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Printed for the use of the Foreign Office. January 1888.

CONFIDENTIAL.
(5566.)

FURTHER CORRESPONDENCE

RESPECTING THE

TERMINATION OF THE FISHERY ARTICLES

OF THE

TREATY OF WASHINGTON

OF THE

8TH MAY, 1871.

[In continuation of Confidential Paper No. 5510.]

October to December 1887.

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CONFIDENTIAL.

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

[In continuation of Confidential Paper No. 5510.]

No. 1.

Sir L. West to the Marquis of Salisbury.—(Received October 3.)

(No. 96. Treaty.)

My Lord, *Washington, September* 21, 1887.

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

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

No. 2.

Sir L. West to the Marquis of Salisbury.—(Received October 3.)

(No. 97. Treaty.)

My Lord, *Washington, September* 21, 1887.

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

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

Inclosure in No. 2.

Mr. Bayard to Sir L. West.

(Personal.)

Dear Sir Lionel, *Washington, September* 20, 1887.

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

The nomenclature of the Agents of the two Governments in negotiation now

proposed, seems to have been so proclaimed by Sir James Fergusson in Parliament and by Her Majesty in the Speech of Prorogation, that it will be difficult now to change it, although it seemed very desirable that the employment of the word "Commission" should be avoided because it was so unpleasantly associated in the American ear with the "Halifax Commission,"—a body whose functions were wholly distinct from those proposed for the negotiators of the anticipated Treaty of Settlement.

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

Yours, &c.
(Signed) T. F. BAYARD.

No. 3.

Sir L. West to the Marquis of Salisbury.—(*Received October* 3.)

(No. 98. Treaty. Very Confidential.)

My Lord, *Washington, September* 21, 1887.

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

He then remarked that he thought that any settlement which might be made should include Newfoundland as an integral part of the British Empire, and seemed to think that for this reason the substitution in the terms of reference proposed by your Lordship was preferable.

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

No. 4.

Colonial Office to Foreign Office.—(*Received October* 4.)

Sir, *Downing Street, October* 3, 1887.

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

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

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

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

Inclosure 1 in No. 4.

The Marquis of Lansdowne to Sir H. Holland.

(Confidential.)
(Telegraphic.) *September 26, 1887.*

YOUR telegram of the 21st.

Are the words "adjacent to British North America" intended to exclude Behring's Sea, which is not adjacent to British North America but to Alaska? It seems undesirable to restrict adjustment to "questions actually in dispute." If these words are literally interpreted many of the questions suitable for discussion might be entirely exclude from the negotiations.

Inclosure 2 in No. 4.

Draft of Telegram from Sir H. Holland to the Marquis of Lansdowne.

(Secret.)

FISHERIES Conference.

Following are terms of reference finally proposed:—

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

It is not considered advisable to press United States' Government upon question of including Alaskan fishery dispute in terms of reference. If negotiations proceed satisfactorily, Alaskan question may by agreement be referred to same Plenipotentiaries under concluding words of reference, which also meet other point referred to in your telegram of 28th ultimo. Are terms of reference agreeable to your Government, and will Sir J. A. Macdonald represent Canada at Conference.

Inclosure 3 in No. 4.

Draft of Telegram from Sir H. Holland to Governor Blake.

FISHERIES Conference.

Following are terms of reference finally proposed:—

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

British Plenipotentiaries limited to three have already been decided upon, they are: Mr. Chamberlain, Sir L. West, and a Canadian Representative. Without displacing one of these a Newfoundland Representative cannot be appointed, but an Agent might be sent, who might be present at Washington during the sittings of the Conference, ready to confer with British Plenipotentiaries on points affecting Newfoundland interests.

*[Newfoundland having lately pressed for separate treatment of fisheries questions with United States, it will be best to await result of Canadian negotiations, which, when completed, the Colonial Government may desire to have made applicable to Newfoundland with or without variations.]

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* Better omit as an unnecessary pledge as to order of business.—S. *October 6.*

No. 5.

Foreign Office to Colonial Office.

(Confidential.) *Foreign Office, October* 4, 1887.

[Transmits copy of Sir L. West's No. 94, Treaty, Confidential, of September 15, 1887: No. 148, Confidential Print No. 5510.]

No. 6.

Sir L. West to the Marquis of Salisbury.—(Received October 6.)

(No. 272.)

My Lord, *Washington, September* 23, 1887.

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

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

I have, &c.

(Signed) L. S. SACKVILLE WEST.

No. 7.

Foreign Office to Colonial Office.

Foreign Office, October 7, 1887.

[Transmits copy of Sir L. West's No. 96, Treaty, of September 21, 1887: *ante*, No. 1.]

No. 8.

Foreign Office to Colonial Office.

Foreign Office, October 7, 1887.

[Transmits copy of Sir L. West's No. 97, Treaty, of September 21, 1887: *ante*, No. 2.]

No. 9.

Foreign Office to Colonial Office.

Sir, *Foreign Office, October* 8, 1887.

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

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

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

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

No. 10.

Colonial Office to Foreign Office.—(Received October 10.)

Sir, *Downing Street, October 10, 1887.*

WITH reference to your letter of the 8th instant, I am directed by the Secretary of State for the Colonies to transmit to you copies of telegrams which were addressed in cypher to the Governor-General of Canada, and the Governor of Newfoundland respectively, relating to the terms of reference to the Fisheries Commission at Washington, and to the appointment of an Agent by the Government of Newfoundland, to be present at Washington, to confer with the British Plenipotentiaries on matters affecting the interests of that Colony.

I am also to inclose the decyphers of replies received from the Governor-General and Governor of Newfoundland respectively. It will be observed that further telegrams are promised.

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

Inclosure 1 in No. 10.

Sir H. Holland to the Marquis of Lansdowne.

(Telegraphic.) *Downing Street, October 8, 1887, 4·10 P.M.*

FISHERIES Conference: Following are terms of reference finally proposed:—"Conference of Plenipotentiaries to consider and adjust all or any questions relating to rights of fishery in the seas adjacent to British North America and Newfoundland, which are in dispute between the Government of Her Britannic Majesty and that of the United States of America, and any other questions which may arise in the course of the negotiations, and which they may be authorized by their respective Governments to consider and adjust." It is not considered advisable to press United States upon question of directly including Alaskan fishery dispute in terms of reference. If negotiations proceed satisfactorily Alaskan question may by agreement be referred to same Plenipotentiaries, under concluding words of reference, which also meet other point referred to in your telegram of the 28th ultimo. Are terms of reference agreeable to your Government, and will Sir J. A. MacDonald represent Canada at Conference? Immediate reply earnestly requested in order to prepare instructions.

Inclosure 2 in No. 10.

Sir H. Holland to Governor Blake.

(Telegraphic.) *Downing Street, October 8, 1887.*

FISHERIES Conference: Following are terms of reference finally proposed:—"Conference of Plenipotentiaries to consider and adjust all or any questions relating to rights of fishery in the seas adjacent to British North America and Newfoundland, which are in dispute between the Government of Her Britannic Majesty and that of the United States of America, and any other questions which may arise in the course of the negotiations, and which they may be authorized by their respective Governments to consider and adjust." British Plenipotentiaries limited to three have already been decided upon. They are: Mr. Chamberlain, Sir L. West, and a Canadian Representative. Without displacing one of these, a Newfoundland Representative cannot be appointed, but an Agent might be sent who might be present at Washington during the sittings of the Conference ready to confer with British Plenipotentiaries on points affecting Newfoundland interests. Immediate reply earnestly requested in order to prepare instructions.

Inclosure 3 in No. 10.

The Marquis of Lansdowne to Sir H. Holland.

(Telegraphic.) *October* 8, 1887.

YOUR telegram of the 8th instant: MacDonald desires to defer to decide until arrival of Sir C. Tupper, who is expected immediately. I will telegraph on Monday as to terms.

Inclosure 4 in No. 10.

Governor Blake to Sir H. Holland.

(Telegraphic.) (*Received October* 9, 1887.)

I HAVE received your telegram of the 8th: I shall consult with my Government to-morrow, and will telegraph reply.

No. 11.

The Marquis of Salisbury to Sir L. West.

(No. 68. Treaty.)

Sir, *Foreign Office, October* 10, 1887.

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

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

I am, &c.

(Signed) SALISBURY.

No. 12.

Colonial Office to Foreign Office.—(Received October 11.)

(Confidential.)

Sir *Downing Street, October* 10, 1887.

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

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

I am, &c.

(Signed) JOHN BRAMSTON.

Inclosure in No. 12.

The Marquis of Lansdowne to Sir H. Holland.

(Secret and Confidential.)

(Telegraphic.) *October* 7, 1887.

I HOPE Chamberlain will come here before going to Washington. I have sent to him inviting to Government House. It is possible that Sir J. A. MacDonald may not accept Commissionership, but this will not be decided till Sir C. Tuppers's arrival.

No. 13.

The Marquis of Salisbury to Sir L. West.

(No. 69. Treaty. Confidential.)

Sir, *Foreign Office, October* 11, 1887.

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

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

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

I am, &c.
(Signed) SALISBURY.

No. 14.

Foreign Office to Colonial Office.

Foreign Office, October 11, 1887.

[Transmits copies of Sir L. West's No. 98, Treaty, of September 21; and No. 69, Treaty, to ditto, dated October 11, 1887: *ante*, Nos. 3 and 13.]

No. 15.

Colonial Office to Foreign Office.—(*Received October* 13.)

Sir, *Downing Street, October* 12, 1887.

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

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

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

Inclosure in No. 15.

Governor Blake to Sir H. Holland.

(Telegraphic.) (*Received October* 10, 1887.)

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

No. 16.

Colonial Office to Foreign Office.—(*Received October* 13.)

Sir, *Downing Street, October* 12, 1887.

WITH reference to your letter of the 8th instant relating to the terms of reference to the Conference at Washington on the North American Fisheries question,

I am directed by Secretary Sir Henry Holland to transmit to you, to be laid before the Marquis of Salisbury, a copy of a telegram from the Governor-General of Canada on the subject.

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

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

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

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

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

Inclosure in No. 16.

The Marquis of Lansdowne to Sir H. Holland.

(Telegraphic.) *October* 10, 1887.

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

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

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

No. 17.

Foreign Office to Mr. Chamberlain.

Sir, *Foreign Office, October* 13, 1887.

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

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

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

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* See amended text, Inclosure 3 in No. 20.

† Inclosure in No. 12.

No. 18.

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

(Telegraphic.) *Belfast, October 15, 1887.*

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

No. 19.

The Marquis of Salisbury to Sir L. West.

(Treaty.)

(Telegraphic.) *Foreign Office, October 15, 1887, 6·10 P.M.*

FISHERIES: Terms of reference.

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

Ask Mr. Bayard whether he attaches importance to them.

No. 20.

Colonial Office to Foreign Office.—(Received October 17.)

Sir, *Downing Street, October 17, 1887.*

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

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

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

Inclosure 1 in No. 20.

The Marquis of Lansdowne to Sir H. Holland.

(Telegraphic.) *(Received October 14, 1887.)*

FISHERIES Conference.

Sir C. Tupper will be Canadian Representative, but this will not be formally decided by the Council till to-morrow.

Inclosure 2 in No. 20.

The Marquis of Lansdowne to Sir H. Holland.

(Telegraphic.) *(Received October 14, 1887.)*

FISHERIES Conference.

Sir Charles Tupper has been formally selected as Canadian Representative.

Inclosure 3 in No. 20.

The Marquis of Lansdowne to Sir H. Holland.

(Telegraphic.) *October 10, 1887.*

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

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

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

No. 21.

Foreign Office to Colonial Office.

Sir. *Foreign Office, October* 17, 1887.

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

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

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

I am, &c.

(Signed) JULIAN PAUNCEFOTE.

No. 22.

Sir L. West to the Marquis of Salisbury.—(*Received October* 18.)

(No. 103. Treaty.)

My Lord, *Washington, October* 3, 1887.

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

I have, &c.

(Signed) L. S. SACKVILLE WEST.

Inclosure in No. 22.

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

THE AMERICAN NEGOTIATORS.

Washington, September 29, 1887.

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

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

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

From the information received here it is expected that Mr. Chamberlain will

leave England about the end of October, and that the negotiators will meet in Washington by the middle of November.

James Burrill Angell, LL.D., is of New England origin, having been born in Scituate, Rhode Island, in 1829. He was graduated from Brown University, and supplemented his course in that institution with two years of study abroad. At the age of 24 he entered the service of his *alma mater* as professor of modern languages and literature. Seven years later he became the editor of "The Providence Journal," the paper with which the late Henry B. Anthony was so long identified as chief owner and source of political inspiration. Professor Angell's editorship covered the critical period of the Civil War, terminating in 1866. He then accepted the Presidency of the University of Vermont, which in 1871 he surrendered for that of the Uaiversity of Michigan. In 1880 President Hayes selected him for a particularly delicate diplomatic duty. For two or three years there had been an increasing sentiment in this country hostile to Chinese immigration, and a growing demand, expressed in legislation which was vetoed, for a check upon this Mongolian invasion of the United States. The President desired to satisfy popular feeling in a manner that should not violate the faith of the Government already pledged to the Celestial Empire nor prejudice the rapidly developing commercial relations between the two countries. He therefore appointed three Commissioners to visit Peking and enter upon negotiations to this effect. Professor Angell was in March made Minister to China and head of the Commission, and John F. Swift, of California, and William Henry Trescott, of South Carolina, were designated as his coadjutors. So effectively was their work performed that when Congress assembled in December two Treaties—one relating to emigration and the other to commerce—were submitted to the Senate for the necessary ratification, which they duly received. Professor Angell remained in China, however, until 1882, when he resigned the office of Minister and returned to America.

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

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

No. 23.

Foreign Office to Colonial Office.

Sir, *Foreign Office, October* 18, 1887.

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

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

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

I am, &c.

(Signed) JULIAN PAUNCEFOTE.

No. 24.

Colonial Office to Foreign Office.—(Received October 20.)

Sir, *Downing Street, October 20, 1887.*

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

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

Inclosure 1 in No. 24.

Admiralty to Colonial Office.

(Confidential.)

Sir, *Admiralty, October 4, 1887.*

WITH reference to your letter of the 6th July, and to subsequent correspondence, on the subject of Imperial support to Canadian officers engaged in the protection of the fisheries, I am commanded by my Lords Commissioners of the Admiralty to transmit to you, for the perusal of the Secretary of State for the Colonies, copy of a letter from the Commander-in-chief on the North American and the West Indian Station, dated the 13th September, forwarding copy of the instructions given to Captain Beaumont, of Her Majesty's ship "Canada," on this subject.

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

Inclosure 2 in No. 24.

Vice-Admiral Lyons to Admiralty.

(Confidential.)

Sir, "*Bellerophon,*" *at Quebec, September 13, 1887.*

REFERRING to your Confidential letter of the 30th July last, and to subsequent correspondence, on the subject of Imperial support to Canadian officers engaged in the protection of the fisheries, I have the honour to report, for the information of the Lords Commissioners of the Admiralty, that I purpose dispatching the "Canada" to-morrow to the Gulf of St. Lawrence with instructions to Captain Beaumont, of which the annexed is a copy.

The "Tourmaline" will next week, on her return to Halifax from Montreal, visit the fishing-grounds near the mainland. The orders I have given Captain Byles are framed in the sense as are those to Captain Beaumont.

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

I have, &c.
(Signed) ALGERNON LYONS.

Inclosure 3 in No. 24.

Vice-Admiral Lyons to Captain Beaumont.

(Confidential.)

Memo., "*Bellerophon,*" *at Quebec, September 13, 1887.*

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

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

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

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

(Signed) ALGERNON LYONS.

Inclosure 4 in No. 24.

Draft of Letter from Colonial Office to Admiralty.

Sir, *Downing Street, October* 1887.

I AM directed by the Secretary of State for the Colonies to acknowledge the receipt of your letter of the 11th instant, inclosing a copy of a letter from the Commander-in-chief on the North American and West Indian Station, forwarding copy of the instructions given to Captain Beaumont of Her Majesty's ship "Canada" respecting the support to be given by Her Majesty's ships to Canadian officers engaged in the protection of the fisheries.

I am to point out, in reply, that Admiral Lyons' instructions do not exactly follow the terms suggested in the letter from this Department of the 6th July last. On reference to that letter it will be seen that not only was it intended that Her Majesty's ships should act in cases of actual resistance to the Canadian authorities on the part of United States' vessels, but that they should be authorized to seize on their own initiative vessels committing the offence of fishing within 3 miles of land.

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

I am, &c.

No. 25.

The Marquis of Salisbury to Sir L. West.

(No. 72. Treaty.)
(Telegraphic.) *Foreign Office, October* 20, 1887, 5·35 P.M.

FISHERIES: Terms of reference.

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

No. 26.

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

(Treaty.)
(Telegraphic.) *Washington, October* 20, 1887.

YOUR telegram of 15th.

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

No. 27.

Foreign Office to Colonial Office.

Sir, *Foreign Office, October* 21, 1887.

I AM directed by the Marquis of Salisbury to transmit to you a copy of a telegram received this day from Her Majesty's Minister at Washington reporting that Mr. Bayard has no objection to omitting from the terms of reference to the Fisheries Conference the words "in the course of the negotiations."*

I am to state that, with Sir Henry Holland's concurrence, his Lordship now proposes to instruct Sir L. West to address a note to Mr. Bayard recapitulating the terms of reference as now arranged, with the omission of the words in question, and to state that Her Majesty's Government accept them as so amended.

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

No. 28.

Colonial Office to Foreign Office.—(Received October 22.)

Sir, *Downing Street, October* 21, 1887.

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

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

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

No. 29.

Foreign Office to Colonial Office.

Foreign Office, October 22, 1887.

[Transmits copy of Sir L. West's No. 103, Treaty, of October 3, 1887: *ante*, No. 22.]

No. 30.

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

(No. 107. Treaty. Confidential.)

My Lord, *Washington, October* 13, 1887.

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

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

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

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* No. 26.

No. 31.

Colonial Office to Foreign Office.—(Received October 24.)

(Confidential.)

Sir, *Downing Street, October 22, 1887.*

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

I am, &c.

(Signed) JOHN BRAMSTON.

Inclosure 1 in No. 31.

Governor Blake to Sir H. Holland.

(Telegraphic.) *(Received October 18, 1887.)*

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

Inclosure 2 in No. 31.

Sir H. Holland to Governor Blake.

(Telegraphic.) *Downing Street, October 21, 1887.*

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

No. 32.

The Marquis of Salisbury to Sir L. West.

(Telegraphic.) *Foreign Office, October 24, 1887, 4·40 P.M.*

FISHERIES Conference.

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

No. 33.

The Marquis of Salisbury to Sir L. West.

(No. 74. Treaty. Ext.)

Sir, *Foreign Office, October 24, 1887.*

I HAVE received your telegram of the 20th instant, acquainting me that Mr. Bayard has no objection to the omission of the words "in the course of the negotiations and" from the terms of reference to the North American Fisheries Conference. In reply, I have to request that you will address a note to Mr. Bayard, recapitulating the terms of reference as now arranged, with the omission of these words, as follows:—

"Conference of Plenipotentiaries to consider and adjust all or any questions relating to rights of fishery in the seas adjacent to British North America and Newfoundland which are in dispute between the Governments of Her Britannic

Majesty and that of the United States of America, and any other questions which may arise and which they may be authorized by their respective Governments to consider and adjust."

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

I am, &c.
(Signed) SALISBURY.

No. 34.

The Marquis of Salisbury to Sir L. West.

(No. 75. Treaty. Ext.)
Sir, *Foreign Office, October* 21, 1887.

WITH reference to my despatch No. 74, Treaty, of this day's date, I have to request that you will inform Mr. Bayard that the Queen has been graciously pleased to appoint the Right Honourable Joseph Chamberlain, M.P., yourself, and Sir Charles Tupper, G.C.M.G., C.B., Minister of Finance of the Dominion of Canada, to be Her Majesty's Plenipotentiaries at the North American Fisheries Conference.

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

I am, &c.
(Signed) SALISBURY.

No. 35.

The Marquis of Salisbury to Her Majesty's Plenipotentiaries at the Fisheries Conference.

(No. 1.)
Gentlemen, *Foreign Office, October* 24, 1887.

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

I transmit to you herewith Her Majesty's full powers to that effect, and I have to give the following instructions for your guidance:—

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

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

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

At the expiration of the stipulated period the United States' Government gave notice of termination of the Fishery Articles, which consequently ceased to have effect on the 1st July, 1885; but the Canadian Government, being loath to subject the American fishermen to the hardship of a change in the midst of a fishing season,

consented to allow them gratuitously to continue to fish inshore and to obtain supplies without reference to any restrictions contained in the Convention of 1818 till the end of the year 1885, on the understanding that a Mixed Commission should be appointed to settle the Fisheries question, and to negotiate for the development and extension of trade between the United States and British North America.

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

Article I of that Convention is as follows:—

"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 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 other manner whatever abusing the privileges hereby reserved to them."

Under these circumstances numerous seizures of American fishing-vessels have subsequently been effected by the Canadian authorities for infraction of the terms of the Convention and of their Municipal Law and Customs Regulation.

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

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

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

The question of the seal fisheries in the Behring Sea, the nature of which will

* "Correspondence respecting the Termination of the Fishery Articles of the Treaty of Washington," from January 1, 1883, to September 30, 1887.

be explained in a separate despatch, has not been specifically included in the terms of reference, but you will understand that if the United States' Plenipotentiaries should be authorized to discuss that subject it would come within the terms of the reference, and that you have full power and authority to treat for a settlement of the points involved, in any manner which may seem advisable, whether by a direct discussion at the present Conference or by a reference to a subsequent Conference to adjust that particular question.

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

I am, &c.

(Signed) SALISBURY.

Inclosure in No. 35.

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

Victoria R. and I.,

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

WHEREAS for the purpose of considering and adjusting in a friendly spirit with Plenipotentiaries to be appointed on the part of our good friends the United States of America, all or any questions relating to rights of fishery in the seas adjacent to British North America and Newfoundland which are in dispute between our Government and that of our said good friends, and any other questions which may arise which the respective Plenipotentiaries may be authorized by their Governments to consider and adjust, we have judged it expedient to invest fit persons with full power to conduct on our part the discussions in this behalf:

Know ye, therefore, that we, reposing especial trust and confidence in the wisdom, loyalty, diligence, and circumspection of our right trusty and well-beloved Councillor Joseph Chamberlain, a member of our most Honourable Privy Council, and a Member of Parliament, &c., &c.; of our trusty and well-beloved The Honourable Sir Lionel Sackville Sackville West, Knight Commander of our most distinguished Order of St. Michael and St. George, our Envoy Extraordinary and Minister Plenipotentiary to our said good friends the United States of America, &c., &c., and of our trusty and well-beloved Sir Charles Tupper, Knight Grand Cross of our most distinguished Order of St. Michael and St. George, Companion of our most Honourable Order of the Bath, Minister of Finance of the Dominion of Canada, &c., &c.

Have named, made, constituted and appointed, as we do by these presents, name, make, constitute, and appoint them our undoubted Plenipotentiaries, giving to them or to any two of them all manner of power and authority to treat, adjust, and conclude with such Plenipotentiaries as may be vested with similar power and authority on the part of our good friends the United States of America, any Treaties, Conventions, or Agreements that may tend to the attainment of the above-mentioned end, and to sign for us and in our name everything so agreed upon, and concluded, and to do and transact all such other matters as may appertain to the finishing of the aforesaid work in as ample manner and form, and with equal force and efficiency as we ourselves could do if personally present:

Engaging and promising upon our Royal word that whatever things shall be so transacted and concluded by our said Plenipotentiaries shall be agreed to, acknowledged, and accepted by us in the fullest manner, and that we will never suffer, either in the whole, or in part, any person whatsoever, to infringe the same, or act contrary thereto, as far as it lies in our power.

In witness whereof we have caused the Great Seal of our United Kingdom of Great Britain and Ireland to be affixed to these presents, which we have signed with our Royal hand.

Given at our Court at Balmoral, the 24th day of October, 1887, and in the fifty-first year of our reign.

No. 36.

The Marquis of Salisbury to Her Majesty's Plenipotentiaries at the Fisheries Conference.

(No. 2.)

Gentlemen, *Foreign Office, October* 24, 1887.

I HAVE to acquaint you that Mr. J. H. G. Bergne, C.M.G., Superintendent of the Treaty Department of this Office, has been appointed Secretary to Her Majesty's Plenipotentiaries at the Fisheries Conference, and that Mr. Willoughby R. D. Maycock, also of this Office, has been appointed Assistant Secretary.

You will avail yourselves of their services in connection with the business of the Conference in any manner which may seem desirable.

I am, &c.
(Signed) SALISBURY.

No. 37.

The Marquis of Salisbury to Sir L. West.

(No. 76. Treaty.)

(Telegraphic.) *Foreign Office, October* 24, 1887, 4 P.M.

FISHERIES Conference.

Inform Mr. Bayard officially that Mr. Chamberlain, yourself, and Sir C. Tupper have been appointed British Plenipotentiaries.

No. 38.

Foreign Office to Colonial Office.

Foreign Office, October 25, 1887.

[Transmits copies of telegram to Sir L. West, No. 37; and Nos. 74 and 75, to ditto, of October 24, 1887: *ante*, Nos. 32, 33, and 34.]

No. 39.

Colonial Office to Foreign Office.—(Received October 25.)

Sir, *Downing Street, October* 24, 1887.

WITH reference to previous correspondence, I am directed by the Secretary of State for the Colonies to transmit to you, for the information of the Marquis of Salisbury, a copy of a telegram from the Governor-General of Canada, reporting that Mr. Wallace Graham, Q.C., will accompany Sir C. Tupper to Washington as well as the Minister of Justice.

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

Inclosure in No. 39.

The Marquis of Lansdowne to Sir H. Holland.

(Telegraphic.) *Chatham, Ontario, October* 21, 1887.

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

No. 40.

The Marquis of Salisbury to Mr. Phelps.

Sir, *Foreign Office, October* 25, 1887.

I HAVE the honour to transmit to you, for your information, the text of the terms of reference to the North American Fisheries Conference which has been finally agreed upon between Her Majesty's Government and that of the United States of America.*

I have the honour, further, to acquaint you that the Right Honourable Joseph Chamberlain, M.P., Sir Lionel S. Sackville West, and Sir Charles Tupper have been appointed British Plenipotentiaries to the Conference, and that Sir Lionel West has been instructed by telegram to-day to notify officially to your Government the above appointments.

I have, &c.
(Signed) SALISBURY.

No. 41.

Foreign Office to Colonial Office.

Sir, *Foreign Office, October* 25, 1887.

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

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

No. 42.

The Marquis of Salisbury to Her Majesty's Plenipotentiaries at the Fisheries Conference.

(No. 3.)

Gentlemen, *Foreign Office, October* 27, 1887.

WITH reference to my despatch No. 1 of the 24th instant I transmit to you herewith printed correspondence relative to the recent seizures of British sealing schooners by American cruizers in the Behring Sea,† which will place you in full possession of the facts of the case so far as they have at present been brought to the knowledge of Her Majesty's Government.

The two printed historical Memoranda annexed refer to questions which had arisen in the earlier part of this century regarding the limit of maritime jurisdiction in the Northern Pacific,‡ and the despatch to Her Majesty's Minister at Washington, No. 219 of the 10th ultimo (p. 86 of Confidential Print), indicates the view taken by Her Majesty's Government in regard to the present aspect of the question.

The accompanying documents relative to the circumstances which led to the passing in 1875 of a British Act of Parliament for the protection of the seal fisheries within a certain defined area of the Arctic Sea, may be useful in case discussion should arise on such a point in connection with the seal fisheries of Alaska;§ and I annex a copy of the Act of Parliament in question, which was put in operation by an Order in Council dated the 28th November, 1876.‖ The Governments of Russia, Germany, Sweden and Norway, and Holland passed Acts of a similar description in regard to the same area of the Arctic Sea.

Relying fully upon your judgment and discretion it is unnecessary for me at present to furnish you with any precise instructions as to the best mode of treating

* See text in No. 33

† Confidential print, up to date.

‡ Memoranda by Mr. L. Hertslet, 1885, No. 1567; and Sir E. Hertslet, October 19, 1886, No. 5340.

§ Board of Trade Blue Book, No. 1712.

‖ 38 Vict., cap. 18, 1875.

the question of seal-fishing in the Behring Sea should it become the subject of discussion in the Conference.

In such case you will give me timely information.

I am, &c.
(Signed) SALISBURY.

No. 43.

The Marquis of Salisbury to Sir L. West.

No. 77. Treaty.) *Foreign Office, October* 28, 1887.

[Transmits copy of Colonial Office letter of October 24, 1887: *ante*, No. 39.]

No. 44.

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

(No. 109. Treaty.)

My Lord, *Washington, October* 20, 1887.

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

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

Inclosure in No. 44.

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

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

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

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

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

to take their chances in the open sea, and they ask only that the Dominion of Canada shall accord the fishermen the right to buy ice and bait in her ports, privileges which are now denied. But these Protectionist Senators are unwilling that these privileges shall be purchased by the removal of our customs duties upon fish, or that any method of securing them shall be discussed by a Commission.

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

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

No. 45.

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

(No. 111. Treaty. Ext.)

My Lord, *Washington, October* 20, 1887.

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

I have, &c.

(Signed) L. S. SACKVILLE WEST.

Inclosure 1 in No. 45.

Mr. Bayard to Sir L. West.

My dear Sir Lionel, *Washington, October* 19, 1887.

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

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

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

Therefore I return you my note to you of the 14th September last (which you

left with me just now), with the draft of proposed terms of reference attached, and with it a draft of the terms as now amended, as to which I would be pleased to receive a statement of the acceptance by your Government.

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

Inclosure 2 in No. 45.

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

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

No. 46.

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

My Lord, *Legation of the United States, London, October 29, 1887.*

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

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

No. 47.

Foreign Office to Colonial Office.

Foreign Office, November 1, 1887.

[Transmits copy of Mr. Phelps' letter of October 29, 1887: *ante*, No. 46.]

No. 48.

Colonial Office to Foreign Office.—(Received November 4.)

Sir, *Downing Street, November 3, 1887.*

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

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

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

Inclosure in No. 48.

Governor Blake to Sir H. Holland.

(Telegraphic.) *St. John's, November* 2, 1887.

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

No. 49.

The Marquis of Salisbury to Sir L. West.

(No. 45.)

(Telegraphic.) *Foreign Office, November* 5, 1887, 2·45 P.M.

GOVERNOR of Newfoundland has appointed Mr. J. S. Winter, Attorney-General of the Colony, as Agent for Colonial Government at Fisheries Conference.

He leaves 5th November.

Inform Plenipotentiaries.

No. 50.

The Marquis of Salisbury to Sir L. West.

(No. 266. Ext. 45.)

Sir, *Foreign Office, November* 5, 1887.

I HAVE to request you to inform the Plenipotentiaries to the North American Fisheries Conference that the Governor of Newfoundland has appointed Mr. J. S. Winter, Attorney-General of the Colony, as Agent at the Conference for the Colonial Government.

Mr. Winter leaves Newfoundland for Washington on the 5th November.

A copy of a letter from the Colonial Office containing this information is inclosed.*

I am, &c.

(Signed) SALISBURY.

No. 51.

Foreign Office to Colonial Office.

Sir, *Foreign Office, November* 5, 1887.

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

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

I am, &c.

(Signed) JULIAN PAUNCEFOTE.

No. 52.

Sir L. West to the Marquis of Salisbury.—(Received November 7.)

(No. 112. Treaty.)

My Lord, *Washington, October* 26, 1887.

UPON the receipt of your Lordship's telegram of the 24th instant, I immediately addressed a note to the Secretary of State, recapitulating the terms of reference as set forth in his communication to me of the 19th instant, copy of which was inclosed in my despatch No. 111, Treaty, of the 20th instant, and stating that Her Majesty's Govern-

* No. 48.

ment accept them ; and I now have the honour to inclose to your Lordship herewith copy of the reply which I have received, stating the acceptance of the same on the part of the Government of the United States.

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

Inclosure in No. 52.

Mr. Bayard to Sir L. West.

Sir, *Department of State, Washington, October* 25, 1887.

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

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

(Signed) T. F. BAYARD.

No. 53.

Sir L. West to the Marquis of Salisbury.—(Received November 7.)

(No. 113. Treaty.)

My Lord, *Washington, October* 27, 1887.

IN obedience to the instructions contained in your Lordship's telegram of the 25th instant, I lost no time in officially informing the Secretary of State that Mr. Chamberlain, myself, and Sir Charles Tupper had been appointed British Plenipotentiaries to attend the Fisheries Conference.

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

No. 54.

Sir L. West to the Marquis of Salisbury.—(Received November 7.)

(No. 114. Treaty.)

My Lord, *Washington, October* 27, 1887.

WITH reference to my preceding despatch, I have the honour to inclose herewith to your Lordship copy of the note of the Secretary of State informing me that the President has designated as Plenipotentiaries to the approaching Fisheries Conference, to be associated with himself, Mr. William L. Putnam, and Mr. James B. Angell.

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

Inclosure in No. 54.

Mr. Bayard to Sir L. West.

Sir, *Department of State, Washington, October* 26, 1887.

WITH reference to the announcement conveyed in your note of yesterday's date of the appointment of British Plenipotentiaries to the approaching Fisheries Conference, I have the honour to inform you that the President has designated as Plenipotentiaries, to be associated with myself on behalf of the Government of the United States in that Conference, Mr. William L. Putman and Mr. James B. Angell.

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

No. 55.

Sir L. West to the Marquis of Salisbury.—(Received November 7.)

(No. 115. Treaty. Confidential.)

My Lord, *Washington, October 28, 1887.*

IN accordance with the instructions contained in your Lordship's despatch No. 69, Treaty, Confidential, of the 11th instant, I have informed Mr. Bayard that your Lordship would have regard to his wishes respecting the terms "Commissioners" or "Plenipotentiaries."

Mr. Bayard asked me for a Memorandum of your Lordship's despatch, which I gave to him.

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

No. 56.

Colonial Office to Foreign Office.—(Received November 9.)

Sir, *Downing Street, November 9, 1887.*

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

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

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

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

Inclosure 1 in No. 56.

Governor Blake to Sir H. Holland.

(Secret.)

Sir, *Government House, Newfoundland, October 25, 1887.*

WITH reference to your telegram of the 22nd instant, I have the honour to inclose a copy of a Minute submitted to me to-day by the Members of the Executive Council or transmission to you.

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

3. At the meeting of the Council, a very strong and indeed rather violently worded protest was read by the Attorney-General, having been drawn up at the meeting of the Ministers on Saturday evening. I pointed out to the Council that it was hardly fair to assume, from the necessarily curt diction of a telegram, that the representations of the Colony on the subject had not been fully and carefully considered, and endeavoured to allay the irritation upon that and other points. I argued that the objection that the Members of the Conference would have no information available on the subject of the interests of Newfoundland would be obviated by sending an Agent to confer with the

Plenipotentiaries at Washington, and that refusing to send an Agent, whose representations might profoundly influence the results of the Conference as regards our interests, because he could not have the more important position of Plenipotentiary, would hardly be justifiable, I assured the Council that, from my own knowledge of the feeling of the Home Government, there was no fear of the interests of Newfoundland being neglected in any way, much less sacrificed to those of Canada. Ultimately the Ministers adopted my suggestion, that the language of the Minute should be modified. They met last evening, and the Minute of which I inclose a copy is the outcome of their further consideration. It was read at a Council convened for to-day.

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

5. My Ministers are uneasy, because your telegram of the 15th instant does not assure them that arrangements made affecting the interests of Newfondland must be accepted by this Government before being ratified. I have endeavoured to reassure them on the point.

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

Inclosure 2 in No. 56.

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

THE Council cannot refrain from the expression of an acute feeling on their part that the proceedings in relation to the proposed Commission, so far as they relate to this Colony, indicate a want of due regard for its vital interests, which at present at least appear to be in jeopardy.

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

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

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

The Government of the Colony are further under the serious disadvantage as regards the method suggested, arising from the want of that information in relation to the whole subject which is indispensable as a preliminary to a suitable representation of the interests of the Colony upon the Commission. The Colony has not until the past few weeks received any intimation whatever except from outside and unauthorized sources

as to the formation of the Commission, its constitution or powers, the scope of the subjects to be dealt with, the extent to which this Colony is to be affected by its conclusions, or the power of the Colony to accept or reject those conclusions.

The authorized information upon these points, so far elicited, has been in reply to very recent inquiries from the Government of this Colony by telegraph, stimulated by the natural anxiety felt by the Government upon the whole subject, and the great uneasiness occasioned by the publication of announcements pointing to the exclusion of the Colony from any representation whatever upon the Commission, and the information so received does not contain any definite or specific replies to questions relating to some of the most vital and radical points involved.

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

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

(Signed) M. FENELON,
Clerk of Executive Council.

Inclosure 3 in No. 56.

Draft of Despatch from Sir H. Holland to Governor Blake.

(Secret.)

Sir, *Downing Street, November* , 1887.

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

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

I have, &c.

No. 57.

The Marquis of Salisbury to Sir L. West.

(No. 46.)

(Telegraphic.) *Foreign Office, November* 10, 1887, 4·30 P.M.

MY telegram No. 45.

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

No. 58.

The Marquis of Salisbury to Her Majesty's Plenipotentiaries at the Fisheries Conference.

(No. 6.)

Gentlemen, *Foreign Office, November* 10, 1887.

IN a telegram which I addressed to Her Majesty's Minister at Washington on the 5th instant, I requested him to inform you that the Government of Newfoundland had appointed Mr. Winter, the Attorney-General for that Colony, as their Agent during the meeting of the Fisheries Conference.

I have now to request that you will give to Mr. Winter every facility to place before you the views of the Newfoundland Government, so that they may receive your attentive consideration and full discussion.

I am, &c.
(Signed) SALISBURY.

No. 59.

The Marquis of Salisbury to Her Majesty's Plenipotentiaries at the Fisheries Conference.

(No. 7.)

Gentlemen, *Foreign Office, November* 10, 1887.

WITH reference to my previous despatch of this day's date, I transmit herewith, for your information, copy of a letter from the Colonial Office and its inclosures relative to the question of the Colony of Newfoundland being represented at the Fisheries Conference at Washington.*

I am, &c.
(Signed) SALISBURY.

No. 60.

Foreign Office to Colonial Office.

(Confidential.)

Sir, *Foreign Office, November* 11, 1887.

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

In reply, I am to request that you will state to Sir H. Holland that his Lordship concurs in the terms of the despatch which it is proposed to address to the Governor of Newfoundland in regard to the question of the direct representation of the Colony at the Fisheries Conference at Washington.

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

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

No. 61.

Sir L. West to the Marquis of Salisbury.—(Received November 14.)

(No. 117. Treaty.)

My Lord, *Washington, November* 1, 1887.

WITH reference to your Lordship's despatch No. 33, Treaty, dated the 30th June last, I have the honour to inclose herewith copy of a note which I have received from the Secretary of State, forwarding a copy of the affidavits of Captain Rose and Augustus Rogers, by which it appears that his Declaration of the 20th April was obtained from him by Collector Atwood through fear and intimidation.

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

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* No. 56. † No. 57.

Inclosure 1 in No. 61.

Mr. Bayard to Sir L. West.

Sir, *Department of State, Washington, October* 31, 1887.

ON the 19th July last I had the honour to receive from you a letter dated the day previous, inclosing a printed copy of a Declaration made by Medeo Rose, formerly master of the schooner "Laura Sayward," of Gloucester, Massachusetts, in which he contraverts certain statements theretofore made by him under oath in relation to his treatment by Mr. Atwood, Collector of Customs at Shelburne, Nova Scotia, on the 13th October, 1886.

Upon receiving your letter, I at once communicated its contents to the Collector of the Port of Gloucester, Massachusetts, through whom the original complaint had been forwarded to this Department.

To-day, for the first time, I was informed that on the 5th August last a reply and sworn statement, by way of explanation of this variance between his affidavit of the 13th October, 1886, and his subsequent Declaration at Sandy Point, Nova Scotia, dated the 20th April, 1887, had been in my absence received at this Department, and by inadvertence not laid before me until to-day.

I therefore now inclose a copy of the affidavits of Captain Rose and Augustus Rogers, made at Gloucester, Massachusetts, on the 3rd August last, before a Notary Public, by which it appears that his Declaration of the 20th April, 1887, was not voluntary, but was obtained from him by Collector Atwood, through fear and intimidation, under circumstances fully stated.

I should transmit these documents without further comment, but that, in closing your note to me of the 18th July last, you stated that you were "further instructed to ask whether the United States' Government have any observations to make thereupon."

In my reply to you on the 19th July I promised to comply with your request, and for that reason I now remark that the incident which has been the subject of this correspondence affords but another illustration and additional evidence, if any were needed, of the unwisdom of imperilling the friendly relations of two kindred and neighbouring countries by intrusting the interpretation and execution of a Treaty between them to the discretion of local and petty officials, and vesting in them powers of administration wholly unwarranted and naturally prolific of those irritations which wise and responsible Rulers will always seek to avoid.

On the eve of a negotiation touching closely the honour and interests of two great nations, I venture to express the hope that the anticipated result of our joint endeavours to harmonize all differences may render it hereafter impossible to create a necessity for those representing our respective Governments to be called upon to consider such questions as are presented in the case of the "Laura Sayward."

I have, &c.

(Signed) T. F. BAYARD.

Inclosure 2 in No. 61.

Affidavits of Captain Rose and Augustus Rogers.

I, MEDEO ROSE, of Gloucester, being under oath, do depose and say:—

That I was master of the schooner "Laura Sayward" during the year 1886, and that I am now master of the schooner "Gleaner," of Gloucester.

