countries."

This provision of the Treaty of 1815 is continued in operation for ten years by the Convention of the 20th October, 1818, which further contains, in Article I, the special stipulations as to the fisheries, including the proviso that American fishermen shall be permitted to enter any of the bays or harbours of Her Britannic Majesty's dominions in America for four purposes, viz. : (a) repairing damages ; (b) shelter ; (c) buying wood ; (d) obtaining water ; and for no other purpose whatever.

The Convention of the 6th August, 1827, extends indefinitely the operation of the Convention of 1815, subject to denunciation on twelve months' notice.

Article I of the Convention of 1818 is expressly stated to last "for ever."

There can be no doubt that the fishery rights of the United States in British

Canadian waters are now regulated by the Convention of 1818, and as the privileges granted thereby to *fishing-boats* cannot be held in any way to be amplified by the general provisions as to entry and commerce specified in the Convention of 1815, which apply only to Europe, it seems clear that, as a matter of strict Treaty right, Canada can refuse to *fishing-vessels* permission to obtain bait, supplies, or ice, or to tranship cargoes.

The United States do not seem to dispute this, but urge that, to deny ordinary privileges and hospitality to *fishing-vessels* is contrary to the spirit of the British Navigation Acts as amended in 1849, and propose to retaliate by denying similar privileges to all Canadian vessels in United States' ports.

It appears that, there being no other Treaty stipulations on the point, they would be able to do this as regards vessels of Canada, but not of the United Kingdom.

The Canadians say that if they do not insist on the strict letter of the Treaty of 1818 the fishing industry will suffer; but there is not so much in this as might appear at first sight, since the bait purchased in Canadian ports can in no case be used in British territorial waters, from which (except a very small portion) United States' fishermen are now excluded.

I firmly believe that the advantage of the trade in bait, ice, &c., would far more than compensate the Canadians for any use made of it to their detriment.

Perhaps it might still be possible to persuade Canada, whilst reserving her full Treaty rights, to give secret instructions not to interfere with the purchase of such supplies for the present, and if this could be done, the most fruitful source of quarrel would be gone for the moment.

The second point to be considered is the instructions to be given to the Imperial cruizers.

These must certainly be in harmony with the instructions to the Canadian fishery police.

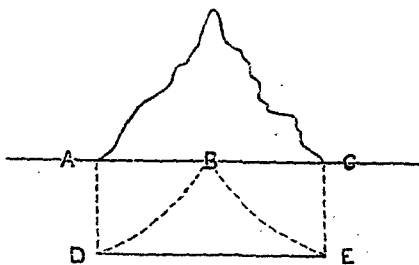
In 1871 the commanders of the Imperial cruizers were instructed that "the transhipment of fish and obtaining supplies by American *fishing-vessels* cannot be regarded as a substantial invasion of British rights, and those vessels are, therefore, not to be prevented from entering British bays for such purposes."

The Canadian instructions to the fishery police of the 16th March, 1886, however, state that foreign *fishing-vessels* are to be prevented from purchasing bait, ice, or supplies, transshipping cargoes, or from transacting any business in connection with their fishing operations.

Until we can come to some understanding with Canada, I do not see how the instructions to our Imperial cruizers on this point can be settled.

On the point of the headland question, the instructions to our cruizers should not present any great difficulty.

The secret Canadian instructions to Admiral Scott are to the effect that no seizure is to be effected except in the case of fishing within a line drawn 3 miles outside the mouths of bays not exceeding 6 miles wide. This is not much different from saying that no seizure shall be effected except within 3 miles of the shore, which is much the simplest test.



A C is a line across a bay 6 miles wide;  
B is the centre, 3 miles from A and from C.  
D E is the line drawn 3 miles outside.

By the Canadian plan the area A D E C would be closed, but by following the shore-line of 3 miles the small triangle D B E would be open.

It ought not to be difficult to settle this with Canada, as it is not a matter of appreciable importance.

I would therefore venture to suggest that the Colonial Office might be asked privately if they could try to get the Canadians, whilst reserving all strict Treaty rights, to consent for the present:—

(a.) To permit the buying of bait, supplies, &c.

(b.) Not to seize except when fishing actually within 3 miles from shore.  
If these two points were conceded, the instructions to Imperial cruisers could at once be framed on the old lines.

J. H. G. B.

May 14, 1886.

## No. 55.

*The Earl of Rosebery to Sir L. West.\**

(Treaty.)

(Telegraphic.)

Foreign Office, May 19, 1886, 5.5 P.M.

HAVE you received any communications with reference to seizures of American fishing-vessels in Nova Scotia?

Should be glad to learn by telegraph if you can suggest any *modus vivendi* to remove present friction.

## No. 56.

*Sir L. West to the Earl of Rosebery.\*—(Received May 20.)*

(Treaty.)

(Telegraphic.)

Washington, May 19, 1886.

YOUR Lordship's telegram of to-day.

See copy of note of Secretary of State inclosed in my despatch No. 28 of 11th instant, sent by post on 12th instant, and communicated to Dominion Government.

## No. 57.

*Sir L. West to the Earl of Rosebery.†—(Received May 21.)*

(Treaty.)

(Telegraphic.)

Washington, May 21, 1886.

MY telegram of 19th instant.

Further note from Secretary of State. Copy by bag to-day. Urges that all arrests of vessels for alleged violation of Convention of 1818 should be restricted to conditions laid down by Great Britain in 1870, viz., no vessel to be seized unless offence of fishing within 3-mile limit is proved. Asks that orders be given to this effect under authority of Her Majesty's Government. Have communicated [?] for] decision to Dominion Government.

## No. 58.

*Sir L. West to the Earl of Rosebery.—(Received May 24.)*

(No. 28. Treaty.)

My Lord,

Washington, May 11, 1886.

I HAVE the honour to inclose to your Lordship herewith copy of a note which I have received from the Secretary of State, commenting on the action of the Dominion Government in seizing certain American fishing vessels under the restrictive provisions of the Treaty of 1818, and inviting a frank expression of the views of Her Majesty's Government upon the subject, believing that should any difference of opinion or disagreement as to facts exist, they will be found to be so minimized that an accord can be established for the full protection of the inshore fishing of the British provinces, without obstructing the open sea-fishing operations of the citizens of the United States, or disturbing the trade Regulations now subsisting between the countries.

I have communicated copy of this note to the Marquis of Lansdowne.

I have, &amp;c.

(Signed) L. S. SACKVILLE WEST.

\* Copy to Colonial Office, May 21.

† Copy to Colonial Office, May 22.

Inclosure in No. 58.

*Mr. Bayard to Sir L. West.*

Sir, *Department of State, Washington, May 10, 1886.*  
 ON the 6th instant I received from the Consul-General of the United States at Halifax a statement of the seizure of an American schooner, the "Joseph Story," of Gloucester, Mass., by the authorities at Baddeck, Cape Breton, and her discharge, after a detention of twenty-four hours.

On Saturday, the 8th instant, I received a telegram from the same official, announcing the seizure of the American schooner "David J. Adams," of Gloucester, Mass., in the Annapolis Basin, Nova Scotia, and that the vessel had been placed in the custody of an officer of the Canadian steamer "Lansdowne," and sent to St. John, New Brunswick, for trial.

As both of these seizures took place in closely land-locked harbours, no invasion of the territorial waters of the British provinces with the view of fishing there could well be imagined. And yet the arrests appear to have been based upon the act or intent of fishing within waters as to which, under the provision of the Treaty of 1818 between Great Britain and the United States of America, the liberty of the inhabitants of the United States to fish has been renounced.

It would be superfluous for me to dwell upon the desire which, I am sure, controls those respectively charged with the administration of the Governments of Great Britain and of the United States to prevent occurrences tending to create exasperation and unneighbourly feeling or collision between the inhabitants of the two countries; but, animated with this sentiment, the time seems opportune for me to submit some views for your consideration, which I confidently hope will lead to such administration of the laws regulating the commercial interests and the mercantile marine of the two countries as may promote good feeling and mutual advantage, and prevent hostility to commerce under the guise of protection to inshore fisheries.

The Treaty of 1818 is between two nations, the United States of America and Great Britain, who, as the Contracting Parties, can alone apply authoritative interpretation thereto, or enforce its provisions by appropriate legislation.

The discussion prior to the conclusion of the Treaty of Washington in 1871 was productive of a substantial agreement between the two countries as to the existence and limit of the three marine miles, within the line of which, upon the regions defined in the Treaty of 1818, it should not be lawful for American fishermen to take, dry, or cure fish. There is no hesitancy upon the part of the Government of the United States to proclaim such inhibition and warn their citizens against the infraction of the Treaty in that regard, so that such inshore fishing cannot lawfully be enjoyed by an American vessel being within three marine miles of the land.

But since the date of the Treaty of 1818, a series of laws and regulations importantly affecting the trade between the North American provinces of Great Britain and the United States have been respectively adopted by the two countries, and have led to amicable and mutually beneficial relations between their respective inhabitants.

This independent and yet concurrent action by the two Governments has effected a gradual extension, from time to time, of the provisions of Article I of the Convention of 3rd July, 1818, providing for reciprocal liberty of commerce between the United States and the territories of Great Britain in Europe, so as gradually to include the colonial possessions of Great Britain in North America and the West Indies within the results of that Treaty.

President Jackson's Proclamation of the 5th October, 1830, created a reciprocal commercial intercourse, on terms of perfect equality of flag, between this country and the British American dependencies, by repealing the Navigation Acts of the 18th April, 1818, 15th May, 1820, and 1st March, 1823, and admitting British vessels and their cargoes "to an entry in the ports of the United States, from the islands, provinces, and Colonies of Great Britain on or near the American continent, and north or east of the United States." These commercial privileges have since received a large extension, in the interests of propinquity, and in some cases favours have been granted by the United States without equivalent concession. Of the latter class is the exemption granted by the Shipping Act of the 26th June, 1884, amounting to one-half of the regular tonnage dues on all vessels from the British

North American and West Indian possessions entering ports of the United States of the reciprocal class are the arrangements for transit of goods, and the remission by Proclamation, as to certain British ports and places, of the remainder of the tonnage tax, on evidence of equal treatment being shown to our vessels.

On the other side, British and colonial legislation, as notably in the case of the Imperial Shipping and Navigation Act of the 26th June, 1849, has contributed its share toward building up an intimate intercourse and beneficial traffic between the two countries, founded on mutual interest and convenience. These arrangements, so far as the United States are concerned, depend upon municipal statute and upon the discretionary powers of the Executive thereunder.

The seizure of the vessels I have mentioned, and certain published "warnings" purporting to have been issued by the colonial authorities, would appear to have been made under a supposed delegation of jurisdiction by the Imperial Government of Great Britain, and to be intended to include authority to interpret and enforce the provisions of the Treaty of 1818, to which, as I have remarked, the United States and Great Britain are the Contracting Parties, who can alone deal responsibly with questions arising thereunder.

The effect of this colonial legislation and executive interpretation, if executed according to the letter, would be not only to expand the restrictions and renunciations of the Treaty of 1818, which related solely to inshore fishing within the three mile limit, so as to affect the deep-sea fisheries, the right to which remained unquestioned and unimpaired for the enjoyment of the citizens of the United States, but further to diminish and practically destroy the privileges expressly secured to American fishing vessels to visit those inshore waters for the objects of shelter, repair of damages, and purchasing wood and obtaining water.

Since 1818, certain important changes have taken place in fishing in the regions in question, which have materially modified the conditions under which the business of inshore fishing is conducted, and which must have great weight in any present administration of the Treaty.

Drying and curing fish, for which a use of the adjacent shores was at one time requisite, is now no longer followed, and modern invention of processes of artificial freezing, and the employment of vessels of a larger size, permit the catch and direct transportation of fish to the markets of the United States without recourse to the shores contiguous to the fishing grounds.

The mode of taking fish inshore has also been wholly changed, and from the highest authority on such subjects I learn that bait is no longer needed for such fishing, that purse-seines have been substituted for the other methods of taking mackerel, and that by their employment these fish are now readily caught in deeper waters entirely exterior to the three mile line.

As it is admitted that the deep-sea fishing was not under consideration in the negotiation of the Treaty of 1818, nor was affected thereby, and as the use of bait for inshore fishing has passed wholly into disuse, the reasons which may have formerly existed for refusing to permit American fishermen to catch or procure bait within the line of a marine league from the shore, lest they should also use it in the same inhibited waters for the purpose of catching other fish, no longer exist.

For it will, I believe, be conceded as a fact that bait is no longer needed to catch herring or mackerel, which are the objects of inshore fishing, but is used, and only used, in deep-sea fishing, and, therefore, to prevent the purchase of bait or any other supply needed in deep-sea fishing, under colour of executing the provisions of the Treaty of 1818, would be to expand that Convention to objects wholly beyond its purview, scope, and intent, and give to it an effect never contemplated by either party, and accompanied by results unjust and injurious to the citizens of the United States.

As, therefore, there is no longer any inducement for American fishermen to "dry and cure" fish on the interdicted coasts of the Canadian provinces, and as bait is no longer used or needed by them (for the prosecution of inshore fishing) in order to "take" fish in the inshore waters to which the Treaty of 1818 alone relates, I ask you to consider the results of excluding American vessels, duly possessed of permits from their own Government, to touch and trade at Canadian ports as well as to engage in deep-sea fishing, from exercising freely the same customary and reasonable rights and privileges of trade in the ports of the British Colonies as are freely allowed to British vessels in all the ports of the United States under the laws and regulations to which I have adverted. Among these customary rights and

privileges may be enumerated the purchase of ship-supplies of every nature making repairs, the shipment of crews in whole or part, and the purchase of ice and bait for use in deep-sea fishing.

Concurrently, these usual rational and convenient privileges are freely extended to, and are fully enjoyed by, the Canadian merchant marine of all occupations including fishermen, in the ports of the United States.

The question, therefore, arises whether such a construction is admissible as would convert the Treaty of 1818 from being an instrumentality for the protection of the inshore fisheries along the described parts of the British American coast into a pretext or means of obstructing the business of deep-sea fishing by citizens of the United States, and of interrupting and destroying the commercial intercourse that, since the Treaty of 1818, and independent of any Treaty whatever, has grown up, and now exists, under the concurrent and friendly laws and mercantile regulations of the respective countries?

I may recall to your attention the fact, that a proposition to exclude the vessels of the United States engaged in fishing from carrying also merchandize was made by the British negotiators of the Treaty of 1818, but, being resisted by the American negotiators, was abandoned. This fact would seem clearly to indicate that the business of fishing did not then and does not now disqualify a vessel from also trading in the regular ports of entry.

I have been led to offer these considerations by the recent seizures of American vessels to which I have adverted, and by indications of a local spirit of interpretation in the provinces, affecting friendly intercourse, which is, I firmly believe, not warranted by the terms of the stipulations on which it professes to rest. It is not my purpose to prejudge the facts of the cases, nor have I any desire to shield any American vessel from the consequences of violation of international obligation. The views I advanced may prove not to be applicable in every feature to these particular cases, and I should be glad if no case whatever were to arise calling in question the good understanding of the two countries in this regard, in order to be free from the grave apprehensions which otherwise I am unable to dismiss.

It would be most unfortunate, and, I cannot refrain from saying, most unworthy, if the two nations who contracted the Treaty of 1818 should permit any questions of mutual right and duty under that Convention to become obscured by partizan advocacy or distorted by the heat of local interests. It cannot but be the common aim to conduct all discussion in this regard with dignity and in a self-respecting spirit, that will show itself intent upon securing equal justice rather than unequal advantage.

Comity, courtesy, and justice cannot, I am sure, fail to be the ruling motives and objects of discussion.

I shall be most happy to come to a distinct and friendly understanding with you as the Representative of Her Britannic Majesty's Government, which will result in such a definition of the rights of American fishing-vessels under the Treaty of 1818 as shall effectually prevent any encroachments by them upon the territorial waters of the British provinces for the purpose of fishing within those waters, or trespassing in any way upon the littoral or marine rights of the inhabitants, and, at the same time, prevent that Convention from being improperly expanded into an instrument of discord by affecting interests and accomplishing results wholly outside of and contrary to its object and intent, by allowing it to become an agency to interfere with and perhaps destroy those reciprocal commercial privileges and facilities between neighbouring communities which contribute so importantly to their peace and happiness.

It is obviously essential that the administration of the laws regulating the Canadian inshore fishing should not be conducted in a punitive and hostile spirit, which can only tend to induce acts of a retaliatory nature.

Everything will be done by the United States to cause their citizens engaged in fishing to conform to the obligations of the Treaty, and prevent an infraction of the fishing laws of the British provinces; but it is equally necessary that ordinary commercial intercourse should not be interrupted by harsh measures and unfriendly administration.

I have the honour, therefore, to invite a frank expression of your views upon the subject, believing that should any differences of opinion or disagreement as to facts exist, they will be found to be so minimized that an accord can be established for the full protection of the inshore fishing of the British provinces, without



obstructing the open sea fishing operations of the citizens of the United States, or disturbing the trade Regulations now subsisting between the countries.

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

No. 59.

*Sir L. West to the Earl of Rosebery.—(Received May 24.)*

(No. 29. Treaty.)

My Lord,

Washington, May 11, 1886.

I HAVE the honour to report to your Lordship that the seizure of an American fishing-vessel by the Canadian authorities for purchasing bait in Canadian waters has called forth Resolutions in the House of Representatives, a Bill in the Senate, and a Bill in the House, copies of which are herewith inclosed.

I have likewise the honour to inclose an article from the "New York Herald," as well as one from the "New York Times," on questions involved in the seizure.

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

Inclosure 1 in No. 59.

*Extracts from the "Congressional Record."*

*The "David J. Adams."*

*Mr. Dawes* submitted the following Resolution, which was considered by unanimous consent, and agreed to:—

"Resolved,—That the President be requested to communicate to the Senate, if in his opinion not incompatible with the public interest, any information in the possession of the Government concerning the alleged seizure of the United States' fishing-vessel 'David J. Adams,' while engaged in lawful commerce in one of the ports in the Dominion of Canada, and what measures, if any, have been taken to protect fishing-vessels of the United States while engaged in lawful commerce in the ports of the Dominion of Canada."

*Mr. Dawes* submitted the following Resolution, which was considered by unanimous consent, and agreed to:—

"Resolved,—That the Committee on Foreign Relations be instructed to inquire whether the United States' fishing-vessel 'David J. Adams' has been seized while engaged in lawful commerce in a port of the Dominion of Canada, and what measures, if any, are necessary to protect the persons and property of American citizens while engaged in lawful commerce in the ports of the Dominion of Canada; and to report by Bill or otherwise."

*Seizure of the Vessel, "David J. Adams."*

*Mr. Stone*, of Massachusetts, offered the following Resolution, which was read, and referred to the Committee on Foreign Affairs:—

"Whereas it is reported that an American fishing-vessel, namely, the 'David J. Adams,' of Gloucester, Massachusetts, has recently been seized in Digby, Nova Scotia, for the alleged purchase of bait, by the British flag-ship 'Lansdowne,' in apparent violation of the commercial rights conceded to American vessels by the British Government:

"Ordered,—That the Committee on Foreign Affairs be instructed to inquire into the facts of the case, with authority to recommend such legislation as may be due to a proper sense of national dignity and to a just regard for the rights and interests of the national commerce."

*Seizure of the "David J. Adams."*

*Mr. Breckinridge*, of Arkansas, offered the following Resolution, which was read, and referred to the Committee on Foreign Affairs:—

"Whereas it is reported in the public prints that on the 7th May, at Digby, in the Dominion of Canada, the schooner 'David J. Adams,' owned by American citizens, was forcibly seized by the steamer 'Lansdowne,' under order of the Government of said Dominion, and is now held for further proceedings: Therefore,

*Be it resolved*,—That the President of the United States be requested to inform this House, if not deemed by him incompatible with the good of the public service, what steps have been taken by him to have said seizure investigated, and to communicate to this House at the earliest practicable day what were the circumstances and the pretence under which said seizure was made."

Inclosure 2 in No. 59.

49th Congress, 1st Session.—H. RES. 168.

IN THE HOUSE OF REPRESENTATIVES.

May 10, 1886.—Read twice, referred to the Committee on Foreign Affairs, and ordered to be printed.

*Mr. Rice* introduced the following joint Resolution:—

*Joint Resolution for the Protection of American Fishermen.*

Resolved, by the Senate and House of Representatives of the United States of America in Congress assembled, That the recent seizure of the United States' fishing-schooner "Adams" by the Canadian Government, on the charge of purchasing fishing-bait in a Nova Scotia port, was a violation of the reciprocal commercial rights of citizens of the United States and of Great Britain, growing out of the principles of international comity recognized by the legislation of both countries, and demands of this Government prompt and efficient measures to obtain reparation to its citizens for this unlawful act, and to protect them against its repetition.

Inclosure 3 in No. 59.

49th Congress, 1st Session.—S. 2392.

IN THE SENATE OF THE UNITED STATES.

May 10, 1886.

*Mr. Frye* introduced the following Bill, which was read twice and referred to the Committee on Commerce:—

*A Bill to Limit the Commercial Privileges of Vessels of Foreign Countries in the Ports of the United States to such Purposes as are accorded to American Vessels in the Ports of such Foreign Countries.*

Be it enacted, by the Senate and House of Representatives of the United States of America in Congress assembled, That whenever any foreign country whose vessels have been placed on the same footing in the ports of the 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 harbours, ports, or waters of such foreign country, it shall be the duty of the President, on receiving satisfactory information of the continuance of such discriminations against any vessels of the United States, 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 such foreign countries, all vessels of such foreign country of

a similar character to the vessels of the United States thus discriminated against, and suspending the 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, harbours, 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 800 dollars, and shall be guilty of a misdemeanour, and, upon conviction, shall be liable to imprisonment for a term not exceeding two years.

---

Inclosure 4 in No. 59.

49th Congress, 1st Session.—H. R. 8630.

IN THE HOUSE OF REPRESENTATIVES.

*May 10, 1886.*—Read twice, referred to the Select Committee on American Ship-Building and Ship-Ownng Interests, and ordered to be printed.

*Mr. Dingley* introduced the following Bill:—

*A Bill to Limit the Commercial Privileges of Vessels of Foreign Countries in the Ports of the United States to such Purposes as are accorded to American Vessels in the Ports of such Foreign Countries.*

Be it enacted, by the Senate and House of Representatives of the United States of America in Congress assembled, That whenever any foreign country whose vessels have been placed on the same footing in the ports of the 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 harbours, ports, or waters of such foreign country, it shall be the duty of the President, on receiving satisfactory information of the continuance of such discriminations against any vessels of the United States, to issue his Proclamation excluding, on and after such time as he may indicate, all vessels of such foreign country of a similar character to the vessels of the United States thus discriminated against from the exercise of such commercial privileges in the ports of the United States as are denied to American vessels in the ports of such foreign country, and suspending the concessions previously granted to the vessels of such foreign country to the extent herein provided; and on and after the date named in such Proclamation for it to take effect, if the master, or 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, harbours, or waters of the United States, for and on account of said 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 every person opposing any officer of the United States in the enforcement of this Act, or aiding or abetting any other person in any opposition, shall forfeit 800 dollars, and shall be guilty of a misdemeanour, and, upon conviction, shall be liable to imprisonment for a term not exceeding two years.

---

Inclosure 5 in No. 59.

*Extract from the "New York Times" of May 11, 1886.*

**THE SEIZURE OF THE "ADAMS."**—The case of the "David J. Adams," seized by the Dominion Government for purchasing bait contrary to the provisions of the Treaty of 1818, is not a very important or a very well-defined case for an international dispute. In the first place, it may be stated that it does not in any way involve, directly or indirectly, the fisheries rights that have for so many years—ever

since the recognition of independence in fact—been a matter of discussion from time to time between our own and the British Government. At most, it involves, according to the Canadian pretensions, a violation of the following provision of the Treaty of 1818: "Provided, however, that the American fishermen shall be permitted to enter such bays or harbours (those of 'His Britannic Majesty's Dominions in America') for the purpose of shelter, of repairing damages therein, of purchasing wood and obtaining water, and for no other purpose whatever."

The "Adams" was seized, according to our despatch of the 7th, by the Government steamer "Lansdowne" because "the purchase of bait" was proved to the satisfaction of the Admiral and the Collector of the Port, and she was sent to St. John for a judicial trial. It may be that after the trial has been had nothing more will be heard of the matter, for there is so little for the Dominion to gain and so much to lose from pressing its present view, and that view is so far from being clearly in accordance with the law, that it would be strange and wholly unprecedented if a Court could be found to sustain it.

On the other hand, the Congressmen who are rushing in with Resolutions of inquiry and implications that our friendly relations with the Government of Great Britain are at stake may be regarded as addressing themselves to the deeply interested constituencies of the New England coast rather than to the sober judgment of either the American people or the Department of the Government which has charge of such matters. The claim made by Senator Frye and by ex-Governor Dingley, of Maine, and sustained, so far as appears, by the Secretary of State, that the right of the fishing-vessels of the United States to enter British ports for the purchase of bait rests upon the mutually recognized and general principle of commercial freedom, is in its essence a strong one. It is a claim that will in due time undoubtedly be brought to the attention of the Government of Great Britain, and we do not believe there will be any serious difficulty in securing friendly attention to it. But, in the meantime, the case of the "Adams" would not seem to be a very strong one on which to rest the presentation of the claim.

The United States have provided by statute that any vessel intending to touch at foreign ports and engage, however modestly, in foreign trade, that is to say, in the purchase or sale of goods in such ports, shall obtain a permit from the United States' Collector of Customs at the port from which she sails, setting forth her intention. This permit the "Adams" is believed and generally conceded not to have held.

Again, it was stated in our despatch of the 7th that the vessel, when in Canadian waters, had "canvas fastened over the stern to prevent identification," thus indicating that her master was conscious of being in some way engaged in an improper business. If we are going to make a test case of our rights under the "reciprocal legislation" plea, let us at least select one in which the American vessel has complied with the Regulations we have ourselves made as to the exercise of the privileges or rights we claim.

The investigation which Congressmen demand will be made, as a matter of course, by the State Department through its ordinary Agencies. The Government is quite as much in earnest in sustaining the rights of Americans in foreign countries as Congressmen even from the New England coast can be, and the Secretary of State is quite in sympathy with the view which regards the purchase of bait as an ordinary commercial right not depending at all on the Treaty of 1818 or on any other. If out of this case there can come any satisfactory understanding as to the rights and obligations on one side and on the other it will be fortunate, but there is no danger of any serious dispute over it.

---

Inclosure 6 in No. 59.

*Extract from the "New York Herald" of May 11, 1886.*

**THE ISSUE FORCED BY CANADA.**—To support their seizure of the Gloucester schooner in Digby Bay the Canadians, on the facts reported, must be maintaining one or both of these propositions:—

1. That the purchase of bait, which is the schooner's alleged offence, is not an act of legitimate commercial intercourse. But any such pretence is contradicted by

the presence of Canadian vessels in our own ports at the same moment engaged in that very kind of purchase.

2. That the Statutes of Great Britain opening her Colonies to foreign trade, enacted since the Treaty of 1818, are limited by that Treaty so that they do not extend the liberty of commercial intercourse with Canadian ports to our fishing vessels. But Great Britain, not her Colonies, was the principal with whom we dealt in the Treaty, and we have yet to learn that she has delegated to Canada the right of construing it and her municipal law in her behalf on this point.

The United States cannot accept either proposition. Our first step must be to reach an understanding with Great Britain whether she ratifies or disavows her Colony's seizure of our vessel. If she disavows it, the trouble will come quickly to an end. If she ratifies it, the Bills introduced into Congress yesterday by Senator Frye and Representative Dingley, of Maine, are designed to invest the President with a power adapted to the occasion. They would authorize him to exclude Canada from commercial intercourse with us upon evidence of the denial to us of commercial intercourse with Canada. It was contended in the Senate a few weeks ago that he already has that power under the Statute of 1823, but this legislation is proposed for greater assurance of his authority.

If the Canadians can stand non-intercourse we can. That was substantially the relation between us and them, by virtue of the British "colonial system" and navigation laws, at the time of the Treaty of 1818. The subsequent Statutes of Great Britain abrogating that system and repealing those laws were reciprocated by the grant of commercial privileges by the United States. Both our country and Canada have profited by the downfall of the barrier, but Canada more than us, and Canada will suffer more if the barrier is put up again.

There is a minor point in the case of this schooner—that she had not taken out a licence for foreign trade under section 4364 of the Revised Statutes. But if that is so, it seems to be a matter between her owners and the United States—a technical point of which Great Britain cannot with propriety avail herself. The Canadian armed vessel could not have been aware of it at the time of the seizure. It should not be allowed to interfere with the main issue.

President Cleveland must be prepared to act promptly as soon as the facts come within his official cognizance, for he has had the probability of just such a seizure long in contemplation, and it is reasonable to suppose that he has matured a policy for the case. On the 9th April, more than a month ago, Secretary Bayard telegraphed to a fishing firm in Portland, Maine:—

"I expect to attain such an understanding (with Great Britain) as will relieve our fishermen from all doubt or risk in the exercise of the ordinary commercial privileges in friendly ports, to which, under existing laws of both countries, I consider their citizens to be mutually entitled free from molestation."

The debates in the Senate on the same day and on the 13th April, preceding the adoption of the Resolution declaring that, in the opinion of that body, no Fishery Commission should be appointed, showed that the President may rely on the unanimous approval of Congress in defending the title of our citizens when molested. The following brief passages are an illustration.

Referring to the Proclamation of the Canadian Minister of Marine, under which this seizure is said to be made, Senator Evarts, of New York, a representative Republican, denounced it as taking a position for which there is "no support;" and Senator Morgan, of Alabama, a representative Democrat, said:—

"In the matter of buying bait or buying anything else our American fishermen have a right to go there (into Canadian ports) and get these things, although they are fishermen, for that is conceded to them under British law. . . . Our men in going there do not go under the license of the Treaty of 1818; they go under the license of the British Statute, and if the Statute is in existence at the time they go we should not hesitate to resent any wrong done to our people, any of them, for the performance of any act innocent at the time."

---

No. 60.

*Sir L. West to the Earl of Rosebery.—(Received May 24.)*

(No. 30. Treaty. Confidential.)

My Lord,

Washington, May 11, 1886.

WITH reference to my preceding despatch, I have the honour to inclose copy of a private letter, together with copy of the inclosure which accompanied it, which I have received from Mr. Bayard, and in consequence of which I telegraphed to the Marquis of Lansdowne in the following words:—

“Secretary of State deprecates conduct of Captain Scott in refusing to give reasons for seizure of ‘Adams.’”

I inclose to your Lordship copy of my reply to Mr. Bayard’s communication.

I have, &amp;c.

(Signed) L. S. SACKVILLE WEST.

Inclosure 1 in No. 60.

*Mr. Bayard to Sir L. West.*

My dear Sir Lionel,

Washington, May 11, 1886.

I INCLOSE a copy of a telegram just received from the United States’ Consul-General at Halifax, who, in accordance with my instructions, is giving careful attention to the case of the American schooner “David J. Adams,” seized by the Canadian steamer “Lansdowne” in Digby Basin some days ago.

The reported conduct of Captain Scott, of the “Lansdowne,” in declining to give any reason for his seizure of the “Adams,” is much to be deprecated, and it is due to the cause of law and order, which I am sure we both desire to serve, that no act of even doubtful authority should be exercised by the Provincial Authorities, and that, in the execution of undoubted powers, a calm and moderate vindication of the law should characterize all proceedings of an adversary character against Americans and their property. A harsh, uncivil administration of law adds nothing to its just force, but only furnishes cause for retaliatory action, and creates new difficulties in the settlement of international questions.

Indiscreet action on the part of the Canadian authorities should certainly be prevented in the interest of amicable relations.

Yours, &amp;c.

(Signed) T. S. BAYARD.

Inclosure 2 in No. 60.

*Mr. Phelan to Mr. Bayard.*

(Telegraphic.)

Digby, United States, May 11, 1886.

“DAVID J. ADAMS” delivered to Collector yesterday. This morning Captain Scott took possession of her again. I addressed him a note, asking why he detained the vessel. He replied by referring me to Ottawa. I will take the deposition of the captain and crew of the “Adams” as soon as they arrive.

Inclosure 3 in No. 60.

*Sir L. West to Mr. Bayard.*

(Private.)

Dear Mr. Bayard,

Washington, May 12, 1886.

I IMMEDIATELY telegraphed the substance of the telegram, copy of which was inclosed in your private letter of yesterday, respecting the seizure of the “Adams,” to Lord Lansdowne, and wrote to him the same evening.

You may rest assured that whatever it is in my power to do to bring about a satisfactory understanding on the question at issue, as well as on all others that may arise in connection therewith, will be done, and that it is my earnest desire to

carry out the instructions which I shall doubtless receive from my Government in this sense.

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

---

No. 61.

*Sir L. West to the Earl of Rosebery.—(Received May 24.)*

(No. 31. Treaty.)

My Lord,

*Washington, May 12, 1886.*

I HAVE the honour to inclose to your Lordship herewith a Memorandum embodying the views expressed in letters addressed to the press by Representatives and others of the position of the United States' Government with regard to the Treaty of 1818.

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

---

Inclosure in No. 61.

*Memorandum respecting the Contention of the American Fishing Interest.*

THE United States' Government has always claimed that the proper construction of the Treaty of 1818 made the 3-mile limit follow the coast-line, and did not allow the line to be drawn from headland to headland, and thus exclude American fishermen from waters of arms of the ocean more than 3 miles from land. But this is not the question at issue. It is commercial rights which are now in dispute, and it is contended that under existing commercial relations between the two countries (Great Britain and the United States), United States' fishing-vessels have the same right to enter Canadian ports and purchase bait to be used in the open sea-fishing as Canadian vessels to enter United States' ports for the same purpose.

