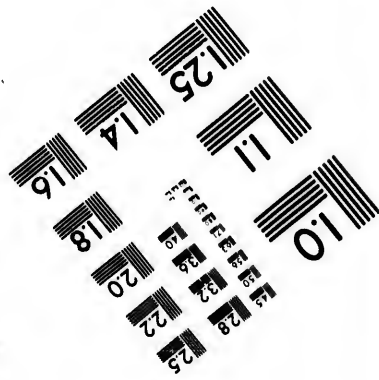
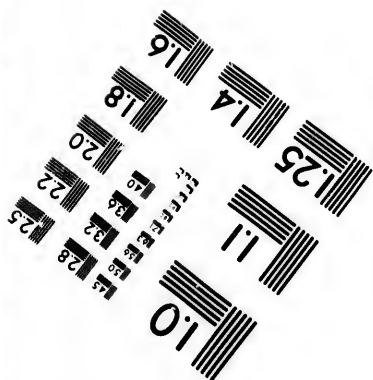
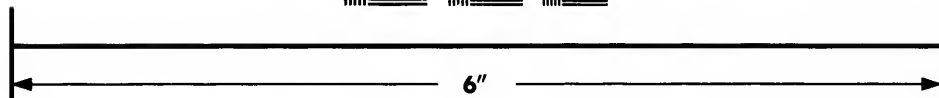
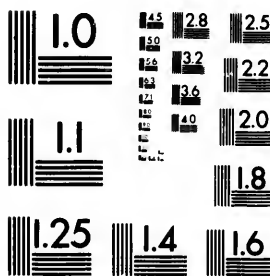


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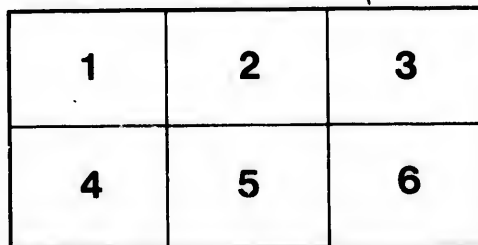
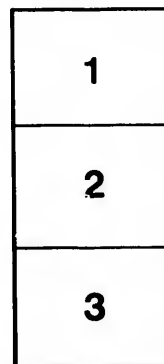
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RESPECTING

SEAL FISHING IN BEHRING'S SEA

DURING THE

SEASON OF 1892.

*Presented to both Houses of Parliament by Command of Her Majesty.
March 1892.*

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Telegraphic Correspondence respecting Seal Fishing in Behring's
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No. 1.

Sir J. Pouncefote to the Marquis of Salisbury.—(Received February 8.)

(Telegraphic.)

Washington, February 8, 1892.

I FORWARDED, by bag, on the 5th instant, for your Lordship's approval, a draft Behring's Sea Arbitration Convention which has been proposed by Mr. Blaine. The Joint Commission is embodied in it, and Mr. Blaine insists that the proceedings of the Joint Commissioners shall be informal until it is signed. After much delay, they meet to-day for the first time. A *modus vivendi* during the next fishery season is pressed for by Mr. Blaine, and he hopes that Her Majesty's Government will be prepared to put into force any Regulations which may be recommended by the Joint Commission for immediate application.

No. 2.

The Marquis of Salisbury to Sir J. Pouncefote.

(Telegraphic.)

Foreign Office, February 16, 1892.

THE draft Convention, inclosed in your despatch of the 5th instant, for referring to arbitration the questions at issue between Her Majesty's Government and that of the United States in connection with the seal fisheries in Behring's Sea, has been referred to the Law Officers of the Crown, who have been asked to furnish a Report on its terms at their earliest convenience.

Her Majesty's Government cannot express an opinion upon Mr. Blaine's proposal for a fresh *modus vivendi* during the present year until they are further informed as to what the provisions of the *modus vivendi* are to be. It does not seem to be at all necessary for the preservation of the fur-seal species that sealing should be entirely prohibited.

No. 3.

Sir J. Pouncefote to the Marquis of Salisbury.—(Received February 18.)

(Telegraphic.)

Washington, February 17, 1892.

WITH reference to your Lordship's telegram of the 16th instant, Mr. Blaine presses that the question of the *modus vivendi* should be considered and reported on by the Joint Commission. I have informed him that, in my opinion, it has no power to do so under its present mandate. Will your Lordship inform me whether you are willing that the necessary authority shall be given to the Commission, provided that no obligations are imposed upon either Government by its report?