On the 18th April, 1887, I went into the lower harbour of Shelburne, Nova Scotia, in said schooner "Gleaner" for shelter and water.

On the morning of the 19th April, Mr. Atwood, the Collector of Customs, with two men wearing badges, which I supposed were Government badges, came on board. Their appearance filled me with fear, for I felt some trouble must be in store for me when Collector Atwood would leave his office and come so far (about 4 miles) to board my vessel. I invited him into the cabin, where he showed me a copy of my statement of the 13th October, 1886, in regard to the treatment I received from him when in the schooner "Laura Sayward" (5th October, 1886), and asked me if I made that statement. I told him I did. "Well," said he, "everything in that statement is false." I told him my statement was true. He then produced a prepared written statement, which he read to me, which stated that my statement of the 13th October was untrue, and told me I must go on shore and sign it. Being nervous and frightened, and fearing

trouble if I refused, I went on shore with him to the store of Mr. Purney, and before Mr. Purney signed and swore to the statement.

On the afternoon of the same day, realizing the wrong I had done, I hired a team, and with one of my crew (Augustus Rogers) went to the custom-house and asked Collector Atwood to read to me the statement I had signed. He did so, and I again told him it was wrong, and that my first statement was true. He said I did not ask for all the articles mentioned in my first statement; that he did not refuse me my papers, and also that that statement might be the cause of his removal from his office. I told him I did not want to injure him, and I did not want to make myself out a liar at Washington.

About the 3rd day of June last, I went into Shelburne again solely to get a copy of the last statement. I went to the custom-house, taking the same man (Augustus Rogers) with me, and asked Collector Atwood for a copy of the statement. He refused to give it to me, and said my lawyer had been advising me what to do, and that I need never expect a favour from him.

The above is a true statement of the case. The statement obtained from me by Collector Atwood was obtained through my fear of seizure if I refused.

(Signed) MEDEO ROSE.

I, Augustus Rogers, one of the crew of the schooner "Gleaner," being duly sworn, do depose and say:—

That I went with Captain Medeo Rose to the custom-house at Shelburne, Nova Scotia, on the 19th day of April last, and also on the 3rd day of June. I heard his conversation with Collector Atwood on both occasions, and hereby certify that the statement of those interviews, as made above, are correct and true.

(Signed) AUGUSTUS ROGERS.

Mass., Essex, ss. *August* 3, 1887.

Personally appeared Medeo Rose and Augustus Rogers, and made oath to the truth of the above statements.

Before me,

(Signed) AARON PARSONS, *Notary Public.*

No. 62.

Sir L. West to the Marquis of Salisbury.—(*Received November* 14.)

(No. 118. Treaty.)

My Lord, *Washington, November* 2, 1887.

I HAVE the honour to inclose to your Lordship herewith an article from the "New York Evening Post" on the Washington Conference, which insists on the interpretation of the Treaty of 1818 as a preliminary step.

I have, &c.

(Signed) L. S. SACKVILLE WEST.

Inclosure in No. 62.

Extract from the "New York Evening Post" of November 1, 1887.

THE WASHINGTON CONFERENCE.—The approach of Mr. Chamberlain to our shores and the renewed volubility of the Canadian press admonish us that we are entering upon a matter of serious business with one of the Powers of the Old World to which we are bound by ties of language and lineage which we sustain to no other. The questions to be considered are not new; they run back to the Colonial period; they have been the subject of four important Treaties between the United States and Great Britain. In the course of time the issues have been slightly changed, but in the main they stand unaltered. They are all embodied in the one question—what are the rights of American fishermen on the shores of Canada? The profits of fishing depend largely upon the use of the neighbouring mainland.

Our contention is that the rights of fishing-vessels are the same as those of merchant-vessels, embracing all the trading rights that the commercial Regulations of

Great Britain accord to the ocean traffic of other countries, corresponding exactly to the privileges that we accord to British vessels trading in or entering our ports. The Canadian contention is, that fishing and commerce are different matters altogether, that they have always been so considered by both countries, that they were acknowledged to be different in the Treaty of 1873 (the Washington Treaty) no less than in that of 1818, and that American fishing rights are now to be determined by the latter Treaty, and not otherwise.

The fishing interest on our side have practically conceded the last point, viz., that their rights rest upon the Treaty of 1818, but they insist that this Treaty must be interpreted by the commercial privileges granted by the two countries to each other not by Treaty, but by Proclamation in the year 1830. That these privileges were of a mercantile sort only is made tolerably clear by the fact that we never asserted their applicability to fishing-vessels until after we had abrogated the Washington Treaty, and that we never put fishing and trading on the same footing in our own laws until last year.

Thus it is inevitable that the first question to come before the Washington Conference will relate to the interpretation of the Trenty of 1818. That that Treaty is still in force nobody questions. It is now old enough to have been formally denounced by either party, but as it has not been, it is as binding as though it were an enactment of yesterday. What are its provisions? It gives us certain shore rights carefully drawn on the Map, and excludes any other shore rights except the right to enter bays and harbours "for the purpose of shelter or repairing damages therein, of purchasing wood and of obtaining water, and for no other purpose whatever." An explanatory clause was added that "they" (the American fishermen) "shall be under such restrictions as may be necessary to prevent their taking, drying, or curing fish therein, or in any other manner abusing the privileges thereby reserved to them." The spirit of the Treaty would seem to be that the laws of humanity should be observed, but that Canada should not be made a base of operations for American fishing-vessels except on those parts of the coast expressly granted for their use, viz,, the north and west shores and the unsettled parts of the south shore of Newfoundland, and the coast of Labrador from Mount Joly northward.

Now the Canadian Government have put their own interpretation upon this Treaty, and have undertaken to decide what are the exigencies that require shelter for fishing-vessels, and what are the suitable occasions for the repair of damages. A skipper may come in shore for shelter when he thinks there is a storm brewing as well as when it is brewed. He may come in to repair his tiller or his sails, although he might be able to repair them outside. His real purpose in coming ashore may be to buy bait or other supplies. It may be within the prescriptions of the Treaty or outside of them. Nobody can tell what his real purpose is unless he is caught in an act prohibited by the Treaty as understood by the Canadians. Under a strict interpretation of the Treaty he may buy wood but not coal, he may take on water but not ice. He may not send home a package by express or mail a letter. He may not hire a seaman, or buy salt or fishing tackle. He may not dry or cure fish. He may not stay in any harbour beyond the time necessary to repair damages. Against these narrow interpretations of the Treaty our fishermen protest, and it is not to be denied that they have grounds for complaint.

The first question to be considered by the Conferees, therefore, is the interpretation of the existing Treaty. We shall make our claims as broad as possible, expecting that the other side will look out equally for their own interests. In the event of a material disagreement as to the meaning of words, arbitration may be necessary. But it is plain that the questions of reciprocity and commercial union or the duties on fish cannot be considered until we know exactly what the law is by which both parties are bound.

No. 63.

Colonial Office to Foreign Office.—(*Received November* 16.)

Sir, *Downing Street, November* 16, 1887.

I AM directed by the Secretary of State for the Colonies to transmit to you, for the information of the Marquis of Salisbury, with reference to your letter of the 11th instant, a copy of the despatch which he has addressed to the Governor of

Newfoundland in reply to the protest of the Colonial Government on the subject of its non-representation at the Fisheries Conference.

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

Inclosure in No. 63.

Sir H. Holland to Governor Blake.

(Secret.)
Sir, *Downing Street, November* 12, 1887.

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

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

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

No. 64.

Colonial Office to Foreign Office.—(Received November 17.)

Sir, *Downing Street, November* 16, 1887.

WITH reference to your letter of the 18th ultimo, I am directed by the Secretary of State for the Colonies to transmit to you, to be laid before the Marquis of Salisbury, a copy of a despatch from the Governor-General of Canada, asking whether it is to be understood that any Treaty provisionally concluded by the Plenipotentiaries will not come into operation without the expressed concurrence of the Dominion Parliament.

I am to inquire what answer should be returned to Lord Lansdowne.

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

Inclosure in No. 64.

The Marquis of Lansdowne to Sir H. Holland.

(Secret.)
Sir, *Government House, Ottawa, November* 3, 1887.

I HAD the honour of receiving your despatch of the 22nd October, inclosing copies of two letters from the Foreign Office, dated respectively the 17th and 18th October, with respect to the North American Fisheries Conference.

2. My Government has learnt with satisfaction that, in consequence of its representations, the Marquis of Salisbury instructed Her Majesty's Minister at Washington to suggest the omission of the words to which attention was called in my telegram of the 10th October from the terms of reference to the Washington Conference.

3. With regard to the statement contained in the same telegram, to the effect that my Government understood that any Treaty would be "subject, like the last, to ratification by the Parliament of Canada," I observe that in Sir Julian Pauncefote's letter to you of the 18th October it is stated "that Her Majesty's Government will proceed according to the uniform practice in this country in dealing with the Colonies, and that no new Treaty respecting the fisheries will be concluded without previous communication with the

Colonial Governments so far as it may affect each Colony." I shall be glad if you will be good enough to inform me whether I may understand from the words quoted that any Treaty which may be provisionally concluded by the Plenipotentiaries will, in so far as it affects the Dominion, not come into operation without the expressed concurrence of the Canadian Parliament.

I have, &c.
(Signed) LANSDOWNE.

No. 65.

Colonial Office to Foreign Office.—(Received November 19.)

Sir, *Downing Street, November 19, 1887.*

I AM directed by the Secretary of State for the Colonies to transmit to you, for the information of the Marquis of Salisbury, with reference to the letter from this Department of the 3rd instant, copies of two despatches from the Governor of Newfoundland respecting the appointment of Mr. Winter as Agent for that Colony at the Fisheries Conference.

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

Inclosure 1 in No. 65.

Governor Blake to Sir H. Holland.

Sir, *Government House, Newfoundland, November 5, 1887.*

I HAVE the honour to inform you that the Honourable J. S. Winter, Attorney-General, left St. John's this day to be present, as Agent for the Colony, at the North American Fisheries Conference at Washington. Mr. A. J. W. McNeily, Q.C., is Acting Attorney-General during his absence.

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

Inclosure 2 in No. 65.

Governor Blake to Sir H. Holland.

Sir, *Government House, Newfoundland, November 7, 1887.*

I HAVE the honour to inclose a copy of a letter I wrote to Sir Sackville West concerning the Honourable J. S. Winter's appointment as Agent for the Colony at the Washington Conference.

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

Inclosure 3 in No. 65.

Governor Blake to Sir L. West.

Sir, *Government House, Newfoundland, November 4, 1887.*

I HAVE the honour to inform your Excellency that my Government has nominated the Honourable J. S. Winter, Attorney-General, as Agent for this Colony, with instructions to proceed to Washington and to confer with the British Plenipotentiaries at the coming Conference on such matters as may arise concerning the interests of Newfoundland.

2. This course has been taken in consequence of a suggestion to that effect from the Imperial Government. I have the honour to inclose copies of communications between this Government and the Colonial Office that will explain the position to your Excellency. The nomination of the Attorney-General was made only two days ago, therefore it will be some days before your Excellency receives the intimation of this appointment from the Imperial Government.

3. Mr. Winter, who, with other members of the Ministry, has had an opportunity of

consulting with the members of the Chamber of Commerce on the subject of the approaching Conference, is thoroughly acquainted with the questions at issue as they affect the interests of this Colony, and I have no doubt that the cordial relations that I anticipate between him and the British Plenipotentiaries will be of material value in the consideration of the final arrangements so far as they affect this Colony when submitted to the Legislature of Newfoundland.

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

No. 66.

Foreign Office to Colonial Office.

Sir, *Foreign Office, November* 19, 1887.

YOUR letter of the 16th instant, inclosing a copy of a despatch from the Governor-General of Canada, marked Secret, of the 3rd November, has been laid before the Marquis of Salisbury.

In that despatch Lord Lansdowne calls attention to a statement made in Sir Julian Pauncefote's letter to you of the 18th ultimo, the text of which is quoted, and inquires whether it is to be understood from the words so quoted that any Treaty which may be provisionally concluded by the Plenipotentiaries who are about to meet at Washington to discuss the Fisheries question will, in so far as it affects the Dominion, not come into operation without the expressed concurrence of the Canadian Parliament.

In reply, I am directed by Lord Salisbury to request that you will state to Sir H. Holland that, in Lord Salisbury's opinion, so far as any Treaty that may be concluded depends for its operation on any change in the laws of Canada, it obviously cannot take effect without the concurrence of the Canadian Parliament.

Lord Salisbury does not imagine that it is the intention of the Canadian Government to make any reservation of a more extensive character, but if, in their judgment, the right of the Canadian Parliament is larger than is expressed by the above words, I am to request that Sir H. Holland will move Lord Lansdowne to state in more precise terms the character of the stipulations which, in his view, should be reserved for the express concurrence of the Canadian Parliament.

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

No. 67.

Foreign Office to Colonial Office.

Foreign Office, November 19, 1887.

[Transmits copy of Sir L. West's No. 293 of October 23, 1887.]

No. 68.

Mr. Chamberlain to the Marquis of Salisbury.—(Received November 21.)

(Separate.)

My Lord, *Brevoort House, New York, November* 10, 1887.

I HAVE the honour to report that I arrived in this city on the 7th instant, accompanied by Mr. Bergne and Mr. Maycock.

I learn that Sir Charles Tupper will be in Washington early next week, and I propose to go there on Wednesday, the 16th instant.

In the meanwhile, Sir Lionel West will be able to arrange with Mr. Bayard as to the date of the first meeting of the Conference, and I learn by telegram that the Attorney-General for Newfoundland has already left for Washington in order to confer with the British Commissioners before the commencement of the proceedings.

I have, &c.
(Signed) J. CHAMBERLAIN.

No. 69.

Sir L. West to the Marquis of Salisbury.—(Received November 21.)

(No. 321.)

My Lord, *Washington, November 11, 1887.*

I HAVE the honour to acknowledge the receipt of your Lordship's telegram No. 47 of yesterday, and to inform your Lordship that I have already notified the Plenipotentiaries of the nomination of the Honourable J. S. Winter as Agent of the Colony of Newfoundland to confer with the British Plenipotentiaries at the coming Fisheries Conference.

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

No. 70.

Sir L. West to the Marquis of Salisbury.—(Received November 21.)

(No. 322.)

My Lord, *Washington, November 11, 1887.*

I HAVE the honour to report to your Lordship that Mr. Chamberlain, accompanied by Mr. Bergne and Mr. Maycock, arrived at New York on the 7th instant, and that they purpose to be in Washington on Wednesday, the 16th.

I am informed that Sir Charles Tupper intends to reach Washington on Monday, the 14th, and that Mr. Winter left St. John's, Newfoundland, on the 5th instant.

The Secretary of State has intimated to me that, as far as the American Plenipotentiaries are concerned, the Conference could immediately meet for preliminary proceedings.

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

No. 71.

Colonial Office to Foreign Office.—(Received November 21.)

Sir, *Downing Street, November 19, 1887.*

WITH reference to your letter of the 6th September, 1886, inclosing a copy of a despatch from Her Majesty's Minister at Washington, with a note from Mr. Bayard protesting against the action of the officer of the Canadian schooner "F. E. Conrad" towards the United States' schooner "Golden Hind," I am directed by Secretary Sir Henry Holland to transmit to you, to be laid before the Marquis of Salisbury, a copy of a despatch, with its inclosures, received from the Governor-General of Canada on the subject.

I am also to inclose a copy of the despatch from the Secretary of State to which the Governor-General's despatch is a reply.

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

Inclosure 1 in No. 71.

The Marquis of Lansdowne to Sir H. Holland.

Sir, *Government House, Ottawa, October 28, 1887.*

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

This despatch, which was received during my absence from Canada on leave, was at once referred to the Department of Marine and Fisheries, and the facts were, as you will observe from the papers now forwarded, investigated without loss of time. Owing to some oversight, however, the matter was not brought in the usual manner before Council, and was consequently altogether overlooked for some months. There were several fishery cases, Reports upon which had been sent to you, or your predecessor, before the

arrival of any complaints from the United States' Government, and I found that the Minister, when I called his attention to Mr. Stanhope's despatch, was under the impression that in the case of the "Golden Hind" he had been furnished with such a Report, and his despatch consequently answered by anticipation.

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

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

I have, &c.
(Signed) LANSDOWNE.

Inclosure 2 in No. 71.

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

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

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

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

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

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

All of which is respectfully submitted.

(Signed) JOHN J. McGEE, *Clerk,*
Privy Council.

Inclosure 3 in No. 71.

Mr. M. Smeltzer to the Deputy Minister of Fisheries, Ottawa.

Government schooner "F. E. Conrad," Souris, P. E. I.,
Sir, *October 5*, 1886.

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

I am, &c.
(Signed) MATHIAS SMELTZER,
In command of schooner "F. E. Conrad."

Inclosure 4 in No. 71.

Mr. Stanhope to the Officer administering the Government of Canada.

My Lord, *Downing Street, September* 9, 1886.

I HAVE the honour to transmit to you herewith a copy of a letter from the Foreign Office, inclosing a copy of a despatch from Her Majesty's Minister at Washington, with copy of a note from Mr. Bayard, protesting against the action of the Commander of the Canadian schooner "F. E. Conrad" in forbidding the master of the United States' schooner "Golden Hind" to enter the Baie des Chaleurs for the purpose of renewing his supply of fresh water.

I have to request that you will obtain from your Government, with the least possible delay, a Report in reference to this matter; and that you will direct their special attention to the last paragraph of the letter from the Foreign Office.

I have, &c.

(Signed) EDWARD STANHOPE.

No. 72.

Colonial Office to Foreign Office.—(Received November 21.)

Sir, *Downing Street, November* 19, 1887.

WITH reference to previous correspondence, I am directed by Secretary Sir Henry Holland to transmit to you, to be laid before the Marquis of Salisbury, a copy of a despatch from the Governor-General of Canada, forwarding a Minute of the Executive Council of British Columbia respecting the value to that province of the sealing industry on Behring's Sea.

I am to ask what answer should be returned to Lord Lansdowne, and to suggest that copies of these papers should be forwarded to Her Majesty's Minister at Washington.

I am, &c.

(Signed) JOHN BRAMSTON.

Inclosure 1 in No. 72.

The Marquis of Lansdowne to Sir H. Holland.

Sir, *Government House, Ottawa, October* 20, 1887.

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

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

I have, &c.

(Signed) LANSDOWNE.

Inclosure 2 in No. 72.

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

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

The Minister of Marine and Fisheries, to whom the despatch and inclosures were

referred, recommends that a copy of the despatch referred to, with its inclosures, be transmitted to Her Majesty's Government.

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

All which is respectfully submitted.

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

Inclosure 3 in No. 72.

Lieutenant-Governor Nelson to the Secretary of State, Ottawa.

Sir, *Harrison Hot Springs, British Columbia, September* 15, 1887.

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

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

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

I have, &c.
(Signed) HUGH NELSON.

Inclosure 4 in No. 72.

PROVINCE OF BRITISH COLUMBIA.

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

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

That there are usually engaged in seal-fishing in Behring's Sea seventeen vessels wholly owned by people residing in this city, of the aggregate value of 125,000 dollars;

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

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

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

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

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

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

That the rights and interests of British subjects, whether in fisheries or commerce, are entitled to the same consideration and protection on the Pacific as on the Atlantic, and

that it is therefore the duty of the Dominion Government to employ every proper means for obtaining immediate and full compensation and redress for past injuries and wrongs, as well as to guard against the possibility of a repetition of these high-handed outrages in the future;

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

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

Certified,

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

No. 73.

The Marquis of Salisbury to Sir L. West.

(No. 278.)

Sir, *Foreign Office, November* 24, 1887.

THE Earl of Iddesleigh, by his despatch No. 51, Treaty, of the 6th September of last year, requested you to inform Mr. Bayard that immediate inquiry should be made into the case of the United States' vessel "Golden Hind," to which he had called attention in his note of the 17th August, inclosed in your despatch No. 78, Treaty, of the 18th of that month.

I transmit to you a copy of a letter which was accordingly addressed to the Colonial Office, and a copy of the reply from that Department dated the 19th instant.*

You will observe, from Lord Landsdowne's despatch of the 28th ultimo, inclosed in the Colonial Office letter, that by an oversight the reply from the Canadian Government to the reference made to them by Her Majesty's Secretary of State for the Colonies has been considerably delayed, though there was no delay on the part of the Canadian authorities in obtaining a Report from the officer in command of the schooner "F. E. Conrad" on the subject of the complaint made by the master of the American fishing-schooner "Golden Hind" that he had been forbidden by the Commander of the "F. E. Conrad" to enter the Baie des Chaleurs when he attempted to put into Port Daniel for the purpose of obtaining a fresh supply of water.

The Commander of the "F. E. Conrad" states that the master of the American vessel did not inform him that he wanted water, nor that he desired to enter Port Daniel.

I have to request that you will express to Mr. Bayard my regret that the United States' Government should have remained so long without a reply to their representation in the case of the "Golden Hind," and that you will communicate to Mr. Bayard the papers inclosed in the Colonial Office letter.

I am, &c.

(Signed) SALISBURY.

No. 74.

Colonial Office to Foreign Office.—(*Received November* 26.)

(Confidential.)

Sir, *Downing Street, November* 25, 1887.

I AM directed by Secretary Sir Henry Holland to transmit to you herewith, for the information of the Marquis of Salisbury, a copy of a letter, received through the Admiralty, from the Commander-in-chief on the North American and West Indian Station, dated the 20th October, with copies of the Reports from the officers in command of Her Majesty's ships which have recently returned from visiting the Canadian fishing-grounds.

I am, &c.

(Signed) JOHN BRAMSTON.

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* To Colonial Office, September 6, 1886; and *ante*, No. 71.

Inclosure 1 in No. 74.

Vice-Admiral Lyons to Admiralty.

(Confidential.)

Sir, "*Bellerophon*," *at Halifax, October* 20, 1887.

WITH reference to your letter of the 30th July last, Confidential, I have the honour to forward Reports from the officers in command of Her Majesty's ships which have recently returned from visiting the Canadian fishing-grounds.

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

It will be observed, from Captain Beaumont's Report, that the officers in command of the Dominion cruizers concur in their statements that they had found no difficulty in dealing with the American fishermen, or in enforcing the regulations as to the 3-mile limit, though they would fish inside whenever they got the chance.

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

I have, &c.

(Signed) ALGERNON LYONS.

Inclosure 2 in No. 74.

Captain Beaumont to Vice-Admiral Lyons.

(Confidential.)

Sir, "*Canada*," *at Halifax, September* 28, 1887.

I HAVE the honour to report that, in obedience to your signal of the 16th instant to part company, and in pursuance of the instructions contained in your Confidential Memorandum of the 13th September, I have visited the principal fishing-grounds in the Gulf of St. Lawrence which border those coasts of the Dominion of Canada within 3 miles of which American fishermen are precluded from fishing.

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

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

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

Along the north coast of Prince Edward Island there were a few schooners in addition to the local fishermen, but it was not until after rounding the east point of that island that the fishery fleet proper was met with. It consisted of from twenty to twenty-five sail, all schooners of from 50 to 80 tons; on passing them I saw that each had one or two whale boats towing astern with a seine-net in each.

One schooner hoisted American colours.

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

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

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

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

6. At Gaspé I met the Canadian cruizer "La Canadienne," and Lieutenant Wake-

ham, in command, informed me that he was then on his way to inspect the fisheries on the Labrador coast.

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

I have, &c.
(Signed) L. A. BEAUMONT.

Inclosure 3 in No. 74.

Captain Byles to Vice-Admiral Lyons.

Sir, "*Tourmaline*," *at Halifax, October* 2, 1887.

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

2. I passed the inshore fisheries outside the 3-mile limit; I observed no vessels of any nationality fishing inside that limit. Passing Gaspé, Miramachi, &c., I observed there were many open boats fishing from 3 to 8 miles from the shore. These were all local fishermen, and carrying two to three men in each boat. Three Canadian schooners were in the vicinity, but not fishing. After passing Chaleur Bay we did not find any more fishing craft until Saturday morning, when passing through the Gut of Canso. Many schooners were just weighing and proceeding north. These schooners all seemed to be Canadian. I took most of their names, but only in the case of a few of them could be ascertained to what port they belonged, and none of them showed any colours.

Outside the Gut again many open boats were fishing, and several shoals of fish, apparently mackerel, were observed. No Canadian cruisers were fallen in with during the passage.

The confidential documents received with my sailing orders are herewith returned; also a list of the fishing craft seen during the passage.

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

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

Inclosure 4 in No. 74.

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

Where seen.	Description.	Names or Number.	No. of Men.	Colours shown.	Fishing or not.	Distance from Shore.
Off Cape Gaspé	Open boats	About 50	2	None	Under sail, apparently proceeding to fishing-grounds	¼ to 2 miles.
In Mal Bay	Ditto	About 20	2	Ditto	Some fishing, others under sail	
Ditto	Schooner	"Dawn"	6	Canadian	Not fishing	3 miles.
Off Bonaventure	Brigantine	"J. C. B." on bows		Ditto	Ditto	Outside 3 miles.
Ditto	Open boats	About 40	2	None	Some fishing, others under sail	3 to 6 miles.
Outside Chaleur Bay	Ditto	About 25	2	Ditto	Some fishing, some with nets drying	10 to 15 miles.
Ditto	Ditto	About 90	2 and 3, one 4	Ditto	Ditto	15 to 18 miles.
Ditto	Open boat	1	3	Red flag, Union Jack at , gold crown in upper centre, green crest, with red diagonal bar and white border at fly	Sailing	18 miles from Point Birch and Bonaventure.
Ditto	Ditto	1	3	Red flag	Sailing	
Off Point Birch	Open boats	12 or 14	3	None	Some fishing, others under sail	6 to 10 miles.
Between Gut of Canso and Cape Canso	Ditto	About 90	2 and 3	Ditto	Ditto	All over the bay.
Ditto	Schooners	About 40		Ditto	Sailing	In bay.

(Signed) MATHER BYLES, *Captain.*

"Tourmaline," at Halifax.

Inclosure 5 in No. 74.

Lieutenant Law to Vice-Admiral Lyons.

Sir, "*Wrangler*," *at Halifax, October* 15, 1887.

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

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

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

I left Souris on the evening of the 12th October, and touched at Port Hawkesbury for mails, leaving that port at 11·30 for Halifax.

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

I inclose herewith the Admiralty letter and inclosures.

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

No. 75.

Mr. Chamberlain to the Marquis of Salisbury.—(*Received November* 26.)

(Telegraphic.) *Washington, November* 26, 1887.

HAVE you accepted a proposal for an International Conference concerning Behring's Sea fisheries?

No. 76.

The Marquis of Salisbury to Mr. Chamberlain.

(No. 1.)
(Telegraphic.) *Foreign Office, November* 26, 1887, 4·15 P.M.

YOUR telegram of to-day.

I have expressed myself favourable to negotiation for Agreement on close season in all seal fisheries, to whomsoever belonging. But I separated the question carefully from all controversies as to fishery rights.

No. 77.

Mr. Chamberlain to the Marquis of Salisbury.—(*Received November* 28.)

(Separate.)
My Lord, *Washington, November* 18, 1887.

WITH reference to my despatch, marked Separate, of the 10th instant, I have now the honour to acquaint your Lordship that Sir Charles Tupper and his suite arrived at New York on the 16th instant from Ottawa, and on the following day we left New York together for Washington, where we arrived yesterday, and were met at the station by Sir Lionel West and the members of Her Majesty's Legation.

Sir Charles Tupper is accompanied by the Honourable J. S. D. Thomson, Minister of Justice in Canada; Major-General D. R. Cameron, Official Secretary to Sir Charles, and Mr. Chipman, his Private Secretary. Mr. Wallace Graham, Q.C., and Mr. George Johnson complete the Canadian party.

Accompanied by Sir Lionel West and Sir Charles Tupper, I this day visited Mr. Bayard, Secretary of State, and he informed me that the official proceedings would commence on Monday next. Reports of those proceedings will be duly forwarded to your Lordship in despatches signed by myself and my colleagues on the negotiation.

It has been arranged that the President will accord an interview to-morrow to the British negotiators and the gentlemen who accompany them.

I have, &c.
(Signed) J. CHAMBERLAIN.

No. 78.

Sir L. West to the Marquis of Salisbury.—(Received November 28.)

(No. 333.)
My Lord, *Washington, November 18, 1887.*

I HAVE the honour to report to your Lordship that Mr. Chamberlain and Sir Charles Tupper arrived here yesterday evening, and that I presented them to the Secretary of State this morning.

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

No. 79.

The Marquis of Salisbury to Mr. Chamberlain.

(No. 2.)
(Telegraphic.) *Foreign Office, November 28, 1887, 5·15 P.M.*

MY telegram of 26th.

See print sent with my despatch No. 8, pp. 99, 102, 104, 115, and 128.

No definite invitation yet received by Her Majesty's Government from United States for international co-operation to protect seal fisheries. Shall see United States' Minister to-day.

No. 79*.

The Marquis of Salisbury to the British Plenipotentiaries to the Fisheries Conference.

(No. 13. Ext.)
Gentlemen, *Foreign Office, November 28, 1887.*

I RECEIVED on the 26th instant a telegram from Mr. Chamberlain, inquiring whether a proposal for an International Conference in regard to the Behring's Sea fisheries had been accepted by Her Majesty's Government.

You are aware from the correspondence which is in your possession that communications with reference to a proposal which would appear to have been addressed to some of the Maritime Powers by the United States for an International Convention for the protection of seals in the Behring's Sea were received last October from the German and Swedish Chargés d'Affaires in London.

No definite invitation, however, for an international understanding on this question has yet been received from the Government of the United States by Her Majesty's Government.

In answer to a question from Mr. Phelps, I have expressed myself as being favourably disposed to negotiating for an Agreement as to a close season in all seal-fisheries, to whomsoever belonging, but I carefully separated the question from all controversies as to fishery rights.

I am, &c.
(Signed) SALISBURY.

No. 80.

Foreign Office to Colonial Office.

Foreign Office, November 28, 1887.

[Transmits copies of Mr. Chamberlain's telegram of November 26; and telegrams Nos. 1 and 2 to ditto, dated November 26 and 28, 1887: *ante*, Nos. 75, 76, and 79.]

No. 81.

The Marquis of Salisbury to the British Plenipotentiaries to the Fisheries Conference.

(No. 14.)

Gentlemen, *Foreign Office, November* 29, 1887.

I TRANSMIT herewith, for your information, a copy of a letter from the Colonial Office,* and its inclosures, calling attention to the value to British Columbia of the present sealing industry in Behring's Sea.

The Executive Council of the Colony express a desire that this question should be included in the scope of the duties of the Fisheries Conference now sitting at Washington.

A copy of the reply which has been returned to the Colonial Office is also inclosed herewith.†

I am, &c.
(Signed) SALISBURY.

No. 82.

Foreign Office to Colonial Office.

Sir, *Foreign Office, November* 29, 1887.

I AM directed by the Marquis of Salisbury to acknowledge the receipt of your letter of the 19th instant, with its inclosures, showing the value to British Columbia of the present sealing industry in Behring's Sea.

His Lordship notes the opinion expressed in the Minute of the Executive Council of the Colony that this question should be included in the scope of the duties of the Fisheries Conference now sitting at Washington.

I am now to request that, in laying this letter before Secretary Sir H. Holland, you will state to him that copies of Lord Lansdowne's despatch of the 20th ultimo, and of its inclosures, will be forwarded to the British Plenipotentiaries at the Conference.

I am also to call attention to the instructions in regard to this subject contained in Lord Salisbury's despatch No. 1 of the 24th ultimo to the British Plenipotentiaries, which were communicated to you in the letter from this Department of the 5th instant.

It was then stated that "the question of the seal fisheries in the Behring's Sea . . . has not been specifically included in the terms of reference; but you will understand that if the United States' Plenipotentiaries should be authorized to discuss that subject, it would come within the terms of the reference, and that you have full power and authority to treat for a settlement of the points involved, in any manner which you may deem advisable, whether by a direct discussion at the present Conference or by a reference to a subsequent Conference to adjust that particular question."

Lord Salisbury would suggest, for Sir H. Holland's consideration, that the substance of these instructions should be communicated to the Governor-General of Canada.

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

No. 83.

Colonial Office to Foreign Office.—(*Received December* 1.)

(Confidential.)

Sir, *Downing Street, November* 30, 1887.

I AM directed by Secretary Sir Henry Holland to transmit to you confidentially, for any observations which the Marquis of Salisbury may have to offer, a copy of a Confidential despatch from the Governor-General of Canada, relating to a question which has lately been before the public in the Dominion in reference to a commercial union between Canada and the United States.

I am also to inclose a copy of the reply which has been returned to it.

A similar letter has been addressed to the Treasury and the Board of Trade.

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

Inclosure 1 in No. 83.

The Marquis of Lansdowne to Sir H. Holland.

(Confidential.)

Sir, *Government House, Ottawa, October* 31, 1887.

THE time has, I think, come when I should call your attention to a movement in favour of what is spoken of as "commercial union" with the United States, which

* No. 72. † No. 82.

has during the last few months made some progress in the Dominion. The movement is one of comparatively recent origin. During the election campaign of last winter neither party associated itself with the project, and even at the present time it has not to any considerable extent been discussed by prominent public men. It has, however, throughout the last spring and summer been advocated with great ability and persistency by several gentlemen not especially connected with either political party. Of these, the most conspicuous have been Professor Goldwin Smith, who has contributed to the press a series of powerfully-written articles dealing with the different aspects of the question; Mr. Erastus Wiman, a Canadian by birth, and a partner in the well-known firm of Dun, Wiman, and Company, of New York; and Mr. Butterworth, of the American House of Representatives, whose name is associated with a Bill prepared for the purpose of bringing about commercial union, which has already been before Congress, and which will be again introduced during its next Session. These gentlemen and their friends have attended numerous meetings which have been held in different parts of the country, and notably in the Province of Ontario, and have apparently been well received by large and representative audiences. A number of well-known newspapers, including both the leading journals of Toronto, have declared themselves in favour of the new policy, and are almost daily advocating it in their columns.

I need scarcely explain that by commercial union is meant the abolition of the Customs line between Canada and the United States, and the establishment of complete reciprocity between the two countries in all products, whether natural or manufactured, together with the adoption of a common Tariff against all other nations, including Great Britain.

That such discrimination against the mother country would be the inevitable concomitant of commercial union is apparent for two reasons. Even if Canada could afford to dispense with the six or seven million dollars of revenue which she derives from the taxation of commodities received from the United States, it is clear that she could not afford to dispense with the remaining eleven or twelve millions of revenue which she derives by taxing the commodities drawn by her from the rest of the world, of which sum about eight millions is levied upon British goods. It is, moreover, inconceivable that the United States should consent to reciprocal free trade with the Dominion except upon the condition that the latter should adopt a Tariff identical with theirs as against all other nations, including Great Britain; an arrangement under which British commodities might be admitted duty free or at a low rate of duty into Canada, and be re-exported thence duty free to the United States, there to compete with native products, would obviously not be accepted by any American Government, however ready such a Government might be to enter into a Commercial Zollverein with a comparatively small community adjoining its own and not likely to prove a formidable competitor in American markets.

The reasons for which the leaders of both political parties in Canada have up to the present time been apparently reluctant to identify themselves with the movement are not far to seek. The Conservative party depends largely for support upon the manufacturers whose industries have been in many cases called into existence and kept alive by the high protective Tariff adopted in 1878 for the express purpose of artificially stimulating them. The acceptance of commercial union by the Conservative party would therefore certainly alienate from it the manufacturing interests, to many of which the abolition of the Customs line would, beyond question, be fatal. The Conservatives have, on the other hand, nothing to gain by prematurely declaring themselves against a movement which is apparently regarded with some favour by the farmers, and which may possibly hereafter find a wide measure of acceptance amongst them.

The prominent men of the Liberal party have on their side to a certain extent found themselves in a position of somewhat similar embarrassment. On the eve of the last general election the then leader of the Opposition—the Honourable Edward Blake—in order to diminish the apprehension with which his return to power was regarded by the manufacturers, committed himself to a virtual engagement that if he should be supported by a majority in the new Parliament he would not attempt a sudden or violent interference with the fiscal policy of his predecessors. It is moreover generally believed that the section of the Liberal party which is connected with the Province of Quebec would not be likely to offer much encouragement to a measure which might have its outcome in the establishment of more intimate political relations between Canada and the United States. The people of Lower Canada are well aware that their annexation to the neighbouring Republic might involve, if not their own effacement as a distinct political community, at all events the sacrifice of many of the privileges, civil

and religious, assured to them under British connection. They would, therefore, probably be averse to any change pointing in this direction; and the public utterances of the Honourable Wilfrid Laurier, who, since Mr. Blake's resignation of the leadership of the Liberal party, is regarded as his successor for the time being, have, although carefully guarded, been such as to justify this conclusion.

It is not, however, probable that the question, in spite of the desire which thus exists in many quarters to avoid its discussion, will much longer remain outside the area of ordinary political controversy. Within the last few days Sir Richard Cartwright, who may be regarded as the leader of the Liberals of Ontario, and of the English-speaking Opposition—a statesman whose great ability and powers in debate entitle him to a very high position in the party to which he belongs—has delivered an important speech, in which, after a careful review of the arguments for and against commercial union, he has declared himself in favour of it. This declaration has stimulated the growing interest already evinced in the subject by the public, and renders it extremely probable that the question will be forced upon the attention of the constituencies, and that commercial union may be adopted as a prominent feature of the policy of the Opposition.

Should the negotiations about to be commenced at Washington be extended so as to include the commercial relations of Canada and the United States, and should a proposal for general commercial reciprocity be made by the Representatives of the latter Power, it will certainly be impossible for any public man in this country to maintain an attitude of neutrality in regard to a matter of such importance.

Under these circumstances, it appears to me that Her Majesty's Government cannot be too careful to consider in good time the bearings of the question, as well as the attitude which they are themselves prepared to adopt in dealing with it.

Upon this occasion I cannot do more than pass very briefly in review one or two of the principal arguments which may be advanced upon either side. I would observe, in the first place, that if the question be considered in its strictly commercial aspect, and with reference to the probable effects of unrestricted reciprocity with the United States upon the material condition of this country, there appears to be no room for doubt that commercial union would be greatly to the advantage of the people of the Dominion, or at all events to that of a large majority of it. The different sections of the country are geographically so widely separated from each other, and so closely connected with the adjoining portions of the United States, that it is impossible to believe that both do not lose largely by the hindrances which a Customs line, with a high Tariff, including on each side an infinite number of commodities, imposes on their commercial transactions, as that each would not gain by the removal of those hindrances, and by the unrestricted flow of trade along its natural channels.

A glance at the position occupied in reference to each other by the maritime provinces and the New England States, by Manitoba and the adjoining States of the Union, by the most populous district of Ontario and the States of New York and Pennsylvania, by British Columbia and the western seaboard of the American Republic, is sufficient to show that reciprocal commerce between these would be more to their mutual convenience and advantage than a system which has for its object to compel the people of Nova Scotia and New Brunswick, the bulk of whose products, in spite of the high Tariff, find a market in the United States, to purchase commodities in Montreal and Quebec, and which drives the settlers of Manitoba and the North-west to deal with the manufacturers of Ontario, from whom they are separated by more than a thousand miles of railroad, instead of with the American cities upon the other side of the frontier-line.

The extraordinary expansion of trade between Canada and the United States, which took place while the partial Reciprocity Treaty of 1854 was in operation is pointed to as justifying the assumption that under a system of universal reciprocity a similar expansion might be anticipated.

From statistics which have been lately republished in the press it appears that the trade of Nova Scotia with the United States, which in 1854 amounted to 4,500,000 dollars, amounted in 1866 to 7,300,000 dollars; that the trade of New Brunswick with the United States, which in 1854 amounted to 4,050,000 dollars, amounted in 1866 to 5,300,000 dollars; and that the trade of Prince Edward Island with the United States, which in 1854 amounted to 280,000 dollars, amounted in 1865 to 1,050,000 dollars; while the total trade of the old Province of Canada with the United States, which, in 1854, amounted to 24,200,000 dollars, amounted in 1866 to 55,200,000 dollars.

It must, of course, not be forgotten that the trade of the maritime provinces with the United States during the above period received an immense stimulus from the exceptional

lemand for Canadian commodities, which arose during the continuance of the American ..ar, and that any argument founded upon statistics collected at that time must be, to a certain extent, misleading. It must also be remembered that since 1886 the railway system of the Eastern States has undergone a large expansion, with the effect of bringing them into much closer contact with other parts of the Union, and diminishing the advantage which the producer in the maritime provinces formerly derived from his geographical propinquity to the markets of New England.

Making, however, every allowance for the alteration which has thus taken place in the circumstances of these two portions of the North American Continent, it can, I think, hardly be questioned that each would be the gainer by improved facilities for commerce with the other, and that the people of the maritime provinces, whose coal, lumber, fish, &c., obtain, in spite of the Tariff, a market in the States, would find it to their advantage to be permitted not only to export these commodities to their neighbours without restriction, but also to take in exchange for them the manufactured products which the high Tariff now compels them to buy in the markets of Old Canada.

There has for some time past prevailed in this portion of the Dominion a feeling of restlessness and discontent, well calculated to predispose the inhabitants in favour of the change. The failure of the ship-building industry, upon which the population of the coast largely depended, the falling-off of business with the British West Indies, and the general tendency of trade to leave such places as Halifax and St. John for centres of distribution further to the west, have seriously crippled these provinces, and have led their people to regard with distrust the policy which has compelled them to transfer their custom from American markets, with which for many years they carried on a profitable and extensive business, to Canadian markets distant from themselves and situated in a country with which, although technically belonging to their own community, they have little real sympathy, and for which they have little genuine affection or respect.