It is important that the commercial rights of American fishing-vessels in Canadian ports should be settled, that is to say, whether they are to be determined by the restrictive principles of maritime intercourse which prevailed in 1818, or by the principles of maritime reciprocity inaugurated by the United States in 1824, and finally accepted by Great Britain in 1850.

---

No. 62.

*Sir L. West to the Earl of Rosebery.—(Received May 24.)*

(No. 33. Treaty.)

My Lord,

*Washington, May 13, 1886.*

WITH reference to my despatch No. 30, Treaty, of the 11th instant, I have the honour to inclose to your Lordship herewith copy of a private note which I have received from the Secretary of State in reply to mine of the 12th, together with copy of a further telegram from the United States' Consul-General at Halifax, the substance of which I also communicated to the Marquis of Lansdowne, who has replied in the following terms:—" 'Adams' will be proceeded against for violation of Customs Act of 1883, of Dominion Fishery Act of 1868, and of Convention of 1818. Captain Scott has been instructed to state reasons of seizure [in?] all cases," and the substance of which I have communicated to Mr. Bayard.

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

---

Inclosure 1 in No. 62.

*Mr. Bayard to Sir L. West.*

Dear Sir Lionel,

*Washington, May 12, 1886.*

THE tenour of your note of to-day is quite in accord with my expectations, and I cannot doubt that you will secure more circumspect and amicable action upon the part of the Canadian officials in relation to interference with American vessels not infracting Treaty stipulations against inshore fishing.

I inclose a copy of a telegram jst received from the United States' Consul-General at Halifax, which I think you ought to see, because it indicates very loose methods in dealing with matters of grave importance.

Yours, &c.  
(Signed) T. F. BAYARD.

Inclosure 2 in No. 62.

*Mr. Pheian to Mr. Bayard.*

(Telegraphic.)

*Digby, United States, May 11, 1886.*

THE charge against the "Adams" for violating the Customs was so trifling, that it seems they have abandoned it, and gone back to the charge of violating the fishery laws. The officers don't seem to know what to do. The "Adams" is here. The "Lansdowne" is here yet. Captain Scott refuses to state why the "Adams" was seized, or why she is held. This information is necessary to an intelligent defence, and I cannot understand why it is refused.

No. 63.

*Mr. Phelps to the Earl of Rosebery.—(Received May 24.)*

My Lord,

*Legation of the United States, London, May 24, 1886.*

WITH reference to our conversation of this morning, I have the honour to inclose herewith, for your information, the copy of the note to which I alluded as having been addressed by the Secretary of State to Her Majesty's Minister at Washington, respecting the recent seizure of American vessels on the Canadian coasts.

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

Inclosure in No. 63.

*Mr. Bayard to Sir L. West, May 10, 1886.*

[See Inclosure in No. 58.]

No. 64.

*The Earl of Rosebery to Sir L. West.\**

(No. 20. Treaty.)

Sir,

*Foreign Office, May 24, 1886.*

THE American Minister called on me to-day, and said that he had received a telegram from Mr. Bayard late on Saturday night instructing him to ask me if the seizure of American fishing vessels in Canadian waters could not be discontinued, and the vessels already captured restored, of course, without prejudice, and on an undertaking to surrender them if required.

Mr. Phelps went on to argue the construction of the Treaty of 1818, and said that though, at a first glance, its provisions might seem to justify the Canadian authorities in the course which they had taken, a general view of its whole scope contradicted that assumption, which, in any case, was inconsistent with the cordial relations existing between the two countries. In reply, I reminded Mr. Phelps that

\* Copy to Colonial Office, May 28.



that Treaty was concluded at a time when, after a war and a period of great bitterness, the relations between Great Britain and the United States were not so cordial as they are now.

As regarded the construction of the Treaty, I could not presume to argue with so eminent a lawyer as himself; I could not, however, refrain from expressing the opinion that the plain English of the clause seemed to me entirely to support the Canadian view. Nor was it the fault of the Canadians that they had been compelled to resort to the enforcement of the Treaty. I admitted, indeed, that the responsibility did not lie on the American Government. But the Senate had refused to sanction any negotiation on the matter, and had therefore thrown back the Canadians on the provisions of the Treaty of 1818. As regarded the seizure of the vessels which Mr. Phelps had described as having transgressed unwittingly I could only say but little, as I had received no intelligence beyond what was stated in the newspapers. If, however, they had erred unwittingly it was not our fault, for we had issued a formal warning to American fishermen that they would not be permitted, under the Treaty of 1818, to do certain things, and we had requested Mr. Bayard to issue a similar notice. He, however, had declined to do so. I could not, therefore, think that the American vessels had erred unwittingly, more especially, as, if I was rightly informed by the newspapers, there were suspicious and furtive circumstances connected with the case of the "David Adams," at any rate, which tended to prove that the captain was aware that he was acting illegally.

As to the substantial proposition of Mr. Bayard, I begged Mr. Phelps to return the following answer: No one, as he was aware, could be more anxious than I was to maintain the most cordial relations between the two countries. He well knew that I would go more than half-way to meet Mr. Bayard in this matter, but it would be difficult to ask the Canadians to suspend their legal action if we had nothing to offer them in the way of a *quid pro quo*. What I would suggest would be this, that he should telegraph at once to Washington to tell Mr. Bayard that I would do my best to induce the Colonial authorities to suspend their action if some assurance could be given me of an immediate readiness to negotiate on the question. Mr. Phelps promised to do this.

I am, &c.  
(Signed) ROSEBERY.

## No. 65.

*Sir L. West to the Earl of Rosebery.—(Received May 25, 11 P.M.)*

(Treaty.)

(Telegraphic.)

Washington, May 25, 1886.

SECRETARY of State writes privately urging some immediate understanding with me expressive of the views of the two parties to the Treaty.

## No. 66.

*Extract from the "Times" of May 25, 1886.*

THE FISHERY DISPUTES IN NORTH AMERICA.

*Sir F. Stanley* asked the Under-Secretary for the Colonies whether he was able to give to the House any further information as to the recent fishery disputes in North America; and whether Her Majesty's Government were ready to offer their assistance towards the friendly settlement of such questions between the Dominion Government of Canada and the United States' Government as had now arisen or might hereafter arise under the terms of the Convention of 1818 or otherwise.

*Mr. Osborne Morgan.*—The circumstances under which the American schooner "David J. Adams" was seized by the Canadian authorities were detailed by me to the House on the 13th May in an answer to the honourable Member for Central Sheffield (Mr. H. Vincent). They were given in a telegram received from the Governor-General of Canada on the preceding day, which I read to the House. A despatch which we have subsequently received substantially confirms this telegram. Since then another American vessel, the "Ella Doughty," is stated in the news-

papers to have been seized; but we have as yet no official information on the subject of this seizure. Her Majesty's Government have been informed by telegram that a despatch from our Minister at Washington, embodying a communication from the United States' Government on the Canadian Fishery question, is on its way to this country. That communication, when it arrives, will be considered by the Government in a friendly spirit and with a due regard for the complete maintenance of the fishery rights of our Canadian fellow-subjects. I hope, therefore, before long to be in a position to give the House further information on the subject. (Hear, hear.)

## No. 67.

*Sir J. Pauncefote to Sir R. Herbert.*

(Confidential.)

Sir,

*Foreign Office, May 26, 1886.*

I AM directed by the Earl of Rosebery to transmit to you a copy of a despatch from Her Majesty's Minister at Washington, inclosing a copy of a note from Mr. Bayard which contains representations respecting the seizure of United States' fishing vessels by Canadian authorities.\*

His Lordship would propose, with Lord Granville's concurrence, to defer making a reply to this communication until the views of the Canadian Government thereon have been received; and as it appears from Sir L. West's despatch that a copy has already been forwarded from Washington to the Governor-General, I am to suggest that his Excellency should be requested, by telegram, to send home, with the least possible delay, any observations which the Dominion Government wish to make on the subject.

I am, &c.

(Signed) JULIAN PAUNCEFOTE.

## No. 68.

*The Earl of Rosebery to Sir L. West.*

(Treaty.)

(Telegraphic.)

*Foreign Office, May 27, 6:30 P.M.*

YOUR telegram of the 25th: Fisheries.

I have sent private communication to Mr. Bayard through United States' Minister.

## No. 69.

*Mr. Bayard to Mr. Phelps.—(Communicated to the Earl of Rosebery by Mr. Phelps, May 29.)*

(Telegraphic.)

*May 27, 1886.*

YOU will say to Lord Rosebery that every disposition exists on our part to arrive at an amicable and just solution of Canadian fishery and trade question as the President has already manifested. Main point now is to have Treaty of 1818 so interpreted as not to destroy commercial intercourse, including purchase of bait for use in deep-sea fishing. This was done by Great Britain in 1871, and its abandonment now would be inadmissible and adhered to now would relieve hardship and exasperation caused by summary arrest of vessels. Present action of Canadian authorities is calculated to obstruct settlement.

\* No. 58.

This word is doubtful as to correct reading of cypher.

*Mr. Bramston to Sir P. Currie.—(Received May 29.)*

(Confidential.)

Sir,

*Downing Street, May 28, 1886.*

WITH reference to previous correspondence respecting the seizure of an American fishing-vessel by the Canadian authorities, I am directed by Earl Granville to transmit to you, for communication to the Earl of Rosebery, copies of two telegrams from the Governor-General of the Dominion on the subject.

Lord Granville is disposed to think that it may be well to suggest confidentially to the Marquis of Lansdowne that it would be advisable to gain a little time for the consideration of the proposal of the United States' Government by deferring assent to the proposed Dominion Act until after reference home.

I am, &c.

(Signed) JOHN BRAMSTON.

Inclosure 1 in No. 70.

*The Marquis of Lansdowne to Earl Granville.*

(Telegraphic.)

*May 27, 1886.*

REFERRING to my despatch of 19th May, Bill for amending Act as to fishing by foreign vessels will pass both Houses and come up for assent beginning of next week. Bill renders liable to forfeiture vessels in any way contravening Convention of 1818.

Inclosure 2 in No. 70.

*The Marquis of Lansdowne to Earl Granville.*

(Telegraphic.)

*May 27, 1886.*

YOUR telegram of 25th.

Canadian Government anxious to facilitate settlement. In order to do so we suspended all legal action for protection of our fisheries last year, although American duties on our fish were retained. Congress, however, declines to act on President's recommendation. We cannot [could not] again abandon our right without better assurance of satisfactory result than suggestion of United States' Minister. Government could not now prevent private prosecutions for breach of Fishery Laws which would certainly be resorted to by Canadian fishermen. Legality of seizures will be tested in Court. Should not this point first be disposed of? Either party could appeal to Judicial Committee of Privy Council.

No. 71.

*The Earl of Rosebery to Sir L. West.*

(No. 21 A. Treaty.)

Sir,

*Foreign Office, May 29, 1886.*

THE American Minister called on me to-day and read me a telegram from Mr. Bayard, of which I inclose a copy.

He again discussed at some length the provisions of the Treaty of 1818, and said that the newspapers which had reached him from America treated the matter as of little moment, because the British Government were sure not to support the action of the Canadian Administration. He also alluded to a correspondence with Lord Kimberley in 1871, in which Lord Kimberley stated that the Imperial Government was the sole interpreter of the British view of Imperial Treaties, and that they were not able to support the Canadian view of the bait clause. Mr. Phelps finally urged that the action of the Canadian Government should be suspended, which would then conduce to a friendly state of matters, which might enable negotiations to be resumed.

I replied to Mr. Phelps that, as regards the strict interpretation of the Treaty of 1818, I was in the unfortunate position, that there were not two opinions in this country on the matter, and that the Canadian view was held by all authorities to be legally correct. If we are now under the provisions of the Treaty of 1818 it was

by the action, not of Her Majesty's Government, or of the Canadian Government, but by the wish of the United States. I had offered to endeavour to procure the prolongation of the temporary arrangement of last year, in order to allow an opportunity for negotiating, and that had been refused. A Joint Commission had been refused, and, in fact, as any arrangement, either temporary or permanent, had been rejected by the United States, it was not a matter of option but a matter of course that we returned to the existing Treaty. As to Lord Kimberley's view, I had had no explanation from him on that point, and of course I entirely concurred with his opinion that the British Government were the interpreters of the British view of Imperial Treaties. As regarded the wish expressed by Mr. Phelps that the present action should be suspended, when possibly an opportunity might arrive for negotiation, I said that that amounted to an absolute concession of the Canadian position with no return whatever, and I feared that the refusal of the United States to negotiate, for so I could not help interpreting Mr. Bayard's silence in answer to my proposition, would produce a bad effect, and certainly would not assist the Imperial Government in their efforts to deal with this question. In the meantime, however, I begged him simply to assure Mr. Bayard that I had received his communication, and that we were still awaiting the Canadian case and the details of the other seizures, that when we had received these, for which we had telegraphed, I hoped to be in a better position for giving an answer. Mr. Phelps also touched on the seizures of these ships, and I said that the legality of that would be decided in a Court of Law, and Mr. Phelps objected that it would be a Dominion Court of Law and not an Imperial Court. I replied that an appeal would lie to the Courts in this country, and Mr. Phelps pointed out that that procedure would be expensive; but I reminded him again that it was not our fault that we had been thrown on the provisions of the Treaty of 1818.

I am, &c.  
(Signed) ROSEBERY.

No. 72.

*Sir L. West to the Earl of Rosebery.—(Received May 31.)*

(No. 35. Treaty.)

My Lord,

*Washington, May 18, 1886.*

I HAVE the honour to inclose to your Lordship herewith an article from the New York "Herald," on a common policy with France on the Fisheries question, which appears to have been inspired by correspondence from Paris, which is likewise transmitted.\*

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

Inclosure in No. 72.

*Extract from the New York "Herald" of May 17, 1886.*

**A COMMON FISHERY POLICY WITH FRANCE.**—Our special despatches from Paris by the Mackay-Bennett cables show that the seizure of the Gloucester schooner by the Canadian cruiser in Digby Basin is deemed in France an opportune occasion to combine with the United States to negotiate with Great Britain for a final settlement of all the fishery troubles pertaining to her Atlantic provinces in this continent.

The hardy Breton and Norman fishermen who cruize to Newfoundland have been harassed in the exercise of their reserved fishing rights ever since they ceded to Great Britain that island and Acadia (since divided into New Brunswick and Nova Scotia) by the Treaty of Utrecht in 1713 at the close of the war of the Spanish succession. Our difficulties are very modern in comparison, springing, most of them, out of the 1st Article of the Convention which Albert Gallatin and Richard Rush, as our Plenipotentiaries, negotiated in 1818 at London as a supplement to the Treaty of Ghent, by which the war with Great Britain begun in 1812 had been brought to a close. The deficiencies of that Treaty, and the subsequent Convention in regard to our fishing rights, were tersely mentioned by Mr. Caleb Cushing in a

\* Correspondence from Paris not printed.

passage which we transfer to another column from his well-known essay on the Treaty of Washington of 1871.

No doubt there are points in these fishery troubles as to which the United States and France might well agree upon a common policy founded upon common principles and interests. Among others, besides such as are raised by the seizure which has just been made, there are the "3-mile limit" and the "headland" questions, which are illustrated by a map that we print on another page. Many of the questions have a much more various international application than would come within the scope of a Commission restricted in membership to Representatives of only the United States and Great Britain.

In our Washington despatches this morning there is the report of an interview between one of our correspondents and the British Minister, in which the latter persists in the notion of such a limited Commission, notwithstanding the condemnation of it by the Senate by a vote of thirty-five to ten. His persistence confirms the allegation that his main purpose is one to which fishery questions would be only incidental—a purpose of negotiating for general commercial reciprocity between Canada and the United States. But it is evident, without argument, that a purpose of that kind is alien to the community of principles and interests concerning the fisheries which exists between us and France.

Supposing that the French Government shares the opinions expressed in our special despatches by prominent citizens of the French Republic, and that President Cleveland's Administration is still harbouring Minister West's notion of such a restricted Commission, this is the alternative that presents itself: shall the United States make common cause with France, and any other nations having like interests, to wipe out all these fishery troubles for ever for all the world by a great international negotiation, to which they shall be the party on the one side and Great Britain the party on the other side; or shall we continue to suffer such pretensions as those recently advanced in the Proclamation of the Canadian Minister of Marine to be used by the Dominion Government as a pressure to negotiations for a Reciprocity Treaty?

In discussing this Proclamation a few days ago, we referred to the denunciation of it in the Senate by Mr. Evarts and Mr. Morgan on the 13th April. In our Washington despatches to-day there is an interview with Mr. Evarts, in which is quoted the salient passage of his speech condemning it as having "no support."

No. 73.

*Sir L. West to the Earl of Rosebery.—(Received May 31.)*

(No. 36. Treaty.)

My Lord,

*Washington, May 21, 1886.*

WITH reference to my telegram of this day's date, I have the honour to inclose to your Lordship herewith copy of a further note which I have received from the Secretary of State, which, after commenting upon the action of the Canadian authorities in the seizure of the American schooner "David J. Adams," concludes by requesting that orders may be issued under the authority of Her Majesty's Government that no vessel be seized unless the offence of fishing within the 3-mile limit is proved in conformity with the instructions issued by the British Government in 1870.

Your Lordship will understand that I am unable, in the absence of instructions, to reply to either of the notes of the Secretary of State. I have communicated copy of the above-mentioned note to the Marquis of Lansdowne.

I have, &c.

(Signed) L. S. SACKVILLE WEST.

Inclosure in No. 73.

*Mr. Bayard to Sir L. West.*

Sir,

*Department of State, Washington, May 20, 1886.*

ALTHOUGH without reply to the note I had the honour to address to you on the 10th instant in relation to the Canadian fisheries, and the interpretation of

the Treaty of 1818, between the United States and Great Britain, as to the rights and duties of the American citizens engaged in maritime trade and intercourse with the Province of British North America, in view of the unrestrained and, as it appears to me, unwarranted, irregular, and severe action of Canadian officials towards American vessels in those waters, yet I feel it to be my duty to bring impressively to your attention information more recently received by me from the United States' Consul-General at Halifax, Nova Scotia, in relation to the seizure and continued detention of the American schooner "David J. Adams," already referred to in my previous note, and the apparent disposition of the local officials to use the most extreme and technical reasons for interference with vessels not engaged in, or intended for, inshore fishing on that coast.

The Report received by me yesterday evening alleges such action in relation to the vessel mentioned as renders it difficult to imagine it to be that orderly proceeding and "due process of law" so well known and customarily exercised in Great Britain and the United States, and which dignifies the two Governments, and gives to private rights of property and the liberty of the individual their essential safeguards.

By the information thus derived it would appear that after four several and distinct visitations by boats' crews from the "Lansdowne" in Annapolis Basin, Nova Scotia, the "David J. Adams" was summarily taken into custody by the Canadian steamer "Lansdowne," and carried out of the Province of Nova Scotia across the Bay of Fundy and into the port of St. John, New Brunswick, and without explanation or hearing, on the following Monday, the 10th May, taken back again by an armed crew to Digby, in Nova Scotia. 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 manner as to prevent its contents being read, and the request of the captain of the "David J. Adams" 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; nor was the United States' Consul-General able to learn from the Commander of the "Lansdowne" the nature of the complaint against the vessel, and his respectful application to that effect was fruitless.

In so extraordinary confused and irresponsible condition of affairs, it is not possible to ascertain with that accuracy which is needful in matters of such grave importance the precise grounds for this harsh and peremptory arrest and detention of a vessel the property of citizens of a nation with whom relations of peace and amity were supposed to exist.

From the best information, however, which the United States' Consul-General was enabled to obtain after application to the prosecuting officials, he reports that the "David J. Adams" was seized and is now held—

1. For alleged violation of the Treaty of 1818;
2. For alleged violation of the Act 59 Geo. III;
3. For alleged violation of the Colonial Act of Nova Scotia of 1868; and
4. For alleged violation of the Act of 1870 and also of 1883, both Canadian Statutes.

Of these allegations there is but one which at present I press upon your immediate consideration, and that is the alleged infraction of the Treaty of 1818.

I beg to recall to your attention the correspondence and action of those respectively charged with the administration and government of Great Britain and the United States in the year 1870, when the same international questions were under consideration and the status of law was not essentially different from what it is at present.

The correspondence discloses the intention of the Canadian authorities of that day to prevent encroachment upon their inshore fishing-grounds, and their preparations in the way of a marine police force, very much as we now witness. The Statutes of Great Britain and of her Canadian provinces, which are now supposed to be invoked as authority for the action against the schooner "David J. Adams," were then reported as the basis of their proceedings.

In his note of the 26th May, 1870, Mr., afterwards Sir Edward, Thornton, the British Minister at this capital, conveyed to Mr. Fish, the Secretary of State, copies of the orders of the Royal Admiralty to Vice-Admiral Wellesley, in command of the naval forces "employed in maintaining order at the fisheries in the neighbourhood of the coasts of Canada."

All of these orders directed the protection of Canadian fishermen and cordial

co-operation and concert with the United States' force sent on the same service with respect to American fishermen in those waters. Great caution in the arrest of American vessels charged with violation of the Canadian Fishing Laws was scrupulously enjoined by the British authorities, and extreme importance of the commanding officers of ships selected to protect the fisheries exercising the utmost discretion in paying especial attention to Lord Granville's observation that no vessel should be seized unless it were evident, and could be clearly proved, that the offence of fishing had been committed, and the vessel captured, within 3 miles of land.

This caution was still more explicitly announced when Mr. Thornton, on the 11th June, 1870, wrote to Mr. Fish:—

“You are, however, quite right in not doubting that Admiral Wellesley, on receipt of the later instructions addressed to him on the 5th ultimo, will have modified the directions to the officers under his command so that they may be in conformity with the views of the Admiralty.

“In confirmation of this I have since received a letter from Vice-Admiral Wellesley, dated the 30th ultimo, informing me that he had received instructions to the effect that officers of Her Majesty's ships employed in the protection of the fisheries should not seize any vessel unless it were evident, and could be clearly proved, that the offence of fishing had been committed, and the vessel itself captured, within 3 miles of land.”

This understanding between the two Governments wisely and efficiently guarded against the manifest danger of intrusting the execution of powers so important, and involving so high and delicate a discretion, to any but wise and responsible officials, whose prudence and care should be commensurate with the magnitude and national importance of the interests involved, and I should fail in my duty if I did not endeavour to impress you with my sense of the absolute and instant necessity that now exists for a restriction of the seizure of American vessels charged with violations of the Treaty of 1818 to the conditions announced by Sir Edward Thornton to his Government in June 1870.

The charges of violating the local Laws and commercial Regulations of the ports of the British provinces (to which I am desirous that due and full observance should be paid by citizens of the United States) I do not consider in this note; and I will only take this occasion to ask you to give me full information of the official action of the Canadian authorities in this regard, and what Laws and Regulations, having the force of law, in relation to the protection of their inshore fisheries and preventing encroachments thereon, are now held by them to be in force. But I trust that you will join with me in realizing the urgent and essential importance of restricting all arrests of American fishing-vessels for supposed or alleged violations of the Convention of 1818 within the limitations and conditions laid down by the authorities of Great Britain in 1870, to wit: that no vessel shall be seized unless it is evident, and can be clearly proved, that the offence of fishing has been committed, and the vessel itself captured, within 3 miles of land.

In regard to the necessity for the instant imposition of such restrictions upon the arrest of vessels, you will, I believe, agree with me, and I will therefore ask you to procure such steps to be taken as shall cause such orders to be forthwith put in force under the authority of Her Majesty's Government.

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

No. 74.

*Sir L. West to the Earl of Rosebery.—(Received May 31.)*

(No. 37. Treaty.)

My Lord,

Washington, May 21, 1886.

WITH reference to my preceding despatch, I have the honour to inclose to your Lordship herewith copy of a private note which I have received from Mr. Bayard, which I have referred to the Marquis of Lansdowne.

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

Inclosure in No. 74.

*Mr. Bayard to Sir L. West.*

My dear Mr. West,

*Washington, May 20, 1886.*

SINCE writing you my last note of to-day's date, my attention has been called to a statement that the American schooner "Jennie and Julia," of Eastport, Maine, having cleared from that port for Digby, Nova Scotia, made due entry at the latter port, and upon attempting to purchase a lot of herring for smoking, was warned that the vessel would be seized if herring were purchased for any purpose whatever, whereupon the vessel left without taking in cargo.

If, as it is to be inferred from the fact of the regular clearance and entry, the "Jennie and Julia" was documented for a trading voyage, the reported action of the Digby collector should be looked into very sharply.

It would certainly not help an amicable adjustment of the present difficulties if the provincial authorities were to initiate a policy of commercial non-intercourse, by refusing to permit exportation of fish in American bottoms.

The report is attracting much attention, and I have telegraphed to our Consular Agent at Digby for a statement of the facts.

I should be glad to receive from you any information you may have in relation to the collector's action.

Very, &c.  
(Signed) T. J. BAYARD.

No. 75.

*Sir L. West to the Earl of Rosebery.—(Received May 31.)*

(No. 38. Treaty.)

My Lord,

*Washington, May 21, 1886.*

I HAVE the honour to inclose to your Lordship herewith copy of a despatch which I have received from the Marquis of Lansdowne in connection with the note of the Secretary of State of the 10th instant. I have taken occasion to communicate this despatch to Mr. Bayard, who expressed great satisfaction at its contents.

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

Inclosure in No. 75.

*The Marquis of Lansdowne to Sir L. West.*

Sir,

*Government House, Ottawa, May 17, 1886.*

I HAD the honour of receiving your letter of the 12th instant, inclosing a copy of Mr. Bayard's note of the 10th upon the questions raised by the recent detention of the United States' schooner "David J. Adams" at Digby, Nova Scotia, for alleged violation of the customs and fishing laws.

You have, I understand, been good enough to supply me with a copy of that letter in order that the Dominion Government may, without loss of time, be placed in possession of the views of that of the United States in regard to these questions, and not with the object of eliciting from me at present any comments upon the arguments advanced by Mr. Bayard.

I am, however, glad to take the earliest opportunity of expressing the pleasure with which the Government of the Dominion has observed the temper in which Mr. Bayard has discussed the matter referred to and its entire concurrence with him in desiring to import into that discussion nothing that could affect the friendly relations of the two countries.

I have, &c.  
(Signed) LANSDOWNE.



*Sir L. West to the Earl of Rosebery.—(Received May 31.)*

(No. 39. Treaty.)

My Lord,

Washington, May 21, 1886.

I HAVE the honour to inclose to your Lordship herewith an article from the New York "Herald" on retaliatory measures, and in this connection I have the honour to inform your Lordship that the Senate has passed the Bill copies of which were inclosed in my despatch No. 29, Treaty, of the 11th instant.

I have, &c.

(Signed) L. S. SACKVILLE WEST.

Inclosure in No. 76.

*Extract from the New York "Herald" of May 21, 1886.*

**MUST WE RETALIATE?**—There is a precedent for the Acts already on the Canadian Statute-books and the supplementary Bills just introduced into the Ottawa Parliament by Sir John Macdonald's Ministry, which harass our fishermen by forbidding them access to Canadian ports for supplies. But it is not a precedent that should command the approval of any civilized nation—least of all Great Britain, whose statesmen of all parties in modern times have repudiated the principle of such laws, and confessed shame for the resort their predecessors had to them a century ago.

For it was by precisely this cruel kind of legislation that the Government of Lord North vainly strove to starve the patriots of our country into abasement to the usurpations of the British Crown and forced us to independence. Mr. Bancroft, in his history of the United States, enumerates in the following order the repressive measures on which the British Ministry resolved in February 1775:—

"The first step towards inspiring terror was to declare Massachusetts in a state of rebellion, and to pledge the Parliament and the whole force of Great Britain to its reduction; the next, by prohibiting the American fisheries, to starve New England; the next, to call out the savages on the rear of the Colonies; the next, to excite a servile insurrection."

A noble association of measures, truly. The suppression of our fisheries, the incitement of savages to devastate our western frontier (soon illustrated by the massacre of Wyoming), and the stirring up of servile war in the South.

Lord North, on the 8th February, in moving an Address to the King, laid special stress on the Fishery Bill as a means of coercion. On the 10th February he introduced it into the House of Commons. On the 8th March it was passed there. On the 21st March it was passed by the House of Lords. It was concisely described in a communication from the Massachusetts Agent in London as—

"A Bill for preventing the four Colonies and provinces of New England from fishing, getting any provisions from the other Colonies, or carrying on any commerce whatever to any part of the world except to Great Britain, Ireland, and the British West Indies."

It was opposed in the Commons by Fox, who styled it a measure intended to exasperate our patriots to open rebellion, and by Burke, who stigmatized it as a measure sure to bring Great Britain to penitence and humiliation; and in the Lords by the Marquis of Rockingham, who termed it "oppressive and tyrannical;" by the Duke of Manchester, who saw in it "nothing but evil," and by the Earl of Abington, who pronounced it "diabolic."

It was soon supplemented by another Bill, applying the same prohibitions to most of the remainder of the thirteen Colonies represented in the Continental Congress. How did they meet it? By retaliation in kind, just as the Bill which has passed the United States' Senate this week, and on which a Conference Committee has been asked from the House of Representatives, proposes to empower the President to respond to the odious Canadian legislation if it is sanctioned by Great Britain. On the 17th May, 1775, the Continental Congress at Philadelphia promptly answered Lord North's anti-fishery and anti-commerce Bills by resolving:—

"That all exportations to Quebec, Nova Scotia, the Island of St. John's, Newfoundland [*sic*] . . . immediately cease, and that no provisions of any kind or

other necessaries be furnished to the British fishermen on the American coasts until it be otherwise determined by the Congress."

The attack was barbarous; international jurisprudence furnished no defence save reciprocal barbarity. How unprovoked are the Canadian Statutes which cut off the trade of our fishermen with Canadian ports is illustrated by the hospitalities daily shown to Canadian fishermen in our own ports. Only yesterday (as our despatches on another page describe) a Nova Scotia fishing schooner put into Eastport, Maine, to buy several hundred barrels of bait. Was she boarded and seized for confiscation for that, as the Nova Scotians boarded and seized a Portland schooner in a Cape Breton harbour for the same kind of purchase the day before? Not at all. Her wants were supplied, and she was permitted to resume her voyage without hindrance, insult, or molestation. This has been our treatment of Canadian fishermen in the past, and it is our treatment of them at the present, notwithstanding the severe provocations they are giving us. But it cannot continue if their odious legislation against our fishermen continues.

There was a story yesterday from Washington that the British Minister has signified to our State Department his Government's disapproval of this legislation, and determination to abolish it and offer indemnity for the seizures made at Digby and on Cape Breton. We wish this might be true. We would like to believe that the embers of Lord North's legislation, though still afire in Canada, are extinct in England. We would like to know that the President will never need to issue a Proclamation to retaliate. But our Washington despatches to-day report a positive contradiction of the story, and it is also contradicted on official authority by our special correspondent in London.

No. 77.

*Sir L. West to the Earl of Rosebery.—(Received May 31.)*

(No. 40. Treaty. Very Confidential.)

My Lord,

Washington, May 21, 1886.

AT an interview which I had with the Secretary of State this day I explained to him that I was unable to express any views on his notes of the 10th and 20th instant until I should receive your Lordship's instructions, and I told him that I would telegraph the substance of his last one to your Lordship, who was probably now in possession of the first note.

Mr. Bayard said that he understood my inability as yet to take any step in the matter, and he then proceeded at great length to discuss the whole bearing of the questions at issue. He emphatically sustained the policy of the Administration as indicated in the President's Message, and of the "temporary arrangement" which had been come to, and said that he was seeking an opportunity still further to emphasize it publicly.

He regretted the denunciation of the Treaty of 1854, which had been productive of so much good feeling, as well as the abrogation of the Fishery Articles of the Treaty of Washington, which had the same tendency, and he spoke strongly against the political principles of those who had thus been the cause of the present difficulties. The protective system, he continued, was like an arch, from which if one stone was taken the rest would crumble, and those who had built the arch saw in "free fish" the removal of the stone and the consequences. But he said we must face the situation which has been thus created, and he then proceeded to reiterate the arguments used in his two notes against the interpretation of the Treaty of 1818 by the Government of the Dominion as inconsistent with the spirit of the Treaty of 1815 and all subsequent arrangements with Great Britain for establishing freedom of commerce.

Canadian vessels, he affirmed, were actually in United States' ports buying and selling bait unhindered, while United States' vessels were being seized in Canadian ports for carrying on the same commercial transactions.

"Bait" had become of no use for inshore fisheries, and he contended that the prohibition to purchase a commodity in a friendly port to be used outside territorial waters was opposed to the commercial principles hitherto advocated and adopted by Her Majesty's Government.

I remarked to Mr. Bayard that perhaps a *modus vivendi* could be found, but that I was not empowered as yet to make any propositions.

He replied that he would communicate with me later, and a short time after our interview he suggested, in a private note, that we should prepare a "*modus vivendi* applicable to the present status of Treaty and Laws affecting fisheries, and also commercial intercourse between Canada and the United States," and that we should meet and see whether the propositions could be blended.

I have not replied as yet to this communication, as it is necessary that I should seek your Lordship's instructions by telegraph.

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

## No. 78.

*Sir L. West to the Earl of Rosebery.—(Received May 31.)*

(No. 41. Treaty.)