No. 4.

The Marquis of Salisbury to Sir J. Pouncefote.

(Telegraphic.)

Foreign Office, February 18, 1892.

HER Majesty's Government have had under their consideration Mr. Blaine's proposal, reported in your telegram of yesterday, that the Joint Commission should examine and report on the question of arranging a fresh *modus vivendi* during the next seal-fishing season in Behring's Sea.

They have no objection to its being considered by the Commission whether, in case the decision of the Arbitrators is not obtained before June on the points to be submitted to them, any *modus vivendi* will be necessary, and, in that case, what should be its provisions.

Her Majesty's Government must, however, reserve absolutely their right of action in respect to any recommendations that may be made by the Commissioners.

In the present state of Parliamentary business, it seems unlikely that it would be possible to obtain any fresh powers from Parliament.

"The Seal Fishery (Behring's Sea) Act, 1891," is still in force, but it only gives power to prohibit sealing in Behring's Sea by Order in Council within limits and for a period to be specified in the Order itself.

You should communicate to the Canadian Government the substance of your telegram of the 17th instant, and of my reply.

No. 5.

Lord Stanley of Preston to Lord Knutsford.—(Received February 24.)*

(Telegraphic.)

Ottawa, February 23, 1892.

WITH reference to your telegram of the 16th instant respecting the *modus vivendi* in Behring's Sea, my Ministers do not possess any information to show that a *modus vivendi* is necessary, or that it can be reasonably demanded. If, however, such information has reached Her Majesty's Government, the Government of the Dominion would not oppose such a *modus vivendi* provided that it were confined to a zone of moderate limits, say, 25 miles, around the seal islands, and provided that it is accompanied by stringent restrictions against the killing of seals on land, with better supervision than during the *modus vivendi* of last year. Any arrangement of a more extended character would involve compensation to the sealing-vessels, and for this, of course, Canada could not be expected to make provision from the funds of the Dominion.

No. 6.

Sir J. Pouncefote to the Marquis of Salisbury.—(Received February 25.)

(Telegraphic.)

Washington, February 25, 1892.

BEHRING'S SEA *modus vivendi*.

With reference to your Lordship's telegram of the 16th instant, I have informed Mr. Blaine that your Lordship could not give an opinion until you learned what *modus vivendi* was proposed.

Following is the substance of a note which I have received in reply:—

The arbitration cannot possibly be concluded within the period of time which was contemplated originally. The delays which have occurred have been much more by Great Britain than by the United States.

The President suggests that the *modus* should be similar in terms to that of last year, but that it should be more fully executed. More efficient measures on the part of Her Majesty's Government will be practicable this year owing to the earlier date. More seals than ever were taken last year, the departure of the sealing-vessels having taken place previous to the agreement as to the *modus vivendi*. The prevention of sealing in the North Pacific Ocean would be the most-effective measure for Her Majesty's Government to adopt. The large number of sealers preparing to go forth from British Columbia would have to receive notice of this. The number of sealers is

* Repeated to Sir J. Pouncefote.

reported to be larger than ever, and without regulations there will be an immense destruction of females heavy with young.

Mr. Blaine urgently requests me to send the contents of the note to your Lordship by telegraph. I have not yet mentioned the question of authorizing the Joint Commission to report on the *modus vivendi* on the conditions mentioned in your Lordship's telegram of the 18th instant.

No. 7.

Sir J. Pauncefote to the Marquis of Salisbury.—(Received February 26.)

(Telegraphic.)

Washington, February 26, 1892.

MY telegram of yesterday.

Mr. Blaine specially desires me to telegraph to your Lordship *verbatim* the following paragraph contained in his note of the 24th instant respecting the *modus vivendi*:—

"Holding an arbitration in regard to the rightful mode of taking seals, while their destruction goes forward, would be as if, while an arbitration to the title to timber-land were in progress, one party were to cut and remove all the trees."

He attaches much importance to this illustration.

No. 8.

Sir J. Pauncefote to the Marquis of Salisbury.—(Received February 27.)

(Telegraphic.)

Washington, February 26, 1892.