It was the prevalence of such feelings as these that led the people of Nova Scotia at the last provincial election to return a majority of members pledged to annexation to the United States, and although the strenuous efforts of the Ministerialists prevented a similar result on the occasion of the elections for the Federal Parliament, the condition of these provinces is still such as would lead them to regard in a critical, if not hostile, spirit any settlement of existing disputes founded upon the surrender of their exclusive rights to the inshore fisheries, and, on the other hand, to view with favour one under which, whatever its political consequences, their prospects of material prosperity would be improved.

It would in like manner, I conceive, be clearly to the advantage of the people of Ontario to be given free access to the coal-fields of Pennsylvania, and to that of the people of British Columbia, in which province is situated the most important coal-field on the western seaboard, to be able to sell their coal without restriction in the Pacific States.

That the change would be beneficial to the agricultural portion of the Canadian community from one end of the Dominion to the other may, I think, also be predicted without hesitation. Throughout the whole length of a frontier-line of some 3,000 miles the Canadian farmer is now excluded from the markets of a rich and numerous community immediately adjoining his own; he could scarcely fail to be a gainer by admission to those markets both for the sale of his own produce and for the purchase of commodities the comparative cheapness of which is the sole justification for a Tariff framed with the express design of excluding them from the markets of Canada.

It is, upon the other hand, idle to deny that the adoption of commercial union would deal a heavy and probably a fatal blow to a large number of those manufacturing industries which have sprung up during the last few years under the influence of the high protective Tariff which has been in force in this country since 1878. Many of these, although thus liberally subsidized at the expense of the Canadian consumers, have great difficulty in maintaining their existence; where they have prospered for a time their prosperity has induced competition followed by over-production, glutted markets, and a ruinous reaction. That the free admission of United States' manufactures would destroy the weaker of these enterprises root and branch is not doubtful. There seems, however, to be no reason why the more vigorous of them, where the natural conditions are favourable to their existence, should not survive and prosper even after the withdrawal of the protection which they have hitherto received. It is pointed out in this connection that thriving industries have come into existence without adventitious aid in the Western States, although subject to the full force of competition with the old-established manufacturing centres of the East, and it is argued that if cities like St. Paul and Minneapolis have prospered in spite of such competition, there is no reason why Canadian cities should not

prosper to the same extent in spite of unrestricted competition on the other side of the international frontier.

Passing from the commercial to the political aspect of the case, it is objected that commercial union would involve a surrender by the Dominion of the power of regulating its own fiscal policy. This anticipation appears to be well founded. It is frequently argued that any Commercial Treaty would be open to this objection, and would involve a temporary surrender by the parties of their liberty of controlling their own Tariffs The case under discussion would, however, not be the same as that of two nations entering into an ordinary Commercial Treaty affecting the Tariff upon a moderately sized group of commodities. In the latter case, both nations no doubt part for a specific period with their liberty of dealing with the Tariff in so far as it affects the commodities specified in the Treaty. In the United States, however, and in Canada the Tariffs include an immense number of articles, that of the United States comprising over 4,000, and that of Canada between 800 and 900.

Any common Tariff adopted by the two countries would no doubt be of the same character, and would be framed so as to afford complete and exclusive protection against foreign competition of all kinds. It is an essential feature of such a Tariff, designed as it must be to regulate the course of commerce according to the circumstances of the moment and the fluctuations of the markets of the world, that it must be liable to frequent readjustment according to the altering conditions of international trade. Were Canada, therefore, and the United States to enter into an Agreement for commercial union it is difficult to conceive that a periodical revision of any common Tariff adopted by the two countries would not be made in the interests of the more powerful partner in the association. Under such circumstances the centre of political activity in regard to all commercial questions affecting the North American Continent would inevitably be at Washington. Congress would be the arbiter of the commercial destinies of the Dominion, and the Canadian Parliament would find itself comparatively impotent to effect any changes which it might desire in the interests of its own country.

That such a change would tend towards the estrangement of Canada from the mother country, and towards an approximation, political as well as commercial, between Canada and the American Republic, is hardly doubtful. It would do this not only by establishing more intimate relations between Canada and the United States, and by contracting the volume of the business transacted between her and the United Kingdom, but also by the undoubted offence which would be given to the people of the latter. It is not difficult to imagine the indignation with which these would view the attempt to deal in such a manner with the mother country and her interests, or the objections which would be raised to any proposal under which Great Britain, while retaining her liability for the defence of the Colony, would be subjected to the indignity of a Tariff hostile to herself and friendly to her rivals.

To those who believe that the obvious destiny of the Dominion is to be united to the Republic which adjoins her the above results would appear to be natural and unobjectionable. Others who profess, and in many cases with absolute sincerity, their desire to remain in connection with the British Empire, dwell upon the fact that Canada has already been given an almost unlimited control over her own finances, that she has already been permitted to use this liberty for the purpose of adopting a Tariff highly injurious to British interests, and that the preference which would in the case supposed be extended to the commodities of a foreign nation, is not in fact or in principle more objectionable than, for instance, such a measure as the increase of the iron duties introduced in the last Session of the Canadian Parliament. This argument is one to which it is not easy to reply. It has never been stipulated by Great Britain that the Canadian Tariff was to be framed with any reference to her convenience; as a matter of fact, it has been framed solely with reference to the supposed advantage of Canada herself. The sacrifice of British commercial interests to the exigencies of Canadian requirements has been permitted repeatedly without criticism or protest on the part of the British Government. Injury to British commerce having been again and again submitted to without complaint, it will be for Her Majesty's Government to consider whether it can formulate a colonial policy founded on the principle that Great Britain is to tolerate any caprice of her Colonies in regard to the taxation of her exports, however injurious to herself such taxation may be, provided only that the injury is shared by others. Whether such a position can be defended or is worth defending appears to be at least open to question. That in which the mother country is really concerned is the extent of the injury sustained by her trade, not the treatment simultaneously accorded by the Colony to other competitors for its custom. It is easy, for instance, to conceive that in certain circumstances a colonial duty discriminating against Great Britain, but affecting a commodity of which she exported only a very small quantity, might be far less detrimental to her than a non-discriminating duty levied upon all foreign

imports of the same kind, but affecting a commodity of which she was a large exporter to the Colony by which the duty was imposed.

As matters stand at present, Canada cannot, like Great Britain, afford free trade with the whole world. If she is to have free trade at all, she will gain most by free trade with her immediate neighbours, the community with which she already does more business than with any other. Should Great Britain, herself so deeply committed to a free trade policy, deny to Canada the advantages of free trade with the United States, the refusal could be defended only upon what would be regarded as purely selfish grounds. A large section of the Canadian community would no doubt be averse to the change, both for sentimental and patriotic reasons, and from dread of its ultimate results; it is, however, in my opinion, by no means certain that these feelings will prevail in the end, or that should the constituencies become convinced that commercial union is within their reach, and that discrimination would enrich their country and relieve them from disagreeable complications with their neighbours, they will have the courage to oppose it.

Mr. Butterworth's Bill will, as I have already observed, be again submitted to Congress. I have no means of knowing the reception with which it will meet; it is, however, believed by many good judges that a return to partial reciprocity, such as that which obtained under the Treaty of 1854, and for a return to which provision has already been made in the existing Customs Law of the Dominion, is not likely to find favour with Congress. The articles enumerated both in the Treaty and in the Customs Act (42 Vict., cap. 15, art. 6) are, as you are aware, of the kind usually spoken of as "natural products," and belong to a class which this country does not import from Great Britain, and although, as far as Canada is concerned, a return to some such form of reciprocity might prove acceptable, an impression prevails in many quarters that the people of the United States would regard the bargain as too favourable to the Dominion, and would not be likely to approve it. The records of the abortive negotiations which took place at Washington in 1874, between Mr. George Brown and Mr. Fish, for a Commercial Treaty, in which it was proposed to include a large number of manufactured articles, are worth referring to in this connection.

It is conceivable, under these circumstances, that a wider measure of international free trade may be proposed as a solution of the difficulties which have arisen in regard to the Canadian fisheries. How such an offer would be regarded by the people of this country it is impossible at this moment to foretell. This, at any rate, may be said, that if such an offer were made it would be for the interests of the party now in power to throw the responsibility for its rejection upon the Imperial Government rather than to assume that responsibility itself. If such an offer were to be so rejected, and it became possible for the advocates of commercial union to make it appear that that offer had been put on one side by the Representatives of Great Britain, merely because it was regarded as detrimental to the interests of the United Kingdom, the feeling which already exists in favour of the change would receive an immense accession of strength.

I have in this despatch made no reference to the effects which commercial union would have upon the Treaty obligations of Great Britain. It may be confidently predicted that the Government of the United States would not be likely to enter into any agreement for complete reciprocity with the Dominion, except upon the condition that the common Tariff adopted by the two countries was to be enforced against all other countries except those which might themselves become members of the North American Zollverein which would be thus created. It is obvious that this state of things would involve the imposition of differential duties, not only against Great Britain, but also against foreign countries entitled under Commercial Treaties with Great Britain to most-favoured-nation treatment in all British possessions.

This important aspect of the question has been fully discussed upon former occasions, and more especially in 1884-85, when a proposal for a Commercial Treaty between the British West Indies and the United States was under the consideration of Her Majesty's Government. In the course of the negotiations which then took place, it was plainly stated by Mr. Frelinghuysen, in his letter of the 16th July, 1884, to Mr. West, that it was the desire of the United States by means of such Treaties "to assimilate trade between them (the British West Indies and the United States) to the conditions which apply to production and shipping in the domestic coasting trade, or the trade of a country and its dependencies."

It appears to be by no means improbable that a similar policy may once more be advocated by the Government of the United States in regard to its future commercial relations with the Dominion.

I have, &c.
(Signed) LANSDOWNE.

Inclosure 2 in No. 83.

Sir H. Holland to the Marquis of Lansdowne.

(Confidential.)
My Lord, *Downing Street, November* 26, 1887.

I HAVE the honour to acknowledge the receipt of your Lordship's despatch, marked Confidential, of the 31st ultimo, relating to a question which has been lately brought before the public in Canada in reference to a commercial union between Canada and the United States of America.

I beg to thank your Lordship for this important and interesting despatch, which sets out clearly the various aspects of a very difficult question.

I need hardly assure your Lordship that the subject will receive the most careful attention.

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

No. 84.

Foreign Office to Colonial Office.

Foreign Office, December 2, 1887.

[Transmits copy of No. 13 to Her Majesty's Plenipotentiaries at the Fisheries Conference, dated November 28, 1887 : *ante*, No. 79*.]

No. 85.

Her Majesty's Plenipotentiaries at the Fishery Conference to the Marquis of Salisbury.—(*Received December* 3.)

(No. 1. Confidential.)
My Lord, *Washington, November* 24, 1887.

WE have the honour to inclose herewith, for your Lordship's information, a Memorandum of the proceedings of the Fishery Conference at their meeting of the 21st instant.

We have, &c.
(Signed) J. CHAMBERLAIN.
L. S. SACKVILLE WEST.
CHARLES TUPPER.

Inclosure in No. 85.

WASHINGTON FISHERY CONFERENCE.

November 1887.

British Plenipotentiaries—
The Right Honourable Joseph Chamberlain, M.P.
The Honourable Sir L. S. Sackville West, K.C.M.G.
Sir Charles Tupper, G.C.M.G., C.B.

United States' Plenipotentiaries—
T. F. Bayard, Secretary of State.
J. B. Angell.
Wm. le B. Putnam.

AN informal meeting was held at the State Department at 12 o'clock on Monday, the 21st November.

The respective full powers were examined and found in good and due form.

Mr. Chamberlain proposed that Mr. Bayard should be the President of the Conference, but Mr. Bayard, whilst expressing his appreciation of the proposal, thought that no President was necessary.

Mr. Bayard thought it desirable to explain that the powers of the American Pleni-

potentiaries were limited by the constitutional usage of the country, and that any Agreement or Treaty which might be signed by the Plenipotentiaries would require the assent of the Senate by a two-thirds majority; and, further, if such Agreement or Treaty involved any legislative change in the United States, the action of both Houses would be requisite. For instance, if Tariff changes were needed the action of the House of Representatives, as well as that of the Senate, would be required. As an example of this, he cited the case of the Treaty between the United States and Mexico.

Mr. Chamberlain stated that any arrangement would, on the part of Great Britain, be submitted, so far as necessary, for confirmation by the Legislatures of Canada and Newfoundland.

Sir C. Tupper added that this course was pursued in the cases of the Reciprocity Treaty of 1854 and of the Treaty of Washington of 1871.

Mr. Bayard said that it was expressly so stipulated in those Treaties, and thought that if a similar proviso was required in the present case it should also be expressly so stated in any Treaty signed.

It was agreed that the proceedings should be entirely secret; that the Protocols should contain a brief record of the proceedings without detail, and only embody conclusions arrived at; but that the Protocolists were each at liberty to keep a record for their own side.

The first formal meeting of the Conference was appointed for 2 P.M. the following day, the 22nd November, when the United States' Plenipotentiaries promised to submit a Memorandum in writing.

No. 86.

Foreign Office to Colonial Office.

Foreign Office, December 3, 1887.

[Transmits copy of Mr. Chamberlain's despatch of November 18, 1887 : *ante*, No.77.]

No. 87.

Her Majesty's Plenipotentiaries at the Fishery Conference to the Marquis of Salisbury.—(*Received December* 5.)

(No. 2. Confidential.)

My Lord, *Washington, November* 24, 1887.

WE have the honour to inclose herewith, for your Lordship's information, a Memorandum of the proceedings of the Fishery Conference at their meeting of the 22nd instant.

We have, &c.

(Signed) J. CHAMBERLAIN.
L. S. SACKVILLE WEST.
CHARLES TUPPER.

Inclosure in No. 87.

WASHINGTON FISHERY CONFERENCE.

Meeting of November 22, 1887.

THE first formal meeting of the Conference was held on Tuesday, the 22nd November, all the Plenipotentiaries being present.

The respective full powers, which had been examined at the informal sitting of the preceding day, were taken as read and accepted.

Mr. John B. Moore, Third Assistant Secretary of State, on the part of the United States, and Mr. J. H. G. Bergne, Superintendent of the Treaty Department of the British Foreign Office, on the part of Great Britain, were appointed joint Protocolists, and their credentials were produced.

Mr. Bayard opened the proceedings by recalling attention to what he had said at yesterday's meeting as to the Constitutional Treaty-making power in the United States.

He then proceeded to read the Memorandum which he had alluded to (see Appendix A).

Mr. Chamberlain stated that the first step would be to receive copies of this Memorandum for careful consideration. In the meanwhile, whilst cordially reciprocating the friendly sentiments contained therein, he must remark that the Memorandum dealt only with points, and recapitulated arguments, which had already been exhausted in diplomatic correspondence.

He quoted the following passage in Mr. Bayard's letter to Sir C. Tupper of the 31st May, 1887:—

"I am confident we both seek to attain a just and permanent settlement, and there is but one way to procure it, and that is by a straightforward treatment on a liberal and statesmanlike plan of the entire commercial relations of the two countries."*

Sir C. Tupper, in his reply to Mr. Bayard of the June, 1887,† had also quoted and indorsed the passage in question, and it was on the faith of it that Sir L. West had on the 9th July, 1887, been instructed to inform Mr. Bayard "that if he would formally propose the appointment of a Commission as suggested in his correspondence with Sir C. Tupper, Her Majesty's Government would agree with great pleasure."‡

Thereupon Mr. Phelps had proposed the appointment of the Commission, and Her Majesty's Government had assumed that the objects of the Commission would be on the lines suggested by Mr. Bayard.

Mr. Chamberlain therefore urged that a settlement should be sought on those lines, without recurring to the disputed interpretation of the Convention of 1818. If that could be done, any claims preferred by the United States' Government on account of past seizures might be considered and discussed.

Mr. Bayard replied that the matter was initiated by the visit of Sir C. Tupper to Washington; that the unofficial communications which had then passed between them had originated by Sir L. West introducing Sir C. Tupper; and that those communications must be considered as a whole, without special reference to isolated passages.

Mr. Chamberlain still maintained that Her Majesty's Government had acted on the faith of the statements contained in Mr. Bayard's communication to Sir C. Tupper, and especially of the passage previously quoted, which clearly indicated Mr. Bayard's view as to the proper aim and method of negotiation.

Mr. Bayard, however, insisted that the scope of the negotiation was defined by the terms of reference, which he quoted as follows:—

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

Mr. Chamberlain considered that these terms of reference were sufficiently wide to include the negotiation of any arrangement such as those come to in 1854 (the Reciprocity Treaty) and in 1871 (the Treaty of Washington).

Mr. Bayard replied that any proposal which the British Plenipotentiaries might make must be judged by itself as to whether it came within the terms of reference, when the United States' Plenipotentiaries could consider whether they were empowered to discuss it, or whether fresh powers from the President would be requisite if it were discussed.

The discussion was then continued as to the scope of the terms of reference.

Sir Charles Tupper reserved any opinion upon the points stated in the Memorandum which had been read by Mr. Bayard. He desired, however, to disclaim in the strongest possible manner any intention on the part of the Canadian Government to treat American fishing-vessels in an inhospitable manner, or to endeavour, by a harsh construction and enforcement of the Convention of 1818, to extort Tariff concessions from the United States.

The status and privileges of American fishing-vessels, as distinct from trading-vessels, were clearly defined by the Convention of 1818.

He recalled the nature of the remedies which had been sought in the past to obviate the difficulties arising in connection with the terms of that Convention, and the beneficial operation of the Reciprocity Treaty of 1854.

That Treaty had been denounced by the United States, and the fishery troubles immediately recommenced. A solution was then found in 1871, not by reconstruing the Convention of 1818, but by the mutual opening of the fisheries and free trade in fish and fish-oil, together with the arbitration of the Halifax Commission.

* Foreign Office Print. p. 78. † Ibid., p. 80. ‡ Ibid., p. 99.

The Fishery Articles of the Treaty of Washington had been denounced, again by the action of the United States, and the troubles at once began again.

He pointed out that the existing Canadian law provided for the remission by an Order in Council, without further legislation, of duties on certain American products, whenever the same should be remitted by the United States.

He referred to the Halifax Award, which indeed had caused irritation in the United States, but was not, in his opinion, excessive.

On the termination of the Fishery Articles of the Treaty of Washington, the Canadian Government was bound to take effective steps to enforce the Convention of 1818; but nothing had been done which was not absolutely necessary for that purpose. The desire of Canada to maintain the most amicable relations with the United States had been plainly evinced by the opening of the fisheries for one year, without any compensation or even the remission of the duties on fish and fish-oil; the only consideration being a promise on the part of the United States' Government that they would recommend the appointment of an International Commission, not, be it observed, to be confined in its discussions to a revision of the Convention of 1818, but to include a complete review of the commercial relations between the two countries. The Senate, however, rejected that proposal, and eventually passed a Bill authorizing the President to proclaim retaliation by means of commercial non-intercourse with Canada.

Sir Charles could not believe that the United States' Government were in favour of such a policy, and when he received from Mr. Bayard an intimation through a private source that an interview would be acceptable, he (Sir Charles), on behalf of the Government of Canada, at once came to Washington.

The first conversation which ensued was private, but Mr. Bayard's unofficial letter of the 31st May, 1887, was not so private, and Sir Charles took it as a positive indication that Mr. Bayard wished to bring about what was proposed therein. The proposal was, therefore, at once transmitted to London by Lord Lansdowne, as Sir C. Tupper had stated in his reply to Mr. Bayard that it would be, and was immediately afterwards clothed with an official character, by the instructions from Lord Salisbury to Sir L. West of the 9th July, 1887, which had been quoted by Mr. Chamberlain.

If the proposal of the United States had been understood to mean only a review of the Convention of 1818, it would never have been accepted. It would be useless to depart from the basis originally proposed by Mr. Bayard, and any attempt to do so would be attended by grave difficulties.

Mr. Bayard said that we had evidently reached at the outset a proposal to extend the terms of reference, but, in his opinion, the preliminary discussions should be conducted according to the strict terms of reference as limited thereby.

His meeting with Sir C. Tupper was prompted by feelings of anxiety as to the situation as existing at that time, and he had welcomed any information tending to show how good relations could be re-established.

In 1886 Sir L. West was authorized to endeavour to reach a mutual understanding as to the true interpretation of the Convention of 1818, and had instructions to negotiate a *modus vivendi*, but Sir L. West withdrew, and the negotiations came to an end, for what reason he did not know.

Mr. Bayard then alluded to Mr. Wiman's project for commercial union, and stated that as a result of an interview with that gentleman he stated that he would welcome any opportunity to discuss any matters with a representative Canadian, and which would tend to facilitate a settlement. He saw no difference between the character of the interview and the correspondence he had with Sir C. Tupper. Both were unofficial; but he did not on that account desire that they should be withheld. He thought, however, itewould be impossible to take that as a basis of discussion. He wished, therefore, to know whether the British Plenipotentiary desired to introduce other matters into the terms of reference.

Mr. Chamberlain considered that the terms of reference were ample to include a settlement on the lines suggested in Mr. Bayard's letter to Sir C. Tupper, and it would certainly be within the powers of the British Plenipotentiaries to propose any mode of settlement including a revision of present commercial arrangements. He added that the communications made by Sir L. West were for the conclusion of an *ad interim* arrangement, pending a permanent settlement, and that the same necessity does not now arise for a temporary arrangement, since the fishing season is closed. He therefore urged that the Conference should now seek the permanent settlement. It was apparently hopeless to reconcile the divergent views disclosed in the diplomatic correspondence which had passed between the two Governments as to the interpretation of the Convention of 1818; and Her Majesty's Government, in consenting to the appointment of the Plenipo-

tentiaries, had therefore understood that the Conference was convened with the object of finding a settlement on other lines.

Mr. Bayard was of opinion that the Conference ought first to discuss the history and the points involved in the construction of the Convention of 1818; but that if the British Plenipotentiaries had any definite proposal to make, it would be for the United States' Plenipotentiaries to consider whether it would be necessary that they should ask the President for an extension of their powers.

The discussion then turned on the debates in Congress on the Retaliatory Bill, *Mr. Chamberlain* saying that it pointed decidedly to a review of the commercial relations between the United States and Canada.

Mr. Bayard said that the question of commercial relations came into debate only because the Convention of 1818 does, in fact, deny commercial relations in certain particulars. The point then arose whether there could be said now to exist any commercial relations between Canada and the United States. Could it be said that a Convention which does not directly refer to such relations does in fact include them? This being the scope of the debates in Congress, the question of commercial relations was necessarily discussed. He concluded by expressing his belief that the Plenipotentiaries on both sides were agreed that the discussions at the present Conference are defined in the terms of reference.

Mr. Chamberlain replied that the powers given to the British Plenipotentiaries undoubtedly gave them full authority to treat any questions incidental to a settlement of the Fisheries question, as well as any other subjects which might come up for discussion, —such as extradition, &c. He offered to prove this by producing an extract from the instructions which the British Plenipotentiaries had received from their Government.

Mr. Bayard replied that in that case any such proposal should come from the British side.

Sir Charles Tupper considered that Mr. Bayard's letter of the 31st May, 1887, contained his deliberate views as to the only mode of obtaining a settlement, and that Lord Salisbury's subsequent action was based upon the same view. The terms of reference must therefore be considered in connection with the correspondence in question.

Mr. Bayard then read *in extenso* his letter to Sir C. Tupper, and added that his view of the matter was supported by the fact that Lord Iddesleigh had asked for some proposal from the United States for a settlement, and that such a proposal had in fact been made by Mr. Phelps on the 15th November, 1886. That observations on this proposal were made on behalf of Great Britain after reference to Canada, and that counter-observations had thereon been made by the Government of the United States.

Mr. Chamberlain replied that the proposal in question was only invited by Her Majesty's Government as an *ad interim* arrangement, and in contemplation of some more permanent settlement.

The discussion was then continued as to the meaning to be attached to the passage in Mr. Bayard's letter to Sir C. Tupper, *Mr. Bayard* ultimately expressing the hope that the power of suggestion on the part of the British Plenipotentiaries might be sufficiently ample to allow of their proposing some mode of settlement.

Sir C. Tupper emphasized the point that Mr. Bayard's letter to him was really the basis proposed for a settlement, and read his letter to Mr. Bayard in reply.

Mr. Bayard then read the instructions which were sent to Mr. Phelps (12th July, 1887) on Sir L. West's communicating to him the text of the telegram from Lord Salisbury to Sir L. West of the 9th July, 1887.

Mr. Chamberlain remarked that those documents showed that the views of both Governments really were convergent; and

Sir C. Tupper pointed to a passage in the above-mentioned instructions to Mr. Phelps as proving that a settlement of all points at issue was contemplated, including improved commercial relations.

Mr. Bayard said that the action of Congress in regard to the Retaliatory Law was the real cause of Sir C. Tupper's visit to Washington in May 1887. The origin of that Law was the fisheries, and the commercial questions connected with the fisheries. Was it not therefore apparent that the commercial questions became involved only by the action of Congress in connection with the Fishery question? The fishery troubles had periodically reappeared because the settlements arrived at in 1854 and 1871 were not of the nature originally proposed by the United States' negotiators, viz., to remove the difficulties incidental to the wording of the Convention of 1818.

Sir C. Tupper replied that the whole difficulty arose from the persistency with which United States' fishermen infringed Canadian territorial waters when closed to them, and

therefore it had been apparent that the efforts of negotiators must be directed to some arrangement whereby those waters should be thrown open.

Mr. Bayard then said that the proper basis of discussion for the present Conference was the proposal made by Mr. Phelps for an *ad interim* arrangement.

Mr. Chamberlain replied that that was not the view of Her Majesty's Government. Having signally failed to come to any agreement as to the interpretation of the Convention of 1818, they had agreed to the installation of the present Conference to seek a settlement on other lines, and especially by the discussion of commercial relations as originally proposed by Mr. Bayard in his letter to Sir C. Tupper. The British Plenipotentiaries were not debarred from considering the Memorandum which had been put in by the United States' Plenipotentiaries, but if they should reply by making a proposal for the review of commercial relations, would the United States' Plenipotentiaries be empowered to receive it?

Mr. Bayard thought the proposal might at all events be made; and

Mr. Chamberlain then inquired whether a proposal for the renewal of the Reciprocity Treaty of 1854 would come within the powers of the United States' Plenipotentiaries to discuss. The British Plenipotentiaries would be warranted by their instructions in making such a proposal.

Mr. Bayard said that if the proposal were made, the United States' Plenipotentiaries could then ascertain whether their powers sufficed to enable them to deal with it.

Mr. Putnam discussed the manner in which the terms of reference were arrived at. He was of opinion that Lord Salisbury did not wish any matters beyond the mere Fishery question to be discussed at the Conference. The whole difficulty on the present occasion had arisen in regard to the insignificant trade in bait, amounting to about 60,000 dollars a-year, and he believed that Lord Salisbury considered that that difficulty should be removed before any other points were discussed. The powers of the British Plenipotentiaries would evidently allow them to follow the course proposed by the United States' Plenipotentiaries, viz., first to endeavour to remove the difficulties arising on the points connected with the questions of fishery and bait, and a settlement on these points could probably be reached without much difficulty.

Mr. Bayard then reverted to the proposed *ad interim* arrangement, and said that in the correspondence which had passed in relation thereto no allusion was made to anything save the purely fishery disputes.

Mr. Chamberlain said that the Plenipotentiaries on each side were agreed up to a certain point, viz., that all the trouble springs from the fishery dispute; but the American proposal now is that Canada should entirely abandon their view of this question. The British Plenipotentiaries meet that proposal by saying that, if it is agreed to, the United States must give something in return. This has always been done in the various settlements which have been made from time to time since the conclusion of the Convention of 1818. The United States have invariably complained that they had paid too much, and had consequently denounced the Treaties.

The British Plenipotentiaries might therefore put their case, that Canada has something to sell. What are the United States prepared to give for it?

Mr. Putnam argued that Canada had already received their consideration by the free importation of a certain portion of fish, one-half of the fish imports from Canada to the United States, viz., fresh fish, being now admitted duty free. But could not the British Plenipotentiaries try to find some points of contact in the arguments and proposals put forward in the Memorandum handed in by the United States' Plenipotentiaries?

Mr. Angell said that the constitutional difficulty in the United States must not be forgotten in the consideration of any give and take settlement. The United States did not wish to buy the inshore fisheries, but desired an amicable settlement by means of an interpretation of the Convention of 1818.

Mr. Chamberlain having stated that he would like some days for the consideration of the Memorandum, copies of it were handed to the British Plenipotentiaries, together with two documents, "Selected Cases of Maltreatment of American Fishing-vessels" (Appendix B), and "Proposed *ad interim* Arrangement, with Observations thereon" (Appendix C); the latter being the proposal already made by Mr. Phelps on behalf of the United States (see Confidential Foreign Office Print).

The Conference was adjourned till Monday, the 28th instant, at 12 o'clock.

(Initialled) J. C.
L. W.
C. T.

J. H. G. B.

Appendix (A).

Memorandum.

THE attention of Her Majesty's Plenipotentiaries is drawn to the constitutional provisions respecting the Treaty-making powers, under which the advice and consent of the Senate of the United States are essential to ratify and confirm any Treaty made by the President.

But a single subject of difference is known to exist which this Conference has been called to adjust. It is the treatment to which fishing-vessels of the United States entering the territorial waters of the Dominion of Canada or of the Province of Newfoundland have been subjected since April 1886.

The correspondence on this subject between the two Governments, including the proposal of the United States of the 15th November, 1886, is offered as the basis of discussion.

A few cases, selected from a large class, and authentically descriptive of the treatment referred to, will be presented, by which it will appear that the authority asserted for the proceedings on the part of the Dominion officers is alleged to be founded upon the Treaty of the 20th October, 1818, between the United States and Great Britain, and upon certain Imperial and Provincial Statutes.

The cases exhibit grounds for several classes of complaints, viz.:—

1. Transactions like those at Shelburne, and exactions of compulsory pilotage, directly violating the rights expressly guaranteed by the Treaty; and

2. Breaches of that customary international comity and hospitality which our vessels are justly entitled to receive independently of all Treaty.

3. Other classes or sub-divisions, which, on careful examination of the facts, may not be thought to group themselves under either No. 1 or No. 2.

It is the desire of the United States to comply fully and in good faith with the terms of the Treaty, and, so far as they touch the controversies, to arrive at a just and harmonious understanding with the Government of Great Britain concerning their interpretation and effect.

The terms of a Convention are subject to construction only by the parties to it, in this case the United States and Great Britain; and as against each other they cannot be controlled or impaired by the subsequent domestic legislation of either.

Treaties of the United States are made by our Constitution the supreme law of the land: and for their infraction our citizens may be made liable to punishment, and equally are entitled to be protected in their rights thereunder.

To this end it is the duty of our Government to secure a just interpretation of its Treaties, and to instruct its citizens in the measure of their rights and duties in reference thereto.

The United States do not accept the interpretations placed by the Dominion authorities upon Article I of the Treaty of 1818, or upon Article XXIX of the Treaty of the 8th May, 1871 (known as the Treaty of Washington); and the consequences of these differences fall upon their citizens, who suffer from the resulting uncertainty, and are entitled to look to their Government for relief.

It is, therefore, our imperative duty to bring these questions to the consideration of Her Majesty's Plenipotentiaries, in order to obtain a common understanding and agreement, based upon the principles of liberal equity and reciprocity, for the just and definite interpretation of the Treaties in question, and for a joint declaration of the duties which each Government shall enjoin upon its citizens.

If, owing to the progress of events since 1818, new interests, usages, and commercial relations and privileges have come into existence which are materially affected by the terms and conditions of the existing Treaties, then, in promotion of the mutual convenience or reciprocal advantage of the parties, revision or modification of the terms thereof should be agreed upon.

Since the Treaty of 1818 the United States have entered into many Conventions with Great Britain, all of which have recognized in greater or less degree the gradual changes, by both perceptible and imperceptible growth, in commercial usages and international law, and have tended to co-operative action and more unrestricted commercial relations.

The IVth Article of the Treaty of 1818 extended for ten years the Treaty of Amity and Commerce of 1815, and this was again, in 1827, renewed indefinitely, with the right of termination on giving twelve months' notice—and is to-day in force.

The Treaty of 1842, settling so many important and difficult questions, is especially marked by features of liberal expansion of facilities for Canadian navigation and commerce, providing the free and open use, by the subjects of each country, of all water communications and all the usual portages along the line of Lake Superior to the Lake of the Woods, and also of grand portage from the shore of Lake Superior to Pigeon River, as well as the free navigation in common of the River St. John.

The Treaty of 1846 provided *inter alia* for the free navigation in common of the channel and Straits of Fuca and of the great River Columbia.

The Treaty of 1871 completed the full and free navigation in common and for ever of the St. Lawrence, and also secured to Great Britain for ever the free navigation of the great Rivers Yukon, Porcupine, and Stikine.

The two nations have joined hands by Treaties to put an end to the African Slave Trade on the ocean.

The Treaty of 1842 for the extradition of criminals has been of great mutual value in the expedition of criminal justice, and propositions for expanding its provisions for the greater protection of life and property in both countries are pending.

The reciprocal liberty of commerce, proclaimed by the Treaty of 1815—which was twice renewed and still exists—did not include the British possessions in the West Indies and North America in its provisions; but by the repeal on the one side of restrictive statutes by the Government of the United States between 1819 and 1830, followed by the Proclamation of the President under the authority of Congress in 1830, and on the other side by contemporaneous British Orders in Council, and ending in the British Shipping and Navigation Act of 1849, the commercial freedom secured by the Treaty of 1815 between the United States and British territories in Europe became equally the law for the British possessions in North America and the West Indies.

Since 1830 Consuls for the protection of trade of the United States have been established in British America, whose exequaturs have been granted under the same terms as those of the Treaty of 1815.

Commercial intercourse has thus grown into its present vast proportions between British North America and the United States.

Thus, step by step, by Treaties, and by independent yet co-operative legislation, we find that commercial privileges have become in large degree common all along our border, and that the great chain of water communications, lakes and rivers, waterways, natural and artificial, have been made free to the inhabitants of both countries.

Of those other links of steel that bind the interests of the citizens of both countries we need not speak at length. Their rapid multiplication under the mighty forces of mutual production and exchange increases daily. The growth of railway communication between the two countries is remarkable, and statistics of the connecting lines now in operation and in the course of construction will disclose the vast amount of capital and enterprise employed in the development of commerce. Under the XXIXth Article of the Treaty of 1871 the right of bonded transit for all goods, wares, and merchandize is mutually secured, and also, under the provisions of United States' laws, facilities of the same nature are allowed; so that railway cars may pass freely from Canada through and over the vast and populous area of the American Union, using the railways in their route, and conveying merchandize of all descriptions, including the products of the Canadian fisheries. Of these latter more than half are, by existing laws, admitted free of duty, and the remainder, upon which an impost is laid, are subjected to an *ad valorem* duty less than one-half of the average *ad valorem* of the Tariff of the United States on other merchandize. Connected with the bonded transit are the warehousing privileges, which extend equally to Canadian merchandize.

The laws of the United States permit Canadian fishermen to come freely into any American port for supplies. They freely obtain in our ports complete outfits for their business, including supplies of bait, which is also purchased in large quantities and shipped from United States' ports for the use of Dominion fishermen. No case is known where a fine has been imposed in the United States upon a Canadian fisherman for failure to report when putting in for shelter.

It is to be remembered that the United States have consistently maintained, and in every branch, executive, judicial, and legislative, have acted invariably upon the principle that by their first Treaty with Great Britain in 1783 they took nothing by grant, but the Treaty was expressly and in terms a recognition of pre-existing rights, a solemn acknowledgment of their sovereignty and independence. Under no circumstances, nor in any negotiation, was this basis of their rights ever abandoned or left in doubt. In all instructions to our Envoys by this Government, and by them in their proposals to the British Envoys, this is steadily enforced. So that in 1818, when the inshore fishing rights in British American territorial waters were under consideration, the final terms agreed upon distinctly recognized this principle by continuing "for ever" to "the inhabitants of the United States" the liberty "to take, dry, and cure fish" in certain places in the British possessions, and by our renouncing the liberty, theretofore enjoyed, to do so in certain other places. The employment of this phrase of renunciation by both parties to the Treaty reaffirmed the basis of the American claims when the partition of the territory and dominion, formerly under one Government, was effected between two Governments, in which the rights of the younger were recognized as existing from the time of the Declaration of Independence, which it had made and had been able to maintain.

Should the situation of the two Governments be considered as though no fishing rights in the British American waters had ever been recognized as belonging to the United States and their inhabitants, the question would then be treated in the light of comity between friendly nations, and of the privileges and customs recognized by international law. And so tested it would appear that such privileges were ever and are now freely extended to Canadian fishermen in American ports, but are refused to American fishermen in Canadian ports, and that in respect to the refusal of such privileges the Convention of 1818 has no pertinence, and offers no defence for the Dominion authorities.

The American fishermen engaged in open sea fishing—neither "fishing nor preparing to fish," nor even suspected of intending so to do, within the marine belt of 3 miles from Canadian shores—have experienced oppressive and inhospitable treatment, and the privileges denied them are those of customary hospitality. The strictest performance of commercial formalities has been exacted, and every ordinary commercial convenience or privilege has been strictly denied.

This is inconsistent with neighbourly relations and duty, and of it the United States have an unquestioned right to complain, to ask redress for their citizens, and to take measures for their protection.

And also, when it is remembered that the United States are lawfully entitled to certain express rights in these waters, which are as clear as those of the mother country, and are solemnly recognized by Treaties, the action of Canada, so far as it affects these express rights, seems even more unwarrantable.

The four purposes for the enjoyment of which the "liberty" is "for ever" expressly secured are stated in general terms, and may be accomplished whenever desired, and at any locality within the region in which the former privilege "to take, dry, and cure fish" is renounced.

No construction can be held admissible that would destroy or impair these liberties which were so

expressly secured. Yet the United States have been asked to accept such an interpretation as would convert these "liberties" into restrictions inconsistent with the ordinary privileges recognized by international law, and due in the absence of any Treaty.

This Conference would be futile, and we would be derelict in duty, should we disregard the deliberate judgment and decisions of our own Government upon this subject, as made manifest by the Act of the 3rd March, 1887, copies of which will be furnished Her Majesty's Plenipotentiaries.

The debates will disclose the unanimity of the Congress in its passage, the only difference between the two Houses being the preference of the House of Representatives for a measure which was claimed to be more positive.

This Statute must be taken as the judgment of our Government, and the restrained and scrupulous discretion of the President has enabled the question to reach the serene atmosphere of this Conference, in which it is earnestly hoped all cause of misunderstanding and anxiety will be removed.

The far-reaching importance of placing the relations of the two countries we respectively represent upon such a footing as will make their progress one of increasing good-will and mutual confidence and beneficence must impress itself on us all.

In the correspondence it appears that the Dominion authorities claim as legitimate the right to enforce an extreme and irritating construction of a Treaty between the United States and Great Britain, in order to procure a change in the Tariff Laws of the United States. Such a claim has no just foundation in the circumstances now before us, and cannot be admitted without raising a question of national independence and self-respect, and must therefore be met *in limine*.

We would not disguise the condition of the public mind in the United States in respect of the Canadian contention.

Under this contention American fishermen, with certain rights in Canadian waters, secured by Treaty and international law, are denied the use and enjoyment of those rights except under such severe restrictions as impair, if not destroy, their value, and also are denied such common hospitality and friendly treatment as would be freely accorded to them in the ports of any nation in Europe in the absence of any Treaty whatever.

There is a deep and widespread sense of the injustice thus suffered by a simple and meritorious class of our people engaged in a calling exceptionally favoured by all nations.

We therefore ask reasonable compensation for the injuries already inflicted, and a removal of the cause.

Appendix (B).

Selected Cases of Mal-Treatment of American Fishing Vessels.

The following are cases and propositions selected as illustrating the various grounds of complaint made by the United States, arising from the conduct of Canadian officials with reference to fishing vessels of the United States, especially in the year A.D. 1886:—

The "Ella M. Doughty."

St. Ann's Bay, protected on the south by Cape Dolphin or Dauphin, is situated on the extreme eastern coast of Cape Breton, in latitude about 46° 30′ north and longitude 60° 30′ west. It is connected by a narrow opening with the inner bay known as St. Ann's Harbour, which we have here called the inner harbour, because there is also anchorage at the head of the bay.

The axis of the bay and harbour lies northerly or north-east. A very small Settlement, known as St. Ann's, exists on the westerly shore of the strait connecting the bay and harbour, and a somewhat larger though scattered Settlement known as English Town, containing in all a population of about 400 people, is situated on the eastern side of the same strait, extending along the shore of the bay and inner harbour.

The whole eastern coast of Cape Breton, including St. Ann's Bay, is crowded with ice fields coming down from the Gulf of St. Lawrence until late in the spring.

What remains of the once famous fortress and City of Louisburg lies on the southern coast of Cape Breton, somewhat to the eastward of south of the Bay of St. Ann's, in latitude of about 45° 85′ north, and very close to the 60th parallel. Between Louisburg and St. Ann's Bay, on the eastern coast of Cape Breton, some 30 miles overland from Louisburg, but approachable by water only after difficult passage around Scatari Island, Cape Morien, and Cape Percy, lie Sydney and its adjacent port of North Sydney. To the southward of Louisburg on each side of the same parallel, but in latitude of about 44° north, lies Sable Island; and to the westward of Sable Island the great bank known as Sable Island Bank, commonly called by the fishermen the Western Banks, extending over more than three parallels and almost connecting with other banks, more or less known, until the Georges shoals or banks are reached somewhere near parallel 67°, the principal intermediate banks being La Have, the Roseway, and Brown's Bank. The names of each of these are used somewhat carelessly and indiscriminately by fishermen, alike in describing the place for which vessels are fitted away and the place where fishing actually occurs, by reason of the proximity of the banks to each other and of the similarity of fishing pursuits on or near each of them.