My Lord,

Washington, May 21, 1886.

I HAVE the honour to acknowledge the receipt of your Lordship's telegram of the 19th instant with reference to the seizures of American fishing-vessels in the waters of Nova Scotia, and asking if I can suggest any *modus vivendi* to remove present friction. The note of the Secretary of State, copy of which was inclosed in my despatch No. 28, Treaty, of the 11th instant,\* fully explains the contention of the United States' Government with regard to the interpretation of the Treaty of 1818, and your Lordship will observe that it is distinctly asserted that the Governments of Great Britain and the United States as the Contracting Parties can alone apply authoritative interpretation thereto, or enforce its provisions by appropriate legislation, and that therefore the right of the Dominion Government to interpret it at all is thus ignored. It is sought, I presume, to obtain an arrangement to the effect that, since the date of the Treaty of 1818, laws and regulations affecting the trade between the North American provinces of Great Britain and the United States having been respectively adopted by the two countries, extending indeed the provisions of Article I of the Treaty of 1815 to the colonial possessions of Great Britain in North America and the West Indies, American vessels have the same right to enter Canadian ports for purposes of commerce as Canadian vessels have to enter the ports of the United States, and that the purchase of bait for deep-sea fishing outside the 3-mile limit is not to be considered as punishable under the Treaty of 1818.

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

## No. 79.

*Sir L. West to the Earl of Rosebery.—(Received May 31, 8 A.M.)*

(Treaty.)

(Telegraphic.)

Washington, May 31, 1886.

NOTE from Secretary of State for Foreign Affairs protesting against Bill in Canadian Parliament as an assumption of jurisdiction unwarranted by existing Conventions between Great Britain and United States.

Copy by post.

## No. 80.

*Mr. Phelps to the Earl of Rosebery.—(Received June 1.)*

My Lord,

Legation of the United States, London, June 1, 1886.

I HAVE the honour to inclose, for your perusal, a copy of the translation of a cypher telegram which I have just received from the Secretary of State of the United States, and respectfully to ask your early attention to the subject it refers to.

I shall have the honour to submit to your Lordship in writing, in behalf of

\* Sent by post on the 12th.

my Government, within two or three days, some observations on the questions involved.

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

Inclosure in No. 80.

*Mr. Bayard to Mr. Phelps.*

(Telegraphic.)

May 30, 1886.

CALL attention of Lord Rosebery immediately to Bill No. 136 now pending in the Parliament of Canada, assuming to execute Treaty of 1818; also Circular No. 371, by Johnson, Commissioner of Customs, ordering seizure of vessels for violation of Treaty. Both are arbitrary and unwarranted assumptions of power against which you are instructed earnestly to protest, and state that the United States will hold Government of Great Britain responsible for all losses which may be sustained by American citizens in the dispossession of their property growing out of the search, seizure, detention, or sale of their vessels lawfully within territorial waters of British North America.

No. 81.

*The Earl of Rosebery to Sir L. West.*

(Treaty.)

(Telegraphic.)

Foreign Office, June 1, 1886, 7.45 P.M.

YOUR despatch No. 28.

We do not object to a friendly interchange of personal views between yourself and Mr. Bayard without prejudice and *ad referendum*.

But as we have not yet received the Canadian Case, we cannot furnish you at present with definite instructions.

I made a proposal of negotiation to Phelps on the 24th May, to which I have received no reply.

No. 82.

*The Earl of Rosebery to Sir L. West.*

(No. 23. Treaty. Ext.)

Sir,

Foreign Office, June 1, 1886.

I HAVE received your despatch No. 28, Treaty, of the 11th ultimo on the subject of the North American fisheries, and I have to acquaint you, in reply, that Her Majesty's Government have no objection to a friendly interchange of personal views between yourself and Mr. Bayard upon this question, on the understanding that any communications which may so take place are without prejudice and *ad referendum*. Her Majesty's Government, not having yet received the full statement of the views of the Canadian Government in the matter, are not at present in a position to furnish you with definite instructions.

I have to add that on the 24th ultimo I made a proposal of negotiation to the United States' Minister at this Court, to which, however, I have not yet received any reply.

I am, &c.  
(Signed) ROSEBERY.

No. 83.

*Mr. Bramston to Sir J. Pauncefote.—(Received June 2.)*

(Confidential.)

Sir,

Downing Street, June 2, 1886.

WITH reference to the letter from this Department of the 28th ultimo, and to previous correspondence respecting the North American Fisheries question, I am

[219]

2 Q

directed by Earl Granville to transmit to you, to be laid before the Earl of Rosebery, a copy of a despatch from the Governor-General of Canada, forwarding a copy of a Bill recently introduced into the Dominion House of Commons for the purpose of amending the Act 31 Vict., cap. 61, respecting fishing by foreign vessels in the territorial waters of the Dominion.

I am also to inclose a copy of a telegram which Lord Granville has addressed to the Marquis of Lansdowne on the subject.

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

---

Inclosure I in No. 83.

*The Marquis of Lansdowne to Earl Granville.*

My Lord,

*Government House, Ottawa, May 19, 1886.*

I HAVE the honour to inclose herewith a copy of a Bill recently introduced in the Dominion House of Commons by my Minister of Marine and Fisheries for the purpose of amending the Act 31 Vict., cap 61, respecting fishing by foreign vessels in the territorial waters of the Dominion.

That Act was, as your Lordship is aware, framed with the object of giving effect to the Convention of 1818, by rendering liable to certain penalties all foreign fishing-vessels entering the territorial waters of the Dominion for any purpose not authorized by that Convention. It is provided under the 3rd section of the Act referred to that the penalty of forfeiture shall attach to any foreign vessel which "has been found fishing or preparing to fish, or to have been fishing" without a licence within the 3-mile limit. These words, which follow closely those of section 2 of the Imperial Act of 1819 (59 Geo. III, cap. 38), appear to my Government to be insufficient for the purpose of giving effect to the intentions of the framers of the Convention of 1818, inasmuch as, while the penalty of forfeiture is attached to foreign vessels found fishing or preparing to fish, or having been fishing within the 3-mile limit, it is not clear that under them the same penalty would attach to vessels entering the territorial waters in contravention of the stipulations of the Convention, for a purpose other than those of sheltering, repairing damages, purchasing wood, and obtaining water, for which purposes alone, under the terms of Article I of the Convention, and of section 3 of the Imperial Act of 1819 above referred to, foreign fishing-vessels are permitted to enter the bays and harbours of the Dominion.

Your Lordship is no doubt aware that the decisions of the Canadian Courts leave it open to question whether the purchase of bait in Canadian waters does or does not constitute a preparation to fish within the meaning of the Imperial Act of 1819 and the Canadian Statute which it is now sought to amend. The decision of Chief Justice Sir William Young in the Vice-Admiralty Court of Nova Scotia, given in November 1871 in the case of the fishing schooner "Nickerson," was to the effect that the purchasing of bait constituted such a preparation to fish within Canadian waters. The same point had, however, previously arisen in February 1871 in the Vice-Admiralty Court at St. John, New Brunswick, in the case of the American fishing-vessel "White Fawn," when Mr. Justice Hazen decided that the purchase of bait within the 3-mile limit was not of itself a proof that the vessel was preparing to fish illegally within that limit.

There being, therefore, some doubt whether the intention of the Convention of 1818 is effectually carried out either by the Imperial or the Canadian Acts referred to, it has been thought desirable by my Government to have recourse to legislation removing all doubt as to the liability to forfeiture of all foreign fishing-vessels resorting to Canadian waters for purposes not permitted by Law or by Treaty.

As the Law now stands, if it should prove that the purchase of bait is not held by the Courts to constitute a preparation to fish illegally, there would be no remedy against foreign fishing-vessels frequenting the waters of the Dominion for purposes not permitted by the Convention of 1818, except—

1. That provided by section 4 of the Act of 1819, namely, a penalty of 200l., recoverable in the superior Courts from the persons violating the provisions of the Act. This penalty, however, only attaches to a refusal to depart from the bay or harbour which the vessel has illegally entered, or to a refusal or neglect to conform to any Regulations or directions made under the Act, and as the purpose for which

the vessel has entered will in most cases have been accomplished before an order can have been given for her departure, it will be obvious that this penalty has very little practical utility.

2. The common law penalties attaching to a violation of the Imperial Statute above referred to in respect of illegally entering the bays and harbours of the Dominion. If, however, it were sought to enforce these penalties, their enforcement personally against the master of the vessel would result in his having ultimately to take his trial for a misdemeanour, while he would, in the first instance, be required to find bail to a considerable amount, a result which would, in the opinion of my Government, be regarded as more oppressive than the detention of the offending vessel subject to the investigation of her case by the Vice-Admiralty Courts.

I have, &c.  
(Signed) LANSLOWNE.

---

Inclosure 2 in No. 83.

*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 31st 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 3rd section of the hereinbefore-recited Act, as amended by the Act 33 Vict., cap. 15, intituled "An Act to amend the Act respecting Fishing by Foreign Vessels," is hereby repealed, and the following section enacted in lieu thereof:—

"3. Any one of the officers or persons hereinbefore mentioned may bring any ship, vessel, or boat, being within any harbour in Canada, or hovering in British waters, within 3 marine miles of any of the coasts, bays, creeks, or harbours in Canada, into port, and search her cargo, and may also examine the master upon oath touching the cargo and voyage; and if the master or person in command does not truly answer the questions put to him in such examination he shall incur a penalty of 400 dollars; and if such ship, vessel, or boat is foreign, or not navigated according to the law 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 3 marine miles of any of the coasts, bays, creeks, or harbours of Canada, not included within the above-mentioned limits, without a licence, or after the expiration of the term named in the last licence granted to such ship, vessel, or boat under the 1st section of this Act; or (b) has entered such waters for any purpose not permitted by the law of nations, or by Treaty or Convention, or by any law of the United Kingdom or of Canada, for the time being in force; or (c) having entered such waters has failed to comply with any such law of the United Kingdom or of Canada, such ship, vessel, or boat, and the tackle, rigging, apparel, furniture, stores, and cargo thereof shall be forfeited." (33 Vict., cap. 15, sect. 1.)

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. Revised Statutes. Third Series.

Year, Reign, and Chapter.	Title of Act.	Extent of Repeal.
Chapter 94 ..	Of the Coast and Deep-Sea Fisheries .. .. .	The whole.

## Acts passed since the Revision of the Statutes.

Year, Reign, and Chapter.	Title of Act.	Extent of Repeal.
29 Vict., cap. 35 (1886)	An Act to amend Chapter 94 of the revised Statutes "Of the Coast and Deep-Sea Fisheries."	The whole.

## ACTS of the Legislature of the Province of New Brunswick.

16 Vict., cap. 69 (1853)	An Act relating to the Coast Fisheries and for the Prevention of Illicit Trade.	The whole.
-----------------------------	---------------------------------------------------------------------------------	------------

## ACTS of the Legislature of the Province of Prince Edward Island.

6 Vict., cap. 14 (1844)	An Act relating to the Fisheries and for the Prevention of Illicit Trade in Prince Edward Island and the Coasts and Harbours thereof.	The whole.
----------------------------	---------------------------------------------------------------------------------------------------------------------------------------	------------

## Inclosure 3 in No. 83.

*Earl Granville to the Marquis of Lansdowne.*

(Telegraphic.)

*Downing Street, June 2, 1886.*

YOUR despatch No. 162.

Desirable to delay assent, or at least defer bringing into operation Bill, which at present juncture cannot fail to embarrass negotiations. Her Majesty's Government should have time to consider its provisions.

## No. 84.

*The Earl of Rosebery to Sir L. West.*

(No. 24. Treaty.)

*Foreign Office, June 2, 1886.*

Sir,  
THE American Minister informed me to-day, in the course of conversation, that he was at this moment preparing a Statement of the American contention with regard to the recent seizures under the terms of the Convention of 1818. He entered into a long argument to show that seizure was not provided for by law as a penalty for the infraction of this clause; that what was provided for was a punishment for American vessels fishing within the forbidden limits. He said that his Government could not admit the interpretation which apparently was accepted by the Canadian Government, and he mentioned the fact that in any case the American fishermen had no notice of the action that was going to be taken. As to the latter point, I replied that that was not the fault of Her Majesty's Government. On the 18th March I had telegraphed to you to ask you to request the Secretary of State to issue a Notice such as we were about to issue to Canadian fishermen, and he had declined to do so. Mr. Phelps was not aware of this. I went on to say that the view of the American Government appeared to be this: "You are to accept our interpretation of the Treaty, whether it be yours or not, and in any case we will not negotiate with you." I said that that was not a tenable proposition. Mr. Phelps said that it was quite true that his Government, owing to circumstances of which I was aware, had not been able to negotiate, but as regarded the Treaty, he felt sure that he would be able to convince me that the American interpretation was correct. I said that, as regards the circumstances to which he had alluded, we had only to look to the United States' Government, and could not look beyond it. He would remember that at almost our first interview on my accession to office I had proposed to him to endeavour to procure the continuation of the recent arrangement for a year, although that arrangement was disadvantageous to Canada in that it gave the United States all it wanted, and gave Canada nothing in return. We had also pressed on the United States' Government the issue of a Joint Commission to investigate the matter, and that had also been refused. Further, on the 24th May,

I made a proposal, personally indeed, but with all the weight which my official character could give, that Canadian action should be suspended, and negotiations should commence, and to this I had received no reply. In these circumstances, I could not feel that Her Majesty's Government had been wanting in methods of conciliation, and I begged him to send me his Statement of his case as quickly as possible, for in the meantime there was such unanimity among our Legal Advisers as to the interpretation of the Treaty of 1818 that I had nothing to submit to them. As regards the cases themselves, I had as yet no details, nor was I in possession of the Bill or of the Circular to which Mr. Bayard's recent telegram referred.

I am, &c.  
(Signed) ROSEBERY.

## No. 85.

*Sir J. Pauncefote to Sir R. Herbert.*

(Confidential.)

Sir,

*Foreign Office, June 2, 1886.*

I AM directed by the Earl of Rosebery to request that you will call Earl Granville's attention to the words of the last paragraph of the "Warning to Fishermen" issued by the Canadian Minister of Marine and Fisheries on the 5th March last, which forms Inclosure No. 8 to your letter of the 21st April last.

This paragraph of the Notice, as issued, would apparently include in the prohibition to enter Canadian harbours, for any purpose other than those four which are specified in the Convention of 1818, not only all United States' fishing vessels, to which alone the notice is intended to apply, but also all vessels of whatever kind belonging to any foreign State.

I am to state that, in Lord Rosebery's opinion, so sweeping and extraordinary an exclusion cannot have been intended, and to suggest that the immediate attention of the Canadian Government should be called to the matter with the view to the amendment of the Notice in question.

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

## No. 86.

*Sir J. Pauncefote to Sir R. Herbert.*

(Secret.)

Sir,

*Foreign Office, June 2, 1886.*

I AM directed by the Earl of Rosebery to transmit to you, to be laid before Earl Granville, a copy of a communication which his Lordship has received from the United States' Minister at this Court, protesting against the Bill relating to the fisheries which is now before the Canadian Parliament.\*

I am also to inclose a copy of a telegram which his Lordship has addressed to Sir L. West, in reply to his despatch No. 28, Treaty, of the 11th ultimo, concerning a suggested interchange of views for arriving at some settlement of the points now in dispute upon the fishery question.†

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

## No. 87.

*Sir J. Pauncefote to Sir R. Herbert.*

(Confidential.)

Sir,

*Foreign Office, June 2, 1886.*

IN reply to your letter of the 28th ultimo relative to the new Dominion Act concerning foreign fishing-vessels in Canadian ports, I am directed by the Earl of Rosebery to state to you that his Lordship concurs in Earl Granville's suggestion that time might be gained by deferring assent to the Act in question pending a reference to the Home Government.

\* No. 80.

† No. 81.



In connection with this question, I am to inclose a copy of a telegram from Her Majesty's Minister at Washington to the effect that the United States' Government have protested against the proposed Act.\*

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

## No. 88.

*Memorandum by Mr. Bergne of certain Points: Seizures for obtaining Bait, &c., and Supplies.*

THERE seems scarcely any doubt as to the true interpretation of Article I of the Convention of 1818 in this respect.

United States' fishing-vessels may enter Canadian bays for four purposes—wood, water, shelter, repairs, and for no other purpose whatever.

2. The Commercial Convention of 1815 does not apply, being limited to British territory in Europe.

3. But the United States' Government contend that the alterations effected in the Navigation Laws in 1849, after correspondence between the two Governments, give in effect an international right of commerce, even in Canada, and to fishing-vessels.

The reply to this seems to be: A domestic Act cannot override an international Treaty,† and even if it is granted that it may (by consent), we have a right to change the Act at any time, in the absence of any Treaty to the contrary.

4. The Treaty right being thus apparently impregnable it would seem that, apart from questions of policy, we have the right to pass new, or enforce existing, laws to exclude United States' fishing-vessels from Canadian harbours for all purposes save the four stated in the Convention of 1818.

5. Two questions then remain:—

(a.) Whether there are Acts in existence sufficient to enforce the strict Treaty right; and

(b.) Whether, if so, seizure is the proper penalty under them.

6. "Buying bait" stands on rather a different footing from supplies in general; the point being whether it is an evidence of "preparing to fish." If it is, it clearly brings the vessel within the terms of the Act 59 Geo. III, cap. 54, and the vessel may be seized.

There are conflicting decisions on this point by Canadian Courts: a collection of Judgments will be found in Appendix (P) of the Records of the Halifax Commission.

The sounder view seems to be that though "buying bait" is evidence of "preparing to fish," there is nothing to show intention to fish in territorial waters, which alone would be illicit to prepare for.

7. I do not know of any Canadian or Imperial Act which imposes the penalty of seizure for the obtaining of supplies in general, but the Act 59 Geo. III, cap. 54, sec. 3, gives power to the Governor to make Regulations to enforce the terms of the Convention of 1818, but whether any such Regulations exist I do not know.‡

J. H. G. BERGNE.

Foreign Office, June 3, 1886.

## No. 89.

*The Earl of Rosebery to Mr. Phelps.*

Sir,

Foreign Office, June 3, 1886.

I HAVE the honour to acknowledge the receipt of your note of the 24th ultimo, inclosing a copy of a note addressed by Mr. Bayard to Sir L. West on the subject of the Fisheries question; and I beg leave to assure you that this communication shall receive the immediate and friendly consideration of Her Majesty's Government.

I have, &c.  
(Signed) ROSEBERY.

\* No. 79.

† That would only be so if the Act were in restriction of Treaty rights.—J. P.

‡ The Governor-General's despatch transmitting the Bill gives a clear summary of the existing state of the law.—J. P.

*Memorandum by Mr. Oakes.*

[Were not Lord Granville's instructions to the Admiral after the United States had agreed to negotiate? At present they refuse.—R.]

THE negotiations which led to the conclusion of the Treaty of Washington of the 8th May, 1871, were commenced, informally, by Sir J. Rose in conversation with Mr. Fish on the 9th January, 1871. (Confidential No. 2028, p. 13.)

By a preconcerted arrangement, Sir E. Thornton proposed to the United States' Government, on the 26th January, 1871, the appointment of a Commission on the Fisheries question, &c. On the 30th January the United States requested that the "Alabama" claims should be referred to the same Commission. Sir E. Thornton acquiesced in this arrangement on the 1st February, on condition that British claims, &c., should be similarly referred. This was accepted by the United States' Government on the 3rd February. (Confidential No. 2028, p. 31.)

The British High Commissioners were appointed on the 9th February, 1871. (Confidential No. 2028, p. 42.)

On the 21st April, 1871, Admiral Fanshaw reported to the Admiralty that he was about to issue instructions to naval officers similar to those in force in the preceding year, with the addition suggested by the Admiralty in their letter of the 15th October, 1870, which would run as follows: "The transhipment of fish and obtaining supplies by American fishing vessels cannot be regarded as a substantial invasion of British rights, and those vessels are therefore not to be prevented from entering British bays for such purposes." (See Colonial Office Confidential Print 1871, p. 128.)

No correspondence appears to have passed between this Office and the Admiralty on the subject of this amendment to the instructions, but about the same date (i.e., October 1870) a similar instruction was sent by the Colonial Office to the Governor-General of Canada, in which instruction Lord Granville concurred on the 11th October, 1870. (Confidential No. 2287, p. 317.)

This instruction was therefore issued by the Admiralty and Colonial Office some time previous to the commencement of the negotiations which led to the Treaty of Washington; although, in the despatch to the Governor-General of Canada, it was stated that a proposal to appoint a Commission to settle the Fishery question was about to be made to the United States' Government. The negotiations were therefore in contemplation at the time.

(Signed) A. H. OAKES.

*Foreign Office, June 3, 1886.*

No. 90.

*The Earl of Rosebery to Mr. Phelps.*

Sir,

*Foreign Office, June 3, 1886.*

I HAVE the honour to acknowledge the receipt of your note of the 1st instant, in which you inclose a copy of a telegram from Mr. Bayard protesting against the Bill now before the Canadian Parliament relative to the Fishery question; and I beg leave to acquaint you, in reply, that the subject shall receive the early and careful consideration of Her Majesty's Government.

I have, &c.  
(Signed) ROSEBERY.

No. 91.

*Sir J. Pouncefote to Sir R. Herbert.*

(Confidential.)

Sir,

*Foreign Office, June 3, 1886.*

I AM directed by the Earl of Rosebery to transmit to you a copy of a despatch from Her Majesty's Minister at Washington, inclosing a copy of a second note from Mr. Bayard on the subject of the North American Fisheries;\* and I am to suggest that, if Earl Granville sees no objection, the Government of Canada may be requested, by telegraph, to furnish any observations on this note (which has been communicated to the Marquis of Lansdowne) in addition to those which they may offer on Mr. Bayard's note referred to in my letter of the 26th ultimo.

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

No. 92.

*Sir J. Pouncefote to Sir R. Herbert.*

(Very Confidential.)

Sir,

*Foreign Office, June 3, 1886.*

I AM directed by the Earl of Rosebery to transmit to you, for any observations which Earl Granville may have to offer, a copy of a despatch from Her Majesty's Minister at Washington relative to a proposal made by Mr. Bayard for the negotiation of some *modus vivendi* on the Fishery question.†

On this subject I am to refer you to the telegram to Sir L. West of which a copy was inclosed in my letter of yesterday's date.

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

No. 93.

*Sir J. Pouncefote to Sir R. Herbert.**Foreign Office, June 3, 1886.*

[Transmits copies of Mr. Bergne's Memorandum of May 14, and Sir L. West's Nos. 29, 30, 31, and 33, Treaty: *ante*, Nos. 54, 59, 60, 61, and 62.]

No. 94.

*The Earl of Rosebery to Sir L. West.*

(No. 25. Treaty.)

Sir,

*Foreign Office, June 4, 1886.*

I HAVE received your despatch No. 28, Treaty, of the 11th ultimo, inclosing a copy of Mr. Bayard's note relative to the Fishery question and to the seizure of United States' vessels in Canadian ports; and I have to acquaint you, in reply, that this

\* No. 73.

† No. 77.

communication shall receive the immediate and friendly consideration of Her Majesty's Government.

I am, &c.  
(Signed) ROSEBERY.

## No. 95.

*Sir J. Pauncefote to Sir R. Herbert.*

*Foreign Office, June 4, 1866.*

[Transmits copies of Sir L. West's Nos. 35, 37, 38, 39, and 41, Treaty: *ante*, Nos. 72, 74, 75, 76, and 78.]

## No. 96.

*Mr. Bramston to Sir J. Pauncefote.—(Received June 5.)*

(Confidential.)

Sir,

*Downing Street, June 4, 1866.*

WITH reference to previous correspondence relative to the North American Fisheries question, I am directed by Earl Granville to transmit to you, to be laid before the Earl of Rosebery, copies of despatches and telegrams which have passed between the Secretary of State and the Governor-General of Canada on the subject.

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

## Inclosure 1 in No. 96.

*The Marquis of Lansdowne to Earl Granville.*

My Lord,

*Government House, Ottawa, May 1, 1866.*

AS I observe that some comments have been made in the London press upon the alleged detention of an American schooner at Baddeck, Cape Breton, for violation of the Fishery Laws of the Dominion, it may be as well that I should submit to you the following statement of the facts of the case, with which I have been supplied by my Minister of Marine and Fisheries.

2. On the evening of the 22nd April the American schooner "Joseph Story," Captain J. L. Anderson, of Gloucester, Massachusetts, anchored off the harbour of Baddeck. On the following morning the captain came ashore, bought some supplies, engaged a man, took him on board, and sailed without reporting to the Customs authorities. The Collector at Baddeck, Mr. L. G. Campbell, upon this telegraphed to the Sub-Collector at Bras d'Or, instructing him to detain the vessel, and at the same time reported his own action in the matter, by telegram, to the Minister of Customs.

3. In compliance with these instructions, the Sub-Collector at Bras d'Or detained the vessel, which proved to have clearances from St. Peter's to Aspy Bay, on a trading voyage.

4. On the 24th April the Minister of Customs telegraphed to Mr. Campbell that the vessel should be allowed to proceed on condition that the man illegally shipped be put on shore, the captain being formally warned by the Collector not to repeat the offence.

5. Your Lordship will observe that this vessel, being an American schooner, rendered herself liable to seizure for violation of the Customs Law by not reporting when she touched at Baddeck, as well as of the Coasting Laws by plying for trade between Canadian ports. The Collector's first telegram to the Minister of Customs stated that she was a fishing schooner, and on that information the telegram above referred to was sent, ordering her not to be longer detained provided the conditions attached were complied with. If it had been known that the case was one of trading illegally, the vessel would, without doubt, have been held for violation of the Customs Law. By the time, however, when the Minister of Customs had been made

aware of the actual facts of the case she had already been released and permitted to proceed on her voyage.

I have, &c.<sup>r</sup>  
(Signed) LANSDOWNE.

Inclosure 2 in No. 96.

*Earl Granville to the Marquis of Lansdowne.*

(Telegraphic.)

*Downing Street, May 10, 1886.*

PLEASE telegraph early full particulars seizure of the vessel "David J. Adams."

Inclosure 3 in No. 96.

*The Marquis of Lansdowne to Earl Granville.*

(Telegraphic.)

*Ottawa, May 11, 1886.*

SCHOONER "David J. Adams" was buying bait at Digby, did not report, as required by law, to Collector, and concealed her name and port of registry; is now detained at Digby in charge of Collector, and will be tried before Vice-Admiralty Court at Halifax for violation of Dominion Fishery Law of 1868, for contravention of Convention of 1818, and for violation of Customs Law by not reporting to Collector. Question of limits of territorial waters not raised.

Inclosure 4 in No. 96.

*The Marquis of Lansdowne to Earl Granville.*

(Confidential.)

My Lord,

*Government House, Ottawa, May 11, 1886.*

I HAD the honour to send your Lordship yesterday a telegram giving particulars of the detention on the 7th instant at Digby, Nova Scotia, of the United States schooner "David J. Adams" for breach of the Customs and Fishery Laws.

2. Your Lordship will observe that the case was one in which there was no doubt that the vessel had knowingly entered a Canadian port for an illegal purpose, her captain having endeavoured to conceal her name and port of registry. The evidence on this point, and also the proof that she had bought bait in large quantities, was, I understand, ample.

3. She had, in addition to this, violated sections 25 and 29 of the Customs Act of 1883 (46 Vict., cap. 12), having been for fully twenty-four hours in port without reporting to the Collector of Customs.

4. In consequence of the above occurrences, Captain P. A. Scott, R.N., in command of the fisheries police steamer "Lansdowne," took possession of the schooner and towed her to St. John, New Brunswick. Instructions had in the meanwhile been sent to him by telegraph, as soon as the Fisheries Department had been advised of the seizure, to detain the "David J. Adams" at Digby, it being thought best that the vessel should be libelled and the case tried in the Vice-Admiralty Court of the province in which the offence had been committed. In compliance with these instructions, Captain Scott took the "David J. Adams" back to Digby, where she now remains in charge of the Collector of Customs.

5. Proceedings will be taken against her: (1) for violation of the Customs Act above referred to; (2) for violation of the Dominion Fishery Act, 1868 (31 Vict., cap. 61); (3) for contravention of the provisions of the Convention of 1818 as enacted in the Imperial Act of 1819 (59 Geo. III, cap. 38).

6. No question has in this case arisen with regard to the limits of the territorial waters of the Dominion.

7. As your Lordship is no doubt aware, American fishing-vessels frequenting the coast of Canada have been in the habit of depending to a great extent upon Canadian fishermen for their supplies of bait. It has been usual for such vessels

hailing from New England ports, as soon as the supply with which they had provided themselves on starting for their trip had become exhausted, to renew it in Canadian waters. Such vessels, if compelled as soon as they ran short of bait to return from the Canadian Banks to an American port, would lose a great part of their fishing season, and be put to considerable expense and inconvenience. Some idea of the importance of this point may be formed from the fact that Mr. Joucas, Commissioner to the London Fisheries Exhibition, and a high authority on all matters connected with the fisheries of the Dominion, in a paper read before the British Association at Montreal in 1884, estimates the cost of the bait used by each vessel engaged in the cod fishery at one-fourth of the value of her catch of cod.

8. There can, however, be no doubt that, under the terms of the Convention of 1818, foreign fishing-vessels are absolutely precluded from resorting to Canadian waters for the purpose of obtaining supplies of bait, and in view of the injury which would result to the fishing interests of the Dominion, which the Convention of 1818 was manifestly intended to protect, if any facilities not expressly authorized by that Convention were conceded to foreign fishermen, my Government will, so long as the relations of the Dominion with the United States are regulated by the Convention, be disposed to insist upon a strict observance of its provisions in this respect.

9. I will keep your Lordship informed of any further occurrences which may take place in connection with this question.

I have, &c.  
(Signed) LANSDOWNE.

Inclosure 5 in No. 96.

*The Marquis of Lansdowne to Earl Granville.*

My Lord,

*Government House, Ottawa, May 17, 1886.*

I HAVE the honour to inclose herewith, for your information, copies of the following papers relating to the recent seizure of the United States' schooner "David J. Adams" for alleged violation of the Customs and Fishery Laws:—

1. Captain Scott's Report addressed to the Deputy Minister of Fisheries.
2. Statement by the first officer of the Dominion cruiser "Lansdowne."
3. Five statements sworn before Captain Scott.

2. I take this opportunity of observing that on the 11th and 13th instant I received from Her Majesty's Minister at Washington telegrams informing me that it had been made a subject of complaint by the United States' Consul at Halifax that he was unable to obtain at once from Captain Scott, in command of the Government steamer "Lansdowne," a statement of the reasons for which the "David J. Adams" was detained, and that the Secretary of State deprecated Captain Scott's conduct in the matter. To these telegrams I sent a reply stating that the vessel in question would be proceeded against for violation of the Customs Act of 1883, of the Dominion Fishery Act of 1868, and of the Convention of 1818. I added that Captain Scott had been instructed to state his reasons for any subsequent seizure which he might find it necessary to make.

3. It is, I think, fair to point out in reference to this complaint that the seizure being the first which had taken place, and the legal questions involved being somewhat intricate, Captain Scott may be presumed to have been not unnaturally reluctant to commit himself to the extent of supplying the United States' Consul with a formal definition of the charges which would be made against the "David J. Adams," and of the grounds upon which he had made the seizure, although he evidently felt no doubt that they were sufficient to warrant his action, and although, as your Lordship will perceive on reference to the inclosures herewith, he made an informal statement of those grounds at the outset to the master of the seized vessel.

4. I may add that, as soon as the matter had been inquired into by my Ministers, Captain Scott was authorized to supply the master of the "David J. Adams" with a written statement of the reasons for which that vessel was seized.

I have, &c.  
(Signed) LANSDOWNE.

## Inclosure 6 in No. 96.

*Statement of Samuel Dennis Ellis.*

I, SAMUEL DENNIS ELLIS, fisherman, being duly sworn, state that on the morning of the 6th instant the master of the "David J. Adams," professing to be under an English register, applied to me for bait, and I therefore sold him four barrels of herring, which I saw him take on board his own vessel. I know nothing further of this matter, but am certain as to the vessel, having noticed she had a broken main topmast.

By Captain Scott, R.N., Fishery Officer.

(Signed) SAMUEL D. ELLIS, his x mark.

Witness:

(Signed) WM. HAWLEY, *Fishery Overseer.*

*Victoria Beach, Granville, Nova Scotia,*

*May 7, 1886.*

## Inclosure 7 in No. 96.

*Statement of Charles T. Dakin.*

I, CHARLES T. DAKIN, being duly sworn, do testify as follows:—

That on the 7th day of May I boarded the American schooner "David J. Adams," of Gloucester, Massachusetts, and went into the hold and examined the bait I saw packed in ice, and do solemnly declare that it was fresh. I asked the captain if it was true that he had bought any bait from a man named Ellis. He replied that he did not think this was true.

Before Captain Scott, R.N., Fishery Officer.

(Signed) CHARLES T. DAKIN,

*Master of the Government steamer "Lansdowne."*

Witness:

(Signed) MANFRED SAWYER.

*Digby, Nova Scotia, May 11, 1886.*

## Inclosure 8 in No. 96.

*Statement of Edwin C. Dodge.*

EDWIN C. DODGE, master mechanic, duly sworn:—

While standing on Digby Pier about 9 o'clock in the morning on the 6th May, I observed a fishing schooner, which proved to be the "David J. Adams," of Gloucester, Massachusetts, standing to the southward under her four lower sails, and observed her to tack close into the wharf.