WITH reference to your Lordship's telegram of the 25th instant, the opinion of the British Behring's Sea Commissioners as to a *modus vivendi* may be convenient to your Lordship at this juncture. They report as follows:—

"We do not apprehend any danger of serious further depletion of the fur-seals resorting to the Pribyloff Islands, as the result of hunting this year, unless excessive killing be permitted on the breeding islands. As a judicious temporary measure of precaution, however, for the season, and looking to permanent regulations for the fishery as a whole being established in time for the season of 1893, we would recommend the prohibition of all killing at sea during this season, within a zone extending to, say, not more than 30 nautical miles around the Pribyloff Islands, such prohibition being conditional on the restriction to a number not to exceed 30,000 as a maximum of the seals killed for any purpose on the islands."

I believe that the necessity for the total cessation of pelagic sealing will be insisted on by the American Commissioners, if the question be referred to the Joint Commission; but I submit that it is not necessary for us to go beyond the opinion of our own experts, pending arbitration.

No. 9.

The Marquis of Salisbury to Sir J. Pauncefote.

(Telegraphic.)

Foreign Office, February 27, 1892.

HER Majesty's Government have had under their consideration your telegrams of the 25th and 26th instant, dealing with the question of the *modus vivendi* proposed by Mr. Blaine for the approaching seal-hunting season.

They cannot admit in any degree the correctness of Mr. Blaine's statement, that there have been greater delays on the part of this country in the negotiations for settling the Behring's Sea difficulty than there have been on that of the United States.

The consent of Her Majesty's Government was given last year to a *modus vivendi* solely on the ground that the preservation of the seal species in those waters was supposed to be endangered unless some interval were given during which there would be a cessation of hunting both on land and sea.

No information has reached Her Majesty's Government to lead them to suppose that so drastic a measure is requisite for two successive seasons.

Indeed, they are informed by the British members of the Joint Commission now sitting at Washington that there is no danger, so far as the sea fishery is concerned, of any serious diminution of the numbers of the fur-seal species as a consequence of hunting them during the approaching season.

You are, however, authorized to offer to the Government of the United States the compromise suggested by the British Commissioners, and reported in your telegram of the 26th instant, viz., that during the present year the killing of seals at sea should be prohibited within a given radius not exceeding 30 nautical miles round the Pribyloff Islands, on condition that the number of seals to be killed for any purpose on the islands shall be restricted to a definite amount, not exceeding 30,000 at the utmost. A speedy decision is necessary, as we are informed that the sealing-vessels are already leaving port.

Mr. Blaine's comparison of the present situation to a question of ownership of timber-land does not appear to me to be applicable. The case resembles rather an arbitration on the title to a meadow. While the arbitration is pending the party in actual possession cuts the grass, and rightly so, inasmuch as next year the grass will be reproduced. This will equally be the case with the seals.

No. 10.

Sir J. Pauncefote to the Marquis of Salisbury.—(Received February 27.)

(Telegraphic.)

Washington, February 26, 1892.

I AM requested by Mr. Blaine to inform your Lordship that he has received the following Report from the United States' Consul at Victoria:—"Forty-six sealing-vessels cleared to date. Six or seven more to go. At the same date last year only thirty-one cleared."

No. 11.

Sir J. Pauncefote to the Marquis of Salisbury.—(Received March 9.)

(Telegraphic.)

Washington, March 8, 1892.

THE Acting Secretary of State has to-day delivered to me on behalf of Mr. Blaine (who is unwell) a note on the subject of the renewal of the *modus vivendi*, with a request from the President that I should telegraph it to your Lordship. I accordingly send a full summary:—

[*The text having since been received, is given in full.*]

Sir,

Department of State, Washington, March 8, 1892.

I AM directed by the President to say, in response to your two notes of the 29th February and 7th March, that he notices with the deepest regret the indisposition of Her Majesty's Government to agree upon an effective *modus* for the preservation of the seals in the Behring's Sea pending the settlement of the respective rights of that Government and of the Government of the United States in these waters and in the fur-seal fisheries therein.

The United States claims an exclusive right to take seals in a portion of the Behring's Sea, while Her Majesty's Government claims a common right to pursue and take the seals in those waters outside a 3-mile limit. This serious and protracted controversy, it has now been happily agreed, shall be submitted to the determination of a Tribunal of Arbitration, and the Treaty only awaits the action of the American Senate. The judgment of the Arbitration Tribunal cannot, however, be reached and stated in time to control the conduct of the respective Governments and of their citizens during the sealing season of 1892; and the urgent question now is, What does good faith, to say nothing of international comity, require of the parties to the arbitration? If the contention of this Government is sustained by the Arbitrators, then any killing of seals by the Canadian sealers during this season in these waters is an injury to this Government in its jurisdiction and property. The injury is not measured by the skins taken, but affects the permanent value of our property.