Northerly and north-easterly of the Bay of St. Ann's and of Cape North, which is the extreme north-eastern point of Cape Breton, at the very mouth of the Gulf of St. Lawrence, and also within the gulf, lie other banks of lesser extent than those already described, resorted to also for fishing.

Halibut catchers seek all the banks above named and the deep waters bordering on them, trawling for halibut at a depth of 250 fathoms, and at even greater depths.

The schooner "Ella M. Doughty," of the gross tonnage of 75$\frac{1}{100}$ tons United States' measurement,

owned by reputable merchants and other reputable people living at or near Portland, in Casco Bay, which is situate on the coast of Maine, in the latitude of the Western Banks and between the 70th and 71st parallels, commanded by Captain Warren A. Doughty, and manned by a crew of eleven fishermen, nearly all residents of Portland or its vicinity, with expensive trawls and other expensive gear for halibut catching, and fully equipped with provisions, bait, and other supplies for the ordinary halibut-fishing trip to the eastward on the Western Banks and such other banks as might be visited, estimating a trip to last not over six weeks, sailed from Portland on the 26th April, A.D. 1886, and arrived on or near the Western Banks the 29th of the same month. Not finding fishing favourable, she soon put away for the neighbourhood of banks in the Gulf of St. Lawrence, but was forced by the ice to seek shelter at Louisburg, where the vessel arrived on the 1st May. She remained there until the 6th May; and on that day, the coast being apparently clear of ice, she started again on her voyage, but was forced into North Sydney. There she was notified by the Customs authorities to report, which she did, and paid harbour dues. On Monday, the 10th May, she again sailed for the gulf, but the next day she was forced by the ice into the Bay of St. Ann's. On Wednesday, the 12th of the same month, she again attempted to work her way through the ice fields, but failed. She made another attempt on Wednesday, the 13th May, but was again forced back into the bay; and this time she hauled into the inner harbour of St. Ann's, where she laid until the next Monday. Meanwhile, finding her bait, which consisted of iced fresh herring, deteriorating or in danger of deteriorating by her unexpected detention through stress of ice, Captain Doughty purchased of the inhabitants of English Town, who were willing enough to sell to him, small supplies of herring taken by them from their weirs on their shores, not 10 dollars' worth in all.

The witnesses for the Crown at the trial of the vessel which afterwards took place, as will appear by the printed Minutes of the case, produced no evidence of actual fishing or of intention to fish within prohibited limits, or of any act looking to fishing anywhere except the purchase of bait. And they said there was no fishing in the Bay of St. Ann's in which a vessel of this class could engage, that the vessel was forced back Thursday evening by ice and wind, and through the rest of the week the wind was to the eastward, which would be against her going out, that there was ice outside, that the ice was pretty heavy, and that it would not be safe for her to go out in that kind of ice.

The proofs for the Crown looked to showing that Captain Doughty was apprehensive he might involve his vessel in trouble by purchasing bait, and that therefore the last bait he purchased he declined to receive until his vessel was under way. But this does not touch the merits of the case; and, moreover, it appears by the letter of the Marquis of Lansdowne to Earl Granville, of the 19th May, A.D. 1886, published in the Dominion volume of Correspondence relative to the Fisheries Question of A.D. 1885 to A.D. 1887, p. 55, the Sub-Collector telegraphed that—"The captain acknowledged the facts and showed the bait bought, but claimed that he had a permit or licence signed by the Collector of Customs at Portland, to touch and trade at any foreign port."

It appears by the testimony of the Sub-Collector of Customs at English Town that he first saw the "Ella M. Doughty" on the 11th May, coming to anchor outside of the lighthouse in the Bay of St. Ann's; that he could see her from his own house, and saw her all that afternoon; that he seized her on Monday, the 17th May; that then she was lying on the north side of the inner harbour; and that he saw her every day between Tuesday and the Monday of her seizure.

It is clear from this testimony that, although the vessel was thus under his nose, he made no request she should report at the custom-house, and no complaint because she did not report, and took no proceedings against her on that account during the six days she was lying there prior to the day of her seizure.

The Sub-Collector admits that never in his experience of ten or eleven years had fishing-vessels been required to report in that bay or harbour.

On the 17th May the Sub-Collector seized the vessel, and took possession and control of her.

Precisely what was the original cause of seizure is not clear. The Sub-Collector, McAulay, testified on cross-examination as follows:—

"I seized this vessel on the charge that she did not report, and that she had bought bait. She was seized on both charges."

Being pressed further, he thinks he said in the telegram to the Collector regarding the seizure that he had "seized the vessel for buying bait."

Again, in his testimony the following question and answer appeared:—

"*Q.* Did you have any instructions in May 1886 to seize American fishing-vessels for not reporting?—*A.* I do not think I did."

Again, he said:—

"I seized her for trading and not reporting, because I thought she was the first vessel that had made a breach of the law in not reporting. I know that during the last eleven years American vessels came in there and did not report, and I did not seize them. Previous to this they had the privilege of going in and out. Since the expiration of the Treaty I have not received any instructions with reference to seizing any American vessels for not reporting."

"In the letter from the Marquis of Lansdowne to Earl Granville of the 19th May, already referred to, he reports:—

"The 'Ella M. Doughty' has been held for not reporting, and an inquiry is now proceeding whether there has or has not been an infraction of the Fishery Law of the Dominion."

On the 25th May the Collector filed in the Vice-Admiralty Court at Halifax the affidavit necessary to secure a warrant against the vessel, which will be found on p. 109 of the Canadian Correspondence relative to the Fisheries Question for A.D. 1885-87. This affidavit is well described by the Solicitor for the Crown in his letter of the 5th August, A.D. 1886, to the Deputy-Minister of Justice at Ottawa, p. 107 of the same book, in which he says:—

"It is very brief, and contains no particulars of fact. The Admiralty Rules only require that it should state the nature of the claim."

The other papers referred to in that letter were not filed in Court, and the owners of the vessel had not in any way the benefit of them.

Pursuant to the Rules of the 23rd August, A.D. 1883, touching the practice to be observed in the Vice-Admiralty Courts, this affidavit was followed by a writ of *summons*, Rules 5 to 8 each inclusive, and Forms Nos. 4 to 7 each inclusive.

This writ of summons gave no indication of the demand or offence alleged, except that Rule 5 required it should be indorsed with "a statement of the nature of the claim and of the relief or remedy required, and of the amount claimed, if any." The forms come under the numbers already referred to, and require an indorsement of the briefest and most general character—even more meagre, if possible, than the affidavit of the Collector according to the description in the letter of the Solicitor already referred to.

That this indorsement was no more specific than the affidavit, and gave the master and owners of the vessel no specific information, will be seen by reference to it, as it appears at length in the printed record of the case.

So that to this point there was not on file, either in the Vice-Admiralty Court or elsewhere accessible to the owners of the vessel, any specific statement of the offence with which the vessel was charged.

No. 55 of the series of Rules already referred to direct that every action "shall be heard without pleadings, unless the Judge shall otherwise order."

In pursuance of this Rule, and in accordance with the arrangement between counsel, the Crown filed its Petition or libel against the vessel during the first week in the month of July next succeeding the seizure. A copy of this Petition is found commencing p. 110 of the Canadian Fishery Book already referred to.

It was even more indefinite than the affidavit of the Collector, because it alleged in several Articles every possible offence which could arise under either the Imperial or Dominion Acts relative to the fisheries, covering without specification of dates, or places, or other particulars of facts, the entire months of April and May, A.D. 1886.

To this point, therefore, the owners of the vessel had no proper information of the true nature of the claim, and were only told that, under the provisions of the Acts to which we will hereafter refer, the burden was on them to acquit their vessel from every possible charge which could possibly be brought against her under any of the above allegations covering the period named.

Meanwhile, another provision of law came in to trouble this vessel.

Vessels of the United States engaged in fishing in the north-eastern waters ship their men very largely on shares, so that the earnings of the crew depend on their employment, and not merely on their being aboard the vessel, as would be if they were shipped on monthly wages. Consequently, it is impossible to detain a crew of fishermen in port idle pending slow legal proceedings against a vessel; therefore, with reference to vessels of this class, the expedition required from the Courts by the old maxim that ships were made to plough the sea is especially necessary. Delay in the trial of a fishing-vessel caught in a port distant from home is equal to total denial of justice with reference to vessels of not very great value, in which category many of them fall.

Merchant-vessels in foreign ports, seized for breach of Customs or other Laws, are supposed to find consignees or other friends at hand prepared to assist them by procuring counsel, furnishing security for costs, and other matters of that nature; but there is no such presumption or fact in favour of fishing-vessels.

The Dominion Act of the 22nd May, A.D. 1868, 31 Vict., cap. 61, "Respecting Fishing by Foreign Vessels," being a Statute under which the proceedings against the "Doughty" were taken, provides in its 12th section that no person shall "enter a claim to anything seized under the Act until security has been given in a penalty not exceeding 240 dollars, to answer and pay costs occasioned by such claim; and that in default of such security the thing seized shall be adjudged forfeited, and shall be condemned."

Few fishing-vessels carry with them on their voyages that amount of money, or are able to give security promptly for that sum.

The result in the case of this vessel, and also in the case of the "David J. Adams," which will be hereafter referred to, was that before security could be arranged, as required by the Statute, the crew scattered; in the case of the "Doughty" imposing on the vessel great expense and delay in obtaining the return of the witnesses to Halifax, and in the case of the "Adams," many of the crew of which were aliens, involving inability to secure all the witnesses at any time, and in each case practically compelling postponement of trial until the pending fishing season was closed.

A prompt trial being therefore impracticable, the cause ran into the usual course of legal proceedings. It is supposable that, notwithstanding the absence of specific allegations, the Counsel for the vessel relied on the statement made by the Sub-Collector at the time of the seizure, that the vessel was seized for purchasing bait, until it came to their ears that a claim was made that the vessel had been actually guilty of fishing. However this may have been, on or about the 18th October, A.D. 1886, defendants filed a motion for a bill of particulars, which was resisted by the Crown and fully argued before the Court.

Although under the common practice in the United States a bill of particulars would be ordered as a matter of course, the right to it in the Vice-Admiralty Courts of Great Britain seems to be not clearly defined, and the Court held the motion under consideration, and it never has been decided.

The case was finally brought to trial in June, A.D. 1887, without any bill of particulars and under the general allegations of the Petition which have already been described.

The printed record of the case shows that at the trial the Crown claimed that under the 10th section of the Act of the 22nd May, A.D. 1868, the burden throughout was on the vessel.

The Proctor for the Crown argued as follows:—

"Now suppose that this term 'preparing to fish' has the meaning which is contended for in the

answer, and that it means preparing within the 3-mile limit, and that they can prepare within the 3-mile limit to fish outside of that limit. I ask your Lordship to look at this evidence closely, and inasmuch as the burden is placed on the claimant, I ask your Lordship to hold that he has not shown that the fishing was to be carried on outside of the 3-mile limit.

"Now, that provision of the Act which places the burden upon the claimant will be found in section 10, chapter 61, of the Acts of 1868. What takes place in these cases, and all revenue cases, is this: The law provides for the master and crew of the vessel to do certain things, or the vessel shall be forfeited, and it provides for seizure. The seizure is made, and the claimant comes forward and claims the property. It is in the possession of the law, it is forfeited, and he puts forward a claim. The legality of the seizure is then to be tried. Of course, the form of the pleadings may be like the ordinary common law actions—as if it was between a plaintiff and defendant; but the question which your Lordship is called upon to try is the legality of the seizure. Was it a case where the officer was justified in making a seizure? And under all revenue laws the burden of proving the illegality of the seizure is placed on the claimant, and that is the exact language of this Statute."

In other words, as already explained, the vessels were charged with every conceivable offence under both the Imperial and the Dominion Fishery Acts, spread over a period of two months, and asked to prove themselves innocent, notwithstanding by the delays which the course of proceedings inevitably involved their witnesses were scattered and might have been entirely lost.

It is useless to say, with such claims on the part of the Crown, that the depositions of witnesses might have been taken, because in the absence of specific allegations, no human ingenuity was equal to anticipating all the contingencies which might prevent justice, unless the witnesses were present in Court to meet unexpected suggestions at the trial.

These things are in no way the fault of the Courts or of the Bar of the maritime provinces. No Courts are held in higher esteem by the lawyers of New England, and no Bars have a more brilliant record for ability, fair dealing, and professional courtesy. The result comes from applying to fishing-vessels a system which, with less injustice, is frequently applied to merchantmen voluntarily entering the ports where proceeded against.

The result of which the foregoing is only an illustration is that one of these fishing-vessels, wholly unprepared for a contest in a foreign Court, proceeding peaceably within the 3-mile limit, may be captured, taken into port, held for trial without specific allegations, and compelled to acquit herself of a great number of possible charges covering an indefinite period of time, after, by force of the nature of proceedings, her crew have been scattered.

The "David J. Adams."

The "David J. Adams," a fishing-vessel of about the same tonnage as the "Doughty," belonging in Gloucester, Massachusetts, having no licence to touch and trade, but having a licence to fish, was seized in Digby Basin a few days earlier than the "Doughty," on the 7th May, A.D. 1886.

It cannot be doubted, from what appears in the depositions in the case, that she was seized for purchasing bait. Indeed, Captain P. A. Scott, by whose authority she was seized on the 11th May, in his Report, found on p. 51 of the fisheries correspondence above named, states in terms that he "seized her for violating the Dominion Fishery Act." Subsequently, a charge of not reporting at the Custom-house was superadded, of which the Report of Captain Scott makes no mention.

The case of the "Adams" differs from that of the "Doughty," in respect that the "Adams" was not in distress, but made a short run from Eastport across to Digby Basin voluntarily for bait, and was in there parts of two or three days. It is claimed she concealed her name and port, but this is not important, and one of the principal witnesses for the Crown states distinctly the captain told him that she was an American vessel.

In the subsequent proceedings as to pleadings, effort to obtain a bill of particulars and all other matters, the case went *pari passu* with that of the "Doughty," except only increased difficulty and expense in obtaining witnesses after they were once scattered, by reason of so many of them being aliens and living at remote places.

Both of the cases remain to this time undecided.

It must, on the whole, be said that the seizures were wholly unexpected by the Government of the United States and by the owners of the vessels concerned, and involved a change of policy of which neither had received actual warning. No known instructions or orders had been issued in accordance with the 4th section of the Act of George III, chapter 38. Neither that Act nor any Act of the Dominion gave any clear warning that mere preparation for fishing was an offence, except for fishing within prohibited waters. The note of Her Majesty's Minister at Washington to Mr. Bayard of the 19th March, A.D. 1886 (see Dominion Fisheries correspondence, p. 24), asked only whether Mr. Bayard would give notice that United States' fishermen were precluded from "fishing," and called attention to nothing else; and the Memorandum passed Mr. Bayard on the 19th March by Her Majesty's Minister (see same correspondence, pp. 23 and 24) likewise called attention only "to foreign fishing-vessels fishing in the waters of the Dominion."

In the note of Her Majesty's Minister to the Marquis of Lansdowne of the 19th March, A.D. 1886 printed in the Dominion Fisheries correspondence, p. 23, he used the following language in reference to an interview with Mr. Bayard, namely: "Suggesting to him at the same time that all danger or friction might perhaps be avoided if it was clearly understood that no American vessel would be allowed to 'fish' in Canadian waters within the 3-mile limit without a licence."

"Warnings" from the Minister of Marine and the Minister of Customs at Ottawa had but little publicity, they were contradictory and misleading, and apparently, as appears by Mr. Bayard's letter of the 29th May, A.D. 1886 (see Dominions Fisheries correspondence, p. 64), did not come to the knowledge of the Department of State at Washington until about the date of the letter.

A Memorandum about these "warnings" will be found in the Appendix attached hereto.

Under these circumstances these seizures in May, A.D. 1886, must well be regarded as a surprise to the owners of the vessels, the authorities of the United States, and all its people.

The position of the Government of the United States and that of Canada, immediately taken with reference to the question, are shown by the following extracts.

Mr. Bayard, on the 10th May, A.D. 1886, wrote to Her Majesty's Minister at Washington as follows:—

"I shall be most happy to come to a distinct and friendly understanding with you, as the Representative of Her Britannic Majesty's Government, which will result in such a definition of the rights of American fishing-vessels, under the Treaty of 1818, as shall effectually prevent any encroachment by them upon the territorial waters of the British provinces for the purpose of fishing within those waters, or trespassing in any way upon the littoral or marine rights of the inhabitants, and at the same time prevent that Convention from being improperly expanded into an instrument of discord by affecting interest and accomplishing results wholly outside of and contrary to its object and intent, by allowing it to become an agency to interfere with, and perhaps destroy, those reciprocal commercial privileges and facilities between neighbouring communities, which contribute so importantly to their peace and happiness."

On the next day, namely, on the 11th May, the Marquis of Lansdowne wrote Earl Granville as follows:—

"As your Lordship is no doubt aware, American fishing-vessels frequenting the coast of Canada have been in the habit of depending, to a great extent, upon Canadian fishermen for their supplies of bait. It has been usual for such vessels hailing from New England ports, as soon as the supplies with which they had provided themselves on starting for their trip have become exhausted, to renew them in Canadian waters. Such vessels, if compelled, as soon as they 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.*"

Without explaining corresponding details in the case of the "Adams," the seizure of the "Doughty" was at once accompanied by the following penal demands, namely:—

1. Demand the forfeiture of the vessel, already referred to, under which she was bailed for 3,000 dollars.
2. Demand for security for costs, 240 dollars.
3. Payment of penalty claimed for not reporting at the Customs, demanded under section 29 of "The Consolidated Customs Act of 1883," by which it is provided that the captain "shall forfeit the sum of 400 dollars, *and the vessel may be detained until the said fine be paid.*"
4. The sum of 200 dollars required to be deposited to pay costs of the proceedings which the Crown might take to determine the penalty of 400 dollars; which proceedings have never been commenced, although the 200 dollars is still retained.
5. A suit in behalf of the Crown against the captain for three penalties of 200*l.* each.

Customs Laws.

"The Consolidated Customs Act of the Dominion of 1883," section 29, provides, if the master fails to make report "he shall forfeit the sum of 400 dollars, *and the vessel may be detained until the said fine be paid.*"

The nature of the Report required is shown by section 25 of the same Act. It requires that vessels entering from "any port or place out of the Dominion of Canada or coastwise," whether "laden or in ballast, shall go without delay, when such vessel is anchored or moored, to the custom-house for the port, and there make report in writing, stating her name," &c., and "whether she is laden or in ballast," and "if laden, the marks and numbers of every package and parcel of goods on board, and where the same was laden, and the particulars of any goods stowed loose, and when, where, and to whom consigned."

It is plain that although that section may possibly be broad enough to include fishing-vessels, yet whoever drew it did not have them in contemplation. As it is in no way fitted to their peculiar circumstances, he evidently had in mind only merchant-vessels.

It will not be questioned that, when that Act was passed, the practice was in accordance with that theory. Fishing-vessels had not previously, when coming in merely for shelter or for making minor purchases, been required to report and enter or clear. To such extent had this become the prevalent practice, that it never occurred to the Sub-Collector at English Town to request or warn the captain of the "Ella M. Doughty" to report, or to make any complaint that he did not report, although he lay under his eyes within a-half or three-fourths of a mile of his residence for the larger part of a week.

In all the cases to which this paper will refer, with one exception, not only was a new policy to enforce the Customs laws suddenly developed, but it was done with the utmost severity; and vessels were not only not warned nor cautioned of the change, but the fines were insisted on, and payment compelled by detention of the vessels.

For the case of the "Rattler" we refer to the Memorandum of the proceedings of the Privy Council found in "The Correspondence relative to the Fisheries Question in A.D. 1885-87," p. 136.

The Memorandum states, in the first place: "It does not appear at all certain from the statements submitted that this vessel put into Shelburne for a harbour *in consequence of stress of weather.*" It is well enough to dwell on this, because at different times, from A.D. 1836 down to the present time (apparently never before A.D. 1836), it has been claimed in Nova Scotia that the expression of the Convention of A.D. 1818, "for the purpose of shelter," should be limited to cases of harbour sought "in consequence of a stress of weather," that the local authorities had the right to determine whether there was stress, and how long the vessel might lie on account of such stress, and that their determination was conclusive.

The Memorandum proceeds:—"Immediately upon the 'Rattler's' coming into port Captain Quigley sent his chief officer to inform the Captain of the 'Rattler' that, before sailing, he must report his vessel at the custom-house, and left on board the 'Rattler' a guard of two men to see that no supplies were landed or taken on board, or men allowed to leave the vessel during her stay in Shelburne Harbour." And the Memorandum further observes, as with a claim of right, that "every vessel entering a port in Canada is required immediately to report at the Customs, and the strict enforcement of this Regulation as regards United States' fishing-vessels has become a necessity in view of the illegal trade transactions carried on by United States' fishing-vessels when entering Canadian ports under pretext of their Treaty privileges."

It may be said in this connection that the Dominion Government has utterly failed to show that any facts have transpired indicating that United States' fishing-vessels have engaged in illegal trade since A.D. 1885, or especially that any vessels which have been harassed during the year A.D. 1886 were engaged in such illegal trade, or had any disposition to so engage.

Then proceeds the Report further, as follows:—"Under these circumstances a compliance with the Customs Act involving only a report of the vessel cannot be held to be a hardship of an unfriendly proceeding."

That might be so in cases where the vessel was in the inner port, and entering at the Customs involved only sending a boat ashore; but to discuss whether or not putting a guard of two men aboard a peaceful vessel entering only for shelter, and as to which there was no charge that any supplies had been landed or taken on board, and no evidence of intention of doing either, must be regarded as an "unfriendly proceeding," is outside the purposes of this Memorandum.

The fact is, Shelburne Harbour is a long estuary, and the places to which the "Rattler" and other vessels to which this statement refers resorted for shelter was in the lower harbour, from 5 to 10 miles from the custom-house. If such vessels touching for shelter, it may be at night, the "Marion Grimes," indeed, at midnight, intending to leave by daybreak for the home port, deeply laden, needing dispatch, are forced to send from 5 to 10 miles to report thus, perhaps involving a loss of fair wind, indefinite delay, and the spoiling of the cargo, this must be regarded as a great hardship.

The Captain of the "Rattler" described the matter as follows, according to his statement appearing in Executive document No. 19, House of Representatives, 49th Congress, 2nd Session, p. 190:—

"On Tuesday, the 3rd August (having secured a fare of mackerel, and while on our passage home), at 7 P.M., the wind blowing hard, the sea being rough, and our vessel deeply loaded, with two large seine boats on deck, we put into the harbour of Shelburne, Nova Scotia, for shelter. Just inside of the harbour we were brought to by a gun fired from the Canadian cruizer 'Terror,' Captain Quigley, and came to anchor.

"Immediately a boat from the 'Terror' came alongside, and its commander, Lieutenant Bennett, asked why we were in the harbour. My reply was, 'For shelter.' Then, taking the name of our vessel, names of owner and captain, where from, where bound, and how many fish we had, and forbidding any of the crew to go on shore, he returned to the 'Terror' for further instructions.

"Boarding us again after a lapse of perhaps forty-five minutes, he put two armed men on board of us, asked for our crew list, and said if I remained until morning I must enter at the custom-house; but if I could sail in the night to tell his men to fire a revolver, and a boat would be sent to take them off."

In his Report of the 30th September, A.D. 1886, Dominion Fisheries correspondence, p. 139, Captain Quigley reports the same matter as follows:—

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

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

Subsequent events are not pursued, as the facts concerning them are disputed.

The case of the "Marion Grimes" is described in the despatch from Mr. Bayard to Mr. Phelps of the 6th November, A.D. 1886, Executive document No. 19, p. 153.

The statement of the captain is found in the same document, p. 162, as follows:—

"On the night of Thursday, the 7th October, the wind blowing almost a gale from the south-east, and a heavy sea running, we came to anchor in the entrance of Shelburne Harbour about midnight for shelter. We were then fully 10 miles from the custom-house at Shelburne At 4·30 A.M. of the next day we hove up our anchor to continue our voyage, the wind having died away almost to a calm. Just as we had got our anchor on the bow an officer and boat's crew from the Canadian cruizer 'Terror,' which laid off Sand Point, some 3 miles above us, came on board and told me we must come to anchor at once, and go to the custom-house at Shelburne and enter and clear. I at once anchored the vessel, and, taking my boat and two of my crew, started for the custom-house. When we reached the 'Terror,' Captain Quigley ordered me to come on board his vessel, leave my boat and men, and go with him in his boat to Shelburne. I arrived at the custom-house at about 8·30 A.M., and waited until 9 A.M., when Collector Attwood arrived. I then entered and cleared my vessel, and was about to pay the charges and depart, when Captain Quigley entered the office and told the Collector he ought not to clear my vessel, as I had attempted to leave the harbour without reporting, and that the case should be laid before the authorities at Ottawa. Collector Attwood then withheld my papers until a decision should be received from Ottawa. I then tried to find the American Consul, calling at his office three times during the day, and was unable to find him; but in the afternoon found a Mr. Blatchford in the Consul's office, who informed me that my vessel had been fined 400 dollars, and I wired my owners

accordingly. At 4 P.M. returned with Captain Quigley on board the 'Terror,' and when on board he informed me that my vessel was fined 400 dollars."

The vessel was detained at Shelburne until the 12th October, and it is understood she was finally released on payment of 8 dollars for watching.

It is also understood that the facts, as stated by the master of the schooner, are not disputed.

It is not deemed necessary here to repeat the facts of the violent hauling down of the flag of the "Marion Grimes," as this was afterwards apologized for by the Dominion authorities.

Subsequent to the claims made against the "Doughty" and the "Adams" for the customs penalties, as already stated, in the early part of May, A.D. 1886, there seems to have been quiet in this matter until early in the following July, when the "City Point," "G. W. Cushing," and "C. B. Harrington" were almost simultaneously seized at Shelburne.

The "City Point" was seized 5 miles below the town on her way up for some repairs, the captain having stopped to fill his water casks as a matter of convenience, and two men from the vessel, residents in that locality, having landed.

The "C. B. Harrington" came to anchor about 7 miles below the town, sent ashore, inquired whether there was any ice for sale, bought none, was soon after seized by the "Terror" and taken to Shelburne.

The "G. W. Cushing" came to anchor about 7 miles below the custom-house, sent ashore to ascertain whether bait could be purchased, finding none put about to sea again, cast anchor in the evening off the outer lighthouse about 10 miles below the town, was captured by the "Terror," and also taken to Shelburne.

No pretence was made that any goods were unlawfully landed from these vessels, or that there was any intention of smuggling. The captain of each of them was acting innocently and in accordance with the long-continued custom on that coast; and yet the owners of each were compelled to pay the fine imposed by the 29th section referred to, and never have been able to secure refunding thereof.

The Statutes of Canada with reference to this penalty of 400 dollars provide that the vessel may be detained until the fine is paid. They give the owner no opportunity for hearing, place his vessel on demurrage until he pays the fine, and provide no specific proceedings for the owner by which he may recover back the fine or ascertain his just liability in reference to it.

It is claimed there were numerous other cases quite as technical and severe as these which have been described; but it is not necessary to detail them, as the seizures already cited are admitted to have been made in pursuance of a policy, and the other cases to a certain extent involve disputed questions of fact.

The same remarks may be made as to those hereafter cited illustrating this rigorous policy of A.D. 1886 in other respects, which policy has since been modified only slightly, if at all. It is enough to say that, as soon as the fishing-vessels of the United States fully understood this policy, they avoided so far as possible the ports of Nova Scotia, and abandoned the benefit of the Treaty right of shelter in preference to incurring the risk of a harsh application of a system, the complications and limitations of which they could not understand.

Landing of Crews of Fishing-vessels prohibited.

The course about this appears in Captain Quigley's Report relative to the "Shilo," dated the 30th September, A.D. 1886, "Fisheries correspondence," p. 140, as follows:—

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

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

Again, on the same page he states the general policy as follows:—

"In all cases where a vessel puts in for shelter the captain reports, and the rest of his crew are not allowed ashore, as the vessel only puts in for the privilege of a shelter, and for no other purpose.

"When she puts in for water, after reporting, the captain is allowed to take his boats and the men he requires to procure water, and the rest remain on board, after which he is ordered to sea."

In Captain Quigley's Report of the 19th January, A.D. 1887, about the "Jennie Seaverns," p. 237, he says his instructions to the captain were:—

"After he reported, no person from his vessel was to go ashore, as he had got all he put in for, namely, shelter, and he reported his vessel putting in with that purpose and no other, not for the purpose of letting his crew on shore."

In the affidavit of Captain Tupper, of the "Jennie Seaverns," p. 236, he says he asked Captain Quigley for permission to visit some of his relations who resided at Liverpool, where his vessel had made harbour on account of a south-east gale and heavy sea, stating to Captain Quigley that he had not seen them for many years, and that this privilege was denied him. He also says some of his relatives came off to see him, and when Captain Quigley saw their boat alongside he sent an officer and boat's crew and ordered them away, and at sundown placed an armed guard aboard his vessel. Captain Tupper continues, that he had complied with the Canadian laws, and had no intention or desire to violate them in any way, and he describes himself, notwithstanding his innocent intention, "as being made a prisoner on board of my own vessel, and treated like a suspicious character."

The Report of the Committee of the Privy Council of the 23rd March, A.D. 1887, p. 234, while it does not contravene the statements of Captain Tupper, affirms the conduct of Captain Quigley, and concludes that Captain Tupper had nothing to complain of, as he came in solely for shelter, and this was not denied him. The Report, however, directs a more moderate course in the future.

It is the purpose of this paper to avoid cases the facts of which are not admitted by the Dominion authorities. Nevertheless, the statement of Captain John McQuinn is worth quoting, although so far as known it never has been admitted or denied by the local officers. He went into Canso in the "Druid," having before transferred to her from another vessel a young man who desired to go to his home at Canso. He says: "When I got into Canso I reported. He was in a hurry to get home to college, but they would not allow me to land him. They allowed it first, but fetched him back, and I finally had to take him aboard and bring him home," that is, to Gloucester.

This statement is found in "Senate Report No. 1683, 49th Congress, 2nd Session," p. 133.

The controverted statements as to refusals of permission to land in case of sickness are not dwelt on; because in the only case where apparently the facts are not contraverted, namely, the "Craig" at Brooklyn, Nova Scotia, the action of Captain Quigley was overruled in the interests of humanity by his superior officer, Captain Scott.

Refusals of Petty Amounts of Provisions.

The circumstances of these cases so clearly indicate that they were in pursuance of a general policy, only two need be cited.

It appears by the Report of the Privy Council of the 31st March, A.D. 1887, p. 241 of the "Dominion Fisheries' correspondence," that the Collector at Port Hood refused the "Mollie Adams" on her homeward voyage on the 25th October, A.D. 1886, permission to purchase a half-barrel of flour; and Mr. Attwood, Collector at Shelburne, by his Report of the 5th January, A.D. 1887, p. 235, on the 6th October, declined to permit the "Laura Sayward," then homeward bound from the banks, to purchase seven pounds of sugar, three pounds of coffee, one barrel of potatoes, and two pounds of butter without authority from Ottawa. Between 4 and 5 o'clock in the afternoon such authority was telegraphed for, and no reply having been received the next morning at half-past 6, the wind being fair with a good breeze, the vessel concluded to wait no longer. The Collector adds Captain Rowe said he had plenty of flour, fish, and other provisions sufficient for the voyage home, that the Collector did not consider it a case of actual distress, and that all the vessel really needed was water.

Shipment of Fish in Bond.

The XXIXth Article of the Treaty of Washington of A.D. 1871 is understood to still remain in force. Under that Article, and even independently of it, the practice of delivering at ports of the United States merchandize intended for points in the Dominion, and at ports in the Dominion of merchandize intended for points in the United States, has long been in the regular course of business; and until A.D. 1886 no discrimination was made in the ports of the Dominion against fishing-vessels or their catch. In A.D. 1886 and ever since both the Treaty and law, so far as this matter is concerned, remained the same as it was before the United States denounced various Articles of the Convention. So large was this commerce that it appears by the Reports of the Consuls of the United States, No. 82, August, A.D. 1887, p. 219, that at Port Mulgrave alone there were transferred during the fishing season of A.D. 1885 to the Intercolonial Railway from United States' fishing-vessels, and carried into United States' ports, equal to 140 car-loads, or 2,235,600 lbs. of fish.

In A.D. 1886 further transhipments of this sort were forbidden, and have never since been allowed, as appears in the Report of the Privy Council of the 14th August, A.D. 1886, p. 118, of the "Correspondence relative to the Fisheries, A.D. 1885-87."

The question first arose with reference to the "Novelty," who offered her cargo of fish at Pictou for transhipment as in the previous course. The Report says the "Novelty" was in character and purpose a fishing-vessel, and as such came under the provision of the Treaty of A.D. 1818; and the Report in substance refused to give her the benefit of the unlimited general phraseology of the XXIXth Article of the Treaty of Washington.

Poaching by American Vessels.

The Dominion authorities, when pressed on account of the measures hereinbefore set out, have attempted divers justifications therefor.

1. That given by the Marquis of Lansdowne in his despatch of the 11th May, A.D. 1886, already cited, namely, that if American vessels are compelled "as soon as they run short of bait to return from Canadian banks to an American port, they would lose a great part of their fishing season and be put to considerable expense and inconvenience."

The truth and force of this proposition are not denied. Its effect, if applied as a general principle to control the relations of Christian nations, is to be judged of.

2. That since the denouncing of the Treaty of Washington and the consequent loss by the fishermen of the United States of any right to fish within limits prohibited by the Treaty of 1818, the rigid enforcement of the Customs law is necessary to prevent illegal trading.

No evidence, however, is offered showing a disposition on the part of the United States' fishing-vessels to indulge in illegal trading, or that if there was such disposition, there had been any increase of it since A.D. 1885, or to overcome the presumption that there is less danger of illegal trading when the United States' fishing-vessels are excluded from the 3-mile limit than when they are freely admitted to it.

3. It is said by the Minister of Justice of Canada in his Report of the 22nd July, A.D. 1886—see "Fisheries correspondence," p. 150—that "the purpose was to prevent the fisheries from being poached on, and to preserve them to the subjects of His Britannic Majesty in North America, not only for the pursuit of fishing within the waters adjacent to the coast which can under the law of nations be done by any country, but as a basis of supplies for the pursuit of fishing in the deep sea."

This embraces two propositions, the second of which is the same as that of the Marquis of Lansdowne already cited, and on the first of which the following facts seem pertinent:—

In A.D. 1886 the Dominion Government employed as fisheries-police cruizers the schooner "L. Howlett," schooner "Critic," schooner "F. E. Conrod," schooner "Terror," schooner "General Middleton," schooner "Lizzie Lindsay," steamer "Lansdowne," steamer "Acadia," and perhaps others; and it is understood that the fleet in the season of 1887 was even larger. Yet during both seasons only one poacher has been captured, namely, the "Highland Light," though two other vessels were detected and their boats and seines taken; and it may well be questioned whether the case of the "Highland Light" was one of intentional violation of the limits, although undoubtedly the vessel was liable to forfeiture by the letter of the law, and her condemnation was not made the ground of international reclamation.

The fisheries within the prohibited waters are the possessions of the Dominion. These possessions like all other property carry with them the danger of "thieves, moth, and rust," against which the Dominion ought to be able to protect itself without violating the rules of good neighbourhood, even though to accomplish this involves trouble and expense. It ought not to expect to bear any less burden than other rich inheritors living in Christian communities.

Unfriendly and Extraordinary Legislation.

Some features of the peculiarly harsh Dominion and provincial legislation have already been stated. In addition thereto, attention is called to the peculiar provision of the 8th section of the Act of A.D. 1868, which permits delivery of the property seized on bail only "with the consent of the person seizing the property;" although there has been no practical difficulty on this score during the last two years.

Attention is also called to the very extraordinary provisions peculiar to this Statute concerning remedies against the seizing officer, and particularly the provision which gives the owner of the property in fact but two months within which to bring his suit.

By the 14th section there is an absolute limitation of three months, and by the 13th section no action can be brought until one month after notice. All this was undoubtedly intended to practically bar actions for unlawful seizure by non-resident owners; because these provisions, as well as all the other provisions to which attention has hereinbefore been called, find their origin in the Nova Scotia Act of the 12th March, A.D. 1836, passed at a time when methods of communication and delays arising therefrom were such as to inevitably defeat proceedings for unlawful seizures in the remote parts of Nova Scotia, especially near the close of the season.

Attention is also called to the Dominion Act approved the 24th December, A.D. 1886, which was protested against in Mr. Bayard's note to Her Majesty's Minister at Washington of the 29th May, A.D. 1886, already referred to; and is commented on by the note of Mr. Phelps to the Marquis of Salisbury of the 26th January, A.D. 1887, in the following language:—

"Since the receipt of Lord Iddesleigh's note the United States' Government has learned with grave regret that Her Majesty's assent has been given to the Act of Parliament of Canada, passed at its late Session, entitled 'An Act further to amend the Act respecting fishing by foreign vessels,' which has been the subject of observation in the previous correspondence on the subject between the Governments of the United States and of Great Britain.

"By the provisions of this Act any foreign ship, vessel, or boat, whether engaged in fishing or not, found within any harbour in Canada, or within 3 marine miles of 'any of the coasts, bays, or creeks of Canada,' may be brought into port by any of the officers or persons mentioned in the Act, her cargo searched, and her master examined upon oath touching the cargo and voyage, under a heavy penalty if the questions asked are not truly answered; and if such ship has entered such waters 'for any purpose not permitted by Treaty or Convention, or by the law of the United Kingdom, or of Canada, for the time being in force, such ship, vessel, or boat, and the tackle, rigging, apparel, furniture, stores, and cargo thereof shall be forfeited."

The phraseology of this Act is so sweeping and general, that its enforcement under high political pressure in Canada would probably involve a conflict with the United States of a serious character.

The Marquis of Lansdowne, in his despatch to Earl Granville of the 19th May, A.D. 1886, Dominion Fisheries correspondence, p. 55, points out the purposes for which this Act was intended. The language of the Act goes far beyond any of those purposes.

A comparison between this Act and Imperial legislation appears in the Appendix.

The United States has not failed at every step to remonstrate urgently against all this unfriendly legislation, which originated, as already stated, in Nova Scotia in A.D. 1836.

The diplomatic correspondence shows sufficiently well that the Act was not known in the United States until the series of difficulties commenced in A.D. 1839. It appears by the letters of the Acting Secretary of State of the 10th July, A.D. 1839 (Senate document, 1st Session, 32nd Congress, vol. x, p. 100), that the United States then claimed seizures were being made for causes of a trivial character, and with a rigour not called for by circumstances; but the despatch proceeds to express confidence that justice will ultimately be done the sufferers by Colonial Courts, which expression subsequent correspondence shows was in ignorance of the peculiar provisions of the Statute of A.D. 1836. This became known at Washington a few months afterwards, as appears by the purport of Mr. Forsyth's despatch to Mr. Stevenson of the 20th February, A.D. 1841, same volume, p. 106, wherein he used the following language:—

"In short, some of these Rules and Regulations are violations of well-established principles of the common law of England, and of the principles of all just Powers and of civilized nations, and seem to be expressly designed to enable Her Majesty's authorities, with perfect impunity, to seize and confiscate American vessels, and to embezzle, almost indiscriminately, the property of our citizens employed in the fisheries on the coasts of the British possessions."

This was communicated to Lord Palmerston by Mr. Stevenson the 27th March, A.D. 1841, p. 115.

Subsequently the Honourable Edward Everett, Minister of the United States at London, in his note of the 9th October, A.D. 1844, to the Earl of Aberdeen, p. 132, reasserts the complaint of Mr. Stevenson, and proceeds as follows:—

"The Undersigned again feels it his duty, on behalf of his Government, formally to protest against an Act of this description. American vessels of trifling size, and pursuing a branch of industry of the most harmless description, which, however beneficial to themselves, occasions no detriment to others, instead of being turned off the debatable fishing-ground—a remedy fully adequate to the alleged evil—are proceeded against as if engaged in the most undoubted infractions of municipal law or the law of nations, captured and sent into port, their crews deprived of their clothing and personal effects, and the vessels subjected to a mode of procedure in the Courts which amounts, in many cases, to confiscation; and this is done to settle the construction of a Treaty.

"A course so violent and unnecessarily harsh would be regarded by any Government as a just cause of complaint against any other with whom it might differ in the construction of a national compact. But when it is considered that these are the acts of a Provincial Government with whom that of the United States has and can have no intercourse, and that they continue and are repeated while the United States and Great Britain, the only parties to the Treaty the purport of whose provisions is called in question, are amicably discussing the matter with every wish on both sides to bring it to a reasonable settlement, Lord Aberdeen will perceive that it becomes a subject of complaint of the most serious kind."

It is to be observed that while no man was ever more guarded and precise in his expressions than Mr. Everett, nor more judicial in the performance of the functions of the distinguished offices which he held, he puts forth these quoted expressions, not merely under instructions, but as representing his personal sentiments.

The citations made indicate that all this legislation, when initiated, was earnestly protested against by the United States, both in the crisis following the legislation of A.D. 1836 and also in A.D. 1839.

Practical Construction of the Treaty.