I observed when her stern was toward me that her name could not be made out, it being hidden by canvas, and which, in my opinion, was done with the object of screening it.

By Captain Scott, R.N., Fishery Officer.

(Signed) EDWIN C. DODGE.

*Digby, Nova Scotia, May 7, 1886.*

## Inclosure 9 in No. 96.

*Statement of Owen Riley.*

OWEN RILEY, a fisherman, duly sworn:—

While standing on Digby Pier at about 9 o'clock in the morning of the 6th May, I observed a fishing schooner, which proved to be the "David J. Adams" of Gloucester, Massachusetts, standing to the southward under her four lower sails, and observed her to tack close into the wharf.

I observed when her stern was towards me that her name could not be made

out, it being hidden by canvas, and which, in my opinion, was done with the object of screening it.

By Captain Scott, R.N., Fishery Officer.  
(Signed)

OWEN RILEY.

*Digby, Nova Scotia, May 7, 1886.*

Inclosure 10 in No. 96.

*Statement of Frederick Allan.*

I, FREDERICK ALLAN, seaman on board the Dominion schooner "Lansdowne," being duly sworn, testify as follows:—

That I being one of the boat's crew of the above ship which boarded the American schooner "David J. Adams" on the 7th May while in the Basin of Annapolis, went into the hold of that vessel and examined the bait, and do solemnly declare that it was fresh.

Before Captain Scott, R.N., Fishery Officer.

(Signed) FREDERICK ALLAN.

Witness:

(Signed) MANFRED J. SAWYER.

*Digby, Nova Scotia, May 11, 1886.*

Inclosure 11 in No. 96.

*Captain Scott to the Department of Marine and Fisheries.*

Sir,

*Government steamer "Lansdowne," at Digby, May 11, 1886.*

I HAVE to inform you that on the 6th instant, while in St. John, I received a despatch from the Collector of Customs at Digby, to the following effect:—

"Fishing schooner, name and port of registry covered, now in harbour buying bait."

I wired you for instructions, but not receiving any, I concluded to come here as soon as possible. We left at 7:30 P.M., and anchored off Digby at 11:45, when the boats were lowered and boarded several schooners, but did not find the right one. As the day broke on the 7th a schooner was seen off Bear Island making the attempt to get out, but as the wind was light and the tide against her, she did not succeed. About 4:30 A.M. the first officer boarded her, and ascertained that she was the "David J. Adams," of Gloucester, Massachusetts. The captain stated that he had not come in for bait, and the boat returned on board. At 10 A.M., not having been satisfied with the above report, I ordered Captain Dakin and the first officer to search her thoroughly, when they discovered a quantity of fresh herring packed in ice in the main hold, close to the hatchway. When the boat returned I ordered the schooner to run in and anchor off Digby. We followed and anchored at 11:15 A.M. I then called upon several parties in the neighbourhood for evidence as to the purchase of the bait.

In the afternoon I proceeded to Victoria Beach, Granville, Annapolis County, accompanied by the Collector of Customs and the Fishery Officer at Digby, having heard that some bait had been sold to the master of that schooner by a man of the name of Ellis. I took his evidence, which went to prove that he had sold him four barrels of bait on the previous morning for 1 dol. 25 c. a barrel. It appears that Ellis was not willing to sell it to him, fearing that he was an American, but the master informed him that he was not, but belonged to Deer Island. At 4 P.M. with the pier of Digby bearing south-west by south, distant three-quarters of a mile, Captain Scott boarded the "David J. Adams," and seized her for violating the Dominion Fishery Act, and placed a guard on board.

At 4:30 on the 8th instant the crew of the "David J. Adams," with the exception of three men, came on board for passage to St. John. At 6 A.M. we took the schooner in tow and took her there for safety. At 10:30 we lashed to the wharf and hauled the schooner alongside. The master and crew then landed.

Sunday, the 9th, having received a despatch to take the schooner back to Digby, the master and crew were offered a passage if they liked to go. They declined doing so, and they then removed all their personal effects.



At 11 we cast off and proceeded. The first officer and five men took charge of the schooner, and sailed her over to the Gut, where we took her in tow, and both anchored at 4 P.M. off the Raquett.

Monday, the 10th May, at 5:30, the Collector having been directed to take charge of the schooner, she was handed over to him.

11th. Mr. Wallace Graham having directed me to still hold the schooner, I sent the first officer and one man back to her to remain on board until further orders.

I am, &c.  
(Signed) P. A. SCOTT.

Inclosure 12 in No. 96.

*Statement of James Beattie Hill.*

I, JAMES BEATTIE HILL, first officer of the Government steamer "Lansdowne," being duly sworn, testify as follows:—

I boarded the American fishing-schooner "David J. Adams," of Gloucester, Massachusetts, United States of America, at 5 o'clock in the morning of the 7th May, she being under weigh heading to the northward and westward, trying to get out of Annapolis Basin, Digby Pier, bearing about south-west at a distance of about 2½ miles. I did not see her stern, therefore did not see the name of the vessel, and, getting upon her deck, I asked the master where his vessel hailed from. He replied, "Gloucester." I asked what he had come in for. He said to see his people, as he formerly belonged here.

I asked if he had any fresh bait on board. He said he had not. I asked where he was from. He replied, "From the Banks." I asked where he was bound to. He said, "To Eastport."

I told him he had no business here, and that I supposed he knew the law. To which he replied, "Yes." I then returned to the "Lansdowne" after boarding another whose name was, I think, the "Lizzie Magee" of St. Andrew's, New Brunswick. One of her crew told me that the "David J. Adams" had bought bait for 1 dol. 25 c., which he had engaged for himself, at 75 c. per barrel.

At about 10 in the forenoon I was again ordered to return to the "David J. Adams" and search her thoroughly for bait.

At this time she was in the Gut, about 1 mile south of Victoria Beach. I told the captain I had come on board to make an examination. He said, "Very well." I then told him that a person on shore had stated that he had bought bait here. He replied that I might bring that person on board, and that he would call that person a liar if that would do any good. Upon searching the hold I found fresh herring upon ice which appeared to be perfectly fresh. Upon my stating my opinion he said it was about ten days old.

I told him I would have to report to Captain Scott that I was of opinion that it was fresh. I then returned to the "Lansdowne."

Captain Scott having directed Captain Dakin to return with me to the "David J. Adams," we went upon her deck and had some of her bait handed up for inspection. Both Captain Dakin and I agreed that it was fresh. We then returned to the "Lansdowne." I was immediately ordered to return to the "David J. Adams" and direct her master to return to Digby and anchor near the "Lansdowne."

Before Captain Scott, R.N., Fishery Officer.

(Signed) JAMES BEATTIE HILL, *First Officer,*  
*Government steamer "Lansdowne."*

Witness:

(Signed) MANFRED J. L. SAWYER.  
*Digby, Nova Scotia, May 10, 1886.*

## Inclosure 13 in No. 96.

*The Marquis of Lansdowne to Earl Granville.*

My Lord,

*Government House, Ottawa, May 18, 1886.*

I HAVE the honour to forward herewith, for your Lordship's information, a copy of a despatch which I have received from Her Majesty's Minister at Washington, inclosing copy of a note, dated the 10th of the same month, from the United States' Secretary of State, in which are set forth the views of that Government upon the seizure of the fishing-schooner "David J. Adams," and the questions arising therefrom.

I have the honour also to inclose a copy of the reply which I have sent to Sir Lionel West.

I have communicated a copy of Sir Lionel West's despatch and of Mr. Bayard's note to my Ministers for their information.

I have, &c.  
(Signed) LANSDOWNE.

## Inclosure 14 in No. 96.

*The Marquis of Lansdowne to Sir L. West.*

Sir,

*Ottawa, May 17, 1886.*

I HAD the honour of receiving your letter of the 12th instant, inclosing a copy of Mr. Bayard's note of the 10th upon the questions raised by the recent detention of the United States' schooner "David J. Adams" at Digby, Nova Scotia, for alleged violation of the Customs and Fishery Laws.

You have, I understand, been good enough to supply me with a copy of that letter in order that the Dominion Government may, without loss of time, be placed in possession of the views of that of the United States in regard to these questions, and not with the object of eliciting from me at present any comments upon the arguments advanced by Mr. Bayard.

I am, however, glad to take the earliest opportunity of expressing the pleasure with which the Government of the Dominion has observed the temper in which Mr. Bayard has discussed the matters referred to, and its entire concurrence with him in desiring to import into that discussion nothing that could affect the friendly relations of the two countries.

I have, &c.  
(Signed) LANSDOWNE.

## Inclosure 15 in No. 96.

*The Marquis of Lansdowne to Earl Granville.*

My Lord,

*Government House, Ottawa, May 19, 1886.*

I HAVE the honour to inform you that the American fishing-schooner "Ella M. Doughty" was seized at St. Ann's, Nova Scotia, by Sub-Collector McAulay, who is reported by the Collector of Customs at Baddeck, Mr. L. G. Campbell, to have proof that the captain bought bait at St. Ann's without reporting to the Customs authorities.

2. Mr. Campbell further telegraphs that the captain acknowledges the facts and showed the bait bought, but claims that he held a permit or licence, signed by the Collector of Customs at Portland, Maine, to touch and trade at any foreign port.

3. The "Ella M. Doughty" has been held for not reporting, and an inquiry is now proceeding in order to ascertain whether there has or has not been an infraction of the Fishery Law of the Dominion.

I have, &c.  
(Signed) LANSDOWNE.

## Inclosure 16 in No. 96.

*Earl Granville to the Marquis of Lansdowne.*

(Telegraphic.)

Downing Street, May 22, 1886.

UNITED STATES' Government is making representations respecting seizure of vessels. Her Majesty's Government desire to be furnished with detailed particulars regarding facts and legal position of Canadian Government. Desirable you should lose no time in sending reply.

## Inclosure 17 in No. 96.

*The Marquis of Lansdowne to Earl Granville.*

(Telegraphic.)

Quebec, May 22, 1886.

YOURS 22nd May.

Have sent despatch respecting seizure.

## Inclosure 18 in No. 96.

*Earl Granville to the Marquis of Lansdowne.*

(Telegraphic.)

Downing Street, May 25, 1886, 6.10 P.M.

AMERICAN Minister asked Lord Rosebery, Saturday, whether seizure of vessels in Canadian waters could not be discontinued and vessels already seized restored—of course without prejudice, and on undertaking to surrender them if required. He argued United States' view of construction of Treaty, and Lord Rosebery upheld Canadian view, and said that while anxious to maintain most cordial relations, Her Majesty's Government would have difficulty in asking Dominion Government to suspend their legal action if nothing offered as *quid pro quo*.

Lord Rosebery therefore asked if some assurance could be given of immediate readiness to negotiate on the question. Phelps said, in his purely personal opinion, President might negotiate without consulting Senate, and there should be no difficulty in reaching solution, when Treaty might be submitted to Senate in December, and, if good, Senate could not refuse to ratify, or, at least, must give reasons. This, however, of course, only his own view.

Telegraph observations of your Government, and whether, in their opinion, this suggestion appears to afford opening for general settlement. I shall not commit myself till I hear from you.

## Inclosure 19 in No. 96.

*Earl Granville to the Marquis of Lansdowne.*

(Telegraphic.)

Downing Street, May 27, 1886.

BAYARD to West, 10th May.

Her Majesty's Government glad to receive, by earliest opportunity, report of your Ministers.

## Inclosure 20 in No. 96.

*The Marquis of Lansdowne to Earl Granville.*

(Telegraphic.)

Ottawa, May 27, 1886.

REFERRING to your telegram of 27th May, Report in forward state of preparation, and sent by next mail.

## Inclosure 21 in No. 96.

*The Marquis of Lansdowne to Earl Granville.*

(Telegraphic.)

June 2, 1886.

YOUR telegram of the 2nd.

Shall reserve Bill, as calculated to embarrass negotiations now progressing.

## Inclosure 22 in No. 96.

*The Marquis of Lansdowne to Earl Granville.*

(Secret.)

(Telegraphic.)

June 2, 1886.

PLEASE have it clearly explained that Bill is reserved solely on ground mentioned in my telegram of this day. We object altogether to position taken by Bayard in despatch 29th May. Great indignation will be felt here if reservation should be construed as acquiescence by Her Majesty's Government in Bayard's contention as to competence of Canadian Parliament and authorities.

## Inclosure 23 in No. 96.

*Earl Granville to the Marquis of Lansdowne.*

(Telegraphic.)

Downing Street, June 3, 1886.

FOLLOWING telegram received from United States' Minister:—

"Call attention of Lord Rosebery immediately to Bill No. 136, now pending in the Parliament of Canada, assuming to execute Treaty of 1818; also Circular No. 371, by Johnson, Commissioner of Customs, ordering seizure of vessels for violation of Treaty. Both are arbitrary and unwarranted assumptions of power, against which you are instructed earnestly to protest, and state that the United States will hold Government of Great Britain responsible for all losses which may be sustained by American citizens in the dispossession of their property growing out of the search, seizure, detention, or sale of their vessels lawfully within territorial waters of British North America."

Telegraph purport of Circular No. 371.

## Inclosure 24 in No. 96.

*Earl Granville to the Marquis of Lansdowne.*

(Telegraphic.)

Downing Street, June 3, 1886.

YOURS 27th.

We do not understand position taken by your Government, Continued seizure of vessels must necessarily preclude friendly negotiations. Some immediate opening of negotiations seems expedient, and would not weaken claim of Canada to maintenance of her rights. When shall we know Judgment of Court case of "D[avid] J. Adams"?

## No. 97.

*Mr. Wingfield to Sir J. Pouncefote.—(Received June 5.)*

(Confidential.)

Sir,

Downing Street, June 5, 1886.

I AM directed by Earl Granville to acknowledge the receipt of your letter of the 3rd instant, forwarding a copy of a despatch from Her Majesty's Minister at Washington, with a note from Mr. Bayard relative to the North American Fisheries question.

Lord Granville desires me to transmit to you, for the information of the Earl of Rosebery, a copy of a telegram which he has addressed to the Governor-General of

Canada, requesting the observations of the Dominion Government upon the subject of this note.

I am, &c.  
(Signed) EDWARD WINGFIELD.

Inclosure in No. 97.

*Earl Granville to the Marquis of Lansdowne.*

(Telegraphic.)

*Downing Street, June 4, 1886.*

HER Majesty's Government desire to be furnished with observations of Dominion Government on Bayard's note 20th May as soon as possible.

No. 98.

*Sir L. West to the Earl of Rosebery.—(Received June 5, 8 A.M.)*

(Treaty.)

*Washington, June 5, 1886.*

(Telegraphic.)

MAY I deny in newspapers reported dispatch of troops to Halifax?

No. 99.

*The Earl of Rosebery to Sir L. West.*

(Treaty.)

*Foreign Office, June 5, 1886, 1.35 P.M.*

(Telegraphic.)

YOUR telegram of to-day.  
Yes.

No. 100.

*Sir J. Pauncefote to the Law Officers of the Crown and Sir J. Deane.*

Gentlemen,

*Foreign Office, June 5, 1886.*

I AM directed by the Earl of Rosebery to transmit to you a despatch from Her Majesty's Minister at Washington,\* inclosing a copy of a note from Mr. Bayard, the United States' Minister for Foreign Affairs, relative to the Fishery question between Canada and Newfoundland and the United States.

The Fishery Articles of the Treaty of Washington (of which a copy is annexed) have now expired in consequence of the renunciation of them by the United States' Government, and it is contended by Her Majesty's Government that the provisions of the Convention of the 20th October, 1818, have now revived in their integrity. A copy of that Convention is annexed, and I am to call your special attention to the terms of Article I.

With regard to the question now immediately at issue, viz., the right of United States' fishing-vessels to frequent Canadian ports for the purpose of buying bait, ice, or supplies, the literal interpretation of Article I seems scarcely to be questioned by Mr. Bayard, but the argument relied on appears to be that the expansion given to trade between the United States and Canada by a series of Laws and Regulations adopted by both countries has effected, by "independent yet concurrent action," a gradual enlargement of the provisions of the Convention of Commerce between Great Britain and the United States of the 3rd July, 1815 (which is limited to Her Majesty's dominions in Europe), so as practically to extend its operation to the British North American territories, and thus to override, as it were, the prohibition in Article I of the Convention of 1818 against United States' fishing-vessels entering the bays and harbours of Canada for any purpose except the four purposes therein specified.

I am to inclose copies of printed correspondence relative to the alteration of the British Navigation Laws and a copy of the Convention of the 3rd July, 1815, which you will perceive applies only to Her Majesty's territories in Europe.

\* No. 58.

Lord Rosebery has asked to be furnished with the observations of the Canadian Government on Mr. Bayard's note; but, in the meanwhile, I am to request that you will favour his Lordship with your opinion as to the validity of Mr. Bayard's contention that Article I of the Convention of 1818 cannot be deemed to have revived in its integrity, by reason of the existing conditions of the commercial relations between the two countries, which have been brought about by concurrent and reciprocal legislation, and are inconsistent with the restrictions still sought to be imposed under the terms of that Article on United States' fishing-vessels.

I have, &c.

(Signed) JULIAN PAUNCEFOTE.

No. 101.

*Sir J. Pauncefote to Sir R. Herbert.*

*Foreign Office, June 5, 1886.*

[Transmits copies of Nos. 21 A and 24, Treaty, to Sir L. West: *ante*, Nos. 71 and 84.]

No. 102.

*Sir L. West to the Earl of Rosebery.—(Received June 7.)*

(No. 45. Treaty. Confidential.)

My Lord,

*Washington, May 27, 1886.*

IN connection with the fishery dispute, several important considerations occur bearing on the maintenance of the amicable relations between the two countries. My correspondence with your Lordship's predecessor sets forth the serious difficulty which arose in consequence of the policy pursued by this Government in dealing with the representations of Her Majesty's Government relative to the proceedings of the Irish "suspects," as well as the fixed purpose of the Irish party to take advantage of any circumstances which might arise, for the purpose of creating ill-feeling between the two Governments. But this difficulty having been happily got over, and the endeavour to foment discord out of it having failed, other circumstances which have arisen seem likely to afford a still more favourable opportunity for the furtherance of this object, and it is to the situation thus created that I am desirous of calling the attention of Her Majesty's Government, and to submit that the matter now in dispute may thus be made the cause of serious complications, apart from the merits of the fisheries question. Another consideration also is, that any misunderstanding with Her Majesty's Government growing out of a dispute with that of the Dominion would probably interrupt the friendly intercourse hitherto carried on through Her Majesty's Legation between Canada and the United States in all matters concerning extradition cases, and questions arising out of Indian insurrections and raids. The United States' Government, as your Lordship is aware, ignores the independent action of the Canadian Government where Treaty rights are involved, and looks to the Imperial Government alone for all authoritative decisions concerning their interpretation.

Were ill-feeling engendered by any passing events, they might also refuse to treat directly with Canada those questions to which I have alluded, and to which contiguity necessarily gives rise, even although the inconvenience of such a course might be as great to themselves as to the Canadian Government. The proximity of British possessions is a source of constant irritation, and the hope of annexation is ever present. It is thought that retaliatory measures inflicting injury on Canadian industry will promote this end, and that the discontent in consequence caused by the interruption of the ordinary fishing transactions which, it is asserted by the American press, exists in the Canadian fishing provinces, may lead to complications between those provinces and the Dominion Government which will have the effect of causing at least separation, and perhaps, also, antagonism between the Imperial Government and that of Canada. There appear, therefore, to be political reasons for keeping alive the irritation which has been the outcome of the fishery dispute, and they also must be borne in mind in dealing with the present situation, inasmuch as they may be made the means of thwarting any amicable arrangement.

I have, &c.

(Signed) L. S. SACKVILLE WEST.

*Mr. Phelps to the Earl of Rosebery.—(Received June 7.)*

My Lord,

*Legation of the United States, London, June 2, 1886.*

SINCE the conversation I had the honour to hold with your Lordship on the morning of the 29th ultimo, I have received from my Government a copy of the Report of the Consul-General of the United States at Halifax, giving full details and depositions relative to the seizure of the "David J. Adams," and the correspondence between the Consul-General and the Colonial authorities in reference thereto.

The Report of the Consul-General, and the evidence annexed to it, appear fully to sustain the points I submitted to your Lordship in the interview above referred to, touching the seizure of this vessel by the Canadian officials.

I do not understand it to be claimed by the Canadian authorities that the vessel seized had been engaged, or was intending to engage, in fishing within any limit prohibited by the Treaty of 1818. The occupation of the vessel was exclusively deep-sea fishing, a business in which it had a perfect right to be employed. The ground upon which the capture was made was that the master of the vessel had purchased of an inhabitant of Nova Scotia, near the port of Digby in that province, a day or two before, a small quantity of bait to be used in fishing in the deep sea, outside the 3-mile limit.

The question presented is whether under the terms of the Treaty, and the construction placed upon them in practice for many years by the British Government, and in view of the existing relations between the United States and Great Britain, that transaction affords a sufficient reason for making such a seizure, and for proceeding under it to the confiscation of the vessel and its contents.

I am not unaware that the Canadian authorities, conscious, apparently, that the affirmative of this proposition could not easily be maintained, deemed it advisable to supplement it with a charge against the vessel of a violation of the Canadian Customs Act of 1883, in not reporting her arrival at Digby to the Customs officer. But this charge is not the one on which the vessel was seized, or which must now be principally relied on for its condemnation, and standing alone could hardly, even if well founded, be the source of any serious controversy. It would be at most, under the circumstances, only an accidental and purely 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 the payment of costs.

But trivial as it is, this charge does not appear to be well founded in point of fact. Digby is a small fishing settlement, and its harbour not defined. The vessel had moved about and anchored in the outer part of the harbour, having no business at or communication with Digby, and no reason for reporting to the officer of Customs.

It appears by the Report of the Consul-General to be conceded by the Customs authorities there that fishing-vessels have for forty 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 claimed against them for so doing.

Can it be reasonably insisted under these circumstances that by the sudden adoption, without notice, of a new rule, a vessel of a friendly nation should be seized and forfeited for doing what all similar vessels had for so long a period been allowed to do without question?

It is sufficiently evident that the claim of a violation of the Customs Act was an afterthought brought forward to give whatever added strength it might to the principal claim on which the seizure had been made.

Recurring, then, to the only real question in the case, whether the vessel is to be forfeited for purchasing bait of an inhabitant of Nova Scotia to be used in lawful fishing, it may be readily admitted 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, to repair damages, or to seek shelter. Whether it would be liable to the extreme penalty of confiscation for a breach of this prohibition, in a trifling and harmless instance, might be quite another question.

Such a literal construction is best refuted by considering its preposterous consequences. If a vessel enters a port 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, it would, upon this construction, be held to violate the Treaty stipulations maintained between two enlightened, maritime, and most friendly nations, whose ports are freely open to each other in all other places and under all other circumstances. If a vessel is not engaged in fishing, she may enter all ports. But if employed in fishing not denied to be lawful, she is excluded, though on the most innocent errand. She may buy water, but not food or medicine; wood, but not coal. She may repair rigging, but not purchase a new rope, though the inhabitants are desirous to sell it. If she even entered the port (having no other business) to report herself to the Custom-house, as the vessel in question is now seized for not doing, she would be equally within the interdiction of the Treaty. If it be said these are extreme instances of violation of the Treaty, not likely to be insisted on, I reply that no one of them is more extreme than the one relied upon in this case.

I am persuaded that your Lordship will, upon reflection, concur with me that an intention so narrow, and in its results so unreasonable and so unfair, is not to be attributed to the High Contracting Parties who entered into this Treaty.

It seems to me clear that the Treaty must be construed 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. The whole document will be taken together, and will be considered in connection with the attendant 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.

Upon these principles of construction, the meaning of the clause in question does not seem doubtful. It is a Treaty of friendship, and not of hostility. Its object was to define and protect the relative rights of the people of the two countries in these fisheries, not to establish a system of non-intercourse, or the means of mutual and unnecessary annoyance. It should be judged in view of the general rules of international comity, and of maritime intercourse and usage, and its restrictions considered in the light of the purposes they were designed to serve.

Thus regarded, it appears to me clear that the words, "for no other purpose whatever," as employed in the Treaty, mean no other purposes inconsistent with the provisions of the Treaty, or prejudicial to the interests of the provinces or their inhabitants, and were not intended to prevent the entry of American fishing-vessels into Canadian ports for innocent and mutually beneficial purposes, or unnecessarily to restrict the free and friendly intercourse customary between all civilized maritime nations, and especially between the United States and Great Britain. Such, I cannot but believe, is the construction that would be placed upon this Treaty by any enlightened Court of Justice.

But even were it conceded that if the Treaty was a private contract instead of an international one, a Court, in dealing with an action upon it, might find itself hampered by the letter from giving effect to the intent, that would not be decisive of the present case.

The interpretation of Treaties between nations in their intercourse with each other proceeds upon broader and higher considerations. The question is not what is the technical effect of the words, but what is the construction most consonant to the dignity, the just interests, and the friendly relations of the sovereign Powers. I submit to your Lordship that a construction so harsh, so unfriendly, so unnecessary, and so irritating as that set up by the Canadian authorities is not such as Her Majesty's Government has been accustomed either to accord or to submit to. It would find no precedent in the history of British diplomacy, and no provocation in any action or assertion of the Government of the United States.

These views derive great if not conclusive force from the action of the British Parliament on the subject, adopted very soon after the Treaty of 1818 took effect, and continued without change to the present time. An Act of Parliament (59 Geo. III, cap. 38) was passed on the 14th June, 1819, to provide for carrying into effect the provisions of the Treaty. After reciting the terms of the Treaty, it enacts (in substance) that it shall be lawful for His Majesty, by Orders in Council, to make such regulations and to give such directions, orders, and instructions to



the Governor of Newfoundland, or to any officer or officers in that station, or to any other persons, "as shall or may be from time to time deemed proper and necessary for the carrying into effect the purposes of said Convention with relation to the taking, drying, and curing of fish by inhabitants of the United States of America, in common with British subjects, within the limits set forth in the aforesaid Convention."

It further enacts that any foreign vessel engaged in fishing or preparing to fish within 3 marine miles of the coast (not authorized to do so by Treaty) shall be seized or forfeited upon prosecution in the proper Court.

It further provides as follows:—

"That it shall and may be lawful for any fisherman of the said United States to enter into any such bays or harbours of His Britannic Majesty's dominions in America as are last mentioned, for the purpose of shelter and repairing damages therein, and of purchasing wood and of obtaining water, and for no other purpose whatever; subject, nevertheless, to such restrictions as may be necessary to prevent such fishermen of the said United States from taking, drying, or curing fish in the said bays or harbours, or in any other manner whatever abusing the said privileges by the said Treaty and this Act reserved to them, and as shall for that purpose be imposed by any Order or Orders to be from time to time made by His Majesty in Council under the authority of this Act; and by any regulations which shall be issued by the Governor, or person exercising the office of Governor, in any such parts of His Majesty's dominions in America, under or in pursuance of any such Order in Council as aforesaid."

It further enacts as follows:—

"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 harbours; 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*l.*, to be recovered," &c.

It will be perceived from these extracts, and still more clearly from a perusal of the entire Act, that while reciting the language of the Treaty in respect to the purposes for which American fishermen may enter British ports, it provides no forfeiture or penalty for any such entry, unless accompanied either (1) by fishing, or preparing to fish, within the prohibited limits; or (2) by the infringement of restrictions that may be imposed by Orders in Council to prevent such fishing, or the drying or curing of fish, or the abuse of privileges reserved by the Treaty; or (3) by a refusal to depart from the bays or harbours upon proper requisition.

It thus plainly appears that it was not the intention of Parliament, nor its understanding of the Treaty, that any other entry by an American fishing-vessel into a British port should be regarded as an infraction of its provisions, or as affording the basis of proceedings against it.

No other Act of Parliament for the carrying out of this Treaty has ever been passed. It is unnecessary to point out that it is not in the power of the Canadian Parliament to enlarge or alter 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.

But until the effort which I am informed is now in progress in the Canadian Parliament for the passage of a new Act on this subject, introduced since the seizures under consideration, I do not understand that any Statute has ever been enacted in that Parliament which attempts to give any different construction or effect to the Treaty from that given by the Act of 59 George III.

The only Provincial Statutes which, in the proceedings against the "David J. Adams," that vessel has thus far been charged with infringing are the Colonial Acts of 1868, 1870, and 1883. It is therefore fair to presume that there are no other Colonial Acts applicable to the case, and I know of none.

The Act of 1868, among other provisions not material to this discussion, provides for a forfeiture of foreign vessels "found fishing, or preparing to fish, or to have been fishing in British waters within 3 marine miles of the coast;" and also provides a penalty of 400 dollars against a master of a foreign vessel within the

harbour who shall fail to answer questions put in an examination by the authorities. No other act is, by this Statute, declared to be illegal, and no other penalty or forfeiture is provided for.

The very extraordinary provisions in this Statute for facilitating forfeitures, and embarrassing defence against or appeal from them, not material to the present case, would, on a proper occasion, deserve very serious attention.

The Act of 1870 is an amendment of the Act just referred to, and adds nothing to it affecting the present case.

The Act of 1883 has no application to the case, except upon the point of the omission of the vessel to report to the Customs officer, already considered.

It results, therefore, that, at the time of the seizure of the "David J. Adams" and other vessels, there was no Act whatever, either of the British or Colonial Parliaments, which made the purchase of bait by those vessels illegal or provided for any forfeiture, penalty, or proceedings against them for such a transaction. And even if such purchase could be regarded as a violation of that clause of the Treaty which is relied on, no Law existed under which the seizure could be justified. It will not be contended that Custom-house authorities or Colonial Courts can seize and condemn vessels for a breach of the stipulations of a Treaty, when no legislation exists which authorizes them to take cognizance of the subject, or invests them with any jurisdiction in the premises. Of this obvious conclusion the Canadian authorities seem to be quite aware. I am informed that since the seizures they 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 legislation under this Treaty, to make the facts upon which the American vessels have been seized illegal, and to authorize proceedings against them therefor.

What the effect of such an Act will be in enlarging the provisions of an existing Treaty between the United States and Great Britain need not be considered here. The question under discussion depends upon the Treaty, and upon such legislation, warranted by the Treaty, as existed when the seizures took place.

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.

On the 26th May, 1870, Mr. Thornton, the British Minister at Washington, communicated officially to the Secretary of State of the United States copies of the orders addressed by the British Admiralty to Admiral Wellesley, commanding Her Majesty's naval forces on the North American Station, and of a letter from the Colonial Department to the Foreign Office, in order that the Secretary might "see the nature of the instructions to be given to Her Majesty's and the Canadian officers employed in maintaining order at the fisheries in the neighbourhood of the coasts of Canada." Among the documents thus transmitted is a letter from the Foreign Office to the Secretary of the Admiralty, in which the following language is contained:—

"The Canadian Government has recently determined, with the concurrence of Her Majesty's Ministers, to increase the stringency of the existing practice of dispensing with the warnings hitherto given, and seizing at once any vessel detected in violating the law.

"In view of this change, and of the questions to which it may give rise, I am directed by Lord Granville to request that you will move their Lordships to instruct the officers of Her Majesty's ships employed in the protection of the fisheries that they are not to seize any vessel unless it is evident, and can be clearly proved, that the offence of fishing has been committed, and the vessel itself captured, within 3 miles of land."

In the letter from the Lords of the Admiralty to Vice-Admiral Wellesley of the 5th May, 1870, in accordance with the foregoing request, and transmitting the letter above quoted from, there occurs the following language:—

"My Lords desire me to remind you of the extreme importance of Commanding Officers of the ships selected to protect the fisheries exercising the utmost discretion in carrying out their instructions, paying special attention to Lord Granville's observation, that no vessel should be seized unless it is evident, and can be clearly proved, that the offence of fishing has been committed, and that the vessel is captured, within 3 miles of land."

Lord Granville, in transmitting to Sir John Young the aforesaid instructions, makes use of the following language:—

“Her Majesty’s Government do not doubt that your Ministers will agree with them as to the propriety of these instructions, and will give corresponding instructions to the vessels employed by them.”

These instructions were again officially stated by the British Minister at Washington to the Secretary of State of the United States, in a letter dated the 11th June, 1870.

Again, in February 1871, Lord Kimberley, Colonial Secretary, wrote to the Governor-General of Canada as follows:—

“The exclusion of American fishermen from resorting to Canadian ports, except for the purpose of shelter and of repairing damages therein, purchasing wood, and of obtaining water, might be warranted by the letter of the Treaty of 1818, and by the terms of the Imperial Act 59 Geo. III, cap. 38; but Her Majesty’s Government feel bound to state that it seems to them an extreme measure, inconsistent with the general policy of the Empire, and they are disposed to concede this point to the United States’ Government, under such restrictions as may be necessary to prevent smuggling, and to guard against any substantial invasion of the exclusive rights of fishing which may be reserved to British subjects.”

And in a subsequent letter from the same source to the Governor-General, the following language is used:—

“I think it right, however, to add that the responsibility of determining what is the true construction of a Treaty made by Her Majesty with any foreign Power must remain with Her Majesty’s Government, and that the degree to which this country would make itself a party to the strict enforcement of the Treaty rights may depend not only on the literal construction of the Treaty, but on the moderation and reasonableness with which these rights are asserted.”

I am not aware that any modification of these instructions, or any different rule from that therein contained, has ever been adopted or sanctioned by Her Majesty’s Government.

Judicial authority upon this 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 Fisheries 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 limit.