Was it ever heard before that one party to such a controversy, whether a nation or

an individual, could appropriate the whole or any part of the income and profits, much less the body of the contested property, pending the litigation, without accountability? Usually a Court of Chancery would place a receiver or trustee in charge, and hold the income of the property for the benefit of the prevailing party. You say that Lord Salisbury, rejecting the illustration used by Mr. Blaine, "suggests that the case is more like one of arbitration respecting title to a meadow. While the arbitration is going on we cut the grass; and quite rightly, for the grass will be reproduced next year, and so will the seals."

He can hardly mean by this illustration that, being in contention with a neighbour regarding the title to a meadow, he could by any precedent in the Equity Courts or by any standard of common honesty be justified in pocketing the whole or any part of the gains of a harvest without accountability to the adverse claimant whose exclusive title was afterwards established. It is no answer for the trespasser to say that the true owner will have an undiminished harvest next year. Last year's harvest was his also. If by the use of the plural pronoun his Lordship means that the harvest of the contested meadow is to be divided between the litigants, I beg to remind him that the title of the United States to the Pribyloff Islands has not yet been contested, and that our flag does not float over any sealing-vessel. The illustration is inapt in the further particular that the seals not taken this year may be taken next, while the grass must be harvested or lost.

This Government has already been advised in the course of this correspondence that Great Britain repudiates all obligations to indemnify the United States for any invasion of its jurisdiction, or any injury done to its sealing property by the Canadian sealers. The attempt to make a damage clause one of the Articles of the Arbitration Agreement failed, because Her Majesty's Government would not consent that the question of its liability to indemnify the United States for the injuries done by the Canadian sealers should be submitted. Two extracts from the correspondence will sufficiently recall the attitude of the respective Governments.

In my note of the 23rd July I said: "The President believes that Her Majesty's Government may justly be held responsible, under the attendant circumstances, for injuries done to the jurisdictional or property rights of the United States by the sealing-vessels flying the British flag, at least since the date when the right of these vessels to invade the Behring's Sea and to pursue therein the business of pelagic sealing was made the subject of diplomatic intervention by Lord Salisbury. In his opinion, justice requires that Her Majesty's Government should respond for the injuries done by those vessels, if their acts are found to have been wrongful, as fully as if each had borne a commission from the Government to do the act complained of. The presence of the master, or even of a third person, under circumstances calculated and intended to give encouragement, creates a liability for trespass at the common law, and much more, if his presence is accompanied with declarations of right, protests against the defence which the owner is endeavouring to make, and a declared purpose to aid the trespassers if they are resisted. The justice of this rule is so apparent that it is not seen how, in the less technical Tribunal of an international arbitration, it could be held to be inapplicable.

"The United States might well insist that Her Majesty's Government should admit responsibility for the acts of the Canadian sealers, which it has so directly encouraged and promoted, precisely as in the proposal the United States admits responsibility for the acts of its revenue vessels. But, with a view to remove what seems to be the last point of difference in a discussion which has been very much protracted, the President is willing to modify his proposal, and directs me to offer the following:—

"The Government of Great Britain having presented the claims of its subjects for compensation for the seizure of their vessels by the United States in Behring's Sea; and the Government of the United States having presented, on its own behalf as well as of the lessees of the privilege of taking seals on the Pribyloff Islands, claims for compensation by reason of the killing of seals in the Behring's Sea by persons acting under the protection of the British flag, the Arbitrators shall consider and decide upon such claims in accordance with justice and equity, and the respective rights of the High Contracting Powers, and it shall be competent for the Arbitrators to award such compensation as, in their judgment, shall seem equitable."

In your note of the 17th October you say:—

"I regret to inform you that Her Majesty's Government, after the fullest consideration, have arrived at the conclusion that this new clause could not properly be assented to by them. In their opinion, it implies an admission of a doctrine respecting the liabilities of Governments for the acts of their nationals or other persons sailing

under their flag on the high seas, for which there is no warrant in the law of nations. Thus it contains the following words:—

“The Government of the United States having presented on its own behalf, as well as of the lessees of the privilege of taking seals on the Pribyloff Islands, claims for compensation by reason of the killing of seals in Behring’s Sea by persons acting under the protection of the British flag, the Arbitrators shall consider and decide upon such claim.’