In the same volume x, p. 92, will be found a Report from the Acting Secretary of State to the President of the United States of the 14th August, A.D. 1839, containing a summary history of matters affected by the Convention of A.D. 1818, from the execution of that Treaty to the date of the Report. This says: "It does not appear that the stipulations in the Article above quoted have, since the date of the Convention, been the subject of conflicting questions of right between the two Governments." But, it continues, that the committing of the execution of the Treaty to the hands of subordinate British Agents "might naturally be expected to give rise to difficulties growing out of individual acts on either side;" and it concludes that the recent seizures had their origin in such causes.

This Report, which seems to be carefully drawn and candidly expressed, bears with it persuasive evidence that down to the period in which it was written, there had been no pretensions whatever of the character which were made near that time by the provincial authorities.

This is made more apparent from the despatch of Mr. Stevenson to Lord Palmerston of the 27th March, A.D. 1841, already referred to, wherein it is said, p. 114, as follows: "The fishermen of the United States believe, and it would seem they are right in their opinion if uniform practice is any evidence of correct construction, that they can with propriety take fish anywhere on the coast of the British provinces, if not nearer than 3 marine miles to land, and have the right to resort to their ports for shelter, wood, and water."

This last expression as to shelter is in reply to the new pretence that such vessels could not resort to provincial ports for shelter "unless in actual distress."

So again Mr. Everett, in his note to Lord Aberdeen of the 10th August, A.D. 1843, p. 122, referring to the expectation of the President as to an early and equitable adjustment, said as follows:—

"This expectation is the result of the President's reliance upon the sense of justice of Her Majesty's Government, and of the fact that, from the year 1818, the date of the Convention, until some years after the attempts of the provincial authorities to restrict the rights of American vessels by colonial legislation, a practical construction was given to the 1st Article of the Convention in accordance with the obvious purport of its terms, and settling its meaning as understood by the United States."

The same assertion of fact is made in Mr. Upshur's despatch to Mr. Everett of the 30th June, A.D. 1843, p. 117, and in Mr. Everett's note to Earl of Aberdeen of the 25th May, A.D. 1844, pp. 123-7.

It is not understood that the Imperial authorities, in reply to these oft-repeated statements as to the practical construction of the Treaty during this period of about twenty years contested them, their replies being limited to thoroughly reasoned arguments about the meaning of the Treaty as drawn from its very terms.

Apparently, none of the pretensions which originated at this period from A.D. 1836 to A.D. 1844. came from Great Britain herself; and it is undoubtedly to this fact that the Acting Secretary alluded in the expression which we have quoted from his Report of the 14th August, A.D. 1839. They were all provincial. Some of them were quite promptly rejected by the Imperial authorities, others never have been fully acquiesced in, and others were acquiesced in only after considerable hesitation and delay.

1. It was claimed, as is set out in Mr. Stevenson's note to Lord Palmerston of the 27th March, A.D. 1841, already referred to, that United States' vessels were to be excluded from British ports unless "in actual distress," and that the provincial authorities had a right to warn them to depart or get under way whenever they should suppose they had remained a reasonable time.

2. It was also claimed, as appears by the questions submitted at the request of the authorities of Nova Scotia to the Law Officers of the Crown in A.D. 1841, that fishermen had no right to purchase wood or obtain water, except under the circumstances of having a full supply in their home ports and

running short through the contingencies of the sea. The Law Officers of the Crown summarily rejected this proposition.

3. What is known as the "headland" proposition, which was covered by the second of the questions referred to, where the word "headland" was used, leading the distinguished legal advisers in their reply to assume that the word was found in the Treaty.

In a note to Phillimore's "International Law," vol. i, p. 233, second edition, he says: "The term 'headland,' however, does not occur in the Treaty. The Law Officers probably gave their opinion on a statement of the colonists in which the word did occur."

These early controversies do not seem to contain clear evidence that the precise question was raised which is to day under discussion, namely, whether by the terms of the Treaty fishing-vessels of the United States waived and abandoned the rights which, in the event of there being no Treaty, might come to them in common with merchant-vessels, as the relations of Canada and the United States became more and more close, and as views about international exchanges of traffic and hospitality became more and more enlightened.

There seems to be nothing in this early correspondence to indicate that there was any clear claim made by the provincials, except as to the rights which fishing-vessels of the United States were guaranteed by the Treaty of A.D. 1818, and as to the limitations which that Treaty imposed on those rights. Indeed, other considerations and questions could hardly have been expected at that period, as commercial relations between Nova Scotia and the United States had commenced but a few years before, and were even then in an inchoate condition.

There is nothing to show that there was any discussion of the precise proposition whether or not fishing-vessels might purchase supplies at provincial ports the same as merchant-vessels might, provided they complied with the customs laws and relied on the same usages as merchant-vessels did, and subjected themselves to the same limitations and restrictions.

The attention of Nova Scotia was, however, later called to this precise question in the correspondence between Captain Daly and the late Provincial Secretary, Mr. Howe, as follows:—

"Sir, "*Provincial Schooner 'Daring,' Gut of Canso, August* 28, 1852.

"On my arrival here this morning from Port Hood I found an American fishing-schooner taking on board empty barrels for her fishing voyage, and as the thing is becoming quite a practice, and as the question has been several times asked me if it can be done, to which I declined giving any answer until I have had the opinion of the Government on the subject.

"I have been told that more than one American vessel has landed a load of herrings from Magdalen Islands in the strait, and fitted out again for the mackerel fishery.

"Our fishermen complain that American vessels, with all their other advantages, should be allowed to fit out so convenient to the fishing ground. As the hook and line fishery has not as yet commenced on Cape Breton shore, I will await your answer in visiting all parts of the strait and Arichat, calling at Plaister Cove on mail day, where you will please direct.

"I am, &c.
(Signed) "JAMES DALY.

"The Honourable Joseph Howe,
"Provincial Secretary, Halifax."

"Sir, "*Provincial Secretary's Office, September* 1, 1852.

"Referring to your letter of the 25th ult., I beg to acquaint you that American vessels which have regularly entered at a port where there is a revenue officer can land fish or purchase barrels; but they have no right to an irregular use of this privilege at places where no officer is stationed.

"I am, &c.
(Signed) "JOSEPH HOWE.

"Captain Daly,
"Commanding schooner 'Daring.'"

The Secretary in his reply uses only the words "American vessels;" but, as Captain Daly was asking specifically about an American fishing-schooner, and as there could be no possible doubt that merchant-vessels might lawfully do the things in the manner stated in the reply of the Secretary, it cannot be questioned that he in his reply also intended to cover fishing-vessels.

As appears by the Appendix attached hereto relative to "warnings" and Circular 371 in A.D. 1886, so in A.D. 1870, four years after the expiration of the first Reciprocity Treaty, and also after the Dominion Government concluded to refuse licences to American fishing-vessels, the objection made with reference to such vessels was simply that they should be prohibited from fishing.

This appears first in the note of the Minister of Justice of Canada, dated the 8th April, A.D. 1870, p. 408, Foreign Relations of the United States, 3rd Session, 41st Congress, wherein he states that "henceforth all foreign fishermen will be prevented from fishing in the waters of Canada;" and this letter was communicated by Sir Edward Thornton to Mr. Fish the 14th April, A.D. 1870. So in the instructions from the English Admiralty in May, A.D. 1870, appearing pp. 415 and 416, which were communicated on the 26th May, A.D. 1870, by Sir Edward Thornton to Mr. Fish, the vessels of Great Britain were expressly directed "not to seize any vessel unless it is evident and can be clearly proved that the offence of fishing has been committed and the vessel itself captured within three miles of land."

It may, perhaps, be justly said that in giving these instructions and the other instructions which we hereafter copy, the Imperial Government was seeking the friendly side; but, nevertheless, such instructions in connection with the other matters to which this paper calls attention are certainly confirmatory proof, even if of slight weight.

It seems that, notwithstanding these official communications from Great Britain to the United

States, and without notice, the fishing-vessels of the United States were later in the season ordered off, and prohibited from taking bait and supplies; and in consequence thereof, the Assistant-Secretary of State, by his Circular under date of the 13th September, A.D. 1870, appearing p. 427, directed an inquiry as to the practice with reference to shipping fish in bond, and with reference to obtaining supplies previous to the date of the first Reciprocity Treaty.

Mr. Jackson, Consul at Halifax, in his Report of the 3rd October, A.D. 1870, p. 428, replied as follows:—

"In no Act is there any prohibition against fishing-vessels visiting colonial ports for supplies. The silence of all the Acts upon this point, and the practice of more than half-a-century under Imperial laws framed expressly for the purpose of carrying into effect the provisions of the Treaty, justify the conclusion that no such prohibition was contemplated. This view of the subject derives additional support from the fact, that at the time of the adoption of the Treaty the mackerel fishing as now carried on was comparatively unknown.

"During the intervening years between 1818 and 1870, throughout all the controversies between the United States and Great Britain on the subject of the fisheries, no question until the present had arisen in reference to supplies. They were always readily procured in colonial ports, and the trade, being profitable to the people of the Colonies, was facilitated by the local authorities."

And again, on p. 431 in the same Report, he says the proceedings were "contrary to all former practice," and that "these rigorous measures were now for the first time adopted."

The Consul-General at Montreal, on the 3rd November, A.D. 1870, p. 433, speaks of these matters as "acts which the captains of American vessels had been permitted to do from time immemorial, as well before as subsequent" to the Treaty.

The "Sessional Papers of Canada," vol. iv, 1871, contain in many places indubitable evidence of the practical construction given to the Law and Treaty on this point, as follows:

Lieutenant Cochrane said in a letter of the 30th September, A.D. 1870:—

"The Collector at St. Andrew's informed me that the Custom-house officers had no orders against allowing American fishing-vessels to go in for salt or stores of any description whatever."

The Lieutenant-Governor of Prince Edward's Island, 23rd November, 1870, speaking of the American fishing-vessels purchasing supplies, said:—

"The people look forward with satisfaction to reopening their ports next summer to their remunerative and welcome visitors."

Lieutenant Cochrane again wrote, 18th November, A.D. 1870:—

"The inhabitants of the Nova Scotia coast, from St. Mary's Bay to Cape Sable, I believe prefer the Americans coming in, as they are in the habit of selling them stores, bait, and ice."

Commander Bateman wrote, 1st November, A.D. 1870:—

"The Collectors of Customs at the places I have been at inform me that they have no instructions to prevent American fishing-vessels from buying supplies, as ice, bait, &c."

Commander Poland wrote, 18th November, A.D. 1870, from Charlotte Town:—

"Every facility is given in the ports of this island to fishermen for obtaining and replenishing their stock of stores and necessaries for fishing."

In the despatch from Earl Kimberley to Lord Lisgar of the 17th March, 1871, the following appears:—

"I think it right, however, to add that the responsibility of determining what is the true construction of a Treaty made by Her Majesty with any foreign Power must remain with Her Majesty's Government, and that the degree to which this country would make itself a party to the strict enforcement of Treaty rights may depend not only on the liberal construction of the Treaty, but on the moderation and reasonableness with which those rights are asserted."

And in another despatch from the same to the same of the 16th February, 1871, appears the following:—

"The exclusion of American fishermen from resorting to Canadian ports, except for the purpose of shelter and of repairing damages therein, purchasing wood, and of obtaining water, might be warranted by the letter of the Treaty of 1818 and by the terms of the Imperial Act 59 Geo. III, cap. 38; but Her Majesty's Government feel bound to state that it seems to them an extreme measure, inconsistent with the general policy of the Empire, and they are disposed to concede this point to the United States' Government under such restrictions as may be necessary to prevent smuggling, and to guard against any substantial invasion of the exclusive rights of fishing which may be reserved to British subjects."

Benefits which Canada, and especially the Maritime Provinces, are receiving from the United States in Matters of Fisheries.

Bait.—Clams are the best bait for hand-line fishing for cod on the Grand Banks and elsewhere. The maritime provinces have no clams, and the need of the Dominion fishermen for clam bait is greater and the quantities required by them in excess of the need and use of Dominion herring bait by fishing-vessels of the United States.

As clam bait is by the Tariff Customs Law of Canada free, it seems to come into the Dominion without much care as to reporting it, and the extent of the transactions is not shown by the Dominion statistics.

The amount of bait exported from only the port of Portland, Maine, direct to ports of Nova Scotia for each of the seasons A.D. 1885, 1886, and 1887, are shown by the copy of the statement of Josiah Chase, Deputy Collector of Customs at the port of Portland, in the Appendix; and other such exports from the United States to the maritime provinces also appear there.

Free Fish.—Canada and Newfoundland enjoyed the privilege of exporting to the United States, free of duty, in the year ending the 30th June, 1886, to the value of 1,065,381 dollars, and in the year ending the 30th June, 1887, to the value of 1,155,674 dollars, according to the statement appearing in

the Appendix headed "Imports of Fish into the United States free of Duty." These amounts exceed the amounts of imports of fish for the corresponding periods subject to duty.

Transhipment in Bond.—By the ruling of the Treasury Department of the United States, large quantities of Dominion fish in ice and Dominion frozen fish are admitted free of duty into the United States. Accordingly, fresh mackerel are caught in the Gulf of St. Lawrence by Dominion fishermen, iced, transferred by them to rail at Port Mulgrave, Pictou, and other ports on the Gulf of St. Lawrence, and shipped free of duty to Portland, Boston, and other points in the United States, notwithstanding the same privilege is refused fishing-vessels of the United States, as shown in this statement. Fish are also frozen at various points of the Dominion as far west as the Manitoba Lakes and as far east as Margaree River in Cape Breton, shipped by rail and vessel, and distributed over the whole eastern section of the United States free of duty, competing with and driving out fish cured by United States' fishermen.

An explanation of this appears in the Appendix.

Leniency of Customs Authorities to Dominion Vessels in the Ports of the United States.—This is sufficiently made clear and practically illustrated by the copies of statements of Lewis B. Smith, Deputy Collector, and William O. McCobb, appearing in the Appendix.

General Reciprocal Benefits.—Substantially all the agricultural products of New Brunswick and Nova Scotia find their market in the United States. It will also be found, notwithstanding there is not any Treaty of Reciprocity nor reciprocal legislation as between the Dominion and the United States, that, nevertheless, the total values imported from the Dominion into the United States for the year ending the 30th June, A.D. 1886, free of duty, was 12,005,563 dollars, as against dutiable merchandize 25,309,103 dollars; and that reverse imports for the same period free of duty were 15,198,167 dollars, against, subject to duty, 29,659,876 dollars.

These values are in excess of the average free imports under the Reciprocity Treaty of A.D. 1854.

These figures are not given as attempting to indicate any balance of benefits *pro* or *con*, but as showing that there has grown up a practical reciprocity of great value, which will inevitably increase with the continuance of friendly relations, and will be destroyed under reverse conditions.

Port Dues, Compulsory Pilotage, and other Charges of like Class.

It is understood that light duties and fees for buoy-service have been exacted from vessels putting in for shelter at sundry ports in Nova Scotia.

The Hon. M. H. Phelan, Consul-General of the United States at Halifax, Nova Scotia, wrote, on the 26th August, A.D. 1886, as follows:—

"The schooner 'City Point,' a fishing-vessel belonging at Portland, Maine, was driven into Halifax by the late storm, with sails torn and otherwise in need of repairs. She reported at the Custom-house, I accompanying the master, and there I paid 1 dollar for harbour duties, 1 dollar for signal charges, and 50 cents for making out papers. I duly entered my protest against all these charges."

Before the Committee of the Senate of the United States on Foreign Relations, as appears by Senate Report No. 1683, 49th Congress, 2nd Session, p. 169, the fishing-schooner "Ontario" put into St. John's, Newfoundland, in June, A.D. 1886, paid light duties, 24 cents a ton on 86 tons; water-rates, 5 cents a ton on 86 tons; pilotage inward and outward, 7 dols. 50 c., although she neither took nor needed water or pilotage, and, it is understood, put in for shelter.

It is understood that light duties are frequently charged United States' fishing-vessels seeking shelter in the waters of Newfoundland.

Efforts to obtain information as to the various charges made in Dominion ports have not resulted very satisfactorily, and either there is a lack of uniformity in the various ports, or our efforts to obtain information have not been sufficiently thorough.

Mr. Phelan to Mr. Adee.

Sir, *United States' Consulate-General, Halifax, Nova Scotia, November 8, 1887.*

Referring to my despatch, dated the 3rd September last, on the liability of American fishing-vessels for pilotage upon entering a Canadian port for shelter under the Treaty of 1818, as stated in that despatch, I addressed the following communication to the Minister of Marine and Fisheries:—

"Hon. George E. Foster,
"Minister Marine and Fisheries, Ottawa.

"Sir, "*United States' Consulate-General, Halifax, Nova Scotia, September 1, 1887.*

"On the 19th ultimo five American fishing-vessels entered the outer harbour of Halifax and anchored under Meagher's Beach for shelter. They entered at the Halifax Custom-house, and on the following day applied for clearances, which were refused because they had not paid pilotage, amounting to 8 dollars for each vessel. The captains say they did not need a pilot, that they came in for shelter only, which was within their Treaty rights. An explanation was made to the Secretary of the Pilots' Commission, who replied that all foreign vessels of over 80 tons were liable for pilotage, and that he could not clear the vessels until it was paid. This Office could not acquiesce in this ruling, and the following telegram was sent to you:

"'Hon. Minister Foster, Ottawa. "'*Halifax, August 20, 1887*

"'Are American fishing-vessels anchoring at the outer entrance Halifax Harbour for shelter liable for pilotage when use of pilot not required, and when such pilotage not exacted of domestic vessels of same class?'

(Signed) "'M. H. PHELAN.'

"After waiting a reasonable time for a reply, and not wishing to detain the vessel, this Consulate-General guaranteed the pilotage if, after an examination, it was found to be conformable to Treaty rights. The vessels were accordingly cleared. The Pilot Commissioners held a meeting and sustained the Secretary in his rulings, but suspended further action pending a decision from you. As the question has arisen several times it should be settled, and with that end in view, I would ask you to pass upon the question submitted in the telegram above.

"I am, &c.

(Signed) "M. H. PHELAN, *Consul-General, United States.*"

To-day I received the following reply:—

"Sir, "*Marine Department, Ottawa, November* 4, 1887.

"I am directed by the Minister of Marine and Fisheries to acknowledge the receipt of your letters of the 1st and 21st September last relative to certain pilotage dues collected from United States' fishing-vessels in the port of Halifax, and your objections to the payment of the same. From a careful examination of the papers submitted, the Minister is of the opinion that the Pilotage Commissioners acted in this case entirely within the scope of their powers as defined by chapter 80, Revised Statutes of Canada, and by Rules framed thereunder and approved by Order in Council.

"As to your contention that United States' fishing-vessels seeking shelter in Canadian ports under the provisions of the Treaty of 1818 can claim exemption from pilotage dues, the Minister is of the opinion that all vessels, whether foreign or not, coming within the limits of a pilotage district, and not exempted by the above-mentioned Act or by the Pilotage Commissioners, under Regulations approved by Governor-General in Council, are liable to a compulsory payment of pilotage dues. The mere fact of the recognition by a Treaty of the right of vessels to come into a harbour for shelter is not of itself a ground of exemption from the payment of such dues.

"I am, &c.

(Signed) "JOHN HARDIE, *Deputy Minister of Marine.*"

The above practically adds a proviso to the Treaty of 1818 something like this:—

"*Provided* such vessels shall pay pilotage, signal, entrance, harbour and such other dues as the Canadian Government may think proper to impose.

"Canadian vessels of 120 tons and under are exempt from pilotage and all other dues. The pilotage claimed from these vessels is in my hands. I do not think they are liable, and submit the question as to payment to the Department. The right claimed by Canada to impose burdens on our fishing-vessels entering her harbours under the Treaty, which are denied all comuercial privileges, should be settled, and the fact should be made known that Canada has one law for American vessels and another for her own of the same class."

I am, &c.

(Signed) M. H. PHELAN.

APPENDIX.

Memorandum concerning "Warnings" from the Minister of Marine and Minister of Fisheries at Ottawa in A.D. 1886.

As appears in the text, the first knowledge of these had by the State Department at Washington was about the 29th May, A.D. 1886, which was several weeks after the "Adams" and "Doughty" were seized, the "Adams" having been seized on the 7th May and the "Doughty" on the 17th May.

The following references are to the Dominion volume of "Correspondence relative to the Fisheries Question, A.D. 1885-87":—

Page 26, it appears the Marquis of Lansdowne wrote Earl Granville on the 25th March, A.D. 1886, inclosing copy of "warning," which his despatch says "was published;" but where published, or to what extent, is not known.

He also inclosed instructions which had been issued to the fisheries officers, &c., dated the 19th March, A.D. 1886; which instructions, as appears by the index of the volume, were confidential. At any rate, it is believed that they were not known either to the United States or its vessels.

The "warning" inclosed purports to bear date the 5th March, A.D. 1886, was signed by the Minister of Marine and Fisheries, and warns all foreign vessels not only from fishing, but from entering except for the purposes specified in the Convention of A.D. 1818.

On the 29th May, A.D. 1886, p. 64, Mr. Bayard called the attention of Her Majesty's Minister at Washington to a copy of Circular No. 371, described below.

June 3, A.D. 1886, p. 66, cables were passed to Earl Rosebery by Mr. Phelps concerning the same matter, and Earl Granville cabled the Marquis of Lansdowne for the purport of Circular No. 371.

This cabling seems to have called the attention of the Home Government to the "warning" purporting to bear date the 6th March, for, on the 4th June, p. 66, a cable is sent to the Marquis of Lansdowne criticizing it.

This is followed by correspondence which appears pp. 66 and sequence, and resulted in the amended "warning," appearing p. 70. This sets out the provisions of the Convention of A.D. 1818, certain provisions of Statute law, avoids specific information, and ends merely with the words, "Of all which you will take notice and govern yourself accordingly."

May 7, A.D. 1886, p. 31, the Commissioner of Customs also issued a "warning" or Circular, known as Circular No. 371, and which, probably, was the only Circular obtaining general publicity. As this bears date the day the "Adams" was seized, of course it could not have come to her knowledge. This also seems to have been criticized in the correspondence already referred to, and the effect of it in its amended form was stated by the *Marquis of Lansdowne*, p. 70, as follows:—"Every fishing-vessel belonging to the United States *found contravening* the existing Canadian Statutes will, if not departing within twenty-four hours *after receiving such* warning, be detained under the conditions prescribed."

Subsequently the Circular was further amended on or about the *12th July*, A.D. 1886, as appears p. 32; and then, for the first time, it was *made specifically clear* that if a vessel had been fishing or preparing to fish, the *twenty-four hours were not to be* allowed her, but an officer was to be put aboard at once.

All these Circulars use the language of the Statute, "preparing to fish within 3 marine miles of the shore," and not the language *now* claimed as the construction of the Statute, "preparing within 3 marine miles of the shore to fish." *In any event they* were contradictory, inconsistent, and misleading.

Exports of Clam Bait to the Dominion.

STATEMENT of Clams exported from the *Port of Portland*, Maine, to the Dominion of Canada, during the Years of 1884, 1885, 1886, and 1887.

Date.	Name of Vessel.	Packages and Contents.	Value.	Whence Exported.
1884	*British schooner*—	Barrels.	Dollars.	
March 24	Hannah Eldredge	398	902	Cape Island, N. S.
April 2	Divina	657	3,942	Lockport, N. S.
,, 2	Nova Stella	560	3,920	Ditto.
June 11	Elder	720	5,040	Ditto.
,, 11	Ocean Bride	630	4,421	Ditto.
,, 21	Annie M. Bell	180	1,638	Pubnico, N. S.
,, 27	Matilda	94	720	Cape Island, N. S.
1885				
March 28	Ellen Maud	686	4,459	Lockport, N. S.
,, 30	Hannah Eldridge	251	1,493	Barrington, N. S.
April 10	Edward T. Russell ..	835	5,428	Lockport, N. S.
,, 20	Blanche	97	631	Lunenburg, N. S.
May 29	Bridgewater Packet ..	870	5,655	Lockport, N. S.
June 1	Ocean Bride	640	3,840	Ditto.
,, 8	Royal Charlie	185	1,110	Barrington, N. S.
1886				
March 24	Alice Louise	223	1,227	Ditto.
,, 31	Nova Stella	363	1,978	Lockport, N. S.
April 5	Ella Maud	717	3,944	Ditto.
,, 9	May	120	710	Shelburne, N. S.
May 29	April	995	5,820	Lockport, N. S.
June 2	Nina Page	230	1,265	Barrington, N. S.
1887				
April 4	Ella Maud	499	2,679	Lockport, N. S.
,, 7	Clifford	295	1,623	Ditto.
May 23	Ella Maud	511	2,856	Ditto.
,, 26	Minnie May	235	1,175	Port Medway, N. S.
		11,024	65,976	

District of Portland and Falmouth, Port of Portland, Maine, October 17, 1887.

I, Josiah Chase, Deputy Collector of Customs for the Port of Portland, Maine, hereby certify that the Customs records aforesaid show exportations of claims in barrels from this port to ports in the Dominion of Canada, during the years 1884, 1885, 1886, and 1887, according to the foregoing statements.

(Seal.) (Signed) JOSIAH CHASE, *Deputy Collector of Customs.*

Custom-house, Boston, Mass., Collector's Office, November 2, 1887.

EXPOREATION of Clams (Bait) from the Port of Boston to the Dominion of Canada during the Fiscal Years ending June 30, 1885, 1886, and 1887, respectively.

July 1, 1884, to June 30, 1885.

Nationality.	Rig.	Name of Vessel.	Barrels.	Value.
				Dollars.
American	Steamer	Carroll	391	2,427
,, ...	,, ...	Worcester	598	4,415
British	Brig	Clio	106	606
,, ...	,, ...	Clyde	97	533
,, ...	Schooner	Cyrene	60	450
,, ...	,, ...	Henrietta	61	384
,, ...	,, ...	Mary E. McDougal ..	20	125
,, ...	,, ...	Narcissus	127	762
,, ...	,, ...	Rival	50	50
,, ...	,, ...	Virgillia..	105	600
		Total	1,615	10,352

July 1, 1885, to June 30, 1886.

American	Steamer	Carroll	315	1,781
,, ...	,, ...	Worcester	190	1,051
British	,, ...	Alpha	100	100
,, ...	,, ...	Dominion	120	305
,, ...	,, ...	Linn O'Dee	100	600
,, ...	Brig	Diadem	50	300
,, ...	,, ...	W. E. Stowe	223	1,115
,, ...	Schooner	Amanda..	60	300
,, ...	,, ...	Blanche O	20	120
,, ...	,, ...	Blizzard	233	1,398
,, ...	,, ...	D. A. Maher	45	250
,, ...	,, ...	Louise	90	450
,, ...	,, ...	Mary Alice	110	550
,, ...	,, ...	Narcissus	224	1,344
,, ...	,, ...	S. G. Irwin	25	125
		Total	1,905	9,789

July 1, 1886, to June 30, 1887.

American	Steamer	Carroll	504	2,869
,, ...	,, ...	Worcester	165	1,050
British	,, ...	Alpha	116	257
,, ...	,, ...	Dominion	65	130
,, ...	,, ...	Yarmouth	164	332
,, ...	Brig	Clio	197	1,083
,, ...	Schooner	Conductor	256	1,350
,, ...	,, ...	Dexter	30	210
,, ...	,, ...	Donzella	111	666
,, ...	,, ...	Mary C...	90	525
,, ...	,, ...	Morris Wilson	85	510
		Total	1,783	8,982

RECAPITULATION.

Fiscal Years.	American.				British.			
	Steam.		Sail.		Steam.		Sail.	
	Barrels.	Value.	Barrels.	Value.	Barrels.	Value.	Barrels.	Value.
		Dollars.				Dollars.		Dollars.
July 1, 1884, to June 30, 1885..	989	6,842	..	..	..	..	626	3,510
July 1, 1885, to June 30, 1886..	505	2,832	..	..	220	905	1,180	6,052
July 1, 1886, to June 30, 1887..	669	3,919	..	..	345	719	769	4,344
Total	2,163	13,593	..	..	565	1,624	2,575	13,906

Grand total: Barrels, 5,303; value, 29,123 dollars.

Respectfully forwarded.

(Signed) J. M. FISKE, *Special Deputy Collector.*

Hospitalities received by Dominion Vessels in United States' Waters.

Dear Sir, *Portland, Maine, October* 15, 1887.

Will you kindly give me answers to the following questions, so far as you can, in your reply following each question with its answer, and merely answering the questions without additional statement? It may be, when I get this, I shall have to trouble you again, but I hope not.

1. How long have you been Deputy Collector of the Port of Portland, Maine?

Answer (1). Twenty-three years last April.

2. Under the laws and regulations, how long may Dominion vessels, whether engaged in the fisheries or otherwise, lie at the Port of Portland before being required to report at the Custom-house when in only for shelter?

Answer (2). Twenty-four hours.

3. In cases where such vessels do not report within twenty-four hours after arrival, what is the practice with reference to obtaining reports from them?

Answer (3). Boarding officer boards all vessels arriving from foreign ports on their arrival, or as soon thereafter as possible. He obtains and deposits at Custom-house manifest of the vessel. This is accepted as a "Report" from the master.

4. During the time you have been Deputy Collector, whether or not there have been numerous cases of Dominion vessels, including vessels engaged in fishing, in our port which have failed to report, though lying more than twenty-four hours after arrival? And, if yes, what penalties have been imposed for such failures during the whole term of your service?

Answer (4). As I remember, there have been many instances of Dominion vessels failing to "report," though lying more than twenty-four hours after arrival, their presence having been overlooked by the boarding officer.

I do not recall from memory a single instance where or when the penalty for such failure was imposed, and find no reference to such payments on the records of this office.

5. In case of such vessels arriving in this port for shelter, are they forbidden or prevented from landing any person aboard of the vessel? And, if yes, are they required to report at the Custom-house simply on account of such landing? Please explain quite fully the practice about this.

Answer (5). "Such vessels" arriving in this port for shelter are not forbidden or prevented from landing any person from on board except *passengers*. In that case a "report" and a "*passenger entry*" is required. The "report" in this case is not of a character requiring an "*entry*" of the vessel. The "passenger entry" is made by the master of the vessel.

6. What has been during that time the practice with reference to purchase of ordinary supplies and fishing supplies by such vessels, and are such vessels required to report at the Custom-house merely in consequence of making such purchases?

Answer (6). The practice in the matter of purchase of ordinary supplies and fishing supplies by such vessels has been that there have been no restrictions upon masters or crews within my recollection relative to such purchases. Vessels would be required to "report" within twenty-four hours in any event, but not "in consequence" of making such purchases.

7. What is the practice with reference to requiring vessels to report who touch in for shelter under Richmond's Island, or other places which are within the limits of this port as known to the law, yet are distant 5 or 10 miles from the Custom-house itself?

Answer (7). No Customs officers are stationed at the points or places named in 7th interrogatory. No reports to my knowledge have been received from vessels seeking shelter under Richmond's Island, or at points distant 5 or six miles from the Custom-house.

8. Have you any statistics, either official or unofficial, showing the number of such vessels seeking shelter at this port during any of the last three or four years? If yes, kindly give them to me; if not, kindly advise me, if you can, where I can obtain them.

Answer (8). There have been sixty-nine such vessels seeking shelter within the past three years at this port, which have laid forty-eight hours. Have no record of number of such vessels not making "report" within the period mentioned.

It is possible that the information you desire on this latter subject may be obtained at the office of Chas. P. Ingraham, Esq., Commercial Wharf.

9. Will you give me, if you can, an official statement of the number of foreign vessels which have arrived at this port during your period of service as Deputy Collector, including those which have arrived only for shelter and have not reported? And, if you cannot give me an official statement, please, if you can, give me the entire number unofficially, or advise me where I can obtain the information.

Answer (9). The whole number of foreign vessels that have arrived at this port during my period of service as Deputy Collector, as ascertained by the records of this office, has been 6,974. There is not included in this number vessels arriving only for shelter, except those reported (sixty-nine) in my answer to 8th interrogatory.

10. Kindly give me the total amount of penalties which have been imposed on all such vessels during your whole period of service for failure to report.

Answer (10). No penalties have been imposed on any such vessel during my whole period of service.

See also second paragraph of my answer to your fourth interrogatory.

11. What fees, if any, are required from vessels arriving at this port for delay in not reporting at the custom-house? And what fees are required from them on reporting?

Answer (11). No fees are required from vessels for delay in not reporting, and none required from them on reporting within twenty-four hours.

12. Are any fees required from vessels remaining less than forty-eight hours? And what fees for those remaining over forty-eight hours?

Answer (12). No fees are required from vessels remaining less than forty-eight hours.

Fees for those remaining over forty-eight hours are as follows, viz., vessels 100 tons and under, entry 1 dol. 50 c.; surveyor, 1 dol. 50 c. if with dutiable cargo, 67 cents if with free cargo; vessels *over* 100 tons, entry 2 dol. 50 c.; surveyor, 3 dollars if with dutiable cargo, 67 cents if free cargo; tonnage dues, 3 cents per ton, to be paid five times in each calendar year, or 15 cents per ton for the twelve months.

Very truly yours,
(Signed) LEWIS B. SMITH, *Deputy Collector.*

Answered from 1 to 12, as above, at Custom-house, Portland, Maine, October 17, 1887.
(Signed) LEWIS B. SMITH, *Deputy Collector.*

My dear Sir, *Booth Bay, November* 4, 1887.

In answer to your telegram to Deputy Collector Carlisle, of Booth Bay, Maine, I will state that I have been a marine reporter at Booth Bay for a number of years for the "Boston Daily Post," of Boston, Mass., to the 24th October, and at the present time I am not a reporter for the "Boston Post."

The number of vessels that has arrived and sailed from this port for the past three years I can give account from three books that I used in taking the names in, and parts of them are lost. The books I have has been in the last three years.

The number of vessels from the coast of New Brunswick, also from the coast of Nova Scotia, by count, is 350.

I have taken them from from the books by count as often as they appear from day to day, for I have reported daily. Some of the vessels' names will appear a number of times during the year. The probability is, a great many more have put in at night and sailed in the morning before I could report them. I will say all vessels put in for shelter and storms at sea. Also, I have learned the facts as above in the course of my duties as a marine reporter.

Yours truly,
(Signed) W. O. McCOBB.

Dear Sir, *Custom-house, Wiscasset, Maine, Collector's Office, November* 3, 1887.

Twenty British vessels have entered at this port during the past three years.

Very truly yours,
(Signed) EDWIN AMSDEN.

Wm. E. Reed, Esq., Booth Bay, Maine.

Instructions of the English Admiralty—Seizures not to be made except Vessels actually Fishing—May 26, 1870.

Mr. Thornton to Mr. Fish.

(No. 257.)
Sir, *Washington, May* 26, 1870.

In compliance with instructions which I have received from the Earl of Clarendon, I have the honour to inclose, for the information of the Government of the United States, copies of letters which have been addressed by the Admiralty to Vice-Admiral George C. Wellesley, commanding Her Majesty's naval forces on the North America and West Indies Stations, and of a letter from the Colonial Department to the Foreign Office, from which you will see the nature of the instructions to be given to Her Majesty's and the Canadian officers who will be employed in maintaining order at the fisheries in the neighbourhood of the coasts of Canada.

(Signed) EDW. THORNTON.

Mr. Wolley to Vice-Admiral Wellesley.

Sir, *Admiralty, April* 9, 1870.

I am commanded by my Lords Commissioners of the Admiralty to transmit, for your information and guidance, the inclosed copies of Foreign Office letters, dated the 2nd, 7th, and 9th instant, referring to the Resolution of the House of Representatives at Washington in regard to the intention of the Government of the Dominion of Canada to suspend the licences to foreign vessels for the inshore fisheries on the coasts of the Dominion. My Lords desire that you will detach a sufficient force to Canadian waters to protect Canadian fishermen and to maintain order, and you are to instruct the senior officer of such force to co-operate cordially with any United States' force sent on the same service.

I am, &c.
(Signed) THOMAS WOLLEY.

P.S.—The following telegram has been sent this day to Her Britannic Majesty's Consul at New York:—

"Please to communicate the following instructions to the Senior Naval Officers at Halifax and Bermuda by first opportunity:

"Admiral Wellesley to make preparations at once for sending vessels to protect Canadian fisheries in concert with United States' naval authorities. Instructions sent to Halifax by to-day's post."

Mr. Lushington to Mr. Hammond.

Sir, *Admiralty, May* 9, 1870.

In reply to your letter of this day requesting that copies of the recent instructions given to Vice-Admiral Wellesley for the protection of the Canadian fisheries may be sent to you for communication to the Government of the United States, I am commanded by my Lords Commissioners of the Admiralty to transmit to you a copy of a letter addressed to the Vice-Admiral on the 9th April, of which you were informed by letter of the same date, and of a letter addressed to him on the 5th instant on a representation from the Secretary of State for the Colonies.

My Lords request that you will lay the same before the Earl of Clarendon.

I am, &c.
(Signed) VERNON LUSHINGTON.

Mr. Rogers to the Secretary of the Admiralty.

Sir, *Downing Street, April* 30, 1870.

In Mr. Secretary Cardwell's letter to the Lords Commissioners of the Admiralty of the 12th April, 1866, it was stated that American vessels should not be seized for violating the Canadian fishing laws "except after wilful and persevering neglect of the warnings which they may have received, and in case it should become necessary to proceed to forfeiture, cases should, if possible, be selected for that extreme step, in which the offence has been committed within 3 miles of land."

The Canadian Government has recently determined, with the concurrence of Her Majesty's Ministers, to increase the stringency of the existing practice of dispensing with the warnings hitherto given, and seizing at once any vessel detected in violating the law.

In view of this change and of the questions to which it may give rise, I am directed by Lord Granville to request that you will move their Lordships to instruct the officers of Her Majesty's ships employed in the protection of the fisheries that they are not to seize any vessel unless it is evident and can be clearly proved that the offence of fishing has been committed and the vessel itself captured within 3 miles of land.

I am, &c.
(Signed) F. ROGERS.

Mr. Wolley to Vice-Admiral Wellesley.

Sir, *Admiralty, May* 5, 1870.

With reference to my letter of the 9th April last in regard to the protection of Canadian fisheries, I am commanded by my Lords Commissioners of the Admiralty to transmit to you, for your information and guidance, the inclosed copy of a letter from the Under-Secretary of State for the Colonies, dated the 30th ultimo, relative to the recent determination to increase the stringency of the existing practice by dispensing with the warnings hitherto given, and seizing at once any vessel detected in violating the law.

My Lords desire me to remind you of the extreme importance of commanding officers of the ships selected to protect the fisheries exercising the utmost discretion in carrying out their instructions, paying special attention to Lord Granville's observation that no vessel should be seized unless it is evident and can be clearly proved that the offence of fishing has been committed, and that the vesse is captured within three miles of land.

I am, &c.
(Signed) THOMAS WOLLEY.

Mr. Holland to the Under-Secretary of State for Foreign Affairs.

Sir, *Colonial Office, May* 13, 1870.

I am directed by Earl Granville to acknowledge the receipt of your letter of the 9th instant, requesting to be furnished, for communication to the Government of the United States, with copies of the instructions issued to the Commanders of the Canadian vessels engaged in the protection of the fisheries.

Lord Granville desires me to state, for the information of Lord Clarendon, that the Governor-General of the Dominion has been requested by telegraph to forward to this Office any instructions already issued on the subject, or that may be issued in consequence of Lord Granville's despatch to the Governor-General, of which a copy is inclosed.

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

Lord Granville to Sir John Young.

Sir, *Colonial Office, April* 30, 1870.

I have the honour to transmit to you the copy of a letter which I have caused to be addressed to the Admiralty respecting the instructions to be given to the officers of Her Majesty's ships employed in the protection of the Canadian fisheries.

Her Majesty's Government do not doubt that your Ministers will agree with them as to the propriety of these instructions, and will give corresponding instructions to the vessels employed by them.

I have, &c.
(Signed) GRANVILLE.

His Excellency the Right Honourable Sir John Young, Baronet, &c.

Importations of Frozen Fish from the Dominion to the United States.

The following references and extracts are made from "The Reply of the Secretary of the Treasury" to the Resolution of the House of Representatives concerning the interpretation of the Tariff Law relative to duties on fish, Executive document No. 78, House of Representatives, 49th Congress, 2nd Session, pp. 1 to 37 of the Appendices:—

Laflin and Co., of Chicago, wrote the Secretary of the Treasury, the 26th December, A.D. 1885, that they were called on to pay at Port Huron 90 dollars duties "on a car-load of frozen smelts from New Brunswick;" that "Manitoba for the past two years has flooded the country with their fresh-water frozen fish, duty free," and that at the Sault Saint Marie, Michigan, large quantities of fish were imported, caught by the Canadians at the Lizard's Islands, and were shipped to Detroit and as far as Buffalo.

On the 30th January, A.D. 1886, the Assistant-Secretary of the Treasury (p. 18) wrote the Collector of Customs at St. Vincent, Minnesota, referring to the fact that large quantities of fresh fish, caught in the lakes of Manitoba, and naturally frozen, are imported into the port named free of duty.

On the 9th February, A.D. 1886, Percy L. Shuman, Chicago (p. 20), wrote to the Secretary of the Treasury explaining at length the imports of frozen smelts from New Brunswick and Nova Scotia.

On the 18th February, A.D. 1886, C. W. Outhit wrote from Halifax, Nova Scotia, to the Secretary of the Treasury that he had made a shipment to Chicago of frozen fish for immediate consumption.

G. L. Young, of St. John, New Brunswick (p. 29), wrote, the 14th April, A.D. 1886: "Shipped a car-load of frozen herring consigned to Chicago."

On the 19th October, A.D. 1886, the Collector at Bangor, Maine (p. 35), wrote the Secretary of the Treasury concerning the freezing of salmon at Margaree Harbour, Cape Breton, for importation into the United States.