And in the case of the “White Fawn,” tried in the Admiralty Court at New Brunswick before Judge Hazan in 1870, I understand it to have been distinctly held that the purchase of bait, unless proved to have been in preparation for illegal fishing, was not a violation of the Treaty nor of any existing Law, and afforded no ground for proceedings against the vessel.

But even were it possible to justify on the part of the Canadian authorities the adoption of a construction of the Treaty entirely different from that which has always heretofore prevailed, and to declare those acts criminal which have hitherto been regarded as innocent, upon obvious grounds of reason and justice, and upon common principles of comity to the United States’ Government, previous notice should have been given to it or to the American fishermen of the new and stringent restrictions it was intended to enforce.

If it was the intention of Her Majesty’s Government to recall the instructions which I have shown had been previously and so explicitly given relative to interference with American vessels, surely notice should have been given accordingly.

The United States have just reason to complain, even if these restrictions could be justified by the Treaty, or by the Acts of Parliament passed to carry it into effect, that they should be enforced in so harsh and unfriendly a manner, without notice to the Government of the change of policy, or to the fishermen of the new danger to which they were thus exposed.

In any view, therefore, which it seems to me can be taken of this question, I feel justified in pronouncing the action of the Canadian authorities in seizing and still retaining the “David J. Adams” to be not only unfriendly and discourteous, but altogether unwarrantable.

The seizure was much aggravated by the manner in which it was carried into

effect. It appears that four several visitations and searches of the vessel were made by boats from the Canadian steamer "Lansdowne" in Annapolis Basin, Nova Scotia. The "Adams" was finally taken into custody, and carried out of the Province of Nova Scotia across the Bay of Fundy and into the port of St. John's, New Brunswick; and, without explanation or warning, on the following Monday, the 10th May, taken back by an armed crew to Digby, in Nova Scotia. 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 manner as to prevent its contents being read, and the request of the captain of the "David J. Adams," 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. Nor was the United States' Consul-General able to learn from the Commander of the "Lansdowne" the nature of the complaint against the vessel, and his respectful application to that effect was fruitless.

From all the circumstances attending this case, and other recent cases like it, it seems to me very apparent that the seizure was not made for the purpose of enforcing any right or redressing any wrong. As I have before remarked, it is not pretended that the vessel had been engaged in fishing, or was intending to fish, in the prohibited waters, or that it had done, or was intending to do, any other injurious act. It was proceeding upon its regular and lawful business of fishing in the deep sea. It had received no request, and, of course, could have disregarded no request, to depart, and was in fact departing when seized; nor had its master refused to answer any questions put by the authorities.

It had violated no existing Law, and had incurred no penalty that any known Statute imposed.

It seems to me impossible to escape the conclusion that this and other 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 the injury, which would have been a serious one if committed under a mistake, is very much aggravated by the motives which appear to have prompted it.

I am instructed by my Government earnestly to protest against these proceedings as wholly unwarranted by the Treaty of 1818, and altogether inconsistent with the friendly relations hitherto existing between the United States and Her Majesty's Government; to request that the "David J. Adams" and the other American fishing-vessels now under seizure in Canadian ports be immediately released; and that proper orders may be issued to prevent similar proceedings in the future; and I am also instructed to inform you that the United States will hold Her Majesty's Government responsible for all losses which may be sustained by American citizens in the dispossession of their property growing out of the search, seizure, detention, or sale of their vessels lawfully within the territorial waters of British North America.

The real source of the difficulty that has arisen is well understood. It is to be found 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 Treaty of Washington on the 1st July last, whereby fish imported from Canada into the United States, and which, so long as that Treaty remained in force, was admitted free, is now liable to the import duty provided by the General Revenue Laws. And the opinion appears to have gained ground in Canada that the United States may be driven, by harassing and annoying their fishermen, into the adoption of a new Treaty by which Canadian fish shall be admitted free.

It is not necessary to say that this scheme is likely to prove as mistaken in policy as it is indefensible in principle. In terminating the Treaty of Washington the United States were simply exercising a right expressly reserved to both parties by the Treaty itself, and of the exercise of which by either party neither can complain. They will not be coerced by wanton injury into the making of a new one. Nor would a negotiation that had its origin in mutual irritation be promising of success. The question now is not what fresh Treaty may or might be desirable, but what is the true and just construction, as between the two nations, of the Treaty that already exists.

The Government of the United States, approaching this question in the most friendly spirit, cannot doubt that it will be met by Her Majesty's Government in the same spirit, and feels every confidence that the action of Her Majesty's Govern-

ment in the premises will be such as to maintain the cordial relations between the two countries that have so long happily prevailed.

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

No. 104.

*Sir R. Herbert to Sir J. Pauncefote.—(Received June 7.)*

(Confidential.)

Sir, *Downing Street, June 7, 1886.*

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 Earl of Rosebery, a copy of a despatch from the Governor-General of Canada, inclosing an extract from the Toronto "Globe" on the subject of the North American Fisheries question.

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

Inclosure 1 in No. 104.

*The Marquis of Lansdowne to Earl Granville.*

My Lord, *Government House, Ottawa, May 4, 1886.*

I HAVE the honour to inclose herewith an extract from the Toronto "Globe" of the 1st instant, commenting upon a recent article in the London "Times" on the subject of the fishery rights of the Dominion.

The "Globe" is, as your Lordship is no doubt aware, the leading Liberal journal of Canada, and its opinions may generally be regarded as those finding favour with the Opposition, or at all events with a considerable section of it.

The "Globe" article will show your Lordship how closely the action of Her Majesty's Government in regard to the Fisheries question is likely to be scrutinized here, and how much resentment would be provoked if it were believed that Her Majesty's Government intended to abandon any of the rights secured by Treaty to Canada.

I have, &c.  
(Signed) LANSDOWNE.

Inclosure 2 in No. 104. ]

*Extract from the Toronto "Globe" of May 1, 1886.*

IT is possible that the London "Times" represents English opinion in regard to Canada's fishing rights by saying: "We have made such large concessions before now that we may venture to continue them without fear of being misinterpreted." To be free from the fear of misinterpretation may be very fine in the "Times," but that Canada will consent to let her property be given away because of that beautiful freedom of the big paper is a trifle too much to expect. If Englishmen do expect so largely, the duty of the Dominion Government is to disabuse their magnanimous minds of that expectation as quickly as possible. It is true that large concessions have been made to American bluster before, but instead of being a good reason for making such again, it is the best of reasons for pursuing a contrary policy. The Convention of 1818 defines Canada's rights regarding the fisheries with all the distinctness necessary, and, if the people of this country do not maintain those rights in full force till they obtain a full equivalent for the surrender of any part of them, they are unworthy of their position as free men. Nothing should be yielded simply to suit Imperial interests, or rather Imperial fears, and the sooner England understands that nothing will be so surrendered, the better for all parties concerned. On this side of the water we understand Brother Jonathan perfectly; we can hold up our own end of a bargain with him; we can estimate his bluster at its true value; and we know that, if unhampered by British pusillanimity, we can make a

just arrangement with him in the fisheries business. Canada wants nothing more than simple justice, and should not hesitate to insist on getting it. The United States will not incur the responsibility of pursuing to the point of force an attempt to crowd a less numerous people out of their national property, but even if the States could be expected to go to such a length, that would be no reason for making a cowardly concession.

The plain truth should be recognized that it would be much better for Canadians to yield everything to the States and join themselves to the surrender, than to permit Great Britain to trade away the Dominion piecemeal. The result of allowing the country to be stripped time and again of valuable possessions would be that we should have to seek annexation in the end for the sake of getting back a share in our concessions. Independence, with full responsibility for the care of our own interests, would be altogether preferable to a condition in which Canadian rights are jeopardized by British fear of the United States. If England does not wish to preserve the connection with Canada, her people are quite free to cut us adrift. That they should do so is much more to be desired than that they should profess that their forces are at Canada's service, and yet insist on the Dominion yielding whatever may be demanded by the only Power that is in a position to put the Dominion to any trouble. If the policy of the "Times" were the policy of the Imperial Government British connection would be worse than useless to this people.

No. 105.

*Sir R. Herbert to Sir J. Pauncefote.—(Received June 10.)*

(Confidential.)

Sir,

*Downing Street, June 9, 1886.*

WITH reference to your letter of the 2nd instant relative to the North American Fisheries question, I am directed by Earl Granville to transmit to you, for the information of the Earl of Rosebery, the decypher of a telegram from the Governor-General of Canada, stating the purport of Circular No. 371 issued by the Dominion Commissioner of Customs.

I have, &c.

(Signed) ROBERT G. W. HERBERT.

Inclosure in No. 105.

*The Marquis of Lansdowne to Earl Granville.*

(Telegraphic.)

*June 4, 1886.*

YOUR telegram of the 3rd.

Customs Circular recites Article I, Convention<sup>s</sup> 1818, and 2, 3, 4 of Canadian Fishery Act, 1868, and directs Customs officers furnish with warning notice any foreign fishing-vessels found within 3-mile limit except for four purposes specified in Convention as lawful. If vessel is found fishing, preparing to fish, or violating Convention by shipping men or supplies, or trading, or, if hovering, does not depart within twenty-four hours of warning, Collector is instructed to place officer on board and telegraph Fishery Department, Ottawa.

No. 106.

*Sir R. Heruert to Sir J. Pauncefote.—(Received June 10.)*

(Confidential.)

Sir,

*Downing Street, June 9, 1886.*

WITH reference to your letter of the 1st instant, and to previous correspondence, I am directed by the Secretary of State for the Colonies to transmit to you, for the information of the Earl of Rosebery, decypher of two telegrams from the Governor-General of Canada relative to the North American Fisheries question.

I am, &c.

(Signed) ROBERT G. W. HERBERT.

## Inclosure 1 in No. 106.

*The Marquis of Lansdowne to Earl Granville.*

(Secret.)

(Telegraphic.)

June 7, 1886.

YOUR telegram of the 3rd as to the position of the Canadian Government.

We object to the unconditional engagement to discontinue seizures, as involving abandonment of all our rights under Convention for rest of the season. American fishermen are fully aware of effect of Convention, and further seizures for buying bait not probable. No seizures will be made except for clear and deliberate violations. Will send probable date of "Adams" decision as soon as possible.

## Inclosure 2 in No. 106.

*The Marquis of Lansdowne to Earl Granville.*

(Secret.)

(Telegraphic.)

June 7, 1886.

YOUR telegram of the 4th.

Warning as first issued contained reference to all foreign vessels. Amended issue merely recites Act and Convention, omitting reference. Last paragraph of Circular No. 371 is perhaps open to objection, as implying that Convention applies to all foreign vessels. This will receive attention.

## No. 107.

*Sir R. Herbert to Sir J. Pauncefote.—(Received June 10.)*

Sir,

*Downing Street, June 9, 1886.*

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 Earl of Rosebery, copies of two despatches from the Governor-General of Canada relative to the North American Fisheries question.

I am, &amp;c.

(Signed) ROBERT G. W. HERBERT.

## Inclosure 1 in No. 107.

*The Marquis of Lansdowne to Earl Granville.*

My Lord,

*Government House, Ottawa, May 26, 1886.*

WITH reference to my despatch of the 18th instant, I have the honour to forward to your Lordship herewith a copy of a further despatch from Sir Lionel West in connection with Mr. Bayard's note on the questions arising from the seizures of American fishing-vessels in Canadian waters.

I have, &amp;c.

(Signed) LANSDOWNE.

Inclosure 2 in No. 107.

*Sir L. West to the Marquis of Lansdowne.*

My Lord,

Washington, May 21, 1886.

I HAVE the honour to acknowledge the receipt of your Excellency's despatch of the 17th instant, and to inform your Lordship that I took an opportunity of communicating it to the Secretary of State, who expressed great satisfaction at the conciliatory language used by your Excellency.

I have, &c.

(Signed) L. S. SACKVILLE WEST.

Inclosure 3 in No. 107.

*The Marquis of Lansdowne to Earl Granville.*

My Lord,

Government House, Ottawa, May 26, 1886.

WITH reference to the concluding paragraph of my despatch of the 19<sup>th</sup> instant, reporting the seizure of the American fishing-schooner "Ella M. Doughty," I have the honour to inform your Lordship that the vessel in question is being proceeded against in the same way as the "David J. Adams," viz., for violation of the Customs Act of 1883, of the Dominion Fishery Act of 1868, and for contravention of the Treaty of 1818.

I have, &c.

(Signed) LANSDOWNE.

No. 108.

*Sir R. Herbert to Sir J. Pauncefote.—(Received June 10.)*

Sir,

Downing Street, June 9, 1886.

WITH reference to the letter from this Department of the 2nd instant, I am directed by the Secretary of State for the Colonies to transmit to you, to be laid before the Earl of Rosebery, a copy of a despatch from the Governor-General of Canada, containing observations upon the Bill for amending the Act respecting fishing by foreign vessels which has been introduced into the Canadian Parliament.

I am, &c.

(Signed) ROBERT G. W. HERBERT.

Inclosure 1 in No. 108.

*The Marquis of Lansdowne to Earl Granville.*

(Secret and Confidential.)

My Lord,

Government House, Ottawa, May 26, 1886.

I HAD the honour, in my despatch of the 19th instant, to state fully to your Lordship the circumstances under which, and the purposes for which, the Bill therein referred to for amending the Act respecting fishing by foreign vessels had been introduced by my Government.

That such an amendment of the law is necessary, in order to carry out literally and strictly the provisions of the Convention of 1818, under which foreign fishing-vessels are absolutely and without any reservation precluded from entering the bays and harbours of the Dominion, except for the purposes of shelter, repairing damages, and obtaining wood and water, is, I think, scarcely open to doubt. In this connection I have nothing to add to the explanation contained in my despatch above referred to.

I think it, however, my duty to lay before your Lordship the strong doubts—doubts which I have pressed upon my Ministers from the time when I first became aware that they intended to have recourse to this legislation—which I feel as to the



policy of an attempt on the part of the Dominion Government to alter the Fishery Law in this direction at the present moment.

I will enumerate briefly the reasons for which it appears to me that, under existing circumstances, such an alteration is uncalled for and undesirable:—

1. This country and the United States being unfortunately involved in a dispute in regard to their respective rights, it should, I conceive, be the object of both to conduct themselves in such a manner as to avoid embittering the discussion, and to place as few obstacles as possible in the way of an amicable and mutually advantageous solution.

If, at the very outset, either of the parties to that dispute endeavours by special legislation to obtain for itself an advantage not secured to it by existing laws or Treaties, that party will be regarded as desiring to accentuate the present differences, instead of removing them.

As matters now stand, it may be fairly argued on behalf of the Dominion that if its conduct in restricting the intercourse of American fishermen with its own people is in appearance unneighbourly and hostile, it is merely accepting the inevitable consequences of a position in which it finds itself placed through no fault of its own, but by the action—itself hostile and unneighbourly—of the United States in abrogating the Fishery Clauses of the Treaty of Washington, and in refusing to authorize the President to take steps for laying the foundation of a new international arrangement in their place. This argument will, however, no longer be available if, by the action of Canada, that position is materially modified and rendered more irksome to the United States than heretofore.

2. By the action of the United States in abrogating the Fishery Clauses of the Treaty of Washington, Canada finds herself, in regard to her inshore fisheries, under a condition of things which has obtained during two previous periods of her history, viz., before the conclusion of the Reciprocity Treaty of 1854, and between the abrogation of that Treaty and the conclusion of the Treaty of 1871. During those periods the Law, as it now stands, sufficed to meet our requirements. If it be contended that the decisions of the Canadian Courts, referred to in my previous despatch, have thrown a doubt upon the liability to forfeiture of foreign vessels purchasing bait in Canadian harbours, it should be remembered that this very point has now been raised by the seizure of the "David J. Adams," and that this country might be expected to abide by the decisions of its own Courts, which will shortly be called upon to adjudicate in the matter.

The legislation now proposed can scarcely fail to weaken the position of the Dominion; the very fact of such legislation having been thought necessary will be regarded as a virtual admission that the claims hitherto put forward by Canada in regard to the right of foreign fishermen to buy bait and to ship crews in Canadian bays and harbours cannot be justified or sustained, and as a proof that the legality of former seizures is open to question.

3. The existing Law, as I have pointed out to your Lordship, supplies remedies which can be enforced against the masters of American fishing-vessels entering Canadian harbours for purposes not permitted by the Convention of 1818. These remedies are no doubt inconvenient, and might possibly prove more onerous in some cases than that which the amending Bill would supply. It is, however, doubtful whether the inconvenience of these remedies will not prove less fruitful of trouble than the questions to which the proposed Bill may give rise.

4. Irrespective of the foregoing considerations, I have felt bound to call the attention of my Ministers to the fact that while the Dominion Statute of 1868 (which it is sought to amend) follows closely the Imperial Statute of 1819, the amending Bill, by rendering liable to forfeiture all foreign fishing-vessels entering Canadian territorial waters for any purpose not permitted by the Convention, goes considerably beyond the Imperial Statute, under which the penalty of forfeiture attaches only to such vessels as may be found "fishing, or to have been fishing or preparing to fish." It appears to me that there are serious objections to an attempt on the part of the Canadian Government to place upon a contract entered into by the Imperial Government an interpretation more favourable to itself than that placed upon it by the Imperial Legislature, an interpretation which, moreover, that Legislature, dealing with the matter in the year following that in which the Convention was concluded, did not venture to give to it.

It is of the utmost importance that throughout this controversy the Imperial Government and that of the Dominion should act in close concert, and should assume a position as far as possible identical. This is doubly necessary in view of

the argument frequently used by our opponents, that the matters at issue are of a kind with which the Colony has no right to deal by legislation of its own. That argument no doubt loses sight of the fact that all colonial legislation, in order to be permanently effectual, must receive the consent of Her Majesty. The argument, such as it is, will, however, derive additional strength if, in this instance, the Legislature of the Colony should be found endeavouring to extend the scope of a contract made by the Imperial Government beyond the limits assigned to it by the Imperial Government itself, at the time when the contract was entered into.

I regret that these considerations appeared to my advisers to be outweighed by those advanced on the other side.

As I have not yet received any intimation of the policy of Her Majesty's Government in regard to these matters, and as it is open to Her Majesty's Government to disallow the measure should it prove to be inconsistent with that policy, I shall not take the unusual and extreme course of withholding my assent to the Bill. I have, however, thought it desirable to make your Lordship fully aware of its nature and of the circumstances which have led to its introduction, as well as the objections which may, in my judgment, be urged against against it.

I may add that the reference in sub-section (b) of the Bill, as printed in the copy which I had the honour to send your Lordship, to the "law of nations," will be omitted.

I have, &c.  
(Signed) LANSDOWNE.

Inclosure 2 in No. 108.

*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 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 3rd section of the hereinbefore-recited Act, as amended by the Act 33 Vict., cap. 15, intituled, "An Act to amend the Act respecting Fishing by Foreign Vessels," is hereby repealed, and the following section enacted in lieu thereof:—

"3. Any one of the officers or persons hereinbefore mentioned may bring any ship, vessel, or boat, being within any harbour in Canada, or hovering in British waters within 3 marine miles of any of the coasts, bays, creeks, or harbours in Canada, into port and search her cargo, and may also examine the master upon oath touching the cargo and voyage, and if the master or person in command does not truly answer the questions put to him in such examination, he shall incur a penalty of 400 dollars; and if such ship, vessel, or boat is foreign, or not navigated according to the Law 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 3 marine miles of any of the coasts, bays, creeks, or harbours of Canada not included within the above-mentioned limits, without a licence, or after the expiration of the term named in the last licence granted to such ship, vessel, or boat, under the 1st section of this Act; or (b) has entered such water for any purpose not permitted by the law of nations, or by Treaty or Convention, or by any Law of the United Kingdom or of Canada for the time being in force; or (c) having entered such waters has failed to comply with any such Law of the United Kingdom or of Canada, such ship, vessel, or boat, and the tackle, rigging, apparel, furniture, stores, and cargo thereof, shall be forfeited." (33 Vict., cap. 15, sect. 1.)

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.)

No. 109.

*Sir L. West to the Earl of Rosebery.—(Received June 11.)*

(No. 46. Treaty.)

My Lord,

Washington, May 30, 1886.

WITH reference to my Treaty telegram of this day's date, I have the honour to inclose to your Lordship herewith copy of the note therein alluded to which I have received from the Secretary of State, protesting against the provisions of the Bill in the Canadian Parliament as an assumption of jurisdiction unwarranted by existing Conventions between Great Britain and the United States, and informing me that the United States' Minister in London had been instructed in this sense.

At an interview which I had yesterday with Mr. Bayard, he again alluded to the right of the Dominion Government to interpret a Treaty between Great Britain and the United States, but he was not at the time aware of the proceedings in the Canadian Parliament, and only sought for information as to the relation of the Legislatures of Great Britain and Canada. It was only after I left him that he received the copy of the Bill in question, upon which he addressed to me the note, copy of which accompanies this despatch.

I have forwarded copy of Mr. Bayard's note to the Marquis of Lansdowne for his Excellency's information.

I have, &amp;c.

(Signed) L. S. SACKVILLE WEST.

Inclosure in No. 109.

*Mr. Bayard to Sir L. West.*

Sir,

Department of State, Washington, May 29, 1886.

I HAVE just received an official imprint of House of Commons Bill No. 136, now pending in the Canadian Parliament, entitled "An Act further to amend the Act respecting fishing by foreign vessels," and am informed that it has passed the House, and is now pending in the Senate.

This Bill proposes the forcible search, seizure, and forfeiture of any foreign vessel within any harbour in Canada or hovering within 3 marine miles of any of the coasts, bays, creeks, or harbours in Canada, where such vessel has entered such waters for any purpose not permitted by the laws of nations, or by Treaty or Convention, or by any law of the United Kingdom or of Canada now in force.

I hasten to draw your attention to the wholly unwarranted proposition of the Canadian authorities, through their local agents, arbitrarily to enforce according to their own construction the provisions of any Convention between the United States and Great Britain, and, by the interpolation of language not found in any such Treaty, and by interpretation not claimed or conceded by either party to such Treaty, to invade and destroy the commercial rights and privileges of citizens of the United States under and by virtue of Treaty stipulations with Great Britain and Statutes in that behalf made and provided.

I have also been furnished with a copy of Circular No. 371, purporting to be from the Customs Department at Ottawa, dated the 7th May, 1886, and to be signed by J. Johnson, Commissioner of Customs, assuming to execute the provisions of the Treaty between the United States and Great Britain concluded the 20th October, 1818; and printed copies of a "Warning" purporting to be issued by George E. Foster, Minister of Marine and Fisheries, dated Ottawa, 5th March, 1886, of a similar tenour, although capable of unequal results in its execution.

Such proceedings I conceive to be flagrantly violative of the reciprocal commercial privileges to which citizens of the United States are lawfully entitled under Statutes of Great Britain and the well-defined and publicly proclaimed authority of both countries, besides being in respect of the existing Conventions between the two countries an assumption of jurisdiction entirely unwarranted, and which is wholly denied by the United States.

In the interest of the maintenance of peaceful and friendly relations I give you my earliest information on this subject, adding that I have telegraphed Mr. Phelps, our Minister at London, to make earnest protest to Her Majesty's Government against such arbitrary, unlawful, unwarranted, and unfriendly action on the part of

the Canadian Government and its officials, and have instructed Mr. Phelps to give notice that the Government of Great Britain will be held liable for all losses and injuries to citizens of the United States and their property caused by the unauthorized and unfriendly action of the Canadian officials to which I have referred.

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

## No. 110.

*Sir L. West to the Earl of Rosebery.—(Received June 11.)*

(No. 47. Treaty.)

My Lord,

*Washington, May 30, 1886.*

I HAVE the honour to inform your Lordship that the fine imposed on the Nova Scotia fishing-schooner "Sisters," seized at Portland (Maine) for a violation of the Customs Regulations, has been remitted by the Acting Secretary of the Treasury.

I inclose herewith an article from the "New York Herald" in connection therewith.\*

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

## No. 111.

*Sir L. West to the Earl of Rosebery.—(Received June 11.)*

(No. 48. Treaty.)

My Lord,

*Washington, May 30, 1886.*

IN my despatch No. 26, Treaty, of the 19th ultimo, I had the honour to forward to your Lordship the Report of the proceedings in the House of Representatives with reference to the seizure of American fishing vessels by the Canadian authorities. It will be observed that it was stated that the reciprocal legislation, subsequent to the Treaty of 1818, "culminated with a reciprocal legislative Arrangement, which took effect the 1st January, 1850, having all the force of a solemn Treaty by which Great Britain and the United States have placed the vessels of each nation respectively on the same footing in all their ports, including the Colonies of Great Britain," and the legislation of the United States was also referred to. As I was unable to find any such legislative arrangement to this effect, or any corresponding legislation on the part of the United States' Government, I referred to Mr. Carlisle for information, and I have now the honour to inclose copy of a letter which I have received from him on the subject.

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

## Inclosure in No. 111.

*Mr. Carlisle to Sir L. West.*

My dear Sir Lionel,

*307, D Street, Washington, May 28, 1886.*

I HAVE examined the Act of Parliament of the 26th June, 1849, and see that by sections 10 and 11 it is made lawful for Her Majesty (in her discretion) by Orders in Council to regulate the privileges, &c., of foreign vessels in British ports according to the treatment vessels of Great Britain receive in foreign ports. This is all that I can find in this Act which has any bearing on the alleged Agreement which, Mr. Dingley asserts, had all the force of a solemn Treaty.

You may remember that Mr. Dingley referred me to an Act of Congress of 1824, without giving the date, by the same Memorandum in which he cited the above-mentioned Act of Parliament. I find no Act of Congress passed in the year 1824 on any subject connected with the matter, and the only Acts prior to 1850 which I can find are the Acts of the 1st March, 1823, and the Act of the 29th May, 1830. These, however, are not now in force, and, besides, do not bear out

\* Not printed.

Mr. Dingley's assertion in his speech, "that there has been reciprocal legislation by both countries, culminating with a reciprocal legislative Agreement, which took effect the 1st January, 1850, having all the force of a solemn Treaty, by which Great Britain and the United States have placed the vessels of each nation respectively on the same footing in all their ports, including the Colonies of Great Britain."

Any "reciprocal legislative Agreement," in order to have the force of a "solemn Treaty," must be backed by such negotiations or promises between the two Governments as would bind them, and, indeed, nations usually resort to reciprocal legislation in cases where they do not desire to bind themselves by Treaties, the Municipal law of a nation being always within its own control.

Very truly yours,  
(Signed) CALDERON CARLISLE.

No. 112.

*Sir L. West to the Earl of Rosebery.—(Received June 11.)*

(No. 49. Treaty.)

My Lord,

*Washington, June 3, 1886.*

I HAVE the honour to inclose to your Lordship herewith copies of two letters which I have received from Mr. Bayard respecting the proceeding of the Canadian authorities against American fishing vessels. I have explained to Mr. Bayard that I am powerless to deal with these matters.

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

Inclosure 1 in No. 112.

*Mr. Bayard to Sir L. West.*

My dear Sir Lionel,

*Department of State, Washington, June 1, 1886.*

I SEND you a copy of a telegram I have received from our Consul-General at Halifax, reporting additional cases of interference with American vessels by the Canadian authorities.

There is no possible justification apparent in the repetition and continuance of such harsh and harassing action on the part of the provincial authorities against peaceful commerce. It can only be productive of injury to the efforts to establish a just mutual understanding, and obstruct the amicable international arrangement of a vexed question.

Very sincerely yours,  
(Signed) T. F. BAYARD.

Inclosure 2 in No. 112.

*Mr. Phelan to Mr. Bayard.*

(Telegraphic.)

*Halifax, Nova Scotia, May 30, 1886.*

CUTTER "Houlett" boarded American vessel at Causo and searched her. I have not particulars.

Schooner "Matthew Keany" detained one day at Souris, Prince Edward's Island, for purchasing ten bushels potatoes. The potatoes were landed and vessel allowed to go.

Inclosure 3 in No. 112.

*Mr. Bayard to Sir L. West.*

My dear Sir Lionel,

*Department of State, Washington, June 2, 1886.*

A TELEGRAM from Eastport, in Maine, to the Member of Congress from that district, announces a threat by Dominion Collectors of Customs to seize American boats if they buy herring for canning in the Dominion weirs.

This additional threatened inhibition of trade relates to the sardine industry, which consists in canning in the United States very small and young herring, which I am informed are caught very closely inshore in weirs in Canadian waters by the inhabitants and sold to citizens of the United States.

The occupation is carried on solely by Canadian fishermen along the coasts of their own country, so that the interference suggested is with their freedom of contract to dispose of property lawfully, the result of their own labours, because the sale is to citizens of the United States.

It is important that the facts should be made known plainly.

Yours, &c.

(Signed) T. F. BAYARD.

No. 113.

*Sir L. West to the Earl of Rosebery.—(Received June 14.)*

(No. 51. Treaty.)

My Lord,

*Washington, June 4, 1886.*

WITH reference to my despatch No. 29, Treaty, of the 11th May, I have the honour to inclose to your Lordship herewith the text of the Bill relating to American shipping which has passed Congress. Section 12 refers to reciprocity of tonnage dues, and section 17 is the retaliatory clause directed against Canada.

Official copies of the Act when approved by the President will be forwarded.

I have, &c.

(Signed) L. S. SACKVILLE WEST.

Inclosure in No. 113.

*Newspaper Extract.*

[From our regular Correspondent.]

*“Herald” Bureau, Corner Fifteenth and G Streets, N.W.,  
Washington, May 27, 1886.*

THE Bill to abolish certain fees for official services to American vessels and to amend the laws relating to shipping Commissioners, seamen, and owners of vessels, and for other purposes, will go to the President for his signature to-morrow. The main features were printed in the “Herald” of to-day, but as most of the amendments and new provisions will go into effect immediately, the maritime interests of New York and other ports are eagerly seeking for the text of the new Act, that it may be definitely understood what the modifications of the law are to be. The first two sections do not go into effect until the 1st July. Following is the full text of the Bill:—

“Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that on and after the 1st July, 1886, no fees shall be charged or collected by collectors or other officers of Customs, or by inspectors of steam-vessels or shipping Commissioners, for the following services to vessels of the United States, to wit:—

“Measurement of tonnage and certifying the same; issuing of license or granting of certificate of registry, record or enrolment, including all indorsements on the same and bond and oath; indorsement of change of master; certifying and receiving manifest, including master’s oath and permit; granting permit to vessels licensed for the fisheries to touch and trade; granting certificate of payment of tonnage dues; recording bill of sale, mortgage, hypothecation, or conveyance, or

the discharge of such mortgage or hypothecation; furnishing certificate of title; furnishing the crew list, including bond; certificate of protection to seamen; bill of health; shipping or discharging of seamen, as provided by title 53 of the Revised Statutes and section 2 of this Act; apprenticing boys to the merchant service; inspecting, examining, and licensing steam-vessels, including inspection certificate and copies thereof, and licensing of master, engineer, pilot, or mate of a vessel, and all provisions of laws authorizing or requiring the collection of fees for such services are repealed, such repeal to take effect the 1st July, 1886.

“Collectors or other officers of Customs, inspectors of steam-vessels and shipping Commissioners who are paid wholly or partly by fees, shall make a detailed Report of such services and the fees provided by law to the Secretary of the Treasury, under such Regulations as that officer may prescribe; and the Secretary of the Treasury shall allow and pay from any money in the Treasury not otherwise appropriated said officers such compensation for said services as each would have received prior to the passage of this Act; also such compensation to clerks of shipping Commissioners as would have been paid them had this Act not passed; provided that such services have, in the opinion of the Secretary of the Treasury, been necessarily rendered.

“Sect. 2. That shipping Commissioners may ship and discharge crews for any vessel engaged in the coastwise trade or the trade with the United States and the Dominion of Canada or Newfoundland or the West Indies or the Republic of Mexico, at the request of the master or owner of such vessel, the shipping and discharging fees in such cases to be one-half that prescribed by section 4612 of the Revised Statutes, for the purpose of determining the compensation of shipping Commissioners.

“Section 3. That section 10 of the Act entitled, ‘An Act to remove certain Burdens on the American Merchant Marine and encourage the American Foreign Carrying Trade, and for other Purposes,’ approved 26th June, 1884, be amended by striking out the words, ‘that it shall be lawful for any seaman to stipulate in his shipping agreement for an allotment of any portion of the wages which he may earn to his wife, mother, or other relative, but to no other person or corporation,’ and inserting in lieu thereof the following:—

“That it shall be lawful for any seaman to stipulate in his shipping agreement for an allotment of all or any portion of the wages which he may earn to his wife, mother, or other relative, or to an original creditor in liquidation of any just debt for board or clothing which he may have contracted prior to engagement, not exceeding 10 dollars per month for each month of the time usually required for the voyage for which the seaman has shipped, under such Regulations as the Secretary of the Treasury may prescribe, but no allotment to any other person or corporation shall be lawful.’

“And said section 10 is further amended by striking out all of the last paragraph after the words ‘vessels of the United States,’ and inserting in lieu of such words stricken out the following:—

“‘And any master, owner, consignee, or agent of any foreign vessel who has violated this section shall be liable to the same penalty that the master, owner, or agent of a vessel of the United States would be for a similar violation.’

“Sect. 4. That section 4289 of the Revised Statutes be amended so as to read as follows:—

“‘Sect. 4289. The provisions of the seven preceding sections and of section 18 of an Act entitled, ‘An Act to remove certain Burdens on the American Merchant Marine and to encourage the American Foreign Carrying Trade, and for other Purposes,’ approved 26th June, 1884, relating to the limitations of the liability of the owners of vessels, shall apply to all sea-going vessels, and also to all vessels used on lakes or rivers or in inland navigation, including canal-boats, barges, and lighters.’