“These words involve the proposition that Her Majesty’s Government are liable to make good losses resulting from the wrongful action of persons sailing outside their jurisdiction under the British flag. Her Majesty’s Government could not accept such a doctrine.”

The President cannot believe that, while holding this view of its accountability, the Government of Great Britain will, pending the arbitration, countenance, much less justify or defend, the continuance of pelagic sealing by its subjects. It should either assume responsibility for the acts of these sealers, or restrain them from a pursuit the lawfulness of which is to be determined by the arbitration.

In your note of the 20th February you state that Her Majesty’s Government has been informed by the British Commissioners “that, so far as pelagic sealing is concerned, there is no danger of serious diminution of the fur-seal species as a consequence of this year’s hunting,” and upon this ground Lord Salisbury places his refusal to renew the *modus* of last year. His Lordship seems to assume a determination of the arbitration against the United States and in favour of Great Britain, and that it is already only a question of so regulating a common right to take seals as to preserve the species; by what right does he do this? Upon what principle does he assume that if our claims are established, any diminution of the seals, whether serious or not, during this season, or indeed, any taking of seals, is to be without recompense? In the opinion of the President, it is not consistent with good faith that either party to an arbitration should, pending a decision, in any degree diminish the value of the subject of arbitration or take any profit from the use of it without an agreement to account.

Before an agreement for arbitration had been reached, the prohibition of pelagic sealing was a matter of comity; from the moment of the signing of that Agreement it became, in his opinion, a matter of obligation.

During the season of 1891, notwithstanding the restrictions resulting from the *modus* adopted, the Canadian sealers took, in the Behring’s Sea alone, 28,763 skins, or nearly four times as many as the restricted catch upon our island. This Government is now advised that fifty-one vessels from British Columbia and sixteen from Nova Scotia have sailed, or are about to sail, for the Behring’s Sea to engage in taking seals. This large increase in the fleet engaged makes it certain, in the absence of an effective restrictive agreement, that the destruction of seal life during this season by pelagic sealing will be unprecedented, and will, in the opinion of our Commissioners, so nearly destroy the value of the seal fisheries as to make what will remain of so little value as scarcely to be a worthy subject for international arbitration.

The proposition of Lord Salisbury, to prohibit the killing of seals at sea “within a zone extending to not more than 30 nautical miles around the Pribyloff Islands,” is so obviously inadequate and so impossible of execution that this Government cannot entertain it. In the early part of the discussion of the subject of a *modus* for last year this method was tentatively suggested, among others, in conversation between yourself and Mr. Blaine. But it was afterwards, in effect, agreed by both Governments to be inadequate, and was not again referred to in the correspondence. In the Memorandum furnished by you with your note of the 6th June you say, “Lord Salisbury points out that if seal-hunting be prohibited on one side of a purely imaginary line drawn in the open ocean, while it is permitted on the other side of the line, it will be impossible in many cases to prove unlawful sealing, or to infer it from the possession of skins or fishing tackle.”

This was said with reference to the water boundary of our purchase from Russia, but it is quite as applicable to the 30-mile zone which he now suggests. The prevalence of fogs in these waters gives increased force and conclusiveness to the point made by his Lordship against an imaginary water-line.

The President cannot agree, now that the terms of arbitration have been settled, that the restrictions imposed shall be less than those which both Governments deemed to be appropriate when it was still uncertain whether an early adjustment of the controversy was attainable. He therefore hopes that Her Majesty’s Government will consent to renew the arrangement of last year with the promptness which the exigency demands, and to agree to enforce it by refusing all clearances to sealing-vessels for the

prohibited waters, and by recalling from those waters all such vessels as have already cleared.

This Government will honourably abide the judgment of the High Tribunal which has been agreed upon, whether that judgment be favourable or unfavourable; and will not seek to avoid a just responsibility for any of its acts which by that judgment are found to be unlawful. But certainly the United States cannot be expected to suspend the defence, by such means as are within its power, of the property and jurisdictional rights claimed by it pending the arbitration, and to consent to receive them from that Tribunal, if awarded, shorn of much of their value by the acts of irresponsible persons.

I have, &c.

(Signed) WILLIAM F. WHARTON.

No. 12.

The Marquis of Salisbury to Sir J. Pouncefote.