It appears from the correspondence that the opinion of the Department at first changed as to the true construction of the Law; but the final conclusion is found in the following extract from the letter of the Acting Secretary of the Treasury of the 18th November, A.D. 1886, to R. J. Godwin and Sons, New York City (p. 37):—

"The circumstances surrounding each importation will have to be taken into consideration by the Collectors at the ports of arrival; but the fact that fish are frozen is not sufficient in itself to make them dutiable, if the other circumstances surrounding the importation are sufficient to establish the fact that they are imported fresh for immediate consumption."

Hostile Proceedings against United States' Fishing-vessels have always been without Warning.

In the text, and also in the Appendix concerning "warnings," in A.D. 1886, it appears that during the period from A.D. 1836 to A.D. 1839, as well as in A.D. 1886, these severe proceedings were commenced against vessels of the United States in breach of the before-existing practices, for the continuance of which the vessels of the United States might well look, and without that clear and seasonable warning or notice which is to be expected as among friendly nations.

In A.D. 1870, as the following extracts will show, not only was there no warning or notice, but, on the other hand, there was such diplomatic communications from Great Britain as justly entitled the United States to expect the contrary.

We have already referred to the communication of the Minister of Justice of the 8th April, A.D. 1870, a copy of which was sent by Sir Edward Thornton to Mr. Fish of the 14th April, A.D. 1870, and also to the instructions from the Admiralty, communicated by Sir Edward Thornton to Mr. Fish the 26th May, A.D. 1870, as already stated, full copies of which appear in the Appendix.

Whether the United States, in view of these communications, had a right to assume that there would be no hostile proceedings against their vessels for buying bait or supplies, or for anything except fishing, is a matter of deduction; but that there might be no possibility of misunderstanding, Mr. Fish made inquiries of Sir Edward Thornton on the 8th June, A.D. 1870, and Sir Edward Thornton replied, the 11th June, 1870, "Foreign Relations of the United States, 3rd Session, 41st Congress," pp. 420 and 421, his reply containing the following:—

"I had the honour to receive yesterday your note of the 8th instant relative to an apparent discrepancy between the instructions issued by Vice-Admiral Wellesley, inclosed in my note of the 3rd instant, and those given by the Admiralty to him which accompanied my note of the 26th ultimo. You are, however, quite right in not doubting that Admiral Wellesley, on the receipt of the later instructions addressed to him on the 5th ultimo, will have modified the directions to the officers under his command, so that they may be in conformity with the views of the Admiralty. In confirmation of

this I have since received a letter from Vice-Admiral Wellesley, dated the 30th ultimo, informing me that he had received instructions to the effect that officers of Her Majesty's ships employed in the protection of the fisheries should not seize any vessel unless it were evident, and could be clearly proved, that the offence of fishing had been committed and the vessel itself captured within 3 miles of land."

Notwithstanding all this, it appears by the letter of Mr. Hall, dated Charlottetown, 19th August, A.D. 1870, that Her Majesty's steamers "Valorous" and "Plover" had closed up all branches of trade, including landing of mackerel in ports of Prince Edward's Island, ordered off a Gloucester schooner, and would not allow her to take bait or supplies.

On the 25th of the same August the Consul at Halifax wrote to Mr. Fish, p. 423, that it appeared by the "Halifax Morning Chronicle" transhipment in bond from Canadian and other provincial ports of American-caught fish had been prohibited: and on the 5th September, A.D. 1870, the same Consul communicated to Mr. Fish, p. 424, certain correspondence with Her Britannic Majesty's Vice-Admiral, showing that the Dominion authorities had issued orders prohibiting ice, bait, and other supplies being furnished in the colonial ports to American fishermen; and the Consul said this was neither announced nor enforced "until after the commencement of the fishing season and after our fishing-vessels were on their voyages to the fishing-grounds."

The Vice-Admiral, in his letter of the 3rd September, A.D. 1870, p. 426, seems to have supposed that notice of his orders had been sent to the United States' Secretary of State; but it will sufficiently appear from the despatch of Mr. Fish to the Consul-General at Montreal of the 29th October, A.D. 1870, p. 331, that to that time he had not received notice of the new instructions, and had apparently heard of the proceedings, or intended proceedings in accordance with them, only by reports from the Consular officers and from the parties interested. Indeed, so clear is this, that the Secretary proceeds on the following assumption: "These alleged causes of seizure are regarded as pretensions of over-zealous officers of the British navy and the colonial vessels."

Also, the Assistant Secretary of State, in his despatch to the Consul at Halifax, 13th September, A.D. 1870, p. 427, said: "It is understood that the Government of the Dominion of Canada is prohibiting vessels of the United States," &c.; showing that even to that date the Department had no positive knowledge, and that their understanding was that the orders came from the Dominion and not from the Imperial authorities.

In the extract made in the text from the Report of the Consul-General of the United States at Montreal of the 3rd November, A.D. 1870, p. 433, he stated that "no adequate nor suitable notice was given to the captains of American fishing-vessels" of this change of policy; and, indeed, taking it altogether, it seems undoubted that, notwithstanding the Imperial authorities at the outset gave the United States diplomatic advices that proceedings would be taken only for actual fishing within 3 miles from the shore, the whole policy was changed, and fishing-vessels of the United States were driven out of Dominion ports without any formal diplomatic notice to the United States thereof, and without any explanation whatsoever to enable either the Department of State or the owners of vessels to understand the meaning and extent of the change.

Subsequently, vessels were seized for mere purchase of supplies, of which one, the "White Fawn," was taken into St. John and acquitted on the ground that there was no Statute authorizing her seizure. Another, the "J. H. Nickerson," was taken into Halifax and condemned, the Court holding the reverse doctrine.

IMPORTS of Fish into the United States free of Duty.

1885–86.

Month.	Fresh.				Lobsters, Canned and Preserved.	All other.
	Salmon.		All other.			
1885.	Lbs.	Dollars.	Lbs.	Dollars.	Dollars.	Dollars.
July	402,103	38,515	1,552,858	54,103	80,786	13,072
August	103,012	11,356	1,074,551	36,410	83,860	2,795
September	64,078	6,095	1,732,636	45,246	55,163	281
October	24,223	2,349	2,031,370	45,074	25,334	505
November	27,312	2,814	1,337,430	33,634	6,692	500
December	52,637	6,426	1,872,351	58,940	1,863	343
1886.						
January	25,377	3,309	2,055,411	48,704	906	482
February	422	46	2,241,201	46,425	5	367
March	350	94	1,286,997	27,629	357	807
April	1,099	523	572,659	16,432	3,716	13,429
May	58,766	8,066	1,623,065	42,506	4,614	15,512
June	663,341	65,196	2,352,258	70,692	75,686	19,014
Totals for year	1,422,720	144,789	19,732,787	625,795	338,982	67,107

1886-87.

Month.	Fresh.				Lobsters, Canned and Preserved.	All other.
	Salmon.		All other.			
1886.	Lbs.	Dollars.	Lbs.	Dollars.	Dollars.	Dollars.
July	242,266	24,157	1,750,934	52,940	94,413	14,017
August	90,592	9,746	1,617,858	52,377	92,131	2,672
September	42,726	4,248	1,679,527	40,939	38,382	36
October	11,250	1,381	1,962,028	50,744	16,291	630
November	2,431	379	1,525,621	36,527	7,909	678
December	1,170	122	2,055,807	58,496	20,764	721
1887.						
January	6,555	664	3,849,186	90,751	28	271
February	2,652	268	4,840,855	75,662	3,990	301
March	9,043	987	2,443,079	47,866	15,393	788
April	3,017	794	653,617	16,838	8,956	1,086
May	38,851	5,623	2,070,797	47,190	3,408	29,127
June	653,337	58,465	2,979,817	73,885	35,402	19,038
Totals for year	1,104,090	106,553	27,301,586	643,113	337,047	68,561

The Table shows that the heaviest imports of fresh salmon occur in the summer months; while the imports of all other (fresh) fish are largest at two seasons of the year—summer and winter.

Comparison of Imperial and Dominion Legislation, showing Unjust Discrimination by the Latter against the United States.

[Imperial Statutes, 46 & 47 Vict., cap. 22. "Sea Fisheries Act, 1883."]

Exclusive Fishery Limits.

7. (1) A foreign sea-fishing boat shall not enter within the exclusive fishery limits of the British Islands, *except for purposes recognized by international law*, or by any Convention, Treaty, or arrangement for the time being in force between Her Majesty and any foreign State, or for any lawful purpose.

(2) If a foreign sea-fishing boat enters the exclusive fishery limits of the British Islands, (*a*) the boat shall return outside of the said limits so soon as the purpose for which it entered has been answered; (*b*) no person on board the boat shall fish or attempt to fish while the boat remains within the said limits; (*c*) such regulations as Her Majesty may from time to time prescribe by Order in Council shall be duly observed.

(3) In the event of any contravention of this section on the part of any foreign sea-fishing boat, or of any person belonging thereto, the master or person for the time being in charge of such boat shall be liable on summary conviction to *a fine not exceeding in the case of the first offence ten pounds, and in the case of a second or any subsequent offence twenty pounds.*

[Dominion Statutes, 49 Vict., cap. 114.]

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

[Reserved by the Governor-General on Wednesday, June 2, 1886, for the signification of the Queen's pleasure thereon. Royal Assent given by Her Majesty in Council on the 26th day of November, 1886. Proclamation thereof made on the 24th day of December, 1886.]

Whereas it is expedient, for the more effectual protection of the inshore fisheries of Canada against intrusion by foreigners, to further amend the Act intituled "An Act respecting Fishing by Foreign Vessels," passed in the thirty-first year of Her Majesty's reign, and chaptered sixty-one:

Therefore Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

(1) The section substituted by section 1 of the Act 33 Vict., cap. 15, intituled "An Act to amend the Act respecting Fishing by Foreign Vessels," for section 3 of the hereinbefore recited Act is hereby repealed, and the following section substituted in lieu thereof:—

"3. Any one of the officers or persons hereinbefore mentioned may bring any ship, vessel, or boat being within any harbour in Canada, or hovering in British waters *within three marine miles of any of the coasts, bays, creeks, or harbours in Canada*, into port and search her cargo, and may also examine the master upon oath touching the cargo and voyage; and if the master or person in command does not truly answer the questions put to him in such examination, he shall incur a penalty of 400 dollars; *and if such ship*, vessel, or boat is foreign, or not navigated according to the laws of the United Kingdom, or of Canada, and (*a*) has been found fishing or preparing to fish, or to have been fishing in British waters within three marine miles of any of the coasts, bays, creeks, or harbours of Canada, not included within the above-mentioned limits, without a licence, or after the expiration of the term named in the last licence granted to such ship, vessel, or boat, under section 1 of this Act, *or* (*b*) *has entered such waters for any purpose not permitted by Treaty or Convention, or by any law of the United Kingdom, or of Canada*, for the time being in force, *such ship*, vessel, or boat, and the tackle, rigging, apparel, furniture, stores and cargo thereof *shall be forfeited*."

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

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

History of Legislation concerning the Extension across the State of Maine of the Canadian Pacific Railway.

The Legislature of Maine, by the Act of the 2nd February, A.D. 1871, entitled "An Act to incorporate the Penobscot and Lake Megantic Railroad Company," incorporated certain persons, including Hon. J. H. Pope and Sir A. T. Galt, with the right to construct a railroad in Maine from the line of the European and North American Railway to the St. Francis and Lake Megantic International Railroad, "or to any other railroad which might be constructed from Lennoxville in the Province of Quebec to the east line of the State of Maine."

By the Act approved the 25th February, A.D. 1881, cap. 65, the same Legislature changed the title of the Company to "The International Railway Company of Maine," and amended section 10 of the Act of the 2nd February, A.D. 1871, to read as follows:—

"Section 10. Said corporation shall have power to make, order, and establish all necessary byelaws and regulations consistent with the constitution and laws of this State for its own government, and for the due and orderly conducting of its affairs and management of its property; and it is also hereby authorized and empowered to make connection with any other railroad corporation; *to lease or sell its line of railroad and property, either before or after its completion, to any other railroad company, either domestic or foreign;* to take a lease of or buy any other connecting line of railroad and property, whether domestic or foreign, either before or after its completion; or to amalgamate its stock with the stock of any connecting railroad, whether domestic or foreign, in order to form with such railroad a single corporation, upon such terms as may be mutually agreed upon, which lease, sale, purchase, or amalgamation shall be binding upon the parties according to the terms thereof."

By the Act approved the 16th February, A.D. 1885, cap. 403, the Charter was amended so as to authorize a change of the route in order to cross Moosehead Lake.

This route being found impracticable, the Legislature again, by the Act of the 14th March, A.D. 1887, cap. 256, empowered the Company to go to the southward of Moosehead Lake, although by so doing it enabled it to parallel the road of the Bangor and Piscataquis Railroad Company.

The railroad of the European and North American Railway, now the Maine Central Railroad Company, is near the eastern line of the State of Maine, and extends from Bangor, in the State of Maine, to such eastern line, where it connects with the New Brunswick Railway; which latter railway crosses the St. John River by a bridge, reaches St. John, in New Brunswick, and thence by the Governmental railway connects with Halifax in Nova Scotia and various points on the Gulf of St. Lawrence.

The New Brunswick Railway comprehends substantially all the railway system of New Brunswick, and is one of the subordinate corporations of the Canadian Pacific Railway.

That portion of the European and North American Railway interposing between the International Railway of Maine, authorized by the above Charter of the 2nd February, A.D. 1871, and the east line of the State of Maine, is fifty-six miles in length.

The Canadian Pacific Railway has, by contract, the right of joint occupation for running its trains over this piece of railway.

Therefore the Act of the 2nd February, A.D. 1871, with its amendments and the other arrangements above described, give a continuous line from Lennoxville or Sherbrooke, in the Province of Quebec, across the State of Maine to St. John and Halifax.

The Canadian Pacific Railway, with its new bridge across the St. Lawrence River at Lachine, has an unbroken railway from the Pacific Ocean to Lennoxville and Sherbrooke, and now controls the line from Sherbrooke and Lennoxville to the east line of the State of Maine, and also the above Charter of the 2nd February, A.D. 1871, with all its amendments.

This line in Maine is being nominally constructed by the Atlantic and North-west Railway, one of the subordinate corporations of the Canadian Pacific Railway system, and the same subordinate corporation which constructed the new St. Lawrence bridge at Lachine.

Therefore after this line in Maine is completed, the Canadian Pacific Railway can run its trains across the State of Maine continuously to and from the Pacific Ocean and all intermediate points, to and from tide-waters at St. John and Halifax and various termini on the Gulf of St. Lawrence, so far avoiding delivery or receipt of traffic to or at New York, Boston, or Portland, the latter an important seaport in the very State by whose comity it is enabled to extend its line to the maritime provinces of Canada.

Sub-Appendix in (B).

Mr. Phelan to Mr. Porter.

Sir, *United States' Consulate-General, Halifax, August* 26, 1886.

I HAVE the honour to acknowledge the receipt of instructions, dated the 19th August, 1886, directing me to ascertain and report the precise formalities involved in our fishing-vessels reporting at a Canadian custom-house, and whether it implies entry and clearance or payment of port charges.

In obedience to these instructions, I have to report that every fishing-vessel of the United States entering a harbour in the maritime provinces of Canada is required to enter and clear the same as a merchant-vessel, and pay harbour dues and, if over 80 tons, pilot dues. Canadian vessels in the coasting trade are exempt from these charges. Every fishing-vessel of the United States entering the harbour of Halifax is required, in addition to the above charges, to pay on every entry a signal tax of 1 dollar, and in all cases 25 cents, and in some ports 50 cents, for making out papers. Canadian fishing-vessels are exempt from this tax. This morning the "City Point," released on bond, entered the harbour of Halifax for repairs. Her master reported at this Consulate-General; I accompanied him to the custom-house to report, when the sum of 1 dollar was exacted as a signal tax and 25 cents for making out the papers. I called on Collector Ross, and pointed out the inconsistency of requiring the payment of a tax to secure commercial privileges in the port, and then denying them the privileges so secured. Mr. Ross very courteously stated that he recognized the delicate character of his duties towards American fishermen, and endeavoured to discharge them honestly and as kindly as possible; that the fees paid were of no benefit to him; he had no discretion but to collect them. I paid the fees

under protest, and send you herewith receipts for the same. I overlooked the Harbour-master. He sent a boat, and notified the captain to call at the office and pay his harbour dues. I paid them under protest, and send you herewith the receipt for the amount of 1 dollar, making a total of fees in the harbour of Halifax for this entry of 2 dol. 25 c. I also send you receipts for fees paid at Shelburne and Liverpool by the same vessel, amounting to 2 dol. 75 c., being 1 dol. 50 c. for Shelburne and 1 dol. 25 c. for Liverpool.

* * * * *

I am, &c.
(Signed) M. H. PHELAN.

(Inclosure 1.)

Receipt for Halifax Signal Dues.

Custom-house, Halifax, Nova Scotia, August 25, 1886.

Received from the master of the vessel "City Point," of Portland, Maine, from Western Banks, the sum of 1 dollar on entry, on account of the service of the signal-station at Halifax for the present voyage.

(Seal.) (Signed) S. NOBLE, JR., *Collector.*

Endorsed:
Paid under protest.
(Signed) M. H. PHELAN,
United States' Consul-General.

(Inclosure 2.)

Receipt for Harbour-master's Fees.

Harbour-master's Office, 60, *Bedford Row, Port of Halifax, Nova Scotia, August* 25, 1886.

Received from Captain Keene, master of "City Point," burthen 59 tons, the sum of 1 dollar, being amount of Harbour-master's fees.

(Signed) GEO. McKERRDOR, *Harbour-master.*

Endorsed:
Paid under protest.
(Signed) M. H. PHELAN,
United States' Consul-General.

(Inclosure 3.)

Certificate of Entry of Schooner "City Point."

(No. A. 6.) *Inwards, Port of Halifax.*

In the schooner "City Point," of Portland, Maine, 59 tons register, ten men, Stephen Keene master for the present voyage, from the Western Banks, freight in full, tons weight, tons measurement, freight to be landed at this port.

900 quint. green codfish, 3 casks cod oil.

(Seal of Surveyor of Customs.)

Entered this port to make repairs.

I, Stephen Keene, master of the ship or vessel called the "City Point," of 59 tons measurement or thereabouts, last cleared from the port of Shelburne, do solemnly swear that, since the said vessel was so cleared, I have not broken bulk, nor has any part of her cargo been discharged or landed, or moved from the said vessel; and I further swear that the manifest now exhibited by me, and hereto annexed, doth, to the best of my knowledge and belief, contain a full, true, and correct account of all the goods, wares, and merchandize laden on board such vessel at the said port of Shelburne, or at any port or place during her present voyage, except those reported and landed according to law at

Sworn to at Halifax, the 25th day of August,
1886, in the presence of (Signed) STEPHEN KEENE, *Master or Purser.*
(Signed) A. D. B. BRENNIN, *Collector.*

(Inclosure 4.)

Receipt for Harbour Dues at Shelburne.

Capt. Step. Keene, *Dr.* *Port of Shelburne, Nova Scotia,*

To harbour dues, commencing from June 30, 1886.

Dol. c.		Received payment,
1 00		One ½ dollar.
0 50	"Citie Pointe,"	
1 50	(Signed)	JOHN LODICTI, *Harbour master.*

	Dol. c.
Amount harbour dues	1 00
Making out papers	0 50
	1 50

(Inclosure 5.)

Receipt for Harbour Dues at Liverpool,

Harbour-master's Office, Liverpool, Nova Scotia, April 21, 1886.

Schooner "City Point," 59 tons.

To W. A. Kenney, *Dr., Harbour-master.*

	Dol. c.
arbour-master's dues	1 00
Clearance	0 25
	1 25

Received payment,
(Signed) W. A. KENNEY, *Harbour-master.*

Appendix (C).

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

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

ARTICLE I.

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

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

This provision would involve a surrender of fishing rights, which have always been regarded as the exclusive property of Canada, and would make common fishing grounds of the territorial waters which, by the law of nations, have been invariably regarded, both in Great Britain and the United States, as belonging to the adjacent country. In the case, for instance, of the Baie des Chaleurs, a peculiarly well-marked and almost land-locked indentation of the Canadian coast, the 10-mile line would be drawn from points in the heart of Canadian territory, and almost 70 miles distance from the natural entrance or mouth of the bay. This would be done in spite of the fact that, both by Imperial legislation and by judicial interpretation, this bay has been declared to form a part of the territory of Canada. (See Imperial Statute 14 & 15 Vict., cap. 63; and Mouat *v.* McPhee, 5 Superior Court of Canada Reports, p. 66.)

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

It was not known to involve the surrender of rights "which had always been regarded as the exclusive property of Canada," or to "make common fishing-ground of territorial waters, which, by the law of nations, have been invariably regarded, both in Great Britain and the United States, as belonging to the adjacent country."

The case of the Baie des Cha-

Ad interim Arrangement proposed by the United States' Government.

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

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

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

Observations on Mr. Bayard's Memorandum.

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

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

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

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

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

The second paragraph of the Ist Article does not incorporate the exact language of the Convention of 1818. For instance, the words "and for no other purpose whatever" should be inserted after the mention of the purposes for which vessels may enter Canadian waters, and after the words "as may be necessary to prevent" should be inserted, "their taking, drying, or curing fish therein, or in any other manner abusing the privileges reserved," &c.

Reply to "Observations" on Proposal.

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

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

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

Ad interim Arrangement proposed by the United States' Government.

of the privilege reserved by said Convention to the fishermen of the United States.

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

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

Observations on Mr. Bayard's Memorandum.

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

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again had access to the inshore fisheries.

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

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

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

The Baie des Chaleurs is 16¼ miles wide at the mouth, measured from Birch Point to Point Macquereau; contains within its limits several other well-defined bays, distinguished by their respective names, and, according to the "observations," a distance of almost 70 miles inward may be traversed before reaching the 10-mile line.

The Delaware Bay is 11¼ miles wide at the mouth, 32 miles from which it narrows into the river of that name, and has always been held to be territorial waters, before and since the case of the "Grange" (an international case) in 1793, down to the present time.

In delivering Judgment in the case of the "Washington," the

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

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

ARTICLE II.

Pending a definitive arrangement on the subject, Her Britannic Majesty's Government agree to instruct the proper Colonial and other British officers to abstain from seizing or molesting fishing-vessels of the United States unless they are found within 3 marine miles of any of the coasts, bays, creeks, and harbours of Her Britannic Majesty's dominions in America, there fishing, or to have been fishing or preparing to fish within those limits, not included within the limits within which, under the Treaty of 1818, the fishermen of the United States continue to retain a common right of fishery with Her Britannic Majesty's subjects.

This Article would suspend the operation of the Statutes of Great Britain and of Canada, and of the provinces now constituting Canada, not only as to the various offences connected with fishing, but as to Customs, harbours, and shipping, and would give to the fishing-vessels of the United States privileges in Canadian ports which are not enjoyed by vessels of any other class, or of any other nation. Such vessels would, for example, be free from the duty of reporting at the Customs on entering a Canadian harbour, and no safeguard could be adopted to prevent infraction of the Customs Laws by any vessel asserting the character of a fishing-vessel of the United States.

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

ARTICLE II.

The objections to this Article will, it is believed, be removed by a reference to Article VI, in which "the United States agrees to admonish its fishermen to comply" with Canadian Customs Regulations, and to co-operate in securing their enforcement. Obedience by American fishing-vessels to Canadian laws was believed, and certainly was intended, to be secured by this Article. By the consolidation, however, of Articles II and VI, the criticism would be fully met.

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ARTICLE III.

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

Observations on Mr. Bayard's Memorandum.

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

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

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

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

For these reasons, the Article in the form proposed is inadmissible; but Her Majesty's Government are not indisposed to agree to the principle of a joint inquiry by the naval officers of the two countries in the first instance, the vessel to be sent for trial at Halifax if the naval officers do not agree that she should be released.

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

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ARTICLE III.

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

ARTICLE IV.

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

This Article is also open to grave objection. It proposes to give the United States' fishing-vessels the same commercial privileges as those to which other vessels of the United States are entitled, although such privileges are expressly renounced by the Convention of 1818 on behalf of fishing-vessels, which were there-

ARTICLE IV.

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

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Regulations and payment of the same port charges as are prescribed for other vessels of the United States.

Observations on Mr. Bayard's Memorandum.

after to be denied the right of access to Canadian waters for any purpose whatever, except those of shelter, repairs, and the purchase of wood and water. It has frequently been pointed out that an attempt was made, during the negotiations which preceded the Convention of 1818, to obtain for the fishermen of the United States the right of obtaining bait in Canadian waters, and that this attempt was successfully resisted. In spite of this fact it is proposed, under this Article, to declare that the Convention of 1818 gave that privilege, as well as the privilege of purchasing other supplies in the harbours of the Dominion.

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these ports were not until long afterwards opened, by reciprocal commercial regulations, to vessels of the United States engaged in trading.

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

The purchase of bait and other supplies by the American fishermen in the established ports of entry of Canada, as proposed in Article IV, is not regarded as inconsistent with any of the provisions of the Treaty of 1818; and in this relation it is pertinent to note the declaration of the Earl of Kimberley, in his letter of the 16th February, 1871, to Lord Lisgar, that "the exclusion of American fishermen from resorting to Canadian ports, except for the purpose of shelter, and of repairing damages therein, purchasing wood, and obtaining water, might be warranted by the letter of the Treaty of 1818, and by the terms of the Imperial Act 59, Geo. III, chap. 38; but Her Majesty's Government feel bound to state that it seems to them an extreme measure inconsistent with the general policy of the Empire, and they were disposed to concede this point to the United States' Government under such restrictions as may be necessary to prevent smuggling, and to guard against any substantial invasion of the exclusive rights of fishing which may be reserved to British subjects."

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

Ad interim Arrangement proposed by the United States' Government.	*Observations on Mr. Bayard's Memorandum.*	*Reply to "Observations" on Proposal.*
		the right of American fishermen to purchase bait and other supplies in Canadian ports, or that such privileges were ever denied them.
ARTICLE V.		ARTICLE V.
The Government of Her Britannic Majesty agree to release all United States' fishing-vessels now under seizure for failing to report at custom-houses when seeking shelter, repairs, or supplies, and to refund all fines exacted for such failure to report. And the High Contracting Parties agree to appoint a Joint Commission to ascertain the amount of damage caused to American fishermen during the year 1886 by seizure and detention in violation of the Treaty of 1818, said Commission to make awards therefor to the parties injured.	By this Article, it is proposed to give retrospective effect to the unjustified interpretation sought to be placed on the Convention by the last preceding Article. It is assumed, without discussion, that all United States' fishing-vessels which have been seized since the expiration of the Treaty of Washington have been illegally seized, leaving, as the only question still open for consideration, the amount of the damages for which the Canadian authorities are liable. Such a proposal appears to Her Majesty's Government quite inadmissible.	This Government is not disposed to insist on the precise form of this Article, but is ready to substitute therefor a submission to arbitration in more general terms.
ARTICLE VI.		
The Government of the United States and the Government of Her Britannic Majesty agree to give concurrent notification and warning of Canadian Customs Regulations, and the United States agrees to admonish its fishermen to comply with them and co-operate in securing their enforcement.	This Article calls for no remark.	

APPENDIX (A).

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

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

APPENDIX (B).

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

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

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

APPENDIX (C).

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

Sir, *Downing Street, October* 10, 1870.

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

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

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

I have, &c.
(Signed) KIMBERLEY.

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

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

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

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

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

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

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

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

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

No. 88.

Foreign Office to Colonial Office.

Foreign Office, December 7, 1887.

[Transmits copy of No. 278 to Sir L. West, dated November 24, 1887 : *ante*, No. 73.]

No. 89.

Mr. Chamberlain to the Marquis of Salisbury.—(Received December 11.)

(Secret.)
(Telegraphic.) *Washington, December 11, 1887.*

CONFERENCE adjourned till 4th January. I go to Ottawa on 19th instant, to confer with Canadian Government.

(Private.)

Interview with Mr. Bayard yesterday suggests possible solution. Particulars by next bag.

No. 90.

Her Majesty's Plenipotentiaries at the Fisheries Conference to the Marquis of Salisbury.—(*Received December* 12.)

(No. 3. Confidential.)

My Lord, *Washington, November* 27, 1887.

WE have the honour to inclose herewith, for your Lordship's information, a Memorandum of the proceedings of the Fishery Conference at their meeting of the 28th instant.

We have, &c.

(Signed) J. CHAMBERLAIN.
L. S. SACKVILLE WEST.
CHARLES TUPPER.

Inclosure in No. 90.

WASHINGTON FISHERY CONFERENCE, 1887.

Second Meeting.—November 28, 1887.

THE Conference met according to adjournment on Monday, the 28th November, 1887, all the Plenipotentiaries being present.

Mr. Bayard handed in a Report of the proceedings in the Vice-Admiralty Court at Halifax in the case of the fishing-vessel "David J. Adams" (Appendix D*).

Mr. Chamberlain stated that the reply of Her Majesty's Plenipotentiaries to the Memorandum of the United States' Plenipotentiaries which had been handed in at the last meeting consisted of three parts: (1) a general reply; (2) a more detailed argument on the several points; and (3) a reply to the papers† (Appendices B and C) which had accompanied the United States' Memorandum, and which contained the selected cases of maltreatment of United States' fishing-vessels and observations on *ad interim* arrangement.

Mr. Chamberlain proceeded to read Part I of this reply, and—

Sir C. Tupper read Part II.

Part III was not read.

The whole reply was handed to the Protocolists to be printed. It will be found as Appendix (E) to the present record.

Mr. Bayard said he must defer criticism for the present; and in the course of a discussion which followed on certain points in the reply, he disclaimed on behalf of the United States' Plenipotentiaries any contention that the Convention of 1818 had been modified by subsequent negotiations or legislation.

Mr. Chamberlain having explained how he had arrived at the conclusion that the argument on pp. 2-5 of the Memorandum had pointed towards such a conclusion,

Mr. Bayard said that the argument simply was that the Convention of 1818 could not relate to a state of things that did not exist at the time it was signed. It gave rights to fishermen which it did not give to merchant-vessels. Those rights were, it is true, restricted, but the Convention did not refer in any way to the question of access to ports for ordinary commercial purposes. He referred to Jay's Treaty of 1794, which allows vessels to go into a port for repairs, but limits the right by stating that they must not sell their cargo. This provision had never been enforced. The contention of the United States has always been that the Convention of 1818 relates only to fishing, and that the question of entering ports for commercial purposes does not come within its scope.

Mr. Chamberlain contested that view. The four purposes—wood, water, shelter, and repairs—for which United States' fishing-vessels were allowed by the Convention of 1818 to enter Canadian harbours, are privileges of humanity, and on that score they were granted to fishing-vessels, which were expressly prohibited from entry for any other purpose. These privileges would not have been denied to merchant-vessels.

Mr. Bayard explained that the passage on p. 5 of the United States' Memorandum was simply intended as an illustration of what would have been the position if the Convention of 1818 had not existed.

Mr. Chamberlain had no objection to admit that if the Convention of 1818 were not in existence the question of commercial intercourse between Canada and the United States would be regulated by the comity of nations. But that Convention does exist, and by it the status of fishermen in regard to access to Canadian harbours is regulated in express terms.

* Not printed.

† Parts I and II now appear together, and form Appendix (B). Part III is sub-Appendix (E) in two papers.

Mr. Bayard said that if the true construction of that Convention were that for which the Canadian Government now contend, it would have been a Treaty not of friendship but of hostility, and would have been a *damnosa hereditas* to the fishermen of the United States, who would, by it, have been placed in a position worse than that of the ordinary trader.

Mr. Chamberlain replied that the status established by the Convention was deliberately created on account and in return for privileges thereby granted to United States' fishermen in British waters far greater than those enjoyed by any other fishermen in the territorial waters of a foreign State.

Mr. Bayard said that up to the secession of the United States from the British Crown the people were one, and enjoyed equal rights. After separation the rights of the United States in the fisheries were distinctly recognized, and those fisheries, which were regarded as the chief object of value of the whole territory, had been mainly won from a foreign Power by New England men. He alluded to the difficulties incidental to what he might call *divided rights* in fishing-grounds, and cited as an example the North Sea fisheries, which had been regulated by International Convention.

He then referred to Lord Bathurst's correspondence, and said that he did not agree to the distinction therein drawn between the *liberty* and the *right* to fish. He thought Lord Rosebery's despatches on the subject confirmed this view. Before the Convention of 1818 a distinct difference was made between open-sea and inshore fisheries. The Treaty of 1783 was not really terminated by the war, and this was borne out by the actual terms of that Treaty, and by those of the Convention of 1818. In fact, the latter Convention merely put a solemn seal to the recognition previously made of the rights secured by the former Treaty, and continued after the war of 1812. The liberty of inshore fishing was certainly restricted by the Convention of 1818, but that Convention had no reference whatever to commerce or to deep-sea fishing. He referred again to Lord Bathurst's correspondence, and said that the partition which was made of the Canadian inshore fisheries was agreed to with the object simply of preventing collisions.

Mr. Chamberlain said that Great Britain, when weary of war in 1783, accepted stipulations which were quite exceptional, and which she would not have accepted under ordinary circumstances. A Treaty arrived at under such conditions was naturally the subject of constant contention. When, however, the war of 1812 had put an end to that Treaty, Great Britain was in a position to insist on better terms, and subsequently, in 1818, the United States consented to limitations not existing previously to the war of 1812. The mere fact of their doing so was evidence that the war had put an end to the Treaty of 1783; else, why should they consent to any limitation of rights which they claimed to possess as much after as before the war?

The four purposes for which access was accorded to United States' fishing-vessels to Canadian ports were limited to those acquired by the dictates of humanity; and for this reason only were inserted in the Convention of 1818. But that Convention denied the privilege of getting bait, and the Canadian Government contend that this denial was for the express purpose of limiting the power of United States' fishermen to secure a base of operations, not only for inshore but also for deep-sea fishing.

The United States' Counsel at Halifax denied that any payment was due for commercial facilities because those privileges were not granted by Treaty; and contended that the restrictive enactments might be renewed at any time. This contention was indorsed by the ruling of the Commission. The principal question now in dispute is as to the right of United States' fishermen to obtain a base of operations by obtaining supplies in British colonial ports. This being expressly excluded by the Convention, Great Britain is clearly entitled to withhold it, and has invariably done so when no equivalents have been given.

Mr. Putnam agreed that the United States' Counsel at Halifax made the admission quoted by Mr. Chamberlain, but contended that no inference could be drawn from that fact because, first, it is impossible to prove that these facilities were ever before denied by Canada; and, second, that Mr. Foster's language at Halifax, though broad, proved nothing, since it is not now claimed that these privileges are granted by Treaty. He only proved that there was no Treaty guarantee for these privileges.

Sir C. Tupper stated that Canada claims no right to interfere with the fishery of the United States in the open sea, but contended that there was no distinction drawn between deep-sea and inshore fishing-vessels. The prohibition to enter Canadian ports was made to apply to all United States' fishermen, because otherwise the inshores could not by any other means be protected. The question as to the right to buy bait was definitively settled by the Convention of 1818 when it was proposed by the United States' Plenipotentiaries that it should be granted, but this was declined by the British Plenipotentiaries.

Mr. Putnam.—The word was "obtain"—*i.e.*, fish for, not buy.

Sir C. Tupper.—No. It means either purchase or fish for; the reason for the restriction is obvious, and is adhered to by Canada as the only means of protecting the inshores. No rights have ever been granted to United States' fishermen except as a matter of favour.

The discussion was then continued as to whether any United States' vessels were confiscated for entering Canadian ports for supplies, &c., prior to 1818.

Mr. Putnam saying that all the vessels seized were released on appeal to the British Privy Council,

Sir C. Tupper said he was not now arguing that point, but he repeated that the question was settled by the Convention of 1818, and the Canadian view on this point has invariably been supported by the highest legal authorities both of England and of the United States. It was therefore idle to suppose the question could now be settled by going back to the reinterpretation of the Convention of 1818. The only solution was by granting equivalents, as in the case of the Reciprocity Treaty of 1854, which was a great advantage to both countries. The question of interpretation has been fully discussed in diplomatic correspondence, and cannot be reopened with advantage.

Mr. Bayard said that the Reciprocity Treaty of 1854 certainly recognized the Convention of 1818. The question was settled in 1871 by the comprehensive arrangements of the Treaty of Washington, and the matter of interpretation was not then gone into.

The British Plenipotentiaries have entirely misunderstood the United States' Memorandum if they suppose the United States' Plenipotentiaries have argued that the true interpretation of the Convention of 1818 has been altered by subsequent legislation on the question of frequenting Canadian ports to obtain bait or supplies. No such argument is put forward by the United States' Plenipotentiaries. Mr. Chamberlain had very impressively stated the unfortunate results of mixed possession of the inshore fisheries, but that mixed possession exists under Treaty. He reverted to the correspondence of Lord Bathurst as to the distinction between "liberty" and "right," and as to the omission of the word "bait." He recalled the circumstance that the British negotiators in 1818 also proposed to exclude the right of United States' fishermen to sell their cargoes in Canadian ports, but that this proposal was not agreed to by the United States' negotiators, and was not inserted in the Convention. He said that bait was not now required for inshore fishing, and as to the question whether obtaining bait was a "preparing to fish" under the Act, he quoted the conflicting decisions in the cases of the "White Fawn" and "J. H. Nickerson," which he attributed to a period prior to 1854, since which date the methods of fishing had changed entirely.

Mr. Chamberlain admitted that the passage quoted from Lord Bathurst's correspondence might relate exclusively to the inshore fishery, but that did not prove the deep-sea fishery was not considered also. The plain words of the Convention of 1818, "for no other purpose whatever," admitted of no doubt, and there was no room for any interpretation whatever by the light of the negotiations. The United States' argument was in effect that to the words, "for no other purpose whatever," there ought to be added the words, "in connection with inshore fishing;" but the Convention must be read as it stands, and is perfectly clear.

Mr. Putnam read Article I of the Convention of 1818.

Mr. Chamberlain.—That makes it quite clear that United States' fishermen are not to take advantage of the privileges of hospitality granted them in express terms "for any other purpose whatever."

The matter in dispute in the cases of the "White Fawn" and "J. H. Nickerson" (which occurred, not in 1854, but in 1870) was not the interpretation of the Convention of 1818, but of the Act passed under it; and whatever question may arise as to the legality of the seizures already made under pre-existing legislation, the terms of the Convention justified Canada in passing an Act to prohibit the entry of United States' fishermen into Canadian ports for any but the four specified purposes. If the Convention of 1818 was, as suggested by Mr. Bayard, a *damnosa hereditas* to American fishermen, it might perhaps be got rid of by agreement of both parties to the Treaty; and it might possibly be a good plan, if the United States' Plenipotentiaries now found themselves unable to propose any scheme of reciprocity or arrangement for extended commercial intercourse, to approach the question from this standpoint, and to lay aside the Convention of 1818 in future discussions, without prejudice, and to discuss the present situation without reference to previous agreements, with the view of arriving at a new and equitable settlement of the rights of all parties, having regard, in the terms of the United States' Memorandum, "to the progress of events since 1818, and to the new interests, usages, commercial relations, and

privileges" which have since come into existence. It must be remembered that the Convention was bilateral, and if, on the one hand, it restricted the rights of American fishermen to commercial intercourse, on the other hand it admitted them to altogether exceptional privileges on portions of the coasts of Newfoundland and Labrador and the Magdalen Islands; of course, if such a plan were adopted, the Treaty of 1783 must also be laid aside.

Mr. Bayard said that if the Canadian construction of the Convention were insisted on it was indeed a *damnosa hereditas*. The United States, however, contend that their fishermen are entitled to the civilities accorded in Canadian ports to all foreigners, and that, in addition to that, they had a right to the privileges mentioned in the Convention, which under existing Canadian law are restricted so as to make it impossible for American fishermen to enjoy them. Nowhere was a merciful construction of the Convention so necessary as on the ironbound shores of Nova Scotia and Newfoundland.

But the terrorism of the Canadian laws operated to prevent the fishermen from coming to those shores at all. The proceedings in the case of the "David J. Adams," which he had handed in, were an illustration of this.

Mr. Bayard was proceeding to refer to a passage on p. 2 of the United States' Memorandum, when—

Sir C. Tupper interposed by saying that before that matter was gone into he must ask that the reply which had been read by the British Plenipotentiaries as to the alleged cases of maltreatment should be carefully read by the United States' Plenipotentiaries. It entirely refuted the charges of inhospitality, and showed the earnest desire of Canada to maintain the most friendly relations with the United States. The Canadian Government, far from adopting any really harsh legislation, had kept greatly within the limits which the Convention prescribed. He hoped that a perusal of this reply would greatly modify the views expressed by Mr. Bayard on this subject.

As to the question of bait, it was a proposal deliberately put forward in 1818 by the United States' Plenipotentiaries, and as deliberately rejected by the British Plenipotentiaries. Mr. Bayard had used the argument that another proposal coming from the British side, viz., that fishing-vessels should be precluded from selling merchandize in Canadian ports, had been rejected, and was not eventually inserted in the Convention. On this Sir Charles desired to observe that when the words, "for no other purpose whatever," had been inserted, any such prohibition in express terms in regard to a particular point was obviously unnecessary.

Mr. Bayard replied that, as a matter of fact, the reason why this British proposal was rejected was to be found in the record of the negotiations. It was to get rid of the right of search. He then went on to refer to p. 2 of the United States' Memorandum, and as to the construction which had been placed upon it in the reply of the British Plenipotentiaries, to the effect that the contention of the United States' Plenipotentiaries was that subsequent events had modified the interpretation of the Convention of 1818. Now, the United States' Plenipotentiaries did not wish to suggest that the words of that instrument did not mean now what they had always been held to mean.