“Sect. 5. That section 4153 of the Revised Statutes be amended by striking out the last sentence of the last paragraph and inserting instead the following:—

“‘In every vessel documented as a vessel of the United States, the number denoting her net tonnage shall be deeply carved or otherwise permanently marked on her main beam, and shall be so continued; and if the number at any time cease to be continued, such vessel shall be subject to a fine of 30 dollars on every arrival in a port of the United States if she have not her tonnage number legally carved or permanently marked.’

“Sect. 6. That from the close of section 4177 of said Statutes the following words shall be stricken out, to wit:—

“ ‘Such vessel shall be no longer recognized as a vessel of the United States,’ and in lieu thereof there shall be inserted the words following :—

“ ‘Such vessel shall be liable to a fine of 30 dollars on every arrival in a port of the United States if she have not her proper official number legally carved or permanently marked.’

“Sect. 7. Every vessel of twenty tons or upward, entitled to be documented as a vessel of the United States, other than registered vessels, found trading between district and district or between different places in the same district, or carrying on the fishery without be enrolled and licensed, and every vessel of less than twenty tons and not less than five tons burden found trading or carrying on the fishery as aforesaid without a license obtained as provided by this title, shall be liable to a fine of 30 dollars at every port of arrival without such enrolment or license. But if the license shall have expired while the vessel was at sea, and there shall have been no opportunity to renew such license, then said fine of 30 dollars shall not be incurred, and so much of section 4371 of the Revised Statutes as relates to vessels entitled to be documented as vessels of the United States is hereby repealed.

“Sect. 8. That foreign vessels found transporting passengers between places or ports in the United States, when such passengers have been taken on board in the United States, shall be liable to a fine of 2 dollars for every passenger landed.

“Section 9. That the fines imposed by sections 5, 6, and 8 of this Act shall be subject to remission or mitigation by the Secretary of the Treasury when the offence was not wilfully committed, under such Regulations and methods of ascertaining the facts as may seem to him advisable.

“Sect. 10. That the provision of schedule N of ‘An Act to reduce Internal Revenue Taxation, and for other Purposes,’ approved the 3rd March, 1883, allowing a drawback on imported bituminous coal used for fuel on vessels propelled by steam, shall be construed to apply only to vessels of the United States.

“Sect. 11. That section 14 of ‘An Act to remove certain Burdens on the American Merchant Marine and encourage the American Foreign Carrying Trade, and for other Purposes,’ approved the 26th June, 1884, be amended so as to read as follows :—

“ ‘Sect. 14. That in lieu of the tax on tonnage of 30 cents per ton per annum imposed prior to the 1st July, 1884, a duty of 3 cents per ton, not to exceed in the aggregate 15 cents per ton in any one year, is hereby imposed at each entry on all vessels which shall be entered in any ports of the United States from any foreign port or place in North America, Central America, the West India Islands, the Bahama Islands, the Bermuda Islands, or the coast of South America bordering on the Caribbean Sea, or the Sandwich Islands or Newfoundland; and a duty of 6 cents per ton, not to exceed 30 cents per ton per annum, is hereby imposed at each entry upon all vessels which shall be entered in the United States from any other foreign ports, not, however, to include vessels in distress or not engaged in trade.

“ ‘Provided, that the President of the United States shall suspend the collection of so much of the duty herein imposed on vessels entered from any foreign port as may be in excess of the tonnage and lighthouse dues or other equivalent tax or taxes imposed in said port on American vessels by the Government of the foreign country in which such port is situated, and shall, upon the passage of this Act, and from time to time thereafter as often as it may become necessary by reason of changes in the laws of the foreign countries above mentioned, indicate by Proclamation the ports to which such suspension shall apply, and the rate or rates of tonnage duty, if any, to be collected under such suspension.

“ ‘Provided further, that such Proclamation shall exclude from the benefits of the suspension herein authorized the vessels of any foreign country in whose ports the fees or dues of any kind or nature imposed on vessels of the United States, or the import or export duties on the cargoes are in excess of the fees, dues, or duties imposed on the vessels of the country in which such port is situated, or on the cargoes of such vessels.’

“And sections 4223 and 4224, and so much of section 4219 of the Revised Statutes as conflicts with this section, are hereby repealed.

“Sect. 12. That the President be, and hereby is, directed to cause the Governments of foreign countries which, at any of their ports, impose on American vessels a tonnage tax or lighthouse dues, or other equivalent tax, or taxes, or any other



fees, charges, or dues, to be informed of the provisions of the preceding section and invited to co-operate with the Government of the United States in abolishing all lighthouse dues, tonnage taxes, or other equivalent tax or taxes on, and also all other fees for official services to the vessels of the respective nations employed in the trade between the ports of such foreign country and the ports of the United States.

“Sect. 13. That section 11 of ‘An Act to remove certain Burdens on the American Merchant Marine and encourage the American Foreign Carrying Trade, and for other Purposes,’ approved the 26th June, 1884, shall not be construed to apply to vessels engaged in the whaling or fishing business.

“Sect. 14. That section 4418 of the Revised Statutes is hereby amended by striking out from the nineteenth and following lines thereof the words, ‘and, to indicate the pressure of steam, suitable steam registers that will correctly record each excess of steam carried above the prescribed limit and the highest point attained,’ and inserting in lieu thereof the words following, ‘and suitable steam gauges to indicate the pressure of steam.’

“Sect. 15. That the provisions of sections 2510 and 2511 of the Revised Statutes, as the sections of title 33 are numbered, in ‘An Act to reduce Internal Revenue Taxation, and for other Purposes,’ approved the 3rd March, 1883, and the provisions of section 16 of ‘An Act to remove certain Burdens on the American Merchant Marine and encourage the American Foreign Carrying Trade, and for other Purposes,’ approved the 26th June, 1884, shall apply to the construction, equipment, repairs, and supplies of vessels of the United States employed in the fisheries or in the whaling business in the same manner as to vessels of the United States engaged in the foreign trade.

“Section 16. That Rule 12 of section 4233 of the Revised Statutes shall be so construed as not to require rowboats and skiffs upon the River St. Lawrence to carry lights.

“Sect. 17. That whenever any foreign country whose vessels have been placed on the same footing in the ports of the United States as American vessels (the coastwise trade excepted) shall deny to any vessels in the United States any of the commercial privileges accorded to national vessels in the harbours, 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 authorized 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 such 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, harbours, 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 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 800 dollars, and shall be guilty of a misdemeanour, and, upon conviction, shall be liable to imprisonment for a term not exceeding two years.

“Sect. 18. Section 9 of ‘An Act to remove certain Burdens on the American Merchant Marine and encourage the American Foreign Carrying Trade, and for other Purposes,’ approved the 26th June, 1884, is hereby amended in the eighth line by inserting after the words ‘and the Consular offices’ the following: ‘When the transportation is by a sailing-vessel, and the regular steerage passenger rate, not to exceed 2 cents per mile, when the transportation is by steamer;’ and the said section is further amended by adding at the end the following: ‘or to take any seaman having a contagious disease.’”

No. 114.

*Mr. Wingfield to Sir J. Pauncefote.—(Received June 14.)*

(Confidential.)

Sir,

*Downing Street, June 14, 1886.*

WITH reference to your letters of the 26th ultimo and 3rd instant, I am directed by Earl Granville to transmit to you, to be laid before the Earl of Rosebery, a copy of a despatch from the Governor-General of Canada, inclosing a Report by the Dominion Minister of Justice on Mr. Bayard's notes of the 10th and 20th ultimo, relative to the North American Fisheries question.

I am, &amp;c.

(Signed) EDWARD WINGFIELD.

Inclosure 1 in No. 114.

*The Marquis of Lansdowne to Earl Granville.*

(Confidential.)

My Lord,

*Government House, Ottawa, May 31, 1886.*

I HAVE the honour to inclose herewith copy of a Report prepared by my Minister of Justice upon Mr. Bayard's notes of the 10th and 20th instant, which were referred to him in the first instance.

2. The substance of this Report, which is now before the Privy Council, will be incorporated in a Minute which I shall have the honour of forwarding to your Lordship as soon as it has been approved.

3. I had hoped to have been able to send the Minute in its final shape by to-day's mail, but the pressure of public business during the last days of the Session, which will end this week, renders it impossible for me to do so.

I have, &amp;c.

(Signed) LANSDOWNE.

Inclosure 2 in No. 114.

*Report from the Minister of Justice.*

THE Undersigned, having had under consideration the communication from Mr. Bayard, Secretary of State, dated at Washington, the 10th May instant, and addressed to Her Majesty's Minister at Washington, in reference to the seizure of the fishing-vessel "David J. Adams," submits the following observations in relation thereto.

Mr. Bayard suggests that "the Treaty of 1818 was between two nations, the United States of America and Great Britain, who, as the Contracting Parties, can alone apply authoritative interpretation thereto, and enforce its provisions by appropriate legislation."

As it may be inferred from this statement that the right of the Parliament of Canada to make enactments for the protection of the fisheries of the Dominion, and the power of the Canadian officers to protect those fisheries, are questioned, it may be well to state, at the outset, the grounds upon which it is conceived by the Undersigned that the jurisdiction in question is clear beyond a doubt.

1. In the first place, the Undersigned would ask it to be remembered that the extent [?] of the Parliament of Canada is not limited (nor was that of the provinces before the union) by the sea-coast, but extends to 3 marine miles from the shore, as to all matters over which any legislative authority can in any country be exercised within that space. The legislation which has been adopted on this subject by the Parliament of Canada (and previously to confederation by the provinces) does not extend beyond that limit. It may be assumed that, in the absence of any Treaty stipulation to the contrary, this right is so well recognized and established by both British and American law that the grounds on which it is supported need not be stated here at large. The Undersigned will merely add, therefore, to this statement of the position, that so far from the right being limited by the Convention of 1818, that Convention expressly recognizes the right.

After renouncing the liberty "to take, cure, or dry fish on or within 3 marine miles of any of the coasts, bays, &c., there is a stipulation that while American fishing vessels shall be admitted to enter such bays, &c., for the purposes of shelter,

and of repairing damages therein, of purchasing wood and of obtaining water," "they shall be under such restrictions as may be necessary to prevent their taking, curing, or drying fish therein, or in any other manner whatever abusing the privileges reserved them."

2. "Appropriate legislation" on this subject was, in the first instance, adopted by the Parliament of the United Kingdom. The Imperial Statute 59 Geo. III, cap. 38, was enacted in the year following the Convention, in order to give that Convention force and effect. That Statute declared that, except for the purposes before specified, it should "not be lawful for any person or persons, not being a natural-born subject of His Majesty, in any foreign ship, vessel, or boat, nor for any person in 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, to fish for, or to take, dry, or cure any fish of any kind whatever, within 3 marine miles of any coasts, bays, creeks, or harbours whatever in any part of His Majesty's dominions in America not included within the limits specified and described in the 1st Article of the said Convention; and that if such foreign ship, vessel, or boat, or any persons on board thereof, shall be found fishing, or to have been fishing, or preparing to fish within such distance of such coasts, bays, creeks, or harbours within such distance of His Majesty's dominions in America, out of the said limits as aforesaid, all such ships, vessels, and boats, together with their cargoes, and all guns, ammunition, tackle, apparel, furniture, and stores, shall be forfeited, and shall and may be seized, taken, sued for, prosecuted, recovered, and condemned by such and the like ways, means, and methods, and in the same Courts, as ships, vessels, or boats may be forfeited, seized, prosecuted, and condemned for any offence against any Laws relating to the Revenue of Customs, or the Laws of Trade and Navigation, under any Act or Acts of the Parliament of Great Britain, or of the United Kingdom of Great Britain and Ireland; provided that nothing contained in this Act shall apply, or be construed to apply, to the ships or subjects of any Prince, Power, or State in amity with His Majesty, who are entitled by Treaty with His Majesty to any privilege of taking, drying, or curing fish on the coasts, bays, creeks, or harbours, or within the limits in this Act described; provided always that it shall and may be lawful for any fisherman of the said United States to enter into any such bays or harbours of His Britannic Majesty's dominions in America as are last mentioned, for the purpose of shelter and repairing damages therein, of purchasing wood, and of obtaining water, and for no other purpose whatever; subject nevertheless to such restrictions as may be necessary to prevent such fishermen of the said United States from taking, drying, or curing fish in the said bays or harbours, or in any other manner whatever abusing the said privileges by the said Treaty and this Act reserved to them, and as shall for that purpose be imposed by any Order or Orders to be from time to time made by His Majesty in Council, under the authority of this Act, and by any Regulations which shall be issued by the Governor or person exercising the office of Governor in any such parts of His Majesty's dominions in America, under or in pursuance of any such Order in Council as aforesaid.

"And 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 in person exercising the office of Governor in any other part 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 harbours, 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*l.*, to be recovered in the Superior Court of Judicature of the Island of Newfoundland, or in the Superior Court of Judicature of the Colony or Settlement within or near to which such offence shall be committed, or by Bill, plaint, or information in any of His Majesty's Courts of Record at Westminster; one moiety of such penalty to belong to His Majesty, his heirs and successors, and the other moiety to such person or persons as shall sue or prosecute for the same."

The Acts passed by the provinces now forming Canada, and also by the Parliament of Canada, are to the same effect, and may be said to be merely declaratory of the law as established by the Imperial Statute.

3. The authority of the Parliaments of the provinces, and, after<sup>3</sup> confederation,

the authority of the Parliament of Canada, to make enactments to enforce the provisions of the Convention, and likewise the authority of Canadian officers to enforce those Acts, rests on well-known Constitutional principles. Those Parliaments existed, and the Parliament of Canada now exists, by the authority of the Parliament of Great Britain, which is one of the "nations" referred to by Mr. Bayard as the "Contracting Parties." The Colonial Statutes have received the sanction of the British Sovereign, who, and not the nation, is actually the party with whom the United States made the Convention.

The officers who are engaged in enforcing the Acts of Canada, or the Laws of the Empire, are Her Majesty's officers, although their authority may have been conveyed through the medium of Her Majesty's Governor-General.

The jurisdiction thus exercised cannot therefore be properly described in the language used by Mr. Bayard as a "supposed," and therefore questionable, "delegation of jurisdiction by the Imperial Government of Great Britain."

Her Majesty governs in Canada as well as in Great Britain; the officers in Canada are Her Majesty's officers, and the Statutes of Canada are Her Majesty's Statutes passed on the advice of her Parliament sitting in Canada.

It is therefore an error to conceive that, because Great Britain and the United States were, in the first instance, the Contracting Parties to the Treaty of 1818, no question arising under that Treaty can be "responsibly dealt with" either by the Parliament or by the authorities of the Dominion of Canada.

The Undersigned has further to observe, with regard to this contention of Mr. Bayard, that in the proceedings which have recently been taken for the protection of the fisheries, no attempt has been made to put any special or novel interpretation on the Treaty of 1818. The seizures of the fishing-vessels have been made in order to enforce the explicit provisions of that Treaty, the clear and long-established provisions of the Imperial Statute, and of the Statutes of Canada.

The proceedings which have been taken to carry out the law of the Empire in this regard are the same as those which have been taken, from time to time, during the period in which the Convention has been in force, and the seizures of vessels have been made under process of the Imperial Court of Vice-Admiralty established in one of the provinces of Canada.

Mr. Bayard's statement that "the discussion prior to the conclusion of the Treaty of Washington in 1871 was productive of a substantial agreement between the two countries as to the existence and limit of the 3 marine miles within the line of which, upon the regions defined in the Treaty of 1818, it should not be lawful for American fishermen to take, cure, or dry fish," does not appear to the Undersigned to have any important bearing on the subject under consideration.

The correspondence preceding the Washington Treaty (1871) shows that while the United States insisted that the limit of the 3 marine miles should follow the sinuosities of the coast, the Representatives of Great Britain distinctly claimed that the limit should be 3 marine miles from the coast-line, or from a line drawn across the mouths of bays, harbours, and inlets from headland to headland.

A friendly and conciliatory spirit induced the Government of Great Britain to allow the right in that respect to remain in abeyance, and to refrain from the strict enforcement thereof; but no agreement was come to by which the right to have the line of demarcation drawn from headland to headland was given up on the part of Great Britain, and that right is now insisted upon by the Government of Canada as firmly as it is within the province of a Government subordinate to Imperial authority to do.

Mr. Bayard further observes that since the Treaty of 1818 "a series of Laws and Regulations affecting the trade between the North American provinces and the United States have been respectively adopted by the two countries, and have led to amicable and mutually beneficial relations between their respective inhabitants;" and that "the independent and yet concurrent action of the two Governments has effected a gradual extension from time to time of the provisions of Article I of the Convention of the 3rd July, 1815, providing for reciprocal liberty of commerce between the United States and the territories of Great Britain in Europe, so as gradually to include the colonial possessions of Great Britain in North America and the West Indies within the limits of that Treaty." In reference to this statement the Undersigned has to observe that Mr. Bayard's letter proceeds to state certain instances in which it appears to be contended that the Laws and Regulations so adopted have affected the provisions of the Convention, and the Under-

signed is obliged to assume that the argument is derived only from those instances, as he is unable to find any Law or Regulation which has been in the least degree infringed by the action of the Dominion authorities in protecting their fisheries.

He has referred to the Proclamation of President Jackson in 1830, creating "reciprocal commercial intercourse on terms of perfect equality of flag" between the United States and the British American dependencies, and has suggested that those "commercial privileges have since received a large extension, and that in some cases favours have been granted by the United States without equivalent concession," such as "the exemption granted by the Shipping Act of the 26th June, 1884, amounting to one-half of the regular tonnage dues on all vessels from British North America and West Indies entering ports of the United States."

He has also mentioned under this head "the arrangements for the transit of goods, and the remission by Proclamation as to certain British ports and places of the remainder of the tonnage tax on the evidence of equal treatment being shown" to United States' vessels.

The Proclamation of President Jackson in 1830 had no relation to the subject of the fisheries, and merely had the effect of opening United States' ports to British vessels on terms like those which prevailed in British ports to vessels of the United States.

The Undersigned, while insisting that such legislation can in no way afford a reason for treating the Convention of 1818 as in any way affected as to its force and operation, desires to call attention to the fact that the object of those "Laws and Regulations" was purely of a commercial character, while the object of the Convention of 1818 was to establish and define the rights of the citizens of the two countries in relation to the fisheries on the British North American coast. Bearing this reservation in mind, however, it may be conceded that large improvements have been made in aid of commercial intercourse between the two countries, and that legislation in that direction has not been confined to the Government of the United States, as indeed Mr. Bayard has admitted, in referring to the case of the Imperial Shipping and Navigation Act of 1849. For upwards of forty years Canada has continued to evince her desire for a free exchange of the chief products of the two countries. She has repeatedly urged the desirability of the fuller reciprocity of trade which was established during the period in which the Treaty of 1854 was in force. That Treaty was terminated at the instance of the United States, and the Treaty of 1818 resumed its operation. Afterwards, by the negotiations which led up to the Washington Treaty (1871), Canada again manifested her willingness for even fuller reciprocal relations than the Representatives of the United States were willing to sanction by that Treaty.

The same readiness on the part of the Dominion of Canada to extend and facilitate commercial intercourse between the two countries was again shown after the Fishery Clauses of the Treaty of Washington had been rescinded by the Government of the United States, when Canada suggested, through Her Majesty's Government, her willingness to have the subjects of fisheries and trade adjusted on a basis that would promote harmony and commercial intercourse.

Upon that occasion, and in order to give ample time for the consideration of her proposals in that regard, and to avoid an interruption in the meantime of friendly relations, she continued to allow the United States' fishermen, for six months, all the advantages which the rescinded Fishery Clauses had previously given them; although her people received from the United States none of the corresponding advantages which the Treaty of 1871 had declared to be an equivalent for the benefits secured thereby to the fishermen of the United States.

The Laws prevailing in Canada in relation to the registry of shipping extend still more liberty than those of the United States, while in relation to the reduction of tonnage dues on Canadian vessels it has escaped the attention of Mr. Bayard that Canada imposes no such dues on United States' vessels.

The ports of Canada in inland waters are free to vessels of the United States, and those vessels are admitted to the use of her canals on equal terms with Canadian vessels.

Canada allows free registry to vessels built in the United States and purchased by British citizens, charges no tonnage or light dues on United States' shipping, and extends a standing invitation for a large measure of reciprocity in trade.

Whatever relevancy, therefore, the argument may have to the subject under consideration, the Undersigned submits that the concessions which Mr. Bayard

refers to as "favours" can hardly be said not to have been met by equivalent concessions on the part of Canada; and inasmuch as the disposition of Canada continues to be the same as was evinced in the friendly legislation just referred to, it would seem that Mr. Bayard's charge of "showing hostility to commerce under the guise of protection to inshore fisheries," or "interrupting ordinary commercial intercourse by harsh measures and unfriendly administration," is hardly justified.

But even if the Convention of 1818 had been a Treaty of Commerce, the Undersigned suggests that the adoption by either country of domestic laws extending commercial relations could not be held to abrogate the terms of agreement between the two countries. The questions, however, as has already been suggested, which are in controversy between Great Britain and the United States prior to 1818 related, not to shipping and commerce, but to the liberties of United States' fishermen in waters adjacent to the British North American provinces. Those questions were definitely settled by the Convention of that year, and although the terms of that Convention have since been twice suspended, first by the Treaty of 1854, and afterwards by the Treaty of 1871, after the lapse of these two latter Treaties, the provisions made in 1818 came again into operation, and were carried out by the Imperial and Colonial authorities without the slightest doubt being raised as to their being in full force and vigour.

Mr. Bayard's contention that the effect of the legislation which has taken place under the Convention of 1818, and of executive action thereunder, would be "to expand the restrictions and renunciations of that Treaty which related solely to inshore fishing within the 3-mile limit, so as to affect the deep-sea fisheries," and so as "to diminish and practically destroy the privileges expressly secured to American fishing-vessels to visit these inshore waters for the objects of shelter, and repair of damages, and purchasing wood and obtaining water," appears to the Undersigned to be unfounded. The legislation referred to in no way affects those privileges, nor has the Government of Canada taken any action towards their restriction. In the cases of the recent seizures, which are the immediate subject of Mr. Bayard's letter, the vessels seized had not resorted to Canadian waters for any one of the purposes allowed. They were United States' fishing-vessels, and, against the plain terms of the Convention of 1818, had entered harbours of Canada for purposes other than those enumerated as lawful. In doing so the "David J. Adams" was not even possessed of a permit "to touch and trade," even if such a document could be supposed to divest her of the character of a fishing-vessel. While the Government of Canada has no desire to expand the restrictions of the Convention of 1818, the Undersigned believes that the fair inference to be drawn from Mr. Bayard's contention is that the desire of the United States' Government is to extend very largely the privileges which their citizens enjoy under its terms. The contention that the changes which may from time to time take place in the habits of the fish taken off our coasts, or in the methods of taking them, should be regarded as justifying a periodical revision of the provisions of the Treaty, cannot be acceded to. Such changes may from time to time render the provisions of the compact inconvenient to one party or the other, but the validity of the agreement can hardly be said to depend on the convenience or inconvenience which it imposes from time to time on one or other of the Contracting Parties. When the operation of its provisions can be shown to have become manifestly inequitable and unfair, the utmost that good-will and fair dealing can suggest is that the terms should be reconsidered, and a new compact entered into; but this the Government of the United States does not appear to have considered desirable.

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 was 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. An undue expansion of the scope of the Convention would, upon the other hand, certainly take place if, under cover of its provisions, or of any Agreements relating to general commercial intercourse which may have since been made, permission were accorded to United States' fishermen to resort habitually to the harbours 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 harbours as a general base of operations from which to prosecute and organize, with greater advantage to themselves, the industry in which they are engaged. 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 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 the provisions of the Treaty. This would amount to a practical repeal of the Treaty, because it would enable a United States' Collector of Customs, by issuing a licence, 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 Treaty of 1818 contained no restrictions on British vessels, and no renunciation of any privileges in regard to them.

Mr. Bayard states that in the proceedings prior to the Treaty of 1818 the British Commissioners proposed that United States' fishing-vessels should be excluded "from carrying also merchandize," but that this proposition, "being resisted by the American negotiators, was abandoned," and goes on to say, "this fact would seem clearly to indicate that the business of fishing did not then and does not now disqualify vessels from also trading in the regular 'ports of entry.'" A reference to the proceedings alluded to will show that the proposition mentioned had reference only to United States' vessels visiting those portions of the coast of Labrador and Newfoundland on which the United States' fishermen had been granted the right to fish, and to land for drying and curing fish, and the rejection of the proposal can only, therefore, be used to indicate that the right to carry merchandize exists in relation to those coasts, and is no ground for supposing that the right extends to the regular ports of entry, against the express words of the Treaty.

The proposition of the British negotiators was to append to Article I the following words:—

"It is therefore well understood that the liberty of taking, drying, and curing fish, granted in the preceding part of this Article, should not be construed to extend to any privilege of carrying on trade with any of His Britannic Majesty's subjects residing within the limits hereinbefore assigned for the use of the fishermen of the United States." It was also proposed to limit them to having on board such goods as might "be necessary for the prosecution of the fishery, or the support of the fishermen while engaged therein, or in the prosecution of their voyages to and from the fishing-ground."

To this the American negotiators objected on the ground that the search for contraband goods, and the liability to seizure for having them in possession, would expose the fishermen to endless vexation, and, in consequence, the proposal was abandoned. It is apparent, therefore, that this proviso in no way referred to the bays or harbours outside the limits assigned to the American fishermen, from which bays and harbours, before and after this proposition was discussed, it was agreed that United States' fishing-vessels were to be excluded for all purposes other than for shelter and repairs, and purchasing wood and obtaining water.

But Mr. Bayard's argument that the rejection of a proposition should lead to an interpretation adverse to the tenour of such proposition suggests strong evidence that United States' fishing-vessels were not intended to have the right to enter Canadian waters for bait, to be used even in the prosecution of the deep-sea fisheries. The United States' negotiators made the proposition that the words "and bait" be added to the enumeration of objects for which their fishermen might be allowed to enter, and the proposition was rejected. This could only have referred to the deep-sea fishing, because the inshore fisheries had already been specifically renounced.

Mr. Bayard on more than one occasion intimates that the interpretation of the Treaty and its enforcement are dictated by local and hostile feelings, and that the main question is being "obscured by partizan advocacy and distorted by the heat of local interests," and that the administration of the Laws is being "conducted in a punitive and hostile spirit, which can only tend to induce steps of a retaliatory

nature," and in conclusion expresses a hope that "ordinary commercial intercourse shall not be interrupted by harsh measures and unfriendly administration."

The Undersigned observes that it is not the wish of the Government or the people of Canada to interrupt for a moment the most friendly commercial intercourse. The mercantile vessels and the commerce of the United States have at present exactly the same freedom that they have for years past enjoyed in Canada, and the disposition of the Canadian Government is to extend reciprocal trade with the United States beyond its present limits; nor can it be admitted that the charge of local prejudice or hostile feeling is justified by the calm enforcement, through the Courts of the country, of the plain terms of a Treaty between Great Britain and the United States, and the Statutes which have been in operation for nearly seventy years, excepting in intervals during which (until put an end to by the United States' Government) special and more liberal provisions existed in relation to the commerce and fisheries of the two countries.

The Undersigned has also to call attention to the letter of Mr. Bayard of the 20th instant, likewise addressed to Her Majesty's Minister at Washington, relating also to the seizure of the "David J. Adams" in the port of Digby, Nova Scotia. That vessel was seized, as has been explained on a previous occasion, by the Commander of the Canadian steamer "Lansdowne," under the following circumstances:—

She was a United States' fishing-vessel, and entered the harbour of Digby for purposes other than those for which entry is permitted by the Treaty and by the Imperial and Canadian Statutes. As soon as practicable legal progress was obtained from the Vice-Admiralty Court at Halifax, and the vessel was delivered to the officers of that Court. The paper referred to in Mr. Bayard's letter as having been nailed to her mast was doubtless a copy of the warrant which commanded the Marshal, or his deputy, to make the arrest. The Undersigned is informed that there was no intention whatever of so adjusting the paper that its contents could not be read; but it is doubtless correct that the officer of the Court in charge declined to allow the document to be removed. Both the United States' Consul-General and the captain of the "David J. Adams" were made acquainted with the reasons for the seizure, and the only ground for the statement that a respectful application to ascertain the nature of the complaint was fruitless was that the Commander of the "Lansdowne," after the nature of the complaint had been stated to those concerned, and was published, and had become notorious to the people of both countries, declined to give the United States' Consul-General a specific and precise statement of the charges upon which the vessel would be proceeded against, but referred him to his superior.

While it is to be regretted that this should seem to be discourteous, the officer of the "Lansdowne" can hardly be said to have been pursuing an "extraordinary" course. The legal proceedings had at that time been commenced in the Court of Vice-Admiralty at Halifax, where the United States' Consul-General resides, and the officer at Digby could not state with precision, as he was called on to do, the grounds on which the intervention of the Court had been claimed in the proceedings therein. There was not in this instance the slightest difficulty in the United States' Consul-General, and those interested in the vessel, obtaining the fullest information; and no information which could have been given by those to whom they applied was withheld. 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 Solicitor for the Crown, and would have been furnished immediately on application to the authority to whom the Commander of the "Lansdowne" requested the United States' Consul-General to apply. No such information could have been obtained from the paper attached to the vessel's mast. Instructions have, however, been given to the Commander of the "Lansdowne" and other officers of the marine police, that in the event of any further seizures, a statement in writing shall be given to the master of the seized vessel of the offences charged, and that a copy thereof shall be sent to the United States' Consul-General at Halifax, and to the nearest United States' Consular Agent. There can be no objection to the Solicitor for the Crown being instructed likewise to furnish the Consul-General with a copy of the legal process in each case, if it can be supposed that any fuller information will thereby be given.

Mr. Bayard is correct in his statement of the reasons for which the "David J. Adams" was seized and is now held. It is claimed that the vessel violated the Treaty



of 1818, and consequently the Statutes which exist for the enforcement of that Treaty, and it is also claimed that she violated the Customs Laws of Canada of 1883. The Undersigned recommends that copies of these Statutes be furnished for the information of Mr. Bayard.

Mr. Bayard has in the same despatch recalled the attention of Her Majesty's Minister to the correspondence and action which took place in the year 1870, when the Fishery question was under consideration, and especially to the instructions of the Royal Admiralty to Vice-Admiral Wellesley, in which that officer was directed to observe great caution in the arrest of American fishermen, and to confine his action to one class of offences against the Treaty. Mr. Bayard, however, appears to have attached unwarranted importance to the correspondence and instructions of 1870, when he refers to them as implying an "understanding between the two Governments." An understanding which should, in his opinion, at other times, and under other circumstances, govern the conduct of the authorities, whether Imperial or Colonial, to whom, under the laws of the Empire, is committed the duty of enforcing the Treaty in question. When, therefore, Mr. Bayard points out the "absolute and instant necessity that now exists for a restriction of the seizure of American vessels charged with violations of the Treaty of 1818," to "the conditions specified under those instructions," it is necessary to recall the fact that in the year 1870 the action of the Imperial Government was probably influenced very largely by the prospect which then existed of an arrangement such as was accomplished in the following year by the Treaty of Washington, and that it may be inferred, in view of the disposition made apparent on both sides to arrive at such an understanding, that the Imperial authorities, without any surrender of Imperial or Colonial rights, and without acquiescing in any limited construction of the Treaty, instructed their Vice-Admiral in British North America to confine his seizures to the more open and injurious class of offences, which were especially likely to be brought within the cognizance of the naval officers of the Imperial Service.

The condition of affairs at the present time is entirely different. No circumstances exist which would seem to call for any such restrictive instructions. The Canadian Government, as has been already stated, for six months left its fishing-grounds open to American fishermen without any corresponding advantage in return, in order to afford time for the action of Congress in regard to the President's suggestion that a Commission should be appointed to consider the subjects involved in the Fishery Clauses of the Treaty of Washington. Congress has evinced no desire to carry out that recommendation, and the Undersigned respectfully submits that the adoption of instructions limiting in any way the enforcement of the Laws for the protection of the fisheries is a step against which it is the duty of the Government of Canada most respectfully to protest.

[No Signature.]

No. 115.

*The Earl of Rosebery to Mr. Phelps.*

Sir,

*Foreign Office, June 14, 1886.*

I HAVE the honour to acknowledge the receipt of your note of the 2nd instant, containing representations which you have been instructed by your Government to make respecting certain seizures of American fishing-vessels which have recently taken place in Canadian ports; and I beg leave to acquaint you, in reply, that the subject will receive the early and careful consideration of Her Majesty's Government.

I have, &c.  
(Signed) ROSEBERY.

No. 116.

*Sir J. Pauncefote to the Law Officers of the Crown and Sir J. Deane.*

Gentlemen,

*Foreign Office, June 14, 1886.*

WITH reference to my letter of the 5th instant on the subject of the North American Fisheries question, I am directed by the Earl of Rosebery to transmit to

you a copy of a note from the United States' Minister at this Court containing representations respecting recent seizures of American fishing-vessels in Canadian ports.

In connection with the arguments contained in this note, I am to inclose the printed Records of the Halifax Fishery Commission.

In Appendix (J), pp. 1539 to 1588, will be found the arguments of counsel on the question of purchasing bait, &c., and in Appendix (P), pp. 3381 to 3398, a collection of Judgments in Canadian Vice-Admiralty Courts respecting vessels seized for infractions of the Convention of 1818, to No. 1 (the "White Fawn") and No. 5 (the "J. H. Nickerson") of which I am to direct your especial attention.