(Telegraphic.)

Foreign Office, March 9, 1892.

I SHOULD wish you to repeat to Lord Stanley your telegram of yesterday, about Behring's Sea.

No. 13.

Sir G. Baden-Powell to the Marquis of Salisbury.—(Received March 10.)

(Telegraphic.)

Washington, March 9, 1892.

WITH reference to the *modus vivendi*, I am of opinion that the taking of one season's limited crop cannot injure the seal herd, but that, although not necessary, the renewal of last year's prohibition and the 7,500 limit would be beneficial.

As the Arbitration Convention conditions ocean rights, I hope that the Canadian Government has warned the British Columbian sealers that the ultimate ownership of the seals taken this year in Behring's Sea depends upon the verdict of the Arbitrators.

The alternatives for the sealers appear to be either to incur the expense of the catch subject to this risk, or to forego, without compensation, one season's catch of, say, 20,000 (in Behring's Sea), on condition that 7,500 instead of 30,000 are taken on the islands, increased numbers of seals in future seasons, and enhanced prices for this spring, being also insured by such restrictions.

No. 14.

The Marquis of Salisbury to Sir J. Pouncefote.

(Telegraphic.)

Foreign Office, March 15, 1892.

I SHOULD wish you to repeat to the Governor-General the telegram I have received from Sir G. Baden-Powell, dated 9th March.

No. 15.

The Marquis of Salisbury to Sir J. Pouncefote.

(Telegraphic.)

Foreign Office, March 18, 1892.

HER Majesty's Government have had under their consideration, and have consulted the Governor-General of Canada in regard to, the arguments in favour of a renewal of the *modus vivendi* of last year, contained in Mr. Wharton's note of the 8th instant, the substance of which is given in your telegram of that day. The necessity of reference to Ottawa has caused a delay in returning an answer.

The information which has reached Her Majesty's Government does not lead them to believe that, in order to prevent an undue diminution of the number of fur-seals, any necessity exists for the suspension of sealing for another year.

Beyond this question, however, I understand that the Government of the United

States consider that, should free sealing be permitted this year, and the United States' claim to jurisdiction in Behring's Sea be upheld by the Arbitrators, they have a right to be protected from the loss that they will have suffered by the sealing operations.

Her Majesty's Government do not dispute that there will be some foundation for this contention when the Arbitration Agreement has been ratified.

But there is this defect in the prohibition of all sealing as a remedy, that if the British contention shall be upheld by the Arbitrators, there may be ground for complaint on the part of the British sealers who will have been excluded from Behring's Sea.

Further, no security exists that the Arbitrators will have given their decision before the sealing season of 1893 arrives.

As you are aware, there has been an arbitration pending for four years between this country, the United States, and Portugal, which is not yet approaching conclusion.

Serious damage would be caused to the sealing industry by a suspension of hunting for a prolonged period.

As a more equitable arrangement, might it not be agreed that sealing-vessels shall be at liberty to hunt in Behring's Sea on condition that security is given by the owner of each vessel for satisfying the award of damages, if any, which the Arbitrators may eventually pronounce?

No. 16.

Lord Knutsford to Lord Stanley of Preston.

(Telegraphic.)

Downing Street, March 18, 1892.

PLEASE direct the proper port authority at all harbours on the Pacific coast to inform owners who are clearing or have cleared this year for Behring's Sea that Her Majesty's Government and the United States' Government have agreed, subject to the ratification of the Senate, to submit to arbitration the question whether sealers have a right, without permission of the United States, to seal in the eastern half of Behring's Sea, east of the Russian line, and that it is possible the sentence of the said Tribunal may be given within the present fishing season. Moreover, that both Her Majesty's Government and the United States' Government have made propositions for intermediate Regulations restraining the catch of seals in the said waters in case the said Arbitration Agreement should be ratified. Neither the Arbitration Agreement nor any intermediate Agreement have yet been definitively adopted between the two Governments, and whether they are adopted, and at what date, is necessarily a matter of uncertainty. But notice is hereby given to all sealers proposing to seal in the said waters that they do so at their own risk, and after warning of the liability to interruption to which they may be exposed in consequence of either of the said Agreements.

No. 17.

Sir J. Pauncefote to the Marquis of Salisbury.—(Received March 24.)

(Telegraphic.)

Washington, March 23, 1892.