Mr. Chamberlain said that this explanation made it evident that the purport of the United States' Memorandum had been misunderstood. This made it the more clear that some revision of the Treaty arrangements of the two countries was needed, the two parties to it having never been in accord as to the true interpretation of the Convention of 1818. In coming to Washington the British Plenipotentiaries had had reason to hope that any such revision would have been arrived at in the shape of a new Commercial Convention. If that was now found to be impossible, the British Plenipotentiaries must ask the United States' Plenipotentiaries to state what other kind of revision they thought was called for under present circumstances.

Mr. Angell said that the United States' Plenipotentiaries had already arrived at the same conclusion, viz., that the divergence of opinion between the two parties to the Convention of 1818 as to its true interpretation could not easily be reconciled, and that some revision was therefore necessary.

At *Mr. Putnam's* suggestion, *Mr. Chamberlain* offered to amend the passage in the British reply to the United States' Memorandum by the light of Mr. Bayard's explanation, it being understood that the United States' Plenipotentiaries disclaimed the contention that subsequent legislation as to commercial intercourse had, in any way, modified the terms of the Convention of 1818.

The British counter-Memorandum was amended accordingly, and appears as altered in Appendix (E).

Mr. Bayard wished to state how painful it had been to him to speak of inhospitality,

&c., but he wished it to be understood as repeating opinions expressed in America on this subject, without any intention of discourtesy on his own part.

The United States' Plenipotentiaries then retired to consult together, and on their return—

Mr. Bayard stated that the documents which had been handed in by the British Plenipotentiaries should be printed at once in the State Department, and he announced that on Wednesday next he hoped to be in a position to make some proposals having for their object a revision of the terms of the Convention of 1818.

The Conference was accordingly adjourned to Wednesday next, the 30th November, at 2 P.M.

(Initialled) J. C.
L. W.
C. T.
J. H. G. B.

Appendix (E).

Memorandum in reply to the Memorandum handed in by the United States' Plenipotentiaries on the 22nd November, 1887.

IN acknowledging and replying to the Memorandum presented by the Plenipotentiaries of the United States, Her Majesty's Plenipotentiaries are constrained at the outset to express their extreme disappointment at finding that the Memorandum is confined to the reassertion, on behalf of the United States, of a construction of the terms of the Convention of 1818, which has already formed the subject of lengthened diplomatic communication, but which is now again presented to the Conference as the only suggestion made by the Plenipotentiaries of the United States for the settlement of the differences which have arisen, and for the maintenance of good neighbourhood and commercial intercourse between the United States and the Dominion of Canada and Newfoundland.

The construction of the Convention of 1818 proposed by the United States is believed by Her Majesty's Government to be altogether unwarranted by any natural interpretation of its language, and it cannot be contended that subsequent international arrangements have modified its original intention.

The views of Her Majesty's Government have been fully set forth in the Earl of Rosebery's despatches to Her Majesty's Minister at Washington of the 23rd July, 1886, both of which were communicated to Mr. Phelps on the same day; also in the late Earl of Iddesleigh's notes to Mr. Phelps of the 1st September, 1886, the 30th November, 1886, and the 14th January, 1887, which latter inclosed a full Report of the Canadian Privy Council dated the 22nd July; while the contentions of the Government of the United States have been developed in the following documents:—

Mr. Bayard's note to Sir L. West of the 10th May, 1886; Mr. Phelps' note to Lord Rosebery of the 2nd June, 1886; as also in his notes to the late Lord Iddesleigh of the 11th September, and 2nd December, 1886.

A careful consideration of this correspondence must lead to the conclusion that an agreement on the points raised between the two Governments is extremely improbable, and it was in these circumstances that the Conference was agreed upon, in the hope, as Her Majesty's Plenipotentiaries understood and believed, that it might lead to some alternative solution of the subject of difference, mutually satisfactory, and conducive to the interests of the United States and of Canada and Newfoundland.

In confirmation of this statement, so far as Her Majesty's Government is concerned, Her Majesty's Plenipotentiaries submit an extract from their instructions dealing expressly with the point:—

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

The view then taken by Her Majesty's Government of the object and scope of the Conference appears to be justified by the tenour of the correspondence which has passed on the subject.

Without entering into an elaborate review of this correspondence, Her Majesty's Plenipotentiaries desire to draw attention to its salient points, so far as the present argument is concerned.

On the 22nd April, 1885, Sir Lionel West received from the Secretary of State a private note, covering a Memorandum which embodied the results of previous conversations, and expressed the views of the United States' Government on a proposition for a temporary arrangement made on behalf of the Dominion of Canada and the Colony of Newfoundland.

This proposition, as related by Mr. Bayard, was to the effect that the Governments of Canada and of Newfoundland should permit fishing to continue as before, and abstain from molesting or impeding the progress and local traffic of the fishermen of the United States during the remainder of the season of 1885, on the understanding that the President would, in the ensuing Session, recommend the appointment of a Commission charged with the consideration and settlement, on a just, equitable, and honourable basis, of the entire question of the fishing rights of the two Governments.

The Secretary of State, on behalf of the Government of the United States, expressed his readiness to accept this proposition.

Sir Lionel West was subsequently instructed to communicate to Mr. Bayard the replies of the

Governments of Canada and of Newfoundland, accepting the proposals contained in Mr. Bayard's Memorandum.

The Secretary of State's reply was dated the 19th June, 1885. After stating that he assumes the two Confidential Memoranda handed to him by Sir Lionel West to contain the acceptance by the Governments of Canada and Newfoundland of the general features of his Memorandum, with the understanding that the agreement has been arrived at under circumstances affording prospects of negotiations for development and extension of trade between the United States and British North America, Mr. Bayard goes on to say:—

"To such a contingent understanding I can have no objection; indeed, I regard it as covered by the statement in my Memorandum of the 21st April, that the arrangement therein contemplated would be reached 'with the understanding that the President of the United States would bring the whole question of the fisheries before Congress at its next session in December, 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, equitable, and honourable basis, of the entire question of fishing rights of the two Governments and their respective citizens on the coasts of the United States and British North America.'

"The equities of the question being before such a Commission would doubtless have the fullest latitude of expression and treatment on both sides, and the purpose in view being the maintenance of good neighbourhood and intercourse between the two countries, the recommendation of any measures which the Commission might deem necessary to attain these ends would seem to fall within its province, and such recommendation would not fail to receive attentive consideration.

"I am not therefore prepared to state limits to the proposals to be brought forward in the suggested Commission on behalf of either party."

From this letter it must be evident that at that date the United States' Government were agreed that the consideration by a Commission of the fishing rights of the two Governments covered and included the question of commercial intercourse, and that the recommendation of any measures which the Commission might deem necessary to this end was within the province of such a Commission.

Since the date of this letter Her Majesty's Government have received no intimation of the slightest change of view on the part of the Government of the United States.

The present Conference results, primarily, from a personal and unofficial interview between the Secretary of State and Sir Charles Tupper, in which similar views were expressed by Mr. Bayard, and the result of which was embodied in a personal and unofficial letter from Mr. Bayard, and the reply thereto by Sir Charles Tupper.

Sir Lionel West was subsequently instructed to inform the Secretary of State that if he would "propose the appointment of a Commission, as suggested in his correspondence with Sir Charles Tupper, Her Majesty's Government will agree with great pleasure."

This communication was accordingly made by Sir Lionel West on the 11th July last, and by arrangement between the two Governments, Plenipotentiaries have been appointed, and the terms of reference agreed upon.

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

The language of the reference above quoted appears to Her Majesty's Plenipotentiaries to be substantially the same as that referred to in Mr. Bayard's letter of the 21st June, 1885, and therefore to cover any recommendation which the Conference may deem necessary to secure the object sought for—whether in the shape of provisions for securing extended commercial intercourse, or by any other method—and they were in expectation that the Plenipotentiaries of the United States would have been able to make some proposals for such extended intercourse which might incidentally have disposed of the Fishery question and rendered unnecessary any attempt to arrive at an agreement on the interpretation of the Convention of 1818.

Her Majesty's Plenipotentiaries note, however, with satisfaction the statement in the Memorandum that, "if, owing to the progress of events since 1818, new interests, usages, and commercial relations and privileges have come into existence, which are materially affected by the terms and conditions of existing Treaties, then, in promotion of the mutual convenience or reciprocal advantage of the parties, revision or modification of the terms thereof should be agreed upon."

They trust that, from this expression of opinion, they are justified in assuming the willingness of the Plenipotentiaries of the United States to consider favourably any proposals which may arise in the course of future discussion, both for removing irritation now existing and also for putting the future commercial relations between the United States and Canada and Newfoundland on a more liberal and extended footing.

In this belief they now proceed to consider in detail the arguments submitted in the Memorandum.

The Memorandum presents, as the "single subject of difference known to exist, which this Conference has been called to adjust," the "treatment to which fishing-vessels of the United States, entering the territorial waters of the Dominion of Canada or of the Province of Newfoundland, have been subjected since April 1886."

In this reply that subject will be adverted to as fully as may seem necessary in order to meet the arguments and observations set forth in the Memorandum, but it must not be inferred therefore that the assertion as to this being the "single subject of difference known to exist, which this Conference has been called to adjust," is acquiesced in by Her Majesty's Plenipotentiaries.

The complaints which are set forth in the Memorandum have already been urged, on the part of

the Government of the United States, to Her Majesty's Government, and, in the correspondence which has taken place thereon between Her Majesty's Government and the Governments of Canada and of Newfoundland, and between Her Majesty's Government and that of the United States, those complaints have been answered so fully that Her Majesty's Plenipotentiaries had little reason to expect that the treatment of the fishing-vessels would be considered the only matter in difference, or made the basis of a claim for compensation.

Before the question of compensation for the treatment of United States' fishing-vessels can be considered as within the range of discussion, or "removal of the cause" can be agreed to, it will be necessary to arrive at the conclusion that such treatment has been contrary to the Treaty provisions existing between the two countries. It seems to Her Majesty's Plenipotentiaries that no such conclusion has yet been reached.

The Plenipotentiaries of the United States having presented, with the Memorandum, a statement of cases which are said to be descriptive of the treatment complained of, a review of the facts, in regard to the treatment of the several vessels which have been mentioned in the statement, and of the reasons for such treatment, is submitted herewith.

From this it will be seen that the fishing-vessels in respect of which complaints have been made had either—

1. Violated the provisions of the Convention of 1818; or

2. Claimed larger privileges than were allowed to them by the Convention of 1818, the refusal of such larger privileges being, in such cases, the grounds of the complaints.

It is the desire of Her Majesty's Government, no less than that of the Government of the United States, "to comply fully, and in good faith, with the terms of the Treaty," and to arrive at a just and harmonious understanding "concerning their interpretation and effect."

Her Majesty's Plenipotentiaries acquiesce in the statement that the terms of a Convention cannot be controlled or impaired by subsequent domestic legislation of either of the parties to it, and they do not deem it necessary to controvert, for the present at least, the assertion that the terms of a Convention are subject to construction only by the parties to it. In so far as these two propositions apply to the matters under discussion, it is to be observed that, in the view of Her Majesty's Government, the effect of the legislation which has taken place in Great Britain and in her Colonies, in relation to the Convention of 1818, has not been to control or impair the terms of the Convention, but, first, to prevent and punish infractions of the Convention, and, secondly, to furnish the restrictions which, by the express terms of the Convention, it was provided that American fishermen should be under, to prevent their abusing the privileges reserved to them.

It is likewise to be observed that it has not been the contention of Her Majesty's Government that the terms of the Convention should be subject to construction by any Government which was not a party thereto. Under the forms of government which prevail within the British dominions, the proceedings which may, from time to time, be necessary to prevent and punish infractions of the Convention, and provide the restrictions which may be necessary, and which are contemplated by the Convention, require sanction and promulgation by certain legislative and executive authorities, but are subject to control by Her Majesty's Government, and have no force or validity without the acquiescence of that Government. As the Memorandum does not point out any particulars in respect of which the "domestic legislation" is considered to have "controlled or impaired" the terms of the Convention, and does not allege that any "construction" has been enforced other than that which has been adopted by Her Majesty's Government (and which has been detailed and commented on in the correspondence), Her Majesty's Plenipotentiaries do not feel called on, at present, to enter into an explanation of the details of the legislation, or to narrate particularly the proceedings under which the "construction" which is evidently referred to has from time been insisted on by the Colonial authorities.

The statement which has already been made in this reply, that the fishing-vessels in respect of which complaints have been made, had either—

1. Violated the provisions of the Convention of 1818; or

2. Claimed larger privileges than were allowed to them by the Convention of 1818, requires for its more full expression a repetition of the view of Her Majesty's Government as to the effect of the Convention. This view has been stated at various times in the correspondence which has taken place. It is that the plain and ordinary meaning of the words of the Convention are to prevail, and therefore that (excepting as to certain parts of the coasts of Newfoundland and Labrador and the shores of the Magdalen Islands) American fishermen are not only prohibited from taking, drying, or curing fish on or within 3 marine miles of any of the coasts, bays, creeks, and harbours of Her Majesty's dominions in America, but are prohibited from *entering* such bays and harbours for any purpose other than that of shelter and of repairing damages, of purchasing wood, and of obtaining water; and that therefore (for example) the entry of an American fishing-vessel for the purpose of buying bait (although for use in the deep-sea fisheries) is a breach of the Convention. These provisions, it is claimed, have not in any wise been modified by the subsequent legislation as to commercial facilities granted in the ports of the United States and of British North America respectively. Of the offending vessels, some had entered the bays and harbours in disregard of this prohibition, and had come within the class first above described as having violated the provisions of the Convention.

The second class includes those vessels for which larger privileges than were allowed to them by the Convention were claimed. The complaint made in respect of these on the part of the United States is that they were held to be subject to the laws in force in the countries which they visited, such as the laws relating to the revenue. The counter-statement which accompanies this reply deals in detail with these cases, and therefore a statement of the general principle which has been acted on by the Colonial authorities in regard to these vessels may suffice. That principle is that Parliament has the right to legislate within British jurisdiction, namely, within British territory, and at sea within 3 miles from the coast, and within all British rivers and within British bays and harbours; that the vessels which enter that jurisdiction must comply with the provisions of such legislation; and that the

privilege of American fishing-vessels to enter the bays and harbours for shelter, to repair damages, to purchase wood, and to obtain water, was a pre-existing privilege, under the comity of nations, prior to the Convention, and was merely *preserved*, and not *conferred*, by the Convention. If it was merely preserved by the Convention, it was preserved subject to the reasonable limitations which had existed with regard to it from time immemorial—limitations which are intended to prevent its abuse and to secure the enforcement of the Revenue Laws, and the maintenance of order, peace, and good government.

The Memorandum declares that the United States do not accept the interpretations placed by the Dominion authorities upon Article I of the Treaty of 1818, or upon Article XXIX of the Treaty of the 8th May, 1871 (known as the Treaty of Washington), and proceeds to enumerate the various measures which have been taken by Great Britain and by the United States to establish, since the Convention of 1818, commercial intercourse between British North America and the United States. Her Majesty's Plenipotentiaries are not aware of any difference of interpretation of Article XXIX of the Treaty of Washington, and the Memorandum does not indicate how any difference as to that Article (which treats solely of the conveyance of goods in bond) affects the "single subject of difference," which is stated to be "the treatment to which fishing-vessels of the United States, entering the territorial waters of the Dominion of Canada or of the Province of Newfoundland, have been subjected since April 1886." Nor is it apparent how the true and proper interpretation of the Convention of 1818 can be affected by the events which have since transpired, and which have not made any alteration in the terms of the Convention itself. What was the true and proper interpretation of the Convention when it was made must be its true and proper interpretation now; none other has been asked by Her Majesty's Government, or can be conceded by Her Majesty's Plenipotentiaries. The growth of commercial intercourse and of friendly relations, the development of means of communication, and the existence of a convenient system of bonded transit for merchandize may forcibly suggest, indeed, that a Convention based on more modern conditions than those which prevailed in 1818 may be made—one by which the exclusive rights of British subjects in the fisheries along their coasts may be shared for equivalent concessions on the part of their neighbours in the United States; but it must be remembered that on each occasion when the Convention of 1818 was reverted to it was reverted to by the wish, and at the instance, of the United States. In 1854 the development of commerce was understood in both countries to call for the suspension of many of the restrictions on trade and intercourse which had existed since the making of the Convention of 1818, as well as of the fishery restrictions embodied in the Convention itself; but the Government of the United States, with full knowledge of the relations between the two countries which are set forth in the Memorandum, and with full knowledge of what is called the British interpretation of the Convention of 1818, returned to that Convention in spite of the unacceptable interpretation, and regardless of the growth of commercial relations, which had been greatly accelerated by the Treaty of Reciprocity. Again, it was in 1885, by the choice of the Government of the United States, that the Convention of 1818, with its unacceptable interpretation, was restored, by the abrogation of the Treaty of Washington of 1871. Indeed, the willingness on the part of Great Britain and the Dominion of Canada, while insisting on the rights secured to British subjects under the Convention of 1818, to agree upon "revision or modification of the terms thereof" in "promotion of the mutual convenience or reciprocal advantage of the parties," has frequently led to the aspersion, which, in fact, finds expression in the Memorandum under consideration, that "an extreme and irritating construction" is enforced, "in order to procure a change in the Tariff Laws of the United States."

The passage in the Memorandum which suggests that "the laws of the United States permit Canadian fishermen to come freely into any American port for supplies," and that Canadian fishermen freely obtain in ports of the United States "complete outfits for their business, including supplies of bait, which is also purchased in large quantities and shipped from United States' ports for the use of the Dominion fishermen," seems to be founded on an inaccurate view of the relations which the fishermen of Canada bear to the United States, and which the fishermen of the United States bear to Canada and Newfoundland. The Convention of 1818 contains a prohibition against the American fishermen from entering the British bays and harbours; it contains no prohibition against the British North American fishermen from entering the bays and harbours of the United States. The prohibition was agreed upon, as well as the renunciation as to taking, drying, and curing fish, in consideration of the right of inshore fishery, in common with British subjects, secured to American fishermen by the same Article of the Treaty, on the coasts of Newfoundland, Labrador, and the Magdalen Islands. A prohibition against Canadian fishermen entering the bays and harbours of the United States would not only have been uncalled for on the ground of necessity, but would have been without any equivalent. It is true that, to some extent, outfits and supplies of bait are purchased by Canadians in the United States. In most, if not all cases, such purchases are made under circumstances which would admit of Americans making the like purchases in Canada. In most cases the outfits and supplies which are purchased in the United States are imported into Canada as any other merchandize, and there delivered to the fishermen. In some rare cases, of which there is no record, it may be that Canadian fishing-vessels visit United States' ports for that purpose. There is no ground for their exclusion, such as exists in relation to American fishermen on the British North American coasts, because they do not pursue the fisheries on the coasts of the United States, and there is no necessity for protecting those fisheries from them. When an *ad interim* arrangement was made in 1885 for a continuance of the Fishery Articles of the Treaty of Washington until the close of the fishing season of that year, and a guarantee of immunity was given to American fishermen availing themselves of that arrangement, the United States' Secretary of State deemed it unnecessary to guarantee such immunity to Canadian vessels resorting to American waters, because, "in fact, no Canadian vessels resorted to American waters." How little importance is to be attached to the purchase of bait by Canadians in United States' ports is shown by the following facts:—

1. Canadian fishermen import salt bait to a very limited extent, and for use in case of emergency,

and they can procure abundant supplies of fresh bait on their own coasts, without leaving their fishing-grounds there to go to the United States for it.

2. The importations of salt bait into Canada, during the Fishery Articles of the Treaty of Washington, were for sale very largely to American fishermen, and for export to the Island of St. Pierre. In 1886, when these Articles had terminated, and the United States' fishermen were excluded from purchasing supplies in Canadian ports, the importation of bait from the United States for home consumption fell to a nominal amount.

The Memorandum under review alludes to the fact that the United States have maintained that the Treaty of 1783 was "a recognition of pre-existing rights," and, in some sense, "a partition of the territory and dominions formerly under one Government." The Plenipotentiaries of the United States are doubtless aware that these views regarding the Treaty of 1783 have never been acceded to on the part of Great Britain. Although they seem to be unimportant as regards the subject more particularly under discussion, they cannot now be acceded to. The Treaty of 1783 cannot be admitted to have accomplished a partition of the Empire. The thirteen Colonies, which had become federated under the name of the United States, had already separated from the Empire by force of arms, and the Treaty recognized the independence which they had already achieved. The colonists had not been co-owners with Great Britain in the fisheries along the Atlantic coasts; they had enjoyed those fisheries by virtue of their position as British subjects, and by virtue of the title which the British Crown enjoyed in the coasts to which the fisheries were adjacent, by cession from the Crown of France. When the Colonies became an independent nation they renounced the benefits as well as the burdens of British subjects, and were no longer entitled to enjoy the fisheries on coasts which had become to them the coasts of a foreign country. There was surely no reason why the Colonies which had remained loyal to the Crown should be divested of valuable territorial rights for the benefit of those who had renounced their allegiance. The United States clearly then acquired a joint participation in those fisheries, by grant, under the Fishery Article of the Treaty of 1783, and, in return for what were deemed important concessions on their part, in relation to the Mississippi and the American lakes. The view which has likewise been adopted by the Government of Great Britain, as regards the termination of the Fishery Article of that Treaty, is that it ceased to have any effect on the outbreak of the war of 1812. The permanence of certain other Articles of the Treaty, in relation to which permanence was, in express terms, or by necessary implication, provided, is not disputed, but the endurance of the Fishery Article, after the outbreak of the war, has never been conceded. The fishing-vessels of the United States were thenceforth continuously excluded until the Convention of 1818, when the renunciation on the part of the United States put an end to any claims under the Treaty of 1783. Although the American Plenipotentiaries sought, by the use of the word "*renounce*," to uphold the view that their people had not forfeited, by the war of 1812, the fishery rights which they had enjoyed under the Treaty of 1783, it is difficult to understand how any such object can be said to have been accomplished, or how Great Britain can be said to have, in accepting that phrase, recognized a subsisting *right* to the enjoyment of the fisheries which the Americans had it in their power to renounce. It was not, as stated in the Memorandum, "a renouncing" of "the liberty theretofore enjoyed," but it was a renouncing of "any liberty theretofore *enjoyed* or *claimed*." A renunciation of *claims* does not involve an assertion of *right* by the renouncing party, or the recognition of a *right* by the party who accepts the renunciation. In the course of the proceedings before the Halifax Commission, under the Treaty of Washington, the avowal was made by the Agent and Counsel of the United States that the "privileges of traffic, purchasing bait and other supplies," although freely allowed to United States' fishermen while the Reciprocity Treaty and the Treaty of Washington were in force, had not only not been conferred by either of those Treaties, but were "enjoyed on sufferance." The Tribunal adopted this view, and ruled accordingly. This contention was not, however, consistent with the idea that any rights under the Treaty of 1783 had survived.

The Memorandum under review presents the contention, in general terms, that "privileges" "recognized by international law" have been "refused to American fishermen in Canadian ports," that "American fishermen engaged in open-sea fishing, neither 'fishing nor preparing to fish,' nor even suspected of intending so to do, within the marine belt of 3 miles from Canadian shores, have experienced oppressive and inhospitable treatment, and that the privileges denied them" were "those of customary hospitality," and that "the strictest performance of commercial formalities has been exacted, and every ordinary commercial convenience or privilege has been strictly denied." The accuracy of these statements can by no means be admitted. They can only have been presented as being the result of an artificial interpretation of the Convention, which has never been acceded to by the Government of Great Britain. The exclusion of the fishing-vessels of the United States from commercial privileges in the bays and harbours of the Dominion of Canada is the treatment which is here complained of. That exclusion is the result of the express and emphatic renunciation and proviso of the Convention, which, it must be repeated, has again been brought into force by those who complain of the severity of its provisions, and who seek to lessen that severity by resorting to novel constructions.

The exclusion of a special class of vessels, to prevent encroachment on a particular industry in the country to which they seek to resort, and to secure the benefits of that industry as much as possible to the inhabitants of the country in question, cannot fairly be claimed to involve the general principle of commercial non-intercourse, even if it is adopted at the will of one only of the countries affected by it. Much less can it be said to involve that principle when the exclusion is a matter of compact, and has been compensated for by privileges of a special kind, such as the Convention conferred on American fishermen in relation to Newfoundland, Labrador, and the Magdalen Islands. Abundant references might be made, if it were necessary, to the negotiations and Treaties which have been made by nearly all the nations possessing valuable fisheries, to show that a policy of exclusion as regards foreign fishing-vessels has not been considered inconsistent with commercial intercourse and friendly relations.

Her Majesty's Plenipotentiaries feel called on to make special reference to the allusion made in

the Memorandum to the Act of Congress of the 3rd March, 1887, as being the "deliberate judgment and decision" of the Government of the United States upon this subject. A review of the circumstances which have transpired in relation to the fisheries during the past three years would lead to the conclusion that a far different judgment and decision might have been expected. Those circumstances may be briefly recalled: In 1885 the Convention of 1818 was brought into vitality by the termination, at the instance of the Government of the United States, of the Fishery Articles of the Treaty of Washington, with full knowledge of the mode in which the terms of the Convention would be enforced, because they had been so enforced before the Treaty of Washington was made. After the 1st July, 1885, the fishermen of the United States ceased to be entitled to pursue the inshore fisheries of Canada and the east coast of Newfoundland, or to resort to the bays and harbours for traffic and for transhipping their cargoes. The privileges of inshore fishing alone had been decided by the Halifax Commission to be worth 5,500,000 dollars for twelve years, *in excess* of the advantages conferred on British subjects by the Tariff concessions on the part of the United States. From the 1st July, 1885, to the close of the fishing season of that year, by a concession on the part of Her Majesty's Government, the fishermen of the United States remained in the full enjoyment of all their former privileges of fishing, purchasing supplies, and transhipping, without payment, while the advantages which had been conferred on British subjects by the Tariff concessions were wholly withdrawn. "This Agreement," said the United States' Secretary of State, "proceeded from the mutual good-will of the two Governments," and was "reached solely to avoid all misunderstanding and difficulties which might otherwise arise from the abrupt termination of the fishing of 1885 in the midst of the season." As a part of this arrangement, the President of the United States engaged to 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." The recommendation for the appointment of such a Commission received no support in Congress; a Resolution was carried by a three-fourths vote in the Senate declaring that such a Commission would be one for which Congress should not provide, and the Statute of the 3rd March, 1887, which is declared by the Memorandum to be the "judgment and decision of the Government of the United States," is the only reply that has ever been given to the concession made in 1885 by Her Majesty's Government. How far it is designed "in the interest of maintaining good neighbourhood and friendly intercourse between the two countries," and how far it is likely to afford a prospect of "the development and extension of trade between the United States and British North America," no very minute study of its provisions is necessary to show.

In view of all that has transpired, and especially in view of the fact that the willingness of the people of British North America for an improvement of their commercial relations with the United States, and for the continuance of feelings of good neighbourhood and amity, has been so pronounced as to give pretext to the statement that they only assert their Treaty rights in order to procure changes in the Tariff Laws of the United States, it may seem unnecessary for Her Majesty's Plenipotentiaries to avow their willingness to consider, in the most friendly spirit, every cause of difference existing between the two countries, and every fair proposition for the removal of such cause. In obedience to the instructions which they have received, and in accordance with the often declared wishes of the Government they represent, they will join the Plenipotentiaries of the United States in every endeavour to remove all causes of misunderstanding and anxiety which interfere with the good harmony which it is so desirable to establish and preserve.

Sub-Appendix (E) No. 1.

Reply to Statement of Selected Cases of Maltreatment of American Fishing Vessels.

THE following is a reply to the document presented 22nd November, 1887, marked "Selected cases of maltreatment of American fishing-vessels":—

The "David J. Adams" and "Ella M. Doughty."

For convenience it is proposed to deal with the cases of both vessels under one head.

The facts connected with the seizure of the "David J. Adams" are briefly these:—

This vessel was a fishing-vessel belonging to Gloucester, licensed to engage in the fisheries, and had no permit to touch and trade at foreign ports. She left Eastport in the spring of 1886 to engage in catching cod-fish with hand-lines on the George's Banks. She did not, however, fish on the George's Banks, but did so on two different occasions on the Western Banks. On the first occasion she was unsuccessful, but on the second about 8,000 lbs. of cod-fish and halibut were taken. She afterwards fished on Brown's Bank, but, being unsuccessful, and three weeks having elapsed (the usual period for such voyages being from three to four weeks), she returned to Eastport with a broken fare. At Eastport some bait was procured, and the vessel sailed across the Bay of Fundy and entered Digby Gut. There she hailed a Nova Scotian vessel engaged at the time in catching cod. On Wednesday, the 5th May, 1886, the day of her arrival, she procured some herring for bait, which was brought on board by three different boats. Several barrels of bait were also purchased that afternoon by the master of the "David J. Adams" from one Samuel D. Ellis. On being questioned by the latter, the master denied the nationality of the vessel, and said she had been formerly an American vessel, but had changed hands, and was then a British vessel. On the same evening the master went on shore and employed one Taylor to set his nets that night (they were then on shore), and he agreed to pay him a

certain price per barrel for his catch. Taylor set his nets, and the next morning took the fish on board of the "David J. Adams," and received the price agreed on.

On Thursday she proceeded to the Clements shore of Annapolis Basin, where she came to anchor. While there the master purchased from one Vroom 4 barrels of bait and 2 tons of ice. The vessel remained there during the night, and the next morning set sail without waiting for Vroom's morning catch, which had been engaged. The Government steamer "Lansdowne," having arrived during the night, was then in sight in Annapolis Basin.

It is proved by witnesses, and not denied by the witnesses for the claimant, that at both places where the purchases of bait were made, and while passing the wharf at Digby, the vessel had her name and port of hail concealed by means of an old sail hanging over her stern. When boarded by the "Lansdowne," the master of the vessel, although questioned, denied that he had any bait on board.

Further information from the shore having reached the officers of the "Lansdowne," the vessel was again boarded and search made, when the master again attempted to deceive the officer by alleging that the bait was ten days old, and he denied the recent acquisitions of bait.

A further examination was made, and further facts were elicited on shore by the master of the "Lansdowne" and the Collector of Customs at the Port of Digby. The vessel was then seized by Captain Scott, of the "Lansdowne," an officer duly qualified under the statute for the protection of the fisheries. The evidence showed that there was an opportunity to fish for codfish within 3 miles of the shore, outside of Digby Gut, and that provincial vessels were engaged in such fishery. The seizure was made by Captain Scott on the 7th May, 1886, under the statutes relating to fishing by foreign vessels, and at the same time the Collector of Customs for the Port of Digby seized the vessel for a violation of the Customs Act, the master of the vessel not having reported his entry at the Custom-house. The vessel having been removed by the order of Captain Scott to St. John's, New Brunswick, about 40 miles distant, for greater safety, was on the next day, by order of the Department, returned to the port of Digby, where she had been seized, the Collector of that port being deemed the proper officer to have the custody of the vessel. There she was left in the charge of the Collector, and, on account of rumours of an attempt at reclamation, Captain Scott remained by her for about a day. A summons and warrant against the vessel were issued on the 10th May, and served in the usual manner on the 11th.

The master was also served with a summons claiming the penalty under 59 Geo. III, cap. 38, for violating the provisions of that statute. The Collector of Customs and Captain Scott each reported the seizure, the former to the Department of Customs, the latter to the Department of Fisheries.

The vessel remained in the custody of the Collector of Customs and the Marshal of the Vice-Admiralty Court under the warrant.

The seizure under the Customs Act was not, as has been suggested, "superadded" or an "after-thought." The Collector consulted with Captain Scott in respect to the infractions of both acts. The crew of the "David J. Adams" had, it was proved, previous knowledge of the enforcing of the Convention and of the protection of the fisheries by the "Lansdowne." The master of the vessel refused to produce to Captain Scott the vessel's papers, and they never have been produced, although notice to produce was served, and their production demanded at the trial. There was a Consul for the United States at Digby and one at St. John. On the 8th May the vigilant Consul-General for the United States at Halifax reported the seizure to the Department of State at Washington. From a debate in Congress it is clear that seizures had been anticipated. The Consul-General was thoroughly conversant with the subject of the fisheries, and on the 11th he proceeded to Digby, where the vessel lay. Captain Scott and the Collector and Deputy-Collector of Customs were severally interrogated by him as to the cause of seizure, and he took the depositions of the crew of the "David J. Adams." On the 10th May the Secretary of State at Washington addressed a long letter to the British Minister on the subject of the seizure. On the 15th May the Consul-General reported to the authorities at Washington that, on the day of his arrival at Digby (the 11th), he was informed by the Collector that the vessel was held on a charge of violating the Customs Act of 1883, the penalty being 400 dollars.

Copies of the warrant and writ of summons issued for violation of the Statutes (59 Geo. III, cap. 38, and 31 Vict., cap. 61) of Canada were, as is required by the rules of practice, then on file with the Registrar of the Vice-Admiralty Court. Copies were nailed to the mast of the vessel, the originals were in the possession of the Deputy Marshal at Digby, and a copy was on the same day procured for publication in the American newspapers, and was published about the 12th.

On the 11th May, 1886, at Digby, Captain Scott wrote a letter to the Consul-General, referring him to the Department for information as to detention, and on the 12th he again wrote to him that the vessel was seized for a violation of the Canadian Customs Act, and also for violation of the Imperial Statute by entering a port for other than legal purposes.

The writ of summons contained indorsements setting forth the various Statutes the violation of which was complained of.

The newspaper interviewers, representing the principal newspapers of Nova Scotia, of the New England States, and of New York City, exhausted the subject by interviewing every one concerned, and the newspapers contained details as minute as those afterwards elicited in Court.

On the 15th May, 1886, immediately after the crew had made their written statements, they returned to the United States. The master, Alden Kinney, who had been served with a writ of summons for the penalty under 59 Geo. III, cap. 38, suffered a default, and Judgment was entered up against him.

On the 20th May the Secretary of State addressed to the British Minister at Washington another long letter, in which he dealt minutely with the infractions of the law charged against the vessel.

On the 10th June the claimant of the vessel appeared and filed his claim. He did not put in bail and obtain a release of the vessel, although he had the opportunity of doing so, upon a valuation which could have been fixed by himself, as was done in the case of the "Ella M. Doughty."

After an order for pleadings had been obtained, the Petition was filed in due course.

It was then competent for the claimant to have applied for particulars of the charges in the Petition. That is the usual time to apply, but no such application was made.

In October, 1886, some months afterwards, after the answer and reply, and after the evidence of the witnesses for the Crown had disclosed the whole case, an application was made for particulars. If successful, it would then have been useless. The examination and cross-examination of eight witnesses had elicited every important fact. If it had been of any moment, the claimant's solicitors would not have gone to a hearing without a decision. It must have been regarded as useless, or it would not have been allowed to sleep. As the claimant did not proceed to call any witnesses, the Court set down the cause for hearing in October, 1886. Claimant thereupon, within a few days of the trial, gave notice of motion to postpone the hearing, and to issue a Commission to take the evidence of witnesses in Boston.

The Crown consented to the postponement of the hearing and to the issue of a Commission to take the evidence, but contended, citing English precedents, and it was so decided, that the master of the vessel should be examined orally at the hearing. The claimant had his own time to take the evidence for the defence, and examined all the witnesses he chose. The master did not come to Nova Scotia, and his evidence was not forthcoming. The hearing was finally fixed for the 3rd June last, and on argument the Court reserved Judgment.

The case of the "Ella M. Doughty" does not differ materially from that of the "David J. Adams." The vessel was licensed to engage in cod-fishing. She fitted out for fishing on Sable Island banks, and, after an unsuccessful attempt to take fish there and some loss of time, she proceeded north. It is alleged by the master that, relying on the representation of one of his crew, who had fished on a previous trip in the neighbourhood of St. Paul's Island, a part of Canada, he intended to proceed there to finish his fishing venture. Notwithstanding his allegations that he entered Cape Breton ports for shelter, the evidence shows that he needed bait to carry on fishing in the locality designated. Unless he returned to the United States he would, in the ordinary course, be obliged to obtain that bait in the ports of Cape Breton. He was obliged to obtain bait or to proceed to sea without it, and he did, during the 12th and 13th days of May, 1886, at St. Ann's, purchase bait from different persons.

This bait he intended to use in the neighbourhood of St. Paul's Island. Neither he nor the fisherman who gave him information as to the locality of the fishery was asked at the hearing, although both gave their evidence, whether or not St. Paul's Bank was within 3 miles of the shore. Of course he never went there, and it was open to him to say that he did not intend to fish anywhere within 3 miles of the shore. The opportunity of fishing within 3 miles of the shore was afforded to him, and his account of fishing on St. Paul's Bank, where he had never been before, on the faith of the statement of a member of his crew, who had only been there on one trip, is not satisfactory. One of the owners was called to prove that the vessel held a permit to touch and trade. He had been extensively interested in other fishing-vessels, but he had been contented to allow those vessels and the "Ella M. Doughty." on every previous voyage made by her, to go to sea without possessing such a document. They had, however, taken out permits between the dates of the termination of the Reciprocity Treaty and the inception of the Washington Treaty. In other words, whenever the Convention was operative, and its terms were enforced by Great Britain against fishing-vessels, then, and then only, although bait and other supplies were obtained and trade of that kind engaged in, in foreign ports, as much during one period as the other, the use of this document was resorted to, as if it in time of danger would turn away the edge of the language of the Convention directed at fishing-vessels.

It is true that after the vessel was seized the master did avow that he claimed the right to purchase bait in St. Ann's, under his permit to touch and trade at a foreign port. Before the seizure, however, he observed secrecy in respect to his transactions.

He consulted with the master of another vessel as to the danger connected with the procuring of bait.

Angus Morrison, who was on board of his vessel at St. Ann's, says:—

"The captain and crew were warning us not to tell. The day before this the crew were ashore, wanting me to take herring aboard in night-time. They were talking about the trading licence, but they did not know whether it was good or not."

Donald McRitchie, one of those who sold bait to the master, says:—

"Captain of schooner "Ella M. Doughty" wished me to keep it quite secret."

Donald J. Morrison, another of those who sold bait, says:—

"They seemed to be very much afraid that they would be seized."

Dan. G. McAskill says:—

"They seemed to be afraid of being seized, as the crew of the vessel told us not to report them ashore." ("Canadian Correspondence, 1887," p. 108.)

In purchasing bait from one boat the crew was directed by those on board of the "Ella M. Doughty" to go to the other side of the ship, which would have the effect of securing them from observation.

Perhaps this is not relevant to the merits of the case, but it is at least pertinent to show that seizure was anticipated, and that want of "warning" cannot be complained of. It also casts suspicion upon the evidence of the master when his intentions are investigated.

Immediately after the vessel was seized the United States' Consul-General at Halifax appeared on the scene of the seizure, and master and crew had the benefit of his assistance. In reply to a written communication addressed to the seizing officer, he was at once informed by letter as to the causes of seizure, and referred to the Customs Act, and the Fishery Acts. That letter is an answer to the suggestion that the cause of seizure was "not clear." There, too, the Consul-General had the benefit of freely interrogating every one connected with the seizure.

The owners of the "Ella M. Doughty" obtained at an early moment the release of the vessel, on giving a bond for 3,000 dollars, the valuation placed upon her by her own solicitor, and upon depositing the amount of the penalty under the Customs Act, and a further amount as security for costs. The

master, who was a part owner, and one man, were the only witnesses from the vessel examined on the part of the claimant at the trial, and they had the opportunity of proving everything which could have been proved if every one of the crew had been called. It is submitted that the difficulty of procuring witnesses was not great, and that every shipowner with a suit in Court is liable to the same inconvenience.

It is not proposed to discuss whether or not these two vessels, in procuring bait within the 3-mile limit (although they clearly violated both the Treaty and the Statute of Great Britain in so doing), were technically "preparing to fish," within the meaning of that expression in the Statute which subjects them to forfeiture. This is surely a matter for the Courts in which the cases are pending. The phraseology of the Statute providing the penalty of forfeiture may not be as broad as that of the Convention, and the vessels may perhaps escape on this technical ground. That the Convention could have been carried out by compelling with force the trespassing vessels to leave the harbour is very clear. The matter, however, is now not as important as it was, because the terms of the Canadian Act of 1886 have been made as broad as the Convention, and subsequent seizures will be dealt with under them. That the vessels violated the Convention of 1818 is sufficient, so far as any international inquiry is concerned.

In a despatch to the United States' Consul-General at Montreal of the 29th October, 1870, with reference to the seizure of American vessels for violation of the Fishery Laws, Mr. Fish expressed himself as follows:—

"It is the duty of the owners of the vessels to defend their interests before the Courts at their own expense, and without special assistance from the Government at this stage of affairs.

"It is for those Tribunals to construe the Statutes under which they act.

"If the construction they adopt shall appear to be in contravention of our Treaties with Great Britain, or to be (which cannot be anticipated) plainly erroneous, in a case admitting of no reasonable doubt, it will then become the duty of the Government, a duty which it will not be slow to discharge, to avail itself of all necessary means of obtaining redress."

The "David J. Adams," not being in pursuit of one of the four privileges mentioned in the Convention, had no right whatever to enter a Canadian bay or harbour. The "Ella M. Doughty" having, as it is claimed, entered for shelter, had no right whatever to exceed the privilege.

By the Constitution of the United States, the Convention of 1818, like other Treaties, has the force and effect of a Statute. If these vessels violated the terms of that Convention they violated a law which the United States' authorities are bound to enforce against them. Their owners, as citizens, must conform to the laws of their own land. The United States and Great Britain are equally bound to fulfil the terms of their national agreement, and the duty is cast upon one as much as the other to see to it that their citizens conform to its provisions.