I am further to inclose a volume containing printed correspondence respecting the negotiations leading to the Convention of 1818, from the draft Articles at pp. 95 and 96 of which it appears that the United States' proposal to include the "obtaining of bait" within the provisions of the Convention was refused.

I am to request that you will favour Lord Rosebery with any observations you may have to offer on Mr. Phelps' note, in connection with that of Mr. Bayard already submitted to you, it being understood that the Case which is expected to contain a full presentment of Canadian views has not yet reached this country, but will be submitted to you as soon as it arrives.

In connection with Mr. Bayard's note, I am to transmit herewith a despatch, since received from Her Majesty's Minister at Washington, inclosing observations by Mr. Calderon Carlisle, the Counsel of the British Legation, on the arguments in that note which are founded on the reciprocal legislation of the two countries.

I am, &c.

(Signed) JULIAN PAUNCEFOTE.

List of Papers:—(A.) Mr. Phelps, June 2, 1886; (B.) Records of Halifax Commission, vol. i; (C.) ditto, vol. ii; (D.) ditto, vol. iii; (E.) Confidential Print No. 2285, 1803-51; (F.) Sir L. West No. 48, Treaty, May 30, 1886.

No. 117.

*Sir J. Pauncefote to Sir R. Herbert.*

(Confidential.)

Sir,

*Foreign Office, June 14, 1886.*

I AM directed by the Earl of Rosebery to transmit to you, to be laid before Earl Granville, a copy of a note from the United States' Minister at this Court, containing representations respecting the recent seizures of American fishing-vessels in Canadian ports;\* and I am to state that his Lordship has referred this communication, as well as Mr. Bayard's note inclosed in Sir L. West's despatch No. 28, Treaty, of the 11th ultimo, to the Law Officers of the Crown, for any observations they may have to offer in anticipation of the detailed exposition of the views of the Canadian Government, which Lord Rosebery hopes may now be received before long.

I am, &c.

(Signed) JULIAN PAUNCEFOTE.

No. 118.

*Sir L. West to the Earl of Rosebery.—(Received June 15, 10:30 P.M.)*

(Treaty.)

(Telegraphic.)

*Washington, June 15, 1886.*

SECRETARY of State protests against jurisdiction claimed by Canadian authorities by means of headland lines drawn from Canso to St. Esprit, and from North Cape to East Cape.

Note by post.

No. 119.

*Sir J. Pauncefote to Sir R. Herbert.**Foreign Office, June 15, 1886.*[Transmits copy of Sir L. West's No. 47, Treaty: *ante*, No. 110.]

No. 119\*.

*The Earl of Rosebery to Sir L. West.*

(No. 27. Treaty. Confidential.)

*Foreign Office, June 16, 1886.*[Transmits copy of Mr. Phelps' note of June 2: *ante*, No. 103.]

No. 120.

*Sir J. Pauncefote to Sir R. Herbert.*

(Confidential.)

Sir,

*Foreign Office, June 16, 1886.*

I AM directed by the Earl of Rosebery to transmit to you, to be laid before Earl Granville, copies of despatches, as marked in the margin,\* from Her Majesty's Minister at Washington relative to the North American Fisheries question; and with reference to Mr. Bayard's note of the 29th ultimo, I am to suggest that a copy of the Circular therein alluded to should be obtained from the Canadian Government.

I am, &amp;c.

(Signed) JULIAN PAUNCEFOTE.

No. 121.

*Sir L. West to the Earl of Rosebery.—(Received June 18.)*

(No. 52. Treaty.)

My Lord,

*Washington, June 8, 1886.*

I HAVE the honour to inclose to your Lordship herewith copy of a further note which I have received from the Secretary of State protesting against the action of the Canadian Customs authorities at the port of St. Andrew's, New Brunswick, in the case of the American fishing-vessel "Annie M. Jordan."

Your Lordship will observe that is again intimated (see note of the 29th May, 1886) that Her Majesty's Government will be held liable for the loss and damage consequent on the seizures and detention of American vessels.

I have, &amp;c.

(Signed) L. S. SACKVILLE WEST.

Inclosure in No. 121.

*Mr. Bayard to Sir L. West.*

Sir,

*Department of State, Washington, June 7, 1886.*

I REGRET exceedingly to communicate that report is to-day made to me, accompanied by affidavit, of the refusal of the Collector of Customs of the port of St. Andrew's, New Brunswick, to allow the master of the American schooner "Annie M. Jordan," of Gloucester, Massachusetts, to enter the said vessel at that port, although properly documented as a fishing-vessel, with permission to touch and trade at any foreign port or place during her voyage.

The object of such entry was explained by the master to be the purchase and exportation of "certain merchandize" (possibly fresh fish for food, or bait for deep-sea fishing).

The vessel was threatened with seizure by the Canadian authorities, and her owners allege that they have sustained damage from this refusal of commercial rights.

I earnestly protest against this unwarranted withholding of lawful commercial privileges from an American vessel and her owners, and for the loss and damage consequent thereon the Government of Great Britain will be held liable.

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

## No. 122.

*Question asked in the House of Commons, June 18, 1886.*

*Mr. Gourley*,—To ask the Under-Secretary of State for Foreign Affairs what arrangements Her Majesty's Government have made with the Governments of the United States and the Dominion of Canada for the settlement of the recent fishery disputes.

*Answer.*

Negotiations on the subject are now in progress, and are being conducted in a friendly spirit, but they have not yet reached such a stage as would enable Her Majesty's Government to make any definite statement on the matter.

## No. 123.

*Mr. Bramston to Sir J. Pauncefote.—(Received June 19.)*

Sir,

*Downing Street, June 18, 1886.*

WITH reference to previous correspondence relating to the position of the North American Fishery question, consequent upon the termination of the Fishery Articles of the Treaty of Washington, I am directed by Earl Granville to transmit to you, to be laid before the Earl of Rosebery, a copy of a telegram received in code from the Governor of Newfoundland, requesting orders or instructions, under the Act of the Imperial Parliament 59 Geo. III, cap. 38, to require American fishermen to depart from bays and harbours of that island.

Lord Granville, as at present advised, sees no ground for entertaining this request, and will await further explanations from the Governor, whom he has informed, by telegram, that he awaits his despatch.

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

Inclosure in No. 123.

*Governor Des Vœux to Earl Granville.*

(Telegraphic.)

*June 10, 1886.*

MY Ministers, in accordance with very strong and almost unanimous public opinion, and at request of Joint Committee of Houses of Legislature, desire me to request orders or instructions, under Act of Parliament 59 Geo. III., cap. 38, sec. 4, to require American fishermen depart from bays and harbours of Newfoundland. No seizure contemplated, and penalties can rarely, if ever, be enforced. Measure intended rather as moral support to Canadian Government, and considered may have deterrent effect.

## No. 124.

*Sir J. Pauncefote to Sir R. Herbert.*

(Secret.)

Sir,

*Foreign Office, June 19, 1886.*

I AM directed by the Earl of Rosebery to transmit to you a copy of a telegram from Her Majesty's Minister at Washington, to the effect that the United States'

Government have protested against the jurisdiction claimed by Canada as regards certain headland lines;\* and I am to request that Earl Granville will inform his Lordship whether he has received any information that such a pretension has lately been advanced by the Canadian authorities.

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

No. 125.

*Sir L. West to the Earl of Rosebery.—(Received June 21.)*

(No. 53. Treaty.)

My Lord,

Washington, June 8, 1886.

I HAVE the honour to transmit herewith the following document, which I have received from the United States' Government, viz., Treasury Circular of the 28th May, 1886, ordering Returns of statistics of the fisheries.

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

Inclosure in No. 125.

CIRCULAR.

*Statistics of the Fisheries (see Circular 177 of 1885).*

To Collectors of Customs and others,  
*Treasury Department, Office of the Secretary,  
Washington, D.C., May 28, 1886.*

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 5 tons burden, engaged in the capture or transportation of any kind of fish, shell-fish, crustacæ, or other products of the seas, rivers, or lakes, shall present himself at the Custom-house for the purpose of obtaining or renewing his marine papers, 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 include the period covered by the paper 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 on requisition.

(Signed) C. S. FAIRCHILD, *Acting 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,	;		;

\* No. 118.

Period covered by papers about to surrendered or renewed began  
 18 , and ended , 18 .  
 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 (coloured), ; 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, ; date of return from last  
 trip,  
 Total number of trips made, ; how long idle during period covered by last  
 papers,  
 Quantity of fish or other products taken during period covered by last papers,  
 as follows:—  
 Pounds sold fresh :  
 Mackerel, ; cod ; halibut, ; herring ;  
 haddock, ; white-fish, ; lake trout, ; menhaden  
 (bbls.), ; other fish (specifying kinds and qualities),  
 Pounds dry-salted or split for salting :  
 Cod, ; hake, ; haddock, ; pollack ; other fish  
 (specifying kinds and qualities),  
 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 taken, ; oysters transported only, ; clams taken,  
 ; clams transported only, ; scallops, ; other  
 shell-fish,  
 Number of lobsters :  
 Lobsters taken, ; lobsters 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),  
 Estimate of rounds of above-named fish taken within 3 miles of the mainland or  
 islands, as follows:—  
 Mackerel, ; cod, ; hake, ; haddock, ;  
 pollack, ; herring, ; menhaden (bbls.), ; other  
 fish,  
 Total value of fish taken within 3 miles of the mainland or  
 islands, \$  
 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 actually 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 3 miles of any land, and  
 locality where taken,  
 Total value of fish taken in foreign waters, \$  
 Value of portion taken within 3 miles of land, \$  
 Money paid to foreign merchants for ice, \$ ; bait, \$ ;  
 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 the 16th December, 1885.

(Signed)

Collector of Customs.

No. 126.

*The Earl of Rosebery to Sir L. West.*

(No. 29. Treaty.)

Sir,

*Foreign Office, June 21, 1886.*

I HAVE received your despatch No. 46, Treaty, of the 30th ultimo, inclosing a  
 copy of a note from Mr. Bayard protesting against the provisions of the Bill No. 136  
 now pending in the Canadian Parliament, and also against the terms of the  
 Customs Circular No. 371; and I have to request that you will inform Mr. Bayard  
 in reply that the matter will receive careful attention after the necessary communi-  
 cation with the Dominion Government.

I am, &c.  
 (Signed) ROSEBERY.

No. 127.

*Sir J. Pouncefote to the Law Officers of the Crown and Sir J. Deane.*

Gentlemen,

*Foreign Office, June 21, 1886.*

WITH reference to my letters of the 5th and 14th instant, I am directed by the  
 Earl of Rosebery to transmit to you a letter from the Colonial Office, inclosing a  
 copy of a Report by the Canadian Minister of Justice upon Mr. Bayard's notes of  
 the 10th and 20th May last relative to the North American Fisheries question.\* A  
 copy of the latter note is inclosed for convenience of reference.†

You will observe that this Report deals only with the question of the construc-  
 tion to be placed upon the words of the Convention of 1818 taken in connection  
 with the subsequent amendments in the Navigation Act; and I am to state that  
 Lord Rosebery would be glad to be favoured in the first instance with any  
 suggestions you may have to make as to the nature of the reply which should be  
 made by Her Majesty's Government to Mr. Bayard upon this point, leaving for  
 consideration the other question as to whether the seizure of the "David J. Adams"  
 was legally justified under the existing legislation (whether Imperial or Colonial)  
 passed to enforce the observance of Article I of the Convention of 1818, or was  
 warranted under any other Laws relating to the Customs or otherwise.

I am to add that the Canadian Government have been pressed for a Report on  
 the latter point.

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

No. 128.

*Sir J. Pauncefote to Sir R. Herbert.*

(Confidential.)

Sir,

*Foreign Office, June 21, 1886.*

I AM directed by the Earl of Rosebery to acknowledge the receipt of your letter of the 14th instant, inclosing a copy of a Report by the Canadian Minister of Justice upon Mr. Bayard's notes of the 10th and 20th May last relative to the North American Fisheries question.

His Lordship observes that this Report is confined to a review of the points dealt with in the two notes in question, viz., the construction to be placed upon Article I of the Convention of 1818, and the effect of the subsequent legislation of the two countries in relation to trade and navigation.

This Report will at once be forwarded to the Law Officers, with reference to the papers already before them, with the view to obtaining their suggestions as to the reply to be made to Mr. Bayard's note of the 10th May.

Earl Granville will, however, recollect that in Mr. Phelps' note of the 2nd June (copy of which was inclosed in my letter of the 14th instant) a further and more serious point is raised, whether the seizure of the "David J. Adams" was justified under the existing legislation (whether Imperial or Colonial) passed to enforce the observance of Article I of the Convention of 1818, or was warranted under any other Laws relating to the Customs or otherwise.

It is probable that the Canadian Government are preparing a Report upon this point also, but, in the meantime, I am to suggest that it will be advisable to acquaint the Dominion Government that a justification of their action in the recent cases of seizure, as being warranted by the existing Law, should be forthcoming as soon as possible in order to enable Her Majesty's Government to reply to the arguments advanced by Mr. Phelps.

I am, &amp;c.

(Signed) JULIAN PAUNCEFOTE.

No. 129.

*Sir J. Pauncefote to Sir R. Herbert.*

Sir,

*Foreign Office, June 21, 1886.*

I AM directed by the Earl of Rosebery to transmit to you, to be laid before Earl Granville, a copy of a despatch from Her Majesty's Minister at Washington, inclosing copy of a note from the United States' Secretary of State protesting against the action of the Canadian Customs authorities at the port of St. Andrew's, New Brunswick, in the case of the United States' fishing-vessel "Annie M. Jordan;"\* and I am to state that Lord Rosebery would be glad to be furnished with a Report from the Dominion Government in regard to this case.

I am, &amp;c.

(Signed) JULIAN PAUNCEFOTE.

No. 130.

*Mr. Bramston to Sir J. Pauncefote.—(Received June 23.)*

(Confidential.)

Sir,

*Downing Street, June 22, 1886.*

WITH reference to the letter from this Department of the 2nd instant, I am directed by Earl Granville to transmit to you, to be laid before the Earl of Rosebery, a copy of a despatch from the Governor-General of Canada stating the grounds on which he has reserved, for the signification of Her Majesty's pleasure, the Bill respecting fishing by foreign vessels recently passed by the Dominion Legislature.

I am, &amp;c.

(Signed) JOHN BRAMSTON.

\* No. 121.



Inclosure in No. 130.

*The Marquis of Lansdowne to Earl Granville.*

(Confidential.)

My Lord,

Citadel, Quebec, June 7, 1886.

I HAD the honour of receiving your Lordship's telegraphic message of the 2nd instant, intimating to me that it was not desirable that the Bill referred to in my despatch No. 162 for amending the Act for fishing by foreign vessels should be allowed to come into operation at present, as it was calculated to embarrass negotiations pending with the United States in regard to the Fishery question.

2. Under these circumstances, as your Lordship's message reached me within a few hours of the prorogation of Parliament, and as it was no longer possible to insert a clause in the Bill suspending its operation until such time as Her Majesty's Government should have had an opportunity of considering its provisions, I thought it my duty to reserve it for the signification of Her Majesty's pleasure thereon, and I have informed my advisers that I have taken this course upon the ground mentioned in the previous paragraph.

3. It is, however, in my opinion, very important that there should be no misapprehension as to the reasons for which the measure has thus been reserved.

4. Her Majesty's Minister at Washington has been good enough to communicate to me, for my information, copy of a note received by him from the Secretary of State of the United States, in which the Bill is criticized, not so much on account of its policy, or because its introduction is regarded as inopportune and inconvenient, as upon the ground that any legislation by the Parliament of the Dominion for the purpose of interpreting and giving effect to a contract entered into by the Imperial Government is beyond the competence of that Parliament, and "an assumption of jurisdiction entirely unwarranted," and therefore "wholly denied by the United States."

5. Your Lordship is no doubt aware that legislation of this kind has been frequently resorted to by the Parliament of the Dominion for the purpose of enforcing Treaties or Conventions entered into by the Imperial Government. In the present case the legislation proposed was introduced not with the object of making a change in the terms of the Convention of 1818, nor with the intention of representing as breaches of the Convention any acts which are not now punishable as breaches of it. What the framers of the Bill sought was merely to amend the procedure by which the Convention is enforced, and to do this by attaching a particular penalty to a particular breach of the Convention after that breach had been proved before a competent Tribunal. It must be remembered that the Convention itself is silent as to the procedure to be taken in enforcing it, and that effect has accordingly been given to its provisions at different times both through the means of Acts passed, on the one side by Congress, and, on the other, by the Imperial Parliament, as well as by the Legislatures of the British North American provinces previous to confederation, and since confederation by the Parliament of the Dominion. The right of the Dominion Parliament to legislate for these purposes, and the validity of such legislation as against the citizens of a foreign country, has, as far as I am aware, not been seriously called in question. Such legislation, unless it is disallowed by the Imperial Government, becomes part of the law of the Empire.

6. The Government of the United States has long been aware of the necessity of reference to the Dominion Parliament in matters affecting Canadian interests, and has, I believe, never raised any objection to such reference. The Treaties of 1854 and 1871, so far as they related to the fisheries or to the commercial relations of the Dominion, were made subject of ratification by her Legislature. In the same way, the Treaty under which fugitive criminals from the United States into Canada are surrendered is carried into effect by means of a Canadian Statute. If a foreigner commits a murder in Canada, he is tried, convicted, and executed by virtue of a Canadian, and not of an Imperial, Act of Parliament. Seizures of goods and vessels for breaches of the local Customs Law have in like manner been made for many years past without any protest on the ground that such Laws involved an usurpation of power by the Colony.

7. Mr. Bayard's statement that the Dominion Government is seeking by its action in this matter to "invade and destroy the commercial rights and privileges secured to citizens of the United States under and by virtue of Treaty stipulations with Great Britain" is not warranted by the facts of the case. 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 *bonâ 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.

8. When, therefore, Mr. Bayard protests against all such proceedings as being "flagrantly violative of reciprocal commercial privileges to which citizens of the United States are lawfully entitled under Statutes of Great Britain, and the well defined and publicly proclaimed authority of both countries," and when he denies the competence of the Fishery Department to issue, under the Convention of 1818, such a paper as the "Warning," dated the 5th March, 1886, of which a copy has been supplied to your Lordship, he is in effect denying to the Dominion the right of taking any steps for the protection of its own rights secured under the Convention referred to.

9. It is no doubt open to the Government of the United States to call in question any act of legislation, whether of the Imperial or Canadian Parliament, on the ground either that it is a breach of Treaty obligations or that it involves an injustice to citizens of the United States of which their Government can reasonably complain. Mr. Bayard's contention, however, goes very far beyond this, and I trust that Her Majesty's Government will be slow to admit its force, and that care will be taken to make it appear that the Amendment Bill was reserved solely upon the ground that Her Majesty's Government, being engaged in negotiations with that of the United States in regard to the question of the Fisheries, desired to have a full opportunity of considering any measure affecting that question before such a measure was allowed to come into operation.

I have, &c.  
(Signed) LANSDOWNE.

### No. 131.

*Mr. Bramston to Sir J. Pauncefote.—(Received June 25.)*

Sir,

*Downing Street, June 24, 1886.*

WITH reference to Sir Lionel West's despatch No. 37 of the 21st May, a copy of which was inclosed in your letter of the 4th instant, I am directed by Earl Granville to transmit to you, to be laid before the Earl of Rosebery, a copy of a despatch, with its inclosure, from the Governor-General of Canada, relative to the case of the United States' schooner "Jennie and Julia."

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

### Inclosure 1 in No. 131.

*The Marquis of Lansdowne to Earl Granville.*

My Lord,

*Quebec, June 8, 1886.*

IN reference to Sir Lionel West's letter to me of the 21st May, inclosing one from Mr. Bayard complaining of the treatment of the American schooner "Jennie and Julia," of Eastport, Maine, which vessel was represented to have, after she had made due entry at the port of Digby, Nova Scotia, attempted to purchase herrings for smoking, and to have been thereupon warned and compelled to leave without taking any cargo, I have the honour to inclose copy of a Report which I have received from my Minister of Marine and Fisheries dealing fully with the case in question.

Your Lordship will observe that the "Jennie and Julia" is described as being to all intents and purposes a fishing-vessel, fully equipped for fishing, and that, as such, she was regarded as debarred by the Convention of 1818 from trading in Canadian ports, and therefore warned to desist from so doing.

I have, &c.  
(Signed) LANSDOWNE.

## Inclosure 2 in No. 131.

*Report from the Minister of Marine and Fisheries.*

WITH reference to a despatch from the British Minister at Washington to his Excellency the Governor-General, dated the 21st May last, and inclosing a letter from Mr. Secretary Bayard regarding the refusal of the Collector of Customs at Digby, Nova Scotia, to allow the United States' schooner "Jennie and Julia" the right of exercising commercial privileges at the said port, the Undersigned has the honour to make the following observations:—

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 acted upon his conviction that she was a fishing-vessel, and, as such, debarred by the Treaty of 1818 from entering Canadian ports for purposes of trade. He 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 *bonâ 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.

The whole respectfully submitted.

[No Signature.]

Ottawa, June 5, 1886.

## No. 132.

*Sir J. Pauncefote to Sir B. Herbert.*

*Foreign Office, June 25, 1886.*

[Transmits copy of Inclosure in Sir L. West's No. 53, Treaty, of June 8, 1886: *ante*, Inclosure in No. 125.]

## No. 133.

*Sir L. West to the Earl of Rosebery.—(Received June 28.)*

(No. 55. Treaty.)

My Lord,

*Washington, June 15, 1886.*

I HAVE the honour to inclose to your Lordship herewith copy of a note which I have received from the Secretary of State requesting the attention of Her Majesty's Government to certain warnings alleged to have been given to American fishing-vessels by the Canadian authorities to keep outside imaginary lines drawn from

neadlands to headlands, which he characterizes as wholly unwarranted pretensions of extra-territorial authority, and usurpations of jurisdiction.

I have, &c.

(Signed) L. S. SACKVILLE WEST.

Inclosure in No. 133.

*Mr. Bayard to Sir L. West.*

Sir,

*Department of State, Washington, June 14, 1886.*

THE Consul-General of the United States at Halifax communicates to me the information derived by him from the Collector of Customs at that port, to the effect that American fishing-vessels will not be permitted to land fish at that port of entry for transportation in bond across the province.

I have also to inform you that the masters of the four American fishing-vessels of Gloucester, Massachusetts—"Martha A. Bradly," "Rattler," "Eliza Boynton," and "Pioneer"—have severally reported to the Consul-General at Halifax that the Sub-Collector of Customs at Canso had warned them to keep outside an imaginary line drawn from a point 3 miles outside Canso Head to a point 3 miles outside St. Esprit, on the Cape Breton coast, a distance of 40 miles. This line, for nearly its entire continuance, is distant 12 to 25 miles from the coast. The same masters also report that they were warned against going inside an imaginary line drawn from a point 3 miles outside North Cape, on Prince Edward Island, to a point 3 miles outside of East Point, on the same island, a distance of over 100 miles, and that this last-named line was for nearly that entire distance about 30 miles from the shore.

The same authority informed the masters of the vessels referred to that they would not be permitted to enter Bay Chaleur.

Such warnings are, as you must be well aware, wholly unwarranted pretensions of extra-territorial authority, and usurpations of jurisdiction by the Provincial officials.

It becomes my duty, in bringing this information to your notice, to request that if any such orders for interference with the unquestionable rights of the American fishermen to pursue their business without molestation at any point not within 3 marine miles of the shores, and within the defined limits as to which renunciation of the liberty to fish was expressed in the Treaty of 1818, may have been issued, the same may at once be revoked as violative of the rights of citizens of the United States under Convention with Great Britain.

I will ask you to bring this subject to the immediate attention of Her Britannic Majesty's Government to the end that proper remedial orders may be forthwith issued.

It seems most unfortunate and regrettable that questions which have been long since settled between the United States and Great Britain should now be sought to be revived.

I have, &c.

(Signed) T. F. BAYARD.

No. 134.

*Mr. Bramston to Sir J. Pauncefote.—(Received June 28.)*

(Confidential.)

Sir,

*Downing Street, June 26, 1886.*

WITH reference to your letter of the 21st instant, respecting the North American Fisheries question, I am directed by Earl Granville to transmit to you, for the information of the Earl of Rosebery, a copy of a telegram which his Lordship has addressed to the Governor-General of Canada on the subject.

I am to add that copies of your letters of the 14th and 21st instant were transmitted by the mail of the 24th instant to the Marquis of Lansdowne for confidential communication to his Ministers.

I am, &c.

(Signed) JOHN BRAMSTON.

Inclosure in No. 134.

*Earl Granville to the Marquis of Lansdowne.*

(Telegraphic.)

Downing Street, June 24, 1886.

UNITED STATES: Government raise question whether seizure of "D. Adams" was justified by existing legislation, whether Imperial and Colonial, passed in order to enforce Article I Convention of 1818, or warranted by any other Laws relative to Customs or otherwise. Her Majesty's Government anxious for reply from Dominion Government on this point.

No. 135.

*Mr. Bramston to Sir J. Pauncefote.—(Received June 28.)*

(Confidential.)

Sir,

Downing Street, June 26, 1886.

WITH reference to your letter of the 2nd instant relative to the warning to fishermen issued by the Canadian Government, I am directed by Earl Granville to transmit to you, to be laid before the Earl of Rosebery, a copy of a despatch, with its inclosure, from the Governor-General of the Dominion on the subject.

I am, &c.

(Signed) JOHN BRAMSTON.

Inclosure 1 in No. 135.

*The Marquis of Lansdowne to Earl Granville.*

(Confidential.)

My Lord,

Citadel, Quebec, June 8, 1886.

IN reference to your Lordship's telegrams of the 3rd and 4th instant, in which you have called the attention of my Government to Customs Circular No. 371, and to the "Warning" inclosed therein, I think it desirable to make the following observations in explanation of the telegraphic replies which I have addressed to your Lordship.

2. In your telegram of the 4th instant your Lordship pointed out that the terms of the concluding paragraph of the "Warning" in question had the effect of excluding not only vessels belonging to the United States, but all foreign vessels, from Canadian bays and harbours, and you observed that this was probably not intentional, as nothing in the Act recited would justify such an exclusion.

3. I have ascertained that the "Warning," as originally issued from the Department of Marine and Fisheries, after reciting the 1st Article of the Convention of 1818 and sections 2, 3, and 4 of the Canadian Act of 1868, respecting fishing by foreign vessels, contained the following paragraph:—

"Therefore be it known that by virtue of the Treaty provisions and Act of Parliament above recited, all foreign vessels or boats are forbidden from fishing or taking fish by any means whatever within 3 marine miles of any of the coasts, bays, creeks, and harbours in Canada, or to enter such bays, harbours, and creeks, except for the purpose of shelter and of repairing damages therein, of purchasing wood, and of obtaining water, and for no other purpose whatever; of all of which you will take notice and govern yourself accordingly."

4. The passage quoted would, as your Lordship has pointed out, have affected all foreign vessels, whether belonging to the United States or not. The mistake was, however, detected, and the "Warning" issued in a revised form, from which the passage which I have quoted was omitted and replaced by the words, "of all of which you will take notice and govern yourselves accordingly."

5. I inclose herewith copies of the "Warning" in its original and its amended form. It is possible that your Lordship, as the American Minister, may have seen the "Warning" before it had been amended in the manner which I have described. The amended form, which merely recites Article I of the Convention of 1818 and the Canadian Statute of 1868, appears to me to be entirely free from any objection. The latter of these Statutes is, as your Lordship is aware, substantially the same as the Imperial Act of 1819 (59 Geo. III, cap. 58), although the provisions relating to hovering are taken from another Imperial Statute (9 Geo. III, cap. 35). The

Law of the United States as to hovering is, I believe, the same as that embodied in this Statute.

6. The concluding paragraphs of the Circular No. 371, to which and not to the "Warning" your Lordship's telegram of the 4th June may have been intended to refer, are also, I think, open to objection. After reciting the Dominion Act of 1868, which, like the Imperial Statute of 1819, applies to foreign vessels generally, the Circular proceeds to mention specially certain acts as violations not of either of the Statutes in question, but of the Convention of 1818, and declares that if "such vessels or boats," that is, any foreign fishing-vessels or boats, are found committing those acts, they are to be detained. As, however, the Convention has reference to the fishing rights of the United States, and not to those of other foreign Powers, the passages which I have quoted are, I think, certainly open to the criticism, not only that they assume that the acts described are violations of the Convention, but that they seek to apply whatever penalties may be enforced against parties contravening the Convention to vessels to which those provisions are not properly applicable.

7. This point has been considered by my Government with every desire to revise the Circular in such a manner as to remove all reasonable objections to it upon these or other grounds, and I have much pleasure in informing your Lordship that the Circular will be reissued, with the following concluding paragraphs in lieu of those referred to above:—

"Having reference to the above, you are requested to furnish any foreign vessels, boats, or fishermen found within 3 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 3-mile limit, does not depart within twenty-four hours after receiving such warning, you will place an officer on board of such vessel, and at once telegraph the facts to the Fisheries Department at Ottawa, and await instructions."

8. The effect of these words will be that every foreign fisherman found within the 3-mile limit will receive a warning, which will make him aware of the state of the law, while every fishing-vessel belonging to the United States found contravening the existing Canadian Statutes, which, as I have already reminded your Lordship, in these respects follow closely those passed by the Imperial Parliament, will, if not departing within twenty-four hours after receiving such warning, be detained under the conditions described.

9. Your Lordship will observe that the Circular as amended not only avoids seeking to apply to foreign vessels other than those of the United States the provisions of the Convention of 1818, but also avoids directing the officers to whom the instructions are issued to treat "the shipping of men, or supplies, or trading," as violations of the Convention.

10. I trust that the above explanation will be satisfactory to your Lordship.

I have, &c.

(Signed) LANSDOWNE.

P.S.—In last section "foreign" vessels are included in the prohibition from entering "bays, &c." So soon as I saw the error I had Circular No. 2 printed and distributed.

L.

---

Inclosure 2 in No. 135.

*Warning.*

To all whom it may concern,

THE Government of the United States having by notice terminated Articles XVIII to XXV, both inclusive, and Article XXX, know as the Fishery Articles of the Washington Treaty, attention is called to the following provision of the Convention between the United States and Great Britain signed at London on the 20th October, 1818:—

"Article I. 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 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 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 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 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 manner whatever abusing the privileges hereby reserved to them."

Attention is called to the following provisions of the Act of the Parliament of Canada, cap. 61 of the Acts of 1868, intituled "An Act respecting Fishing by Foreign Vessels."

"2. Any commissioned officer of Her Majesty's navy, serving on board of any vessels 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 harbour in Canada, or hovering (in British waters) within 3 marine miles of any of the coasts, bays, creeks, or harbours 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 harbour, 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 dollars; 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 3 marine miles of any of the coasts, bays, creeks, or harbours of Canada not included within the above-mentioned limits, without a licence, or after the expiration of the period named in the last licence granted to such ship, vessel, or boat under the 1st section of this Act, such ship, vessel, or boat, and the tackle, rigging, apparel, furniture, stores, and cargo thereof, shall be forfeited.

"4. All goods, ships, vessels, and boats, and the tackle, rigging, apparel, furniture, stores, and cargo, liable to forfeiture under this Act, may be seized and secured by any officers or persons mentioned in the 2nd section of this Act; and every person opposing any officer or person in the execution of his duty under this Act, or aiding or abetting any other person in any opposition, shall forfeit 800 dollars, and shall be guilty of a misdemeanour, and, upon conviction, be liable to imprisonment for a term not exceeding two years."

Of all of which you will take notice and govern yourself accordingly.

(Signed)

GEORGE E. FOSTER,  
Minister of Marine and Fisheries.

Department of Fisheries, Ottawa, March 5, 1886.

No. 136.

*Mr. Wingfield to Sir J. Pouncefote.—(Received June 28.)*

(Confidential.)

Sir,

*Downing Street, June 26, 1886.*

I AM directed by Earl Granville to acknowledge the receipt of your letter of the 19th instant respecting an alleged claim by the Canadian authorities to jurisdiction by means of headland lines drawn from Canso to St. Esprit, and from North Cape to East Cape.

I am to request that you will inform the Earl of Rosebery that Lord Granville is not in possession of any information on the subject.

I am, &c.  
(Signed) EDWARD WINGFIELD.

No. 137.

*Sir J. Pouncefote to Sir R. Herbert.*

Sir,

*Foreign Office, June 28, 1886.*

WITH reference to my letter of the 14th instant, inclosing a copy of Mr. Phelps' note of the 2nd instant on the Fishery question, I am directed by the Earl of Rosebery to request that, if Earl Granville sees no objection, the Canadian Government may be pressed for a speedy Report upon the arguments advanced by Mr. Phelps, especially in regard to the legal power under existing Statutes to seize United States' fishing-vessels for the purchase of bait in Canadian ports.

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

No. 138.

*Sir J. Pouncefote to the Law Officers of the Crown and Sir J. Deane.*

SIR JULIAN PAUNCEFOTE presents his compliments to the Attorney- and Solicitor-General and Sir J. Parker Deane, and with reference to his letters of the 5th, 10th, and the 21st instant, has the honour to inclose two letters from the Colonial Office for consideration, in connection with the papers already before them, on the subject of the North American Fisheries.\*

*Foreign Office, June 29, 1886.*

No 139.

*Mr. Meade to Sir J. Pouncefote.—(Received June 30.)*

(Confidential.)