LAST night I received the reply of the United States' Government to my note embodying the substance of your Lordship's telegram of the 18th instant on the Behring's Sea question. The President requested that it should be telegraphed to your Lordship. The substance of it is as follows:—

The President had given immediate attention to my note, on account of the extreme gravity and urgency of the matter, growing out of the fact that any *modus vivendi* will be made ineffectual for the protection of the interests of the United States by much further protraction, and that, by reason of the impossibility of communicating with the Canadian sealers, immunity will be given to them. These vessels have hastened their departure, as is known, in order to escape notice of any *modus vivendi* being served upon them. Forty-seven vessels have already cleared, and if measures be not taken to stop them, they will pursue the slaughter of gravid female seals to the very shores of the breeding islands. This is a crime against nature. If the arbitration proceeds, the United States' Government expect to be able to show that the

larger percentage of the pelagic catch consists of female seals. It is surprising and disappointing, in view of the above, that your Lordship should assume that suspension of such sealing for another year is not necessary, in order to prevent the undue diminution of the seal-herds, and that you should insist that it should continue. If Her Majesty's Government pays so little regard to the contentions of the United States' Government as to refuse to respect them for a single season, the President is unable to understand for what reason it should have been proposed and agreed to by your Lordship to give them the status implied by the agreement to submit them to arbitration. It was open to neither party to disregard the contention of the other from the date of the signature of the above Agreement. It must be assumed that the object which the two Governments had in view was the promotion of good-will and peace but; if, while arbitration is pending, the subject-matter is dealt with by either of them on the basis of its own contention only, this purpose is not attained; on the contrary, and even if it should be possible under such circumstances to proceed with the arbitration, a new sense of injury and injustice is added.

If Her Majesty's Government proceeds this season on the basis of its contention as to the rights of the Canadian sealers, no choice remains for the United States but to proceed on the basis of their own confident contention, that pelagic sealing is an infraction of its jurisdiction and proprietary rights. This, in the opinion of the President, constitutes the gravity of the situation, and he is not willing to be found responsible for such results as may follow from an insistence on the part of either Government during this hunting season on the extreme rights claimed by it. The two great Governments interested in the question would be discredited in the eyes of the world if the friendly adjustment of their difficulties, which is so nearly concluded, were to be thwarted, or even disturbed, on account of the paltry profits of a single season. But if your Lordship persists in refusing to join the Government of the United States in stopping pelagic sealing promptly, and insists upon the maintenance of free sealing for British subjects, the question no longer is one of pecuniary loss or gain, but one of honour and self-respect, so far as it affects the Government of the United States.

The United States have proposed to take no profit from the island catch, notwithstanding that their right to take seals on the islands is neither disputed nor involved in the arbitration, and to engage that the take should be limited to the necessities of the natives. Whether with or without indemnity, they are unable to consent that the rights of British subjects in Belring's Sea, which are contested, shall continue to be exercised while arbitration is pending. The President finds it difficult to believe that your Lordship is serious in proposing that bonds against the injury which may be inflicted on the jurisdiction or property of the United States shall be taken by the United States' Government from the owners of about 100 Canadian vessels, and he must decline to discuss a suggestion which only his respect for your Lordship, and his belief that the gravity of this discussion is fully realized by your Lordship, enables him to treat seriously.

In order to secure the proposed bonds, the United States would have to pursue owners upon the sea, and as the condition is to be that "any damages which the Arbitrators shall adjudge" shall be paid by the owners, while no power to adjudge such damages is given to the Arbitrators by the Treaty, the transaction would be of no value to the United States, and without risk to the owners. But however adequate the security offered, the United States' Government cannot consent to have its rights impaired, pending their determination by a Tribunal of Arbitration. The reference in Mr. Blaine's last note to the inconsistency of Her Majesty's Government in denying responsibility for the acts of Canadian sealers was not meant to imply that the United States would be willing to consent to the conversion of their property into a claim for damages, particularly as the Arbitrators cannot determine such a claim unless the Treaty be revised. Your Lordship should bear in mind, whilst making your present proposal, that the fact of the Arbitrators not having jurisdiction as to damages is the result of concessions made by the United States' Government to your views.