Sir,

*Downing Street, June 29, 1886.*

WITH reference to your two letters of the 21st instant and to the reply from this Department of the 26th instant respecting the North American Fisheries question, I am directed by Earl Granville to transmit to you, to be laid before the Earl of Rosebery, the decypher of a telegram from the Governor-General of Canada on the subject.

I am also to transmit a copy of a despatch from the Governor-General, forwarding a copy of an approved Report of his Privy Council on Mr. Bayard's notes of the 10th and 20th ultimo.

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



## Inclosure 1 in No. 139.

*The Marquis of Lansdowne to Earl Granville.*

(Telegraphic.)

Quebec, June 26, 1886.

YOUR telegrams 24th.

Vice-Admiralty Court, 1871, decided that purchase of bait was evidence of preparing to fish. Master of "Adams" having bought bait, his vessel becomes liable under Imperial Statute 1819, section 2. Canadian Statute to same effect. Master also liable to penalty for entering Canadian waters for purpose not recognized by Convention. "Adams" also liable under Customs Act until a penalty of 400 dollars paid for not making proper entry at Customs.

Have no knowledge of the "Annie M. Jordan."

## Inclosure 2 in No. 139.

*The Marquis of Lansdowne to Earl Granville.*

My Lord,

Citadel, Quebec, June 14, 1886.

I HAVE the honour to inclose herewith a certified copy of an approved Report of my Privy Council upon Mr. Bayard's notes of the 10th and 20th May, dealing with the seizure of the American fishing-vessel "David J. Adams," and the questions affecting the rights of United States' fishermen within the territorial waters of the Dominion which have arisen in consequence of that seizure.

2. The Report bears the strongest testimony to the desire of my Government not only to avoid any action which might unnecessarily interrupt the amicable and neighbourly relations of the two countries, but also to establish if possible upon a wider and mutually advantageous basis the commercial relations of Canada and the United States.

3. Your Lordship will observe that whatever action has been resorted to by the Dominion Government has been taken solely with the object of maintaining valuable rights secured to the subjects of Her Majesty by contracts entered into by the Imperial Government, and by legislation carrying out the terms of those contracts. The Report expresses the conviction of my Government that such legislation, together with the administrative acts of those to whom has been intrusted the duty of giving effect to it, are not, as the Secretary of State of the United States has asserted, usurpations of power on the part of the Canadian Legislatures or of the Canadian Executive, but clearly within the competence of both.

4. In another portion of the Report your Lordship will find a statement of the reasons for which it is held that the provisions of the Convention of 1818 have not, as Mr. Bayard appears to suppose, been superseded or rendered of doubtful validity by subsequent laws and regulations affecting the trade of the two countries, but that they are still undoubtedly in force, and it is pointed out that now that the Convention has been once more brought into operation by the action not of the Dominion, but of the United States, the Government of this country cannot consistently with its duty abandon or suspend any of the privileges secured by that Convention to its people.

5. Your Lordship will find that a full, and I trust satisfactory, explanation has been given of the circumstances under which the "David J. Adams" was seized, and of the conduct of the officers of the Canadian Fisheries Police in dealing with that vessel.

I have, &amp;c.

(Signed) LANSDOWNE.

## Inclosure 3 in No. 139.

*Report of a Committee of the Honourable the Privy Council for Canada approved by his Excellency the Governor-General on the 14th June, 1886.*

THE Committee of the Privy Council have had under consideration a Report from the Minister of Marine and Fisheries upon the communications, dated the 10th and 20th May last, from the honourable Mr. Bayard, Secretary of State of the United States to Her Majesty's Minister at Washington in reference to the seizure of the American fishing-vessel "David J. Adams."

The Committee concur in the annexed Report, and they advise that your Excellency be moved to transmit a copy thereof to the Right Honourable the Secretary of State for the Colonies.

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

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

The Undersigned having had his attention called by your Excellency to a communication from Mr. Bayard, Secretary of State of the United States, dated the 10th May, and addressed to Her Majesty's Minister at Washington, and to a further communication from Mr. Bayard, dated the 20th May instant, in reference to the seizure of the American fishing-vessel "David J. Adams," begs leave to submit the following observations thereon:—

Your Excellency's Government fully appreciates and reciprocates Mr. Bayard's desire that the administration of the laws regulating the commercial interests and the mercantile marine of the two countries might be such as to promote good feeling and mutual advantage.

Canada has given many indisputable proofs of an earnest desire to cultivate and extend her commercial relations with the United States, and it may not be without advantage to recapitulate some of those proofs.

For many years before 1854 the maritime provinces of British North America had complained to Her Majesty's Government of the continuous invasion of their inshore fisheries (sometimes accompanied, it was alleged, with violence) by American fishermen and fishing-vessels.

Much irritation naturally ensued, and it was felt to be expedient by both Governments to put an end to this unseemly state of things by Treaty, and at the same time to arrange for enlarged trade relations between the United States and the British North American Colonies. The Reciprocity Treaty of 1854 was the result, by which were not only our inshore fisheries opened to the Americans, but provision was made for the free interchange of the principal natural products of both countries, including those of the sea. Peace was preserved on our waters, and the volume of international trade steadily increased during the existence of this Treaty, and until it was terminated in 1866, not by Great Britain, but by the United States.

In the following year Canada (then become a Dominion, and united to Nova Scotia and New Brunswick) was thrown back on the Convention of 1818, and obliged to fit out a Marine Police to enforce the laws and defend her rights, still desiring, however, to cultivate friendly relations with her great neighbour, and not too suddenly to deprive the American fishermen of their accustomed fishing grounds and means of livelihood. She readily acquiesced in the proposal of Her Majesty's Government for the temporary issue of annual licences to fish on payment of a moderate fee. Your Excellency is aware of the failure of that scheme. A few licences were issued at first, but the application for them soon ceased, and the American fishermen persisted in forcing themselves into our waters "without leave or licence."

Then came the recurrence, in an aggravated form, of all the troubles which had occurred anterior to the Reciprocity Treaty. There were invasions of our waters, personal conflicts between our fishermen and American crews, the destruction of nets, the seizure and condemnation of vessels, and intense consequent irritation on both sides.

This was happily put an end to by the Washington Treaty of 1871. In the interval between the termination of the first Treaty and the ratification of that by

which it was eventually replaced, Canada on several occasions pressed, without success, through the British Minister at Washington, for a renewal of the Reciprocity Treaty, or for the negotiation of another on a still wider basis.

When in 1874 Sir Edward Thornton, then British Minister at Washington, and the late honourable George Brown, of Toronto, were appointed joint Plenipotentiaries for the purpose of negotiating and concluding a Treaty relating to fisheries, commerce, and navigation, a Provisional Treaty was arranged by them with the United States' Government, but the Senate decided that it was not expedient to ratify it, and the negotiation fell to the ground.

The Treaty of Washington, while it failed to restore the provisions of the Treaty of 1854 for reciprocal free trade (except in fish), at least kept the peace, and there was tranquillity along our shores until July 1885, when it was terminated again by the United States' Government, and not by Great Britain.

With a desire to show that she wished to be a good neighbour, and in order to prevent loss and disappointment on the part of the United States' fishermen by their sudden exclusion from her waters in the middle of the fishing season, Canada continued to allow them for six months all the advantages which the rescinded fishery clauses had previously given them, although her people received from the United States none of the corresponding advantages which the Treaty of 1871 had declared to be an equivalent for the benefits secured thereby to the American fishermen.

The President, in return for this courtesy, promised to recommend to Congress the appointment of a Joint Commission by the two Governments of the United Kingdom and the United States to consider the fishery question, with permission also to consider the whole state of the trade relations between the United States and Canada.

This promise was fulfilled by the President, but the Senate rejected his recommendation and refused to sanction the Commission.

Under these circumstances, Canada, having exhausted every effort to procure an amicable arrangement, has been driven again to fall back upon the Convention of 1818, the provisions of which she is now enforcing and will enforce, in no punitive or hostile spirit as Mr. Bayard supposes, but solely in protection of her fisheries, and in vindication of the right secured to her by Treaty.

"Mr. Bayard suggests that the Treaty of 1818 was between two nations, the United States of America and Great Britain, who, as the Contracting Parties, can alone apply authoritative interpretation thereto, and enforce its provisions by appropriate legislation."

As it may be inferred from this statement that the right of the Parliament of Canada to make enactments for the protection of the fisheries of the Dominion, and the power of the Canadian officers to protect those fisheries, are questioned, it may be well to state at the outset the grounds upon which it is conceived by the Undersigned that the jurisdiction in question is clear beyond a doubt.

1. In the first place, the Undersigned would ask it to be remembered that the extent of the jurisdiction of the Parliament of Canada is not limited (nor was that of the provinces before the union) to the sea coast, but extends for 3 marine miles from the shore as to all matters over which any legislative authority can in any country be exercised within that space. The legislation which has been adopted on this subject by the Parliament of Canada (and previously to confederation by the provinces) does not reach beyond that limit. It may be assumed that, in the absence of any Treaty stipulation to the contrary, this right is so well recognized and established by both British and American law that the grounds on which it is supported need not be stated here at large; the Undersigned will merely add, therefore, to this statement of the position that, so far from the right being limited by the Convention of 1818, that Convention expressly recognizes it.

"After renouncing the liberty to take, cure, or dry fish on or within 3 marine miles of any of the coasts, bays, creeks, or harbours of Her Majesty's Dominions in America," there is a stipulation that while American fishing-vessels shall be admitted to enter such bays, &c., "for the purpose of shelter and of repairing damages therein, of purchasing wood, and of obtaining water, they shall be under such restrictions as may be necessary to prevent their taking, curing, or drying fish therein, or in any other manner whatever abusing the privileges reserved to them."

2. Appropriate legislation on this subject was, in the first instance, adopted by the Parliament of the United Kingdom. The Imperial Statute 59 Geo. III, cap. 38,

was enacted in the year following the Convention, in order to give that Convention force and effect. That Statute declared that, except for the purposes before specified, it should "not be lawful for any person or persons, not being a natural-born subject of His Majesty, in any foreign ship, vessel, or boat, nor for any person in 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, to fish for, or to take, dry, or cure any fish of any kind whatever within 3 marine miles of any coasts, bays, creeks, or harbours whatever, in any part of His Majesty's dominions in America, not included within the limits specified and described in the 1st Article of the said Convention, and that if such foreign ship, vessel, or boat, or any person or persons on board thereof shall be found fishing, or to have been fishing, or preparing to fish within such distance of such coasts, bays, creeks, or harbours within such parts of His Majesty's dominions in America, out of the said limits as aforesaid, all such ships, vessels, and boats, together with their cargoes, and all guns, ammunition, tackle, apparel, furniture, and stores, shall be forfeited, and shall and may be seized, taken, sued for, prosecuted, recovered, and condemned by such and the like ways, means, and methods, and in the same Courts as ships, vessels or boats may be forfeited, seized, prosecuted, and condemned for any offence against any Laws relating to the Revenue of Customs, or the Laws of Trade and Navigation, under any Act or Acts of the Parliament of Great Britain or the United Kingdom of Great Britain and Ireland, provided that nothing contained in this Act shall apply or be construed to apply to the ships or subjects of any Prince, Power, or State in amity with His Majesty who are entitled by Treaty with His Majesty to any privileges of taking, drying, or curing fish on the coasts, bays, creeks, or harbours, or within the limits in this Act described. Provided always, that it shall and may be lawful for any fishermen of the said United States to enter into any such bays or harbours of His Britannic Majesty's dominions in America as are last mentioned, for the purpose of shelter and repairing damages therein, of purchasing wood, and of obtaining water, and for no other purpose whatever, subject nevertheless to such restrictions as may be necessary to prevent such fishermen of the said United States from taking, drying, or curing fish in the said bays or harbours, or in any other manner whatever abusing the said privileges by the said Treaty and this Act reserved to them and as shall for that purpose be imposed by any order or orders to be from time to time made by His Majesty in Council under the authority of this Act, and by any Regulations which shall be issued by the Governor or person exercising the office of Governor in any such parts of His Majesty's dominions in America, under or in pursuance of any such Order in Council as aforesaid.

"And 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 in 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 harbours, 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*l.*, to be recovered in the Superior Court of Judicature of the Island of Newfoundland, or in the Superior Court of Judicature of the Colony or Settlement within or near to which such offence shall be committed, or by Bill, plaint, or information in any of His Majesty's Courts of Record at Westminster, one moiety of such penalty to belong to His Majesty, his heirs, and successors, and the other moiety to such person or persons as shall sue or prosecute for the same."

The Acts passed by the provinces now forming Canada, and also by the Parliament of Canada (now noted in the margin),\* are to the same effect, and may be said to be merely declaratory of the law as established by the Imperial Statute.

3. The authority of the Legislatures of the Provinces, and after confederation, the authority of the Parliament of Canada, to make enactments to enforce the provisions of the Convention, as well as the authority of Canadian officers to enforce those Acts, rests on well-known constitutional principles.

\* Dominion Acts, 31 Vict., cap. 6; 33 Vict., cap. 16; now incorporated in revised Statutes of 1886, cap. 90. Nova Scotia Acts, revised Statutes 3rd series, c. 94, 29 Vic. (1866) C. 35. New Brunswick Acts, 16 Vic. (1863), C. 69. Prince Edward Island Act, 6 Vic. (1843), C. 14.

Those Legislatures existed, and the Parliament of Canada now exists, by the authority of the Parliament of the United Kingdom of Great Britain and Ireland, which is one of the nations referred to by Mr. Bayard as the "Contracting Parties." The Colonial Statutes have received the sanction of the British Sovereign who, and not the nation, is actually the party with whom the United States made the Convention. The officers who are engaged in enforcing the Acts of Canada or the laws of the Empire, are Her Majesty's officers, whether their authority emanates directly from the Queen or from Her Representative, the Governor-General. The jurisdiction thus exercised cannot therefore be properly described in the language used by Mr. Bayard as a supposed and therefore questionable delegation of jurisdiction by the Imperial Government of Great Britain. Her Majesty governs in Canada as well as in Great Britain; the officers of Canada are her officers; the Statutes of Canada are her Statutes, passed on the advice of her Parliament sitting in Canada.

It is, therefore, an error to conceive that because the United States and Great Britain were in the first instance the Contracting Parties to the Treaties of 1818, no question arising under that Treaty can be "responsibly dealt with," either by the Parliament, or by the authorities of the Dominion.

The raising of this objection now is the more remarkable, as the Government of the United States has long been aware of the necessity of reference to the Colonial Legislatures in matters affecting their interests.

The Treaties of 1854 and 1871 expressly provide, that so far as they concerned the fisheries or trade relations with the provinces, they should be subject to ratification by their several Legislatures, and seizures of American vessels and goods, followed by condemnation for breach of the Provincial Customs Laws have been made for forty years without protest or objection on the part of the United States' Government.

The Undersigned, with regard to this contention of Mr. Bayard, has further to observe that in the proceedings which have recently been taken for the protection of the fisheries, no attempt has been made to put any special or novel interpretation on the Convention of 1818. The seizures of the fishing-vessels have been made in order to enforce the explicit provisions of that Treaty, the clear and long established provisions of the Imperial Statute and of the Statutes of Canada expressed in almost the same language.

The proceedings which have been taken to carry out the law of the Empire in the present case, are the same as those which have been taken from time to time during the period in which the Convention has been in force, and the seizures of vessels have been made under process of the Imperial Court of Vice-Admiralty, established in the Provinces of Canada.

Mr. Bayard further observes that since the Treaty of 1818 "A series of Laws and Regulations affecting the trade between the North American Provinces and the United States have been respectively adopted by the two countries, and have led to amicable and mutually beneficial relations between their respective inhabitants," and that "the independent and yet concurrent action of the two Governments has effected a gradual extension from time to time of the provisions of Article I of the Convention of the 3rd July, 1815, providing for reciprocal liberty of commerce between the United States and the territories of Great Britain in Europe, so as gradually to include the Colonial possessions of Great Britain in North America and the West Indies within the limits of that Treaty."

The Undersigned has not been able to discover, in the instances given by Mr. Bayard, any evidence that the Laws and Regulations affecting the trade between the British North American Provinces and the United States, or that, "the independent and yet concurrent action of the two Governments" have either extended or restricted the terms of the Convention of 1818, or affected in any way the right to enforce its provisions according to the plain meaning of the Articles of the Treaty; on the contrary, a reference to the XVIIth Article of the Washington Treaty will show that the Contracting Parties made the Convention the basis of the further privileges granted by the Treaty, and it does not allege that its provisions are in any way extended or affected by subsequent legislation or Acts of Administration.

Mr. Bayard has referred to the Proclamation of President Jackson, in 1830, creating "reciprocal commercial intercourse on terms of perfect equality of flag" between the United States and the British American dependencies, and has suggested that these "commercial privileges have since received a large extension, and that in

some cases 'favours' have been granted by the United States without equivalent 'concession,' such as the exemption granted by the Shipping Act of the 26th June, 1884, amounting to one-half of the regular tonnage dues on all vessels from British North America and West Indies entering ports of the United States."

He has also mentioned under this head "the arrangement for the transit of goods, and the remission by Proclamation as to certain British ports and places of the remainder of the tonnage tax on evidence of equal treatment being shown" to United States' vessels.

The Proclamation of President Jackson in 1830 had no relation to the subject of the fisheries, and merely had the effect of opening United States' ports to British vessels on terms similar to those which had already been granted in British ports to vessels of the United States. The object of these "Laws and Regulations" mentioned by Mr. Bayard was purely of a commercial character, while the sole purpose of the Convention of 1818 was to establish and define the rights of the citizens of the two countries in relation to the fisheries on the British North American coast.

Bearing this distinction in mind, however, it may be conceded that substantial assistance has been given to the development of commercial intercourse between the two countries.

But legislation in that direction has not been confined to the Government of the United States, as indeed Mr. Bayard has admitted in referring to the case of the Imperial Shipping and Navigation Act of 1849.

For upwards of forty years, as has already been stated Canada has continued to evince her desire for a free exchange of the chief products of the two countries. She has repeatedly urged the desirability of the fuller reciprocity of trade which was established during the period in which the Treaty of 1854 was in force.

The laws of Canada with regard to the registry of vessels, tonnage dues, and shipping generally, are more liberal than those of the United States. The ports of Canada in inland waters are free to vessels of the United States, which are admitted to the use of her canals on equal terms with Canadian vessels.

Canada allows free registry to ships built in the United States and purchased by British citizens, charges no tonnage or light dues on United States shipping, and extends a standing invitation for a large measure of reciprocity in trade by her Tariff legislation.

Whatever relevancy, therefore, the argument may have to the subject under consideration, the Undersigned submits that the concessions which Mr. Bayard refers to as "favours" granted by the United States can hardly be said not to have been met by equivalent concessions on the part of the Dominion, and inasmuch as the disposition of Canada continues to be the same, as was evinced in the friendly legislation just referred to, it would seem that Mr. Bayard's charges of showing "hostility to commerce under the guise of protection to inshore fisheries," or of interrupting ordinary commercial intercourse by harsh measures and unfriendly administration is hardly justified.

The questions which were in controversy between Great Britain and the United States prior to 1818, related not to shipping and commerce but to the claims of United States' fishermen to fish in waters adjacent to the British North American Provinces.

Those questions were definitely settled by the Convention of that year, and although the terms of that Convention have since been twice suspended, first by the Treaty of 1854 and subsequently by that of 1871, after the lapse of each of these two Treaties the provision made in 1818 came again into operation, and were carried out by the Imperial and Colonial authorities without the slightest doubt being raised as to their being in full force and vigour.

Mr. Bayard's contention that the effect of the legislation which has taken place under the Convention of 1818, and of Executive action thereunder, would be "to expand the restrictions and renunciations of that Treaty which related solely to the inshore fishing within the 3-mile limit, so as to affect the deep-sea fisheries," and "to diminish and practically destroy the privileges expressly secured to American fishing-vessels to visit these inshore waters for the objects of shelter and repair of damages, and purchasing wood and obtaining water," appears to the Undersigned to be unfounded. The legislation referred to in no way affects those privileges, nor has the Government of Canada taken any action towards their restriction. In the cases of the recent seizures, which are the immediate subject of Mr. Bayard's letter, the vessel seized had not resorted to Canadian waters, for any one of the purposes

specified in the Convention of 1818 as lawful. They were United States' fishing-vessels, and, against the plain terms of the Convention, had entered Canadian harbours. In doing so the "David J. Adams" was not even possessed of a permit "to touch and trade," even if such a document could be supposed to divest her of the character of a fishing-vessel.

The Undersigned is of opinion that while, for the reasons which he has advanced, there is no evidence to show that the Government of Canada has sought to expand the scope of the Convention of 1818 or to increase the extent of its restrictions, it would not be difficult to prove that the construction which the United States seek to place on that Convention would have the effect of extending very largely the privileges which their citizens enjoy under its terms. The contention that the changes which may from time to time occur in the habits of the fish taken off our coasts, or in the methods of taking them, should be regarded as justifying a periodical revision of the terms of the Treaty, or a new interpretation of its provisions cannot be acceded to. Such changes may from time to time render the conditions of the contract inconvenient to one party or the other, but the validity of the agreement can hardly be said to depend on the convenience or inconvenience which it imposes from time to time on one or other of the Contracting Parties. When the operation of its provisions can be shown to have become manifestly inequitable, the utmost that good-will and fair dealing can suggest is that the terms should be reconsidered and a new arrangement entered into, but this the Government of the United States does not appear to have considered desirable.

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 agreements relating to general commercial intercourse which may have since been made, permission were accorded to United States' fishermen to resort habitually to the harbours 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 harbours 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 harbours, 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 permit 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 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 licence—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 restrictions on British vessels, and no renunciation of any privileges in regard to them.

Mr. Bayard states that in the proceedings prior to the Treaty of 1818, the British Commissioners proposed that United States' fishing-vessels should be excluded "from carrying also merchandize," but that this proposition, "being resisted by the American negotiators, was abandoned," and goes on to say, "this

fact would seem clearly to indicate that the business of fishing did not then, and does not now, disqualify vessels from also trading in the regular ports of entry." A reference to the proceedings alluded to will show that the proposition mentioned related only to United States' vessels visiting those portions of the coast of Labrador and Newfoundland on which the United States' fishermen had been granted the right to fish, and to land for drying and curing fish, and the rejection of the proposal can at the utmost be supposed only to indicate that the liberty to carry merchandize might exist without objection in relation to those coasts, and is no ground for supposing that the right extends to the regular ports of entry, against the express words of the Treaty.

The proposition of the British negotiators was to append to Article I the following words: "It is, therefore, well understood that the liberty of taking, drying, and curing fish, granted in the preceding part of this Article, shall not be construed to extend to any privilege of carrying on trade with any of His Britannic Majesty's subjects residing within the limits hereinbefore assigned for the use of the fishermen of the United States."

It was also proposed to limit them to have on board such goods as might "be necessary for the prosecution of the fishery or the support of the fishermen while engaged therein, or in the prosecution of their voyages to and from the fishing grounds."

To this the American negotiators objected on the ground that the search for contraband goods, and the liability to seizure for having them in possession, would expose the fishermen to endless vexation, and in consequence the proposal was abandoned. It is apparent, therefore, that this proviso in no way referred to the bays or harbours outside of the limits assigned to the American fishermen, from which bays and harbours it was agreed, both before and after this proposition was discussed, that United States' fishing-vessels were to be excluded for all purposes other than for shelter and repairs, and purchasing wood and obtaining water.

If, however, weight is to be given to Mr. Bayard's argument that the rejection of a proposition advanced by either side during the course of the negotiations should be held to necessitate an interpretation adverse to the tenor of such proposition, that argument may certainly be used to prove that American fishing-vessels were not intended to have the right to enter Canadian waters for bait to be used even in the prosecution of the deep-sea fisheries. The United States' negotiators in 1818 made the proposition that the words "and bait" be added to the enumeration of the objects for which these fishermen might be allowed to enter, and the proviso as first submitted had read "provided, however, that American fishermen shall be permitted to enter such bays and harbours for the purpose only of obtaining shelter, wood, water, and bait." The addition of the two last words was, however, resisted by the British Plenipotentiaries, and their omission acquiesced in by their American colleagues. It is, moreover, to be observed that this proposition could only have had reference to the deep-sea fishing, because the inshore fisheries had already been specifically renounced by the Representatives of the United States.

In addition to this evidence it must be remembered 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. The British case claimed compensation for the privilege which had been given since the ratification of the latter Treaty to United States' fishing-vessels "to transfer cargoes, to outfit vessels, buy supplies, obtain ice, engage sailors, procure bait, and traffic generally in British ports and harbours."

This claim was, however, successfully resisted, and in the United States' case it is maintained "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 by the enforcement of existing Laws or the re-enactment of former oppressive Statutes. Moreover, the Treaty does not provide for any possible compensation for such privileges."

Now, the existing Laws referred to in this extract are the various Statutes passed by the Imperial and Colonial Legislatures to give effect to the Treaty of 1818, which it is admitted in the said case could at any time have been enforced (even during the existence of the Washington Treaty) if the Canadian authorities had chosen to do so.



Mr. Bayard, on more than one occasion, intimates that the interpretation of the Treaty and its enforcement are dictated by local and hostile feelings, and that the main question is being "obscured by partisan advocacy and distorted by the heat of local interests," and, in conclusion, expresses a hope that "ordinary commercial intercourse shall not be interrupted by harsh measures and unfriendly administration."

The Undersigned desires emphatically to state that it is not the wish of the Government or the people of Canada to interrupt for a moment the most friendly and free commercial intercourse with the neighbouring Republic.

The mercantile vessels and the commerce of the United States have at present exactly the same freedom that they have for years passed enjoyed in Canada, and the disposition of the Canadian Government is to extend reciprocal trade with the United States beyond its present limits, nor can it be admitted that the charge of local prejudice or hostile feeling is justified by the calm enforcement, through the legal Tribunals of the country, of the plain terms of a Treaty between Great Britain and the United States, and of the Statutes which have been in operation for nearly seventy years, excepting in intervals during which (until put an end to by the United States' Government) special and more liberal provisions existed in relation to the commerce and fisheries of the two countries.

The Undersigned has further to call attention to the letter of Mr. Bayard of the 20th May, relating also to the seizure of the "David J. Adams" in the port of Digby, Nova Scotia.

That vessel was seized, as has been explained on a previous occasion, by the Commander of the Canadian steamer "Lansdowne" under the following circumstances :

She was a United States' fishing-vessel, and entered the harbour of Digby for purposes other than those for which entry is permitted by the Treaty and by the Imperial and Canadian Statutes.

As soon as practicable, legal process was obtained from the Vice-Admiralty Court at Halifax, and the vessel was delivered to the officer of that Court. The paper referred to in Mr. Bayard's letter as having been nailed to her mast, was doubtless a copy of the warrant which commanded the Marshal or his deputy to make the arrest.

The Undersigned is informed that there was no intention whatever of so adjusting the paper that its contents could not be read, but it is doubtless correct that the officer of the Court in charge declined to allow the document to be removed. Both the United States' Consul-General and the Captain of the "David J. Adams" were made acquainted with the reasons for the seizure, and the only ground for the statement that a respectful application to ascertain the nature of the complaint was fruitless, was that the Commander of the "Lansdowne," after the nature of the complaint had been stated to those concerned and was published, and had become notorious to the people of both countries, declined to give the United States' Consul-General a specific and precise statement of the charges upon which the vessel would be proceeded against, but referred him to his superior.

Such conduct on the part of the officer of the "Lansdowne" can hardly be said to have been extraordinary under the present circumstances.

The legal proceedings had at that time been commenced in the Court of Vice-Admiralty at Halifax, where the United States' Consul-General resides, and the officer at Digby could not have stated with precision, as he was called upon to do, the grounds on which the intervention of the Court had been claimed in the proceedings therein.

There was not, in this instance, the slightest difficulty in the United States' Consul-General and those interested in the vessel, obtaining the fullest information, and no information which could have been given by those to whom they applied was withheld.

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, and would have been furnished immediately on application to the authority to whom the Commander of the "Lansdowne" requested the United States' Consul-General to apply. No such information could have been obtained from the paper attached to the vessel's mast.

Instructions have, however, been given to the Commander of the "Lansdowne," and other officers of the marine police, that in the event of any further seizures, a

statement in writing shall be given to the master of the seized vessel, of the offences for which the vessel may be detained, and that a copy thereof shall be sent to the United States' Consul-General at Halifax, and to the nearest United States' Consular Agent, and there can be no objection to the Solicitor for the Crown being instructed likewise to furnish the Consul-General with a copy of the legal process in each case if it can be supposed that any fuller information will thereby be given.

Mr. Bayard is correct in his statement of the reasons for which the "David J. Adams" was seized and is now held. It is claimed that that vessel violated the Treaty of 1818, and, consequently, the Statutes which exist for the enforcement of that Treaty, and it is also claimed that she violated the Customs Laws of Canada of 1883.

The Undersigned recommends that copies of those Statutes be furnished for the information of Mr. Bayard.

Mr. Bayard has in the same despatch recalled the attention of Her Majesty's Minister to the correspondence and action which took place in the year 1870, when the Fishery question was under consideration, and especially to the instructions from the Lords of the Admiralty to Vice-Admiral Wellesley, in which that officer was directed to observe great caution in the arrest of American fishermen, and to confine his action to one class of offences against the Treaty. Mr. Bayard, however, appears to have attached unwarranted importance to the correspondence and instructions of 1870, when he refers to them as implying "an understanding between the two Governments," an understanding which should, in his opinion, at other times and under other circumstances, govern the conduct of the authorities, whether Imperial or Colonial, to whom under the laws of the Empire is committed the duty of enforcing the Treaty in question.

When, therefore, Mr. Bayard points out the "absolute and instant necessity that now exists for a restriction of the seizure of American vessels charged with violations of the 'Treaty of 1818'" to the conditions specified under those instructions, it is necessary to recall the fact that in the year 1870 the principal cause of complaint on the part of Canadian fishermen was that the American vessels were trespassing on the inshore fishing grounds and interfering with the catch of mackerel in Canadian waters, the purchase of bait being then a matter of secondary importance.

It is probable, too, that the action of the Imperial Government was influenced very largely by the prospect which then existed of an arrangement such as was accomplished in the following year by the Treaty of Washington, and that it may be inferred, in view of this disposition made apparent on both sides to arrive at such an understanding, that the Imperial authorities, without any surrender of Imperial or Colonial rights, and without acquiescing in any limited construction of the Treaty, instructed the Vice-Admiral to confine his seizures to the more open and injurious class of offences which were especially likely to be brought within the cognizance of the naval officers of the Imperial Service.

The Canadian Government, as has been already stated, for six months left its fishing grounds open to American fishermen, without any corresponding advantage in return, in order to prevent loss to those fishermen, and to afford time for the action of Congress, on the President's recommendation that a Joint Commission should be appointed to consider the whole question relating to the fisheries.

That recommendation has been rejected by Congress. Canadian fish is by prohibitory duties excluded from the United States' market. The American fishermen clamour against the removal of those duties, and in order to maintain a monopoly of the trade, continue against all law to force themselves into our waters and harbours, and make our shores their base for supplies, especially of bait, which is necessary to the successful prosecution of their business.

They hope by this course to supply the demand for their home market, and thus to make Canada indirectly the means of injuring her own trade.

It is surely, therefore, not unreasonable that Canada should insist on the rights secured to her by Treaty. She is simply acting on the defensive, and no trouble can arise between the two countries if American fishermen will only recognize the provisions of the Convention of 1818 as obligatory upon them, and until a new arrangement is made, abstain both from fishing in her waters and from visiting her bays and harbours for any purposes save those specified in the Treaty.

In conclusion, the Undersigned would express the hope that the discussion which has arisen on this question may lead to renewed negotiations between Great

Britain and the United States, and may have the result of establishing extended trade relations between the Republic and Canada, and of removing all sources of irritation between the two countries.

(Signed)

GEORGE E. FOSTER,  
*Minister of Marine and Fisheries.*

No. 140.

*The Earl of Rosebery to Sir L. West.*

(No. 32. Treaty. Confidential.)

Sir,

*Foreign Office, June 30, 1886.*

I TRANSMIT herewith, for your information, a copy of a letter from the Colonial Office, inclosing a despatch from the Governor-General of Canada, stating the grounds on which he has reserved for the signification of Her Majesty's pleasure the Bill respecting fishing by foreign vessels recently passed by the Dominion Legislature.\*

I am, &c.

(Signed) ROSEBERY.

No. 141.

*Sir J. Pauncefote to Sir R. Herbert.*

(Confidential.)

Sir,

*Foreign Office, June 30, 1886.*

WITH reference to your letter of the 26th instant, I am directed by the Earl of Rosebery to state that his Lordship would be glad if Earl Granville could ascertain whether any instructions have been given by the Canadian Government to Customs officers on the subject of headland lines which might have given rise to the alleged claim to exclude United States' fishing-vessels from the waters covered by lines drawn from Cape Canso to St. Esprit, and from North Cape to East Cape of Prince Edward Island.

I am, &c.

(Signed) JULIAN PAUNCEFOTE.

No. 142.

*Sir J. Pauncefote Sir R. Herbert.*

*Foreign Office, June 30, 1886.*

[Transmits copy of Sir L. West's No. 55, Treaty: ante, No. 133.]

x

**CONFIDENTIAL**

(5307.)

**FURTHER CORRESPONDENCE**

**BESPECTING THE**

**TERMINATION OF THE FISHERY ARTICLES**

**OF THE**

**TREATY OF WASHINGTON**

**OF THE**

**8TH MAY, 1871.**

---

**January to June 1886.**