The President fails to see how claims can, by law or equity, be brought by subjects of either Power against their respective Governments, on account of restraints imposed with a view to the promotion of the public good or of international peace. There is full provision in the Treaty itself against the suggestion, that the conclusion of the arbitration will not be reached before the season of 1893. As to the Delagoa Bay Arbitration, your Lordship is in error in thinking that it has been proceeding for four years. It dates from a period of less than one year ago. If the Treaty is promptly ratified, mutual interests will be a sufficient guarantee against delay. The sole obstacle

to such a consummation is the prevalent belief, that Great Britain's refusal to preserve the *status quo* of the property, and her insistence on continuance of pelagic sealing during the arbitration, to the injury of the rights of the United States, largely defeats the object for which the Treaty was made.

The note ends with the following words: "The President directs me to say, in conclusion, that the *modus vivendi* of last year is the least that this Government can accept. In reason, the restraints after a Treaty of Arbitration should be more absolute, not less. He does not desire to protract the discussion, and having now, in the most friendly spirit, submitted the considerations which support the just demand of this Government, that the property which is now the subject of an agreed arbitration shall not be subject to spoliation pending the arbitration, he expresses the hope that Lord Salisbury will give a prompt and friendly assent to the renewal of the *modus vivendi*. The President will hear with regret that Her Majesty's Government continues to assert a right to deal with this subject precisely as if no provision had been made for the settlement of the dispute; and in that event, this Government, as has already been pointed out, will be compelled to deal with the subject upon the same basis, and to use every means in its power to protect from destruction or serious injury property and jurisdictional rights which it has long claimed and enjoyed."

No. 18.

The Marquis of Salisbury to Sir J. Pouncefote.

(Telegraphic.)

Foreign Office, March 26, 1892.

IN reply to your telegram of the 23rd instant, notice has been given to the owners of ships sailing for Behring's Sea, that both the Agreements which are at present under discussion between Great Britain and the United States—that as to Arbitration and that as to an intermediate arrangement—may affect the liberty of sealing in Behring's Sea. They have, therefore, notice of their liability to possible interruption, and will sail subject to that notice.

The question of time is not, therefore, urgent.

Inform President that we concur in thinking that when the Treaty shall have been ratified there will arise a new state of things. Until it is ratified our conduct is governed by the language of your note of the 14th June, 1890. But when it is ratified both parties must admit that contingent rights have become vested in the other, which both desire to protect.

We think that the prohibition of sealing, if it stands alone, will be unjust to British sealers, if the decision of the Arbitrators should be adverse to the United States. We are, however, willing, when the Treaty has been ratified, to agree to an arrangement similar to that of last year, if the United States will consent that the Arbitrators should, in the event of a decision adverse to the United States, assess the damages which the prohibition of sealing shall have inflicted on British sealers during the pendency of the Arbitration; and, in the event of a decision adverse to Great Britain, should assess the damages which the limitation of slaughter shall, during the pendency of the Arbitration, have inflicted on the United States or its lessees.

As an alternative course we are also willing, after the ratification of the Treaty, to prohibit sealing in the disputed waters, if vessels be excepted from the prohibition which produce certificate that they have given security for such damages as the Arbitrators may assess, in case of a decision adverse to Great Britain; the Arbitrators to receive the necessary authority in that behalf. In this case the restriction of slaughter on the islands will not, in point of equity, be necessary.

Her Majesty's Government are unable to see any other than one of these two methods of restricting seal-hunting in the disputed waters during the Arbitration, which will be equitable to both parties.

The Marquis of Salisbury to Sir J. Pauncefote.

(Telegraphic.)

Foreign Office, March 26, 1892.

WITH further reference to your telegram of the 23rd instant, I am not prepared to admit, as I gather that the President thinks, that we have objected to the Arbitrators having jurisdiction as to damages inflicted in the past by the party against whom the award is given. I only objected to make Her Majesty's Government liable for acts which they have not committed. I am ready to consent to a reference on this point in the following terms:—

That in case the Arbitrators shall decide in favour of the British Government, that Government may ask them, further, to decide whether the United States' Government have since 1885 taken any action in Behring's Sea directly inflicting a wrongful loss on British subjects, and, if so, to assess the damage incurred thereby.

That in case the Arbitrators shall decide in favour of the Government of the United States, that Government may ask them to decide, further, whether the British Government have since 1885 taken any action in Behring's Sea directly inflicting a wrongful loss on the United States or its lessees, and, if so, to assess the damage incurred thereby.

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TELEGRAPHIC CORRESPONDENCE respecting Seal
Fishing in Behring's Sea during the Season
of 1892.

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