The want of specific charges in the petition filed praying for a condemnation and sale of the vessels in question is complained of. The procedure is also complained of for not affording relief in this respect.

At the outset it may be said that there is no provision, as there is in many Statutes relating to the revenue, which dispenses with the necessity of complying with the ordinary rules of pleading. The Vice-Admiralty Rules of 1883 were promulgated in England. The Court is a British Court, and the Judge is, or may be, appointed by Her Majesty's Imperial Government. The Rules of 1883 were taken from the Judicature Rules of England, which were framed by the most eminent lawyers in that country, and which command the respect of the jurists of both countries. They have been adopted to a very great extent in the Colonies, in the Courts of Equity and Common Law, and it is thought that they owe their origin to the improved systems of "code pleading" which have been created on this side of the Atlantic.

If the pleadings in the cases referred to were defective because they did not comply with the rules, they could have been struck out on the application of the claimant. If they did not afford him sufficient notice of the charge, an amendment could have been applied for. If that failed, ample redress is given by an application for discovery or for particulars. If the affidavits, writs of summons, or other proceedings were defective, they could have been set aside.

But the allegations were specific. The date, place, and circumstances of the commission of the offence were stated with the usual particularity. General paragraphs were added, no doubt through caution.

Take the following paragraph from the petition referred to:—

"8. Between the 10th and 17th days of May, 1886, the said Warren A. Doughty, the master of the said ship or vessel "Ella M. Doughty," and the officers and crew of the said ship or vessel "Ella M. Doughty," did in and with the said ship or vessel "Ella M. Doughty" enter into the bay and harbour of St. Ann's aforesaid, within 3 marine miles of the shores of the said bay and harbour of St. Ann's, and within 3 miles of the coast, bays, creeks, and harbours of those portions of the dominions in America of his said late Majesty King George the Third, being now the dominions in America of Her Majesty Queen Victoria, not included within the limits specified and defined in the said Article of the said Convention, and set out and recited in the first paragraph hereof, for the purpose of procuring bait that is to say herrings, wherewith to fish, and ice for the preservation on board said vessel of bait to be used in fishing, and of fresh fish to be fished for, taken, and caught, by, and upon the said vessel, and by the master, officers, and crew thereof, and did procure such bait wherewith to fish, and such ice for the purposes aforesaid, and did so enter for other purposes than the purpose of shelter, or repairing damages, or of purchasing wood, or of obtaining water, contrary to the provisions of the said Convention, and of the said several Acts; and the said vessel "Ella M. Doughty" and her cargo were thereupon seized within 3 marine miles of the coasts or shores of the said bay and harbour of St. Ann's, by Donald McAulay and Lauchlin G. Campbell, officers of the Customs of Canada, as being liable to forfeiture for breach or violation of the said Convention and of the said several Acts."

The charges were as specific as they are in all Admiralty suits against ships, in all civil pro-

ceedings against the person, and in all informations and indictments where more strictness is required. The rules of pleading are the same in all cases and for all litigants, whether citizens of Canada (who are there more frequently in Court) or citizens of the United States, who are seldom there. Surely rules of pleading and procedure of the Courts of a country, when they resemble those of other countries and are the same for all suitors, are not matter for international discussion. That there was no denial of justice is sufficiently clear when it appears from a letter of the Secretary of State to the master of the "David J. Adams" that eminent American counsel were retained in the case by the United States' Government, in addition to those who acted in the interests of the owner.

Delay and difficulty in taking the evidence of the claimant's witnesses is also referred to.

This, it is alleged, is partly due to the delay caused by the provisions of the statute requiring security for costs to be given. The Vice-Admiralty Rules of 1883 enable the claimant, the moment the writ of summons is served, to obtain an order for the examination of his witnesses.

It was as easy and as simple for the claimants to pursue this course before the witnesses left the province as it was for the counsel to take their informal depositions. There is no difference between the procedure in respect to taking evidence in these cases and that which obtains in all actions *in rem* in the same Court. The same complaint would apply to the procedure of every Court in both countries having Admiralty jurisdiction. There is always a difficulty in respect to taking the evidence of witnesses for the defence who wish to proceed abroad. If a remedy can be suggested, it will be useful in all cases.

It is not suggested that blame is to be attributed to the Judge for any delay which has taken place in rendering Judgments. In fact, in the statement he, as well as the Bar, is expressly absolved from all blame. It can hardly be intended to impute to the Government of Canada any blame in the matter, once the case was submitted for decision.

It is proposed to deal with all of the statutes regulating the procedure, which are complained of under another head.

The penalties sought to be enforced in the cases of the "David J. Adams" and "Ella M. Doughty" are said to be oppressive.

They are imposed for a violation—(1) of the Fishery Acts, *by the vessel*, involving forfeiture; (2) of the Customs Act, *by the master*, involving a penalty of 400 dollars; and (3) of the Imperial Act 59 Geo. III, cap. 38, *by the master*, involving a penalty of 200*l*.

It may be suggested that such penalties are not unusual in statutes of this nature, and that proceedings for their recovery are quite as usual. The joinder of several counts for the same offence certainly has not misled any lawyer. The Statutes of the United States relating to Alaska afford an instance of penalties quite as severe. For killing seals within the limits of Alaska territory, or in the waters thereof, the following penalties are imposed—that is to say:—

(1.) Forfeiture of the vessel violating the section; (2) a penalty of not less than 200 dollars, and not more than 1,000 dollars, on every person on board who has been engaged in killing seals; or (3) imprisonment not exceeding six months; or (4) both fine and imprisonment.

In practice *both* fine and imprisonment have been imposed, and upon both master and mate, and not by any means a minimum fine or a minimum term of imprisonment. After the term of imprisonment has been served, default of payment of penalties averaging from 500 dollars to 700 dollars has, under the peculiar terms of the sentence, obliged the prisoners to remain in prison. Lifelong imprisonment for the unfortunate seamen is necessarily the result. Perhaps the severity of such punishment is more deeply felt in a country where professional assistance is so difficult to obtain, and where a Judge sits supreme without appeal, where a jury must consist partly of persons disqualified by the laws of some civilized countries, and where property seized must be invariably sacrificed. The section adds, "nor shall he (the Secretary of the Treasury) grant any special privileges under this section."

But in the case of the "David J. Adams" and "Ella M. Doughty" it is submitted that all of the penalties, except those which may be enforced against the ship, are in practice harmless. The masters and their property being out of the jurisdiction are beyond the reach of the arm of the Court. No attempt was made to arrest any person or to hold him to bail.

Customs Laws.

The contention that fishing vessels were not intended to be included in the operation of the statute of Canada, which requires vessels entering from any place outside of Canada, or coastwise, promptly to make report, is quite unfounded. The enactment expressly includes "*every vessel, whether laden or in ballast.*"

The object of the Act is to prevent smuggling on a coast extending some thousands of miles, along which it is impossible to keep guard unless *all* vessels are to be reported.

If vessels professedly engaged in any particular occupation (as fishing) were exempt, there would be no protection for the revenue, as any vessel engaged in smuggling would secure immunity by the claim to be a fishing vessel.

The Commander of Her Majesty's ship "Devastation" complained, in his Report to the Vice-Admiral on the 10th November, 1852, that "from the lax administration of the Customs Laws in some of the provinces, it was impossible to detect those really fraudulent" among the fishing vessels.

The object of requiring a vessel to be reported is to enable the Customs officers to ascertain whether the visit she is making is on lawful business or not. The entry costs nothing, and the vessel is in nowise interfered with if her business is lawful.

"It will not be questioned that when that Act was passed the practice was in accordance with that theory" (the theory that only merchant vessels were intended). Such is the assertion in the "Statement" under review.

The contrary is the fact.

Without going back to the date of the Convention, it may be sufficient to refer to the practice of the last half-century as a refutation of the assertion that the "*new policy*" was "suddenly developed" in 1886. During that period, at least, the provisions of Acts such as that quoted have been enforced with more or less regularity.

In the "Confidential Memorandum for the use of the Commissioners on the part of the United States in the American-British Joint High Commission" of 1871, reference is made to the passage of the Nova Scotia Statute of 1836 against encroachment on the fisheries, and to the application on the part of the Colony for "a naval force to put an end to American aggressions." The following passage then occurs.—

"The seizures which followed this course were numerous.

"The voluminous correspondence which grew out of these seizures will be found in the Senate Executive documents already cited, pp. 59 to 103. The results are summed up in a Report from the Secretary of State, Mr. Vail (p. 92), and in a Report from Lieutenant-Commanding Paine to Mr. Forsyth (p. 98). Mr. Vail is unable to state whether, in the cases under consideration, there has been any flagrant infraction of the existing Treaty stipulations (p. 95). He appears to think that most of the cases were connected with alleged violations of the customs laws."

From a letter of the United States' Consul at Charlottetown, dated the 19th August, 1870, to the United States' Consul-General at Montreal, it appears that it was the practice of the United States' fishermen at that time to make regular entry at the port to which they resorted. The Consul said, "Here the fishermen enter and clear, and take out permits to land their mackerel from the Collector, and as their mackerel is a free article in this island, there can be no illicit trade."

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

With reference to the statement that the "Dominion Government has utterly failed to show that any facts have transpired indicating that the United States' fishing-vessels have engaged in illegal trade since A.D. 1885," &c., it may be observed that this has never formed a subject of discussion in the correspondence which has taken place, and in which the Dominion Government is thus asserted to have "utterly failed to show" such a state of facts.

The object of enforcing the customs laws is to *prevent* illegal trade, and if such illegal trade has been prevented by the vigilance exercised, it would indeed be difficult to prove that such trade was actually carried on.

As to the assertion that the vessels said to have been "harassed" were not engaged in such illegal trade, and had no disposition to so engage—these are facts not easy to be ascertained. The vessels which were fined had violated the law and incurred the penalties imposed.

As to the statement that Shelburne Harbour, at which the "Rattler" and other vessels are said to have been severely treated, is a "long estuary," and the custom-house some miles distant from the outer or lower harbour; to remove all complaint a Customs officer was specially appointed at the entrance to receive reports of vessels entering, and the captains of the police vessels were authorized in all places to receive reports.

The following is the substance of the Report of the Minister of Marine and Fisheries on the case of the "Rattler":—

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

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

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

The "Marion Grimes" is the next vessel with which the statement deals. She had incurred a penalty of 400 dollars by failing to report, and by attempting to leave the harbour of Shelburne without reporting. She was subjected to four days' detention while her case was being considered, and was released on payment of an expense of 8 dollars which had been incurred in watching.

The mention of this vessel is made, in the "statement," an opportunity of referring to the lengthy and able despatch in which Mr. Bayard on the 6th November, 1886, referred to the case of this vessel. The force of Mr. Bayard's arguments, as to the facts of this particular case, was removed when the penalty, which was the chief subject of his remonstrance, was relinquished. There are some contentions, however, in this despatch which remain to be noticed. Among these is the contention that vessels resorting to the ports of another country for shelter, are not by the law of nations subject to custom-house exactions.

The justice of such a proposition will be apparent as applied to an attempt to exact customs duties on a vessel driven into port in distress, but no duties or "custom-house exactions" have been enforced,

The obligation to report, in order that the *bona fides* of the visit might be ascertained, was the only obligation insisted on. The authorities which Mr. Bayard cites are likewise inapplicable. They assert the right of those on board the visiting vessel to immunity from interference "*with the relations or personal conditions of those on board*," and then deny that an armed force should invade "*the vessel of a friendly nation that has committed no offence*," and "*forcibly dissolve the relations, which, by the laws of his country, the captain is bound to observe and enforce on board.*"

In the case of the "Grimes" there was no interference "with the relations or personal condition of those on board." The vessel *had* committed an offence, and there was no attempt to dissolve the relations which the captain was bound to observe and enforce. These authorities do not state, or even suggest, that the visiting vessel may disregard the laws of the country visited, or violate them. An eminent authority (Phillimore) lays down what is understood to be the true rule on this subject. After treating of the rights of the public vessels (of war), he says (vol. i, p. 483):—

"With respect to merchant or private vessels, the general rule of law is, that, except under the provisions of an express stipulation, such vessels have no exemption from the territorial jurisdiction of the harbour or port, or—so to speak—territorial waters (*mèr littorale*), in which they lie."

In relation to the right of the vessel to be in the harbour for shelter, it is admitted that the comity of nations gave her that privilege, and that the Convention of 1818 preserved it. It is not admitted, however, that any such right existed, as seems to have been claimed by Mr. Bayard, by virtue of any survival of the Fishery Article of the Treaty of 1783, or by anything connected with the former relations of the people of the United States to the British Empire. The views in that direction, presented by the extract from Mr. Livingstone's instructions to Dr. Franklin, quoted in Mr. Bayard's despatch, are excepted to on the following grounds:—

1. The author professes only to refer to the fisheries "on the banks of Newfoundland."

2. When applied to coast fisheries the quotation fails, because it professes to found a claim on the former colonial condition. When that condition was forsaken its privileges could not be claimed by those who had renounced its obligations.

3. It claims that the participation in the wars in British North America gave a special right to the American fisheries. But the fisheries, and the coasts to which they were adjacent, were not acquired by conquest. They were restored after conquest, and eventually were acquired by Great Britain from France under the Treaty of 1763. Even had it been otherwise, the participation in these wars surely gave the New England colonists no superior right to those of the people who remained colonists, but whose coasts they claimed to be made subservient to them.

4. It assumes that the colonists were tenants in common of the fisheries with Great Britain; whereas they enjoyed the fisheries by virtue of her sole and exclusive title, which they could no longer avail themselves of after their separation from her Empire.

5. It embodies the contention that Great Britain forced the separation by oppression; but surely no superior right, in relation to countries not involved in the oppression or the separation, thereby resulted. The independence of the United States had been achieved—the remainder of the British Empire became to them, by their own choice, a foreign country.

The rights which were acquired in the Treaty of 1783 by the people of the United States were conferred on them by grant, and ceased when that grant was dissolved by the war of 1812, and by the consequent renunciation of its provisions on the part of Great Britain. After the conclusion of that war Great Britain firmly and successfully established, both by argument and by force, that the Fishery Article of 1783 had no longer any validity, and the result was the Convention of 1818.

Allusion is made in Mr. Bayard's despatch in reference to the "Grimes" to the case of Sutton *v.* Sutton, decided by Vice-Chancellor Leach (1 Russ. & M., 675). The single question which was before the Vice-Chancellor was whether an Article of the Treaty of 1783, relating to the property of British and American subjects, respectively, had survived the war. His decision merely was that it had so survived, for the reason that the language of that Article expressly required that it should endure. He had no other question in view; he attempted no dictum on any other point, and if he had attempted to deal, even by inference, with the Fishery Article (in which, by the way, no such intention as that expressed in the Article relating to property can be discovered) his dictum would have been "*obiter*."

The contentions in the despatch founded on the development of railways and commerce since 1818 need not be considered here, as these can hardly give an interpretation to the Convention, and are dealt with in the reply to the Memorandum to which the "Statement" under review is an Appendix.

As to the "City Point," she violated the Customs Act by failing to report and by landing some of her crew and their luggage.

The "C. B. Harington" and the "G. W. Cushing" violated the Convention of 1818. They entered for the purchase of ice and bait, and not for one of the four permitted purposes. Although mentioned in the Statement under the heading "Customs Laws," they do not properly belong to that subject, excepting by reason of the fact that, having entered for an illicit purpose, they at the same time violated the Customs Laws, by abstaining from making the Report which they could not make without disclosing their illegal design.

Landing of Crews of Fishing Vessels prohibited and Refusals of petty amounts of Provisions,

Under these headings the Statement mentions the cases of the "Shilo," the "Jennie Seaverns," the "Mollie Adams," and the "Laura Sayeward," which vessels were forbidden, according to the terms of the Convention, to use the bays and harbours of Canada for any other than the four purposes specified in the Convention. After what has been said in the correspondence with regard to this subject, and in reply to the Memorandum presented by the Plenipotentiaries of the United States, it will be unnecessary to make any argument here. It is deemed sufficient to say that the United States

had, in the plainest words that the language contained, renounced, for all its fishing-vessels, the privilege which was claimed for those vessels, and the refusal of which is now made the subject of complaint. The Government of the United States has been fully informed of this contention, and after controverting it with as much zeal and ingenuity as the question admitted of, were informed by Lord Rosebery, through Mr. Phelps, on the 24th May, 1886, "that the plain English of the clause seemed entirely to support the Canadian view."

On the 29th of the same month Lord Rosebery informed Mr. Phelps "that as regards the strict interpretation of the Treaty of 1818," he was "in the unfortunate position that there were not two opinions in England on the matter, and that the Canadian view was held by all authorities to be legally correct." On the 2nd June of the same year, Lord Rosebery informed Mr. Phelps that "there was such unanimity among our legal advisers as to the interpretation of the Treaty of 1818 that he had nothing to submit to them." The Earl of Iddesleigh wrote to Mr. Phelps on the 30th March, 1886: "Her Majesty's Government are unable to perceive any ambiguity in the terms of Article I of the Convention of 1818."

In this condition of matters the Plenipotentiaries of the United States cannot be surprised that Her Majesty's Plenipotentiaries do not recognize these cases as forming ground for complaint or compensation.

Shipment of Fish in Bond.

It is not disputed that Article XXIX of the Treaty of Washington (1871) remains in force. There has been no case of refusal to accept goods or merchandize at any point in Canada, from any vessel which could "lawfully enter" for delivering such. Fishing-vessels of the United States, it will be remembered, can enter the "bays and harbours" for shelter and repairs, and for purchasing wood and obtaining water, "and for no other purpose whatever."

Poaching by American Vessels.

Under this head the Statement discusses the reasons which, it is conjectured, induce the Canadian authorities to enforce the Convention.

When a right exists it is not often necessary to vindicate the various purposes which may be served by enforcing the right. Long experience and innumerable instances have shown the necessity for the enforcement in question. The history of the fishery question is full of justifications.

After the making of the Convention of 1818, year after year the fishermen of the United States maintained a system of encroachment and of trespass by fishing within 3 miles of the coast, and by entering, without due justification, the bays and harbours of the provinces. Marine police cruizers were kept up by the Provincial Governments, and the Imperial ships of war aided these in seizing from time to time the vessels which were so found trespassing. Condemnations of these took place under the Imperial and Colonial Statutes.

In some cases these seizures were made for violations of the Customs Laws. They were, nevertheless, in nearly every case, seizures practically for violations of the Convention of 1818 and of the Fishery Laws.

The vessels seized were United States' fishing-vessels; the Customs officers along the line of coast of the different provinces were in reality the fisheries police of British North America. The vessels, in most instances, frequented the harbours, ports, and bays of Nova Scotia and New Brunswick for purposes other than the four allowed by the Convention of 1818, viz., the purchase of wood and the obtaining of water, and for shelter and repairs. The enforcement of the Customs Regulations was for the avowed purpose of denying to such vessels all rights of access, excepting those which related to the right of asylum as recognized and preserved in express words by the Treaty of 1818.

Many of the reasons given to show the necessity for the exclusion of the Bahama fishermen from the coasts of Florida (see Report of Mr. Duval, Governor of Florida in 1831, Congressional Documents, 1852-53) will apply to the case of the exclusion of American fishermen from territorial waters except when entering for one of the four purposes mentioned in the Convention of 1818.

The necessity for such exclusion from fishing limits is easily demonstrated. Why did the framers of the Convention of 1818, in the somewhat exceptional and extreme case of fishing-vessels being obliged to enter our bays and harbours for refuge or repairs, for wood or water, take the precaution to guard the conditions of that entry with a provision that they should be "subject to such restrictions as should be necessary to prevent them taking, drying, or curing fish therein, or in any other manner whatever abusing the privileges thereby secured to them?" And if the entry in such an exceptional case was so carefully provided for, and the danger of clandestine fishing and abuse and encroachment so specifically anticipated, how much greater was the necessity for prohibiting altogether fishing-vessels from entering territorial waters except when in distress or in want of wood or water? To concede to them the privilege to enter for bait or supplies, or to tranship cargoes, without stipulation or regulation, would completely nullify the renunciation of the United States in respect to fishing.

With respect to all laws relating to game, the revenue or the fisheries, where great difficulties beset the detection of their infringement, every possibility of violation must be prevented. The preliminary steps to infringement must be guarded against. To allow fishing-vessels with fishing implements on board inside of the fishery limits is but to allow them to fish. It would be impossible to prevent abuse. The difference between the off-shore and bank fishing-vessels and the in-shore fishing-vessels is not easily noticed at a distance. The constant access to harbours of large fleets of vessels throughout the whole fishing season renders impossible the thorough administration of the Revenue Laws of the country. The cost of a marine police would be too great; the inconvenience of insuring a regard for the rights and laws of the nation would be too burdensome.

In 1837 the Legislature of Nova Scotia suggested a few of the difficulties. The following appears in its records:—

"The Committee further report that the construction of distinguished lawyers and the legitimate

construction of the Convention is, that the citizens of the United States cannot conduct their fishing within 3 marine miles of the headlands of the coast of Nova Scotia, and have no liberty to enter the bays, harbours, or creeks thereof, except for shelter and to purchase wood or obtain water, and only then on proof of having left their own ports sufficiently supplied for the voyage; yet on inquiry, and hearing evidence, it is proved beyond all doubt, by witnesses of unquestionable character, that the fishing-vessels of that country resort to our shores with as little concern as they quit their own; that, contrary to the terms of the Convention, they purchase bait from the inhabitants, and in many instances set their own nets within the harbours of the province, and on various occasions have, by force, coerced the inhabitants to submit to their encroachments, and they land on the Magdalen Islands and pursue the fishery therefrom as unrestricted as British subjects, although the Convention cedes no such right. The consequences following in the train of these open violations of a solemn Treaty are illicit trade, destruction of the fishery by the means of conducting it, interruption of that mutual confidence which ought always to exist between the merchants and fishermen of a country, inducing the former to supply and the latter to make payments with punctuality; and, finally, the luring from our shores, by means of bounties, the youth of our country to their employment, reducing our population and impoverishing our province, while they add strength and vigour to their own; for proof of which your Committee refer to the documents hereto annexed, and numbered from 1 to 3." (Nova Scotia Journals, 1837, Appendix No. 75, p. 3.)

And the House of Assembly of Nova Scotia in 1851 adopted a Report containing the following language in respect to a very limited area affected by the granting of liberty of passage to American fishing-vessels through the Strait of Canso, viz.:—

"When that necessity does not exist, it would be unwise any longer to permit American fishing-vessels to pass through the Gut of Canso, for the following among many other reasons which could be given, if necessary:—In the month of October, the net and seine fishery of mackerel in the Bay of St. George is the most important to the people of that part of the country, and requires at the hands of the Legislature every legitimate protection. Up to this period American fishermen, using the passage of the Gut of Canso, go from it into St. George's Bay, and not only throw out bait to lure the fish from the shores where they are usually caught by our own fishermen, but actually fish in all parts of that bay, even within 1 mile of the shores. It is also a notorious fact that the American fishing-vessels in that bay annually destroy the nets of the fishermen by sailing through them, and every year in that way do injury to a great extent—and this upon ground which they have no right to tread. Remonstrances have therefore been made to the American Government against such conduct, but the answer has invariably been, to protect ourselves in that respect. Had the United States' Government adopted suitable measures to prevent its citizens from trespassing as before mentioned, it would not be necessary for this Legislature to put any restriction on their use of the passage in question; but as the onus has been thrown upon this Legislature, it is clearly its duty to adopt the most efficient and least expensive means of protection. If the privilege of passage is exercised through the Gut of Canso and the bay in question, it is next to impossible to prevent encroachments and trespasses upon our fishing-grounds by American citizens, as it would require an expensive coastguard by night and day to effect that object, and then only partial success would result. It would be unreasonable to tax the people of this country to protect a right which should not be invaded by foreigners, and which can only be invaded and encroached upon by our permitting foreigners to use a passage to which they are not entitled. Without, therefore, any desire unnecessarily to hamper American citizens in the enjoyment of that to which they are justly entitled, your Committee consider it their imperative duty to recommend such measures for the adoption of the House as will in the most effectual way protect the true interests of this country. The outlay necessarily required to watch properly the operations of foreign fishing-vessels in the Bay of St. George, so as to prevent encroachment, amounts to a prohibition of its being accomplished; and it therefore becomes indispensable that such vessels be prohibited from passage *through* the Gut of Canso. The strait will always be, to vessels of all classes, a place of refuge in a storm, and American fishing-vessels will be entitled to the use of it as a harbour for the several purposes mentioned in the Treaty. It can be visited for all these purposes without a passage through being permitted, and your Committee therefore recommend that an Act be passed authorizing the Governor, by and with the advice of his Executive Council, by Proclamation, either to impose a tax upon foreign fishing-vessels for such amount as may be provided in the Act, or to prohibit the use of such passage altogether."

A Memorial was transmitted to the Imperial authorities, dated the 2nd September, 1852, in which the following paragraph was contained:—

"By the terms of the Convention of 1818, the United States expressly renounced any right of fishing within 3 marine miles from the coasts and shores of these Colonies, or of entering their bays, creeks, and harbours, except for shelter, or for wood and water.

"If this restriction be removed, it must be obvious to your Excellency that it will be impossible to prevent the Americans from using our fishing grounds as freely as our own fishermen. They will be permitted to enter our bays and harbours, where and at all times, *unless armed vessels are present in every harbour;* they will not only fish in company with our fishermen, but they will bring with them contraband goods to exchange with the inhabitants for fish, to the great injury of colonial traders and loss to the public revenue. The fish obtained by this illicit traffic will then be taken to the United States, where they will be entered as the produce of the American fisheries, while those exported from the Colonies in a legal manner are subject to oppressive duties."—(Sabine, p. 450.)

If the necessity for exclusion and for imposing guards upon the access to territorial waters existed in 1818, how much has that necessity increased? Then large areas of our coasts were almost uninhabited; now we have a greatly increased population, and a greatly increased trade has sprung into existence. The use of our territorial waters and shores by the citizens of another country, always a serious matter to the subjects of the Crown of Great Britain, would now be a positive inconvenience and a burden. Competition and rivalry, which existed slightly in 1818, have increased as the industry has increased, and while the industry has increased the necessity for vigilance has become greater. A

higher Tariff has enhanced the difficulties of administering the revenue laws. The nations possessed of fisheries are making more stringent Regulations in regard to them, and while the untenable claims in respect to extended limits from the shore are necessarily now abandoned, the exclusive enjoyment of the fisheries, and rights pertaining thereto, are more firmly insisted on.

Exclusiveness becomes more necessary as competition becomes more active, and the people of the United States have not been slow to apply this principle in regulating the terms on which others can have access to their markets, while they complain of its application to the fishing-grounds of a neighbouring country, whence the supplies for those markets have largely to be drawn.

The reference which is made in the "Statement" under review, as to the small number of seizures for actual smuggling and poaching in recent years is, at least, inconclusive. There has been, as is stated in the document under review, considerable vigilance used in prevention, and in warnings, and the vessels which have been molested have not by any means been the only transgressors.

It must be conceded, as is claimed in the "Statement," that the fisheries of Canada and Newfoundland, like all other riches, are subject to "thieves, moth, and rust." The experience of the last sixty-nine years has removed that axiom from the field of discussion, but it is somewhat unusual to see that the rightful possessors of such property may not seek to protect themselves, at least against the first of these dangers, without the reproach of violating "Christian principles" and "the rules of good neighbourhood."

"Unfriendly and Extraordinary Legislation."

This term, in the United States' "Statement," is used to designate certain provisions of the statutes of Canada relative to "fishing by foreign vessels." A short history of this legislation may not be out of place.

At the first Session of the British Parliament, after the ratification of the Convention of 1818, the Act 59 Geo. III, cap. 38, was passed. In is entitled "An Act to enable His Majesty to make Regulations with respect to the taking and curing of fish on certain parts of the coasts of Newfoundland and Labrador, and His Majesty's other possessions in North America, according to a Convention made between His Majesty and the United States of America." It was assented to on the 14th June, 1819.

Up to 1836 no orders had been made by His Majesty in Council, and no Regulations had been made by the Governor of any North American Colony under an Order in Council, although section 3 of that Act authorized such Orders and Regulations. The provisions of the Convention, it will be remembered, contemplated and authorized the making of such restrictions as might be necessary to prevent the United States' fishermen from taking, drying, or curing fish in the said bays or harbours, or in any other manner whatever abusing the privileges reserved to them.

It was also then found that, since the Imperial Act did not designate the persons who were to make the seizures, the Statute was liable to be evaded and the fishery carried on contrary to the terms of the Convention.

In Nova Scotia, where its provisions had been most frequently violated, the necessity for such Regulations and restrictions first became apparent.

On the 12th March, 1836, an Act was passed, entitled, "An Act relating to the Fisheries and for the prevention of Illicit Trade in the Province of Nova Scotia and the Coasts thereof." (Acts of 1836, 6 Wm. IV, cap. 8, N.S.).

The Act is in the same terms as the Act passed by the Dominion of Canada immediately after the Confederation, 31 Vict., cap. 61 (Canada).

By the 18th section of the Act of Nova Scotia, it was enacted:—

"That this Act shall not go into force or be of any effect until His Majesty's assent shall be signified thereto, and an order made by His Majesty in Council that the clauses and provisions of this Act shall be the Rules, Regulations, and restrictions respecting the fisheries on the coasts, bays, creeks, or harbours of the province of Nova Scotia.

This Act received the assent and ratification of His Majesty by an Imperial Order in Council which will be found in the Nova Scotia journals of the House of Assembly, 1837, Appendix 1, p. 2.

Another Order of His Majesty in Council, dated the 15th June, 1836, was made declaring that the clauses and provisions of this Act of the province of Nova Scotia, cap. 8 of the Acts of 1836, should be the Rules, Regulations, and restrictions respecting the fisheries on the coasts, bays, creeks, or harbours of Nova Scotia (*ibid.*, p. 3). Notification thereof was duly gazetted in the province.

In Prince Edward Island, in 1843, a similar Act, containing a similar preamble, and a clause identical with section 18 of the Nova Scotia Act, was passed. This Act will be found in the Statutes of Prince Edward Island, 6 Vic., cap. 14, vol. i, p. 419. This Act received the "Royal allowance" on the 3rd September, 1844, and an Order was on the same day made by Her Majesty in Council declaring that its clauses and provisions should be the Rules, Regulations, and restrictions respecting the fisheries on the coasts, bays, creeks, or harbours of the Island of Prince Edward, and notification of said Royal assent and of the said Order was published, in the "Royal Gazette" newspaper of the island on the 8th October, 1844. (See note, ibid., p. 425.)

In New Brunswick, in 1853, an Act of that Legislature was passed, which is entirely similar to the two provincial Statutes just referred to (16 Vict., cap. 69, New Brunswick). In this way, under the terms of the Convention, and of the Imperial Act, 59 Geo. III, cap. 38, Regulations were made for all three provinces.

Upon the confederation of the provinces in 1867, the Act 31 Vict., cap. 61, comprising the provincial Acts, was passed. Its administration was cast upon the Federal Government to be carried out by Dominion officials.

Amendments were passed from time to time by the Dominion Parliament, that is to say, 33 Vict., cap. 61, and 34 Vict., cap. 14.

The next amendment was passed in 1886. It was reserved by the Governor-General on the

2nd June, 1886, for the signification of the Queen's pleasure thereon. Royal assent was given by Her Majesty in Council on the 26th November, 1886; proclamation thereof was made on the 24th December, 1886.

It provides for forfeiture of any fishing-vessel entering the prohibited waters for any purpose not permitted by Treaty or Convention, or by any Law of the United Kingdom or of Canada.

It is proposed to deal with the several provisions of this legislation which form the subject of complaint.

The Canadian Act of 1868, sec. 10, cap. 61, casts the burden of proof upon the claimant. What takes place in these and all revenue cases is this: The law provides that if the master or crew of a vessel do certain things, the vessel shall be forfeited. A seizure is made and the claimant makes his claim; then the legality of the seizure is to be tried. Of course the forms may be similar to those in an ordinary action between plaintiff and defendant, but the question to be decided is the legality of that seizure. Was it a case in which the officer was authorized to make the seizure, &c.? In all such cases the burden is placed upon the claimant of proving such illegality.

A similar section, with a proviso annexed, will be found in the Revised Statutes of the United States, section 909:—

"In suits or information brought where any seizure is made pursuant to any Act providing for or regulating the collection of duties on imports or tonnage, if the property is claimed by any person, the burden of proof shall lie upon such claimant: Provided that probable cause is shown for such prosecution, to be adjudged of by the Court."

By English decisions, under a section similar to our own, it has been held that, notwithstanding its provisions, a *primâ facie* case must be made out by the prosecutor; so that the terms of the Canadian section are more favourable to the claimant than if the proviso were added which is contained in the United States' provision. (See the "Beaver," 1 Dodson, 152.)

Section 909, Revised Statutes of United States, p. 172, has existed since the 2nd March, 1799, and upon it numerous decisions have been given.

The first case is Locke *v.* The United States, 7 Cranch, 339, when a seizure under circumstances which warranted suspicions was upheld. Pinkney, who appeared for the United States, said:—

"The claimant has sufficient notice that the United States mean to rely on the general ground of suspicion and on the shifting of the *onus probandi*, and must come prepared to remove the suspicion. Of what use is the provision respecting the *onus probandi* if the law was so before? It is perfectly nugatory if probable cause means *primâ facie* evidence. It must mean something less than evidence, it means reasonable grounds of suspicion."

The Court, on giving judgment, said:—

"The circumstances on which the suspicion is founded, that they have been landed without a permit, are: (1) that the whole cargo, in fact, belongs to the claimant, and yet was shipped in Boston in the names of thirteen different persons, no one of whom had any interest in it, or was consulted respecting it, and several of whom have no real existence; (2) that no evidence exists of a legal importation into Boston, the port from which they were shipped, to Baltimore, where they were seized; (3) that the original marks are removed and others substituted in their place."

Those were the grounds of suspicion. Then the Judge continues:—

"These combined circumstances furnish, in the opinion of the Court, just cause to suspect that the goods, wares, and merchandize against which the information in this case was filed have incurred the penalties of the law, but the counsel for the claimant contends that this is not enough to justify the Court in requiring exculpatory evidence from his clients. 'Guilt,' he says, 'must be proved before the presumption of innocence can be removed.' The Court does not so understand the Act of Congress. The words of the 71st section of the Collective Law which apply to the case are these."

Then follows the clause which is now section 902, Revised Statutes, United States.

"It is contended that probable cause means *primâ facie* evidence, or, in other words, such evidence as in the absence of exculpatory proof to justify condemnation. This argument has been very satisfactorily answered on the part of the United States by the observation that this would render the provision totally inoperative. It may be added that the term 'probable cause,' according to its usual acceptation, means less than evidence which would justify condemnation; and in all cases of seizure has a fixed and well-known meaning. It imports a seizure made under circumstances which warrant suspicion. In this, its legal sense, the Court must understand the term to have been used by Congress."

The next case is the "Luminary," reported in 8 Wheaton, 407. In that case a mere suppression was held to make out a *primâ facie* case and to justify the Court in giving judgment of condemnation. The head-note is as follows:—

"Under the 27th section of the Registry Act of the 31st December, 1792, circumstances of suspicion sufficient in the judgment of the Court to call for an explanation being shown, and the claimant having it in his power by the production of documents to make a clear case either for the Government or himself, and refusing to produce these documents, the vessel was condemned."

Mr. Justice Story, in the Judgment in that case, said:—

"The suppression, therefore, justifies the Court in saying that the United States have made out a *primâ facie* case, and that the burden of proof to rebut it rests with the claimant."

In "Charles Clifton *v.* the United States," 4 Howard, 252, the defendant was obliged to bring, in support of his defence, the best evidence in his possession.

Then there is the case of "Cliquot's Champagne," 3 Wallace, 114, where the Judge recognized the "rule of *onus probandi* as a *permanent feature* of the revenue system." He says:—

"By the legislation of the United States it is established that in revenue cases where the Government has shown probable cause, the *onus probandi* or burden of proof is on the part of the claimant to prove the facts necessary to be shown in his defence. Under that rule of law, or rather provision of the Statute, I am bound to say that, in my opinion, the United States have proved

probable cause, and it is for you to say whether the claimants themselves have made out their defences."

The "John Griffin," 15 Wallace, 29, was a decision of the Supreme Court of the United States, and the section with which the Court was dealing was section 71 of the Act, 1799:—

"That in actions, suits, or informations to be brought where any seizure shall be made pursuant to this Act, if the property be claimed by any person, in every such case the *onus probandi* shall be upon the claimant."

In that case there was a conflict of testimony. It was a case of seizure of cigars, and the captain testified:—

"That the cigars were not on board with his knowledge or consent, and he believed they were not there at all. He admitted an interview with Albern, in Havana, or somewhere else, in regard to a trunk and barrel package. He equivocated about the authorship of a letter produced by Albern, saying that he could not say that it was written by him; that it might have been written by him, that it looked like his writing. He nowhere denied that he wrote it. He attempted to explain it by saying that it might possibly have referred to his having sent these things on board of another vessel, not his, as a service to Albern, to let him know that they were there, but with no knowledge that they were to be landed without paying duty. But he did not speak of this with certainty, nor did he give the name of the other vessel on which he might have sent the cigars. The receipt of the money from Albern he wholly denied."

Mr. Justice Miller, in giving the decision in that case, speaks of a *primâ facie* case having been made out.

The case of ten hogsheads of rum (1 Gallison's Reports, p. 191), decided by Mr. Justice Story, was a remarkable decision. The rum had been imported from the British West Indies into the United States, but had been seized because it was of the "growth, produce, or manufacture" of a Colony of Great Britain.

The section in question (section 909) was apparently not applicable. The Court said:—

"It has been supposed that the *onus probandi* is not thrown upon the claimant in proceedings *in rem*, unless in cases within the purview of the 71st section of the Collection of Acts of the 2nd March, 1799, cap. 128 (now section 909, Revised Statutes). But I incline to the opinion that the *provision alluded to is but an extension of the rules of the common law.* Be this as it may, whenever the United States makes out a case *primâ facie*, or by probable evidence, the presumption arising from it will prevail unless the claimant completely relieve the case from difficulty. In the present case I think the United States have *primâ facie* maintained the allegations of the information. The burden of proof of the contrary, therefore, rests upon the claimant. He and he only knows the origin of the goods. If he does not attempt it, but relies on the mere absence of conclusive, irrefragible proof, admitting of no possible doubt, he claims a shelter for defence which the laws of the country have not hitherto been supposed to acknowledge."

Reference is made to the 12th section of the Canadian Act, 31 Vic., cap. 68, which provides that no person should enter a claim to anything seized under the Act until security has been given, in a penalty not exceeding 240 dollars, to answer and pay costs occasioned by such claim, and that, in default of such security, the thing seized should be adjudged forfeited and should be condemned.

The corresponding section in the Revised Statutes of the United States, made applicable, it is believed, to seizures for killing seals in the waters of Alaska, is as follows:—

"Section 93 (part). And if no person appears and claims such vessels, goods, wares, or merchandize, and gives bond to defend the prosecution thereof, and to respond the cost, in case he shall not support his claim, the Court shall proceed to hear and determine the cause according to law."

A similar provision is frequently found in other Statutes. Generally it may be said that in cases where bail bonds are taken from persons who have been arrestad on civil process, or whose prcperty has been attached under "absent debtors" process, an amount is included to cover the costs, in case of the successful event of the suit. The section referred to is not exceptional. It is common to all procedure which contemplates absence of the party from the jurisdiction and failure to respond, in person, the costs of the litigation.

It appears also to be a matter of complaint that no action can be brought, except within three months, to redress an illegal seizure, and that at least one month's notice of the action must be given, which notice must contain the grounds of action. This provision is very far from depriving the claimant of the right to bring such an action.

Under the Revised Statutes of the United States, section 934, property taken under the revenue laws can not be replevied. In Canada, as in England, replevin will lie, and where replevin, which is a common remedy in such cases, is brought, it has been held that such a section requiring notice of action to be given, does not apply to such actions.

By section 970 of the Revised Statutes of the United States, if judgment is rendered for the claimant, but the Judge certifies that there was reasonable cause of seizure, the claimant is not allowed any costs in that proceeding, although he is always liable to costs if the decision be against him, and neither the prosecutor nor the person that made the seizure shall be liable to a suit or Judgment on account of such suit or prosecution, and if a suit is brought against the officer and the Judgment is given in his favour, he recovers double costs.

It does seem that the mode of obtaining redress for illegal seizure is not more restrictive in one country than in the other.

These Statutes do not take away the rights which American citizens possessed under the Convention and are not in conflict with its terms. They regulate procedure in a certain class of actions arising out of violation of the Statute. That procedure may militate against the interests of American fishermen, because it prevents them to some extent from violating the provisions of the Convention with impunity. The provision for forfeiture is against their interests, but without such a provision the Convention would be ineffectual.

If the provisions as to procedure are invalid, then it can with equal reason, and on the same grounds, be held that the provisions of the Statute with regard to forfeiture are equally invalid. Such a contention would be manifestly absurd. These sections may be inconvenient for persons violating the Statute, but they are provisions which Canada has adopted in her revenue laws with respect to her citizens, and which the United States have to some extent adopted in their revenue laws. They prevailed in Great Britain and in the United States when the Provisional Acts were made, and as the parties to the Convention must have foreseen that some procedure should be enacted to make the Treaty effective, they no doubt contemplated a procedure used in a class of cases most closely resembling cases to arise for an infraction of the Convention—a procedure applicable to seizures and proceedings *in rem*.

This matter of procedure in our own Courts is one in respect to which American citizens have no more right to complain than they have in respect to any procedure. They might as well say that we have no right to have any procedure at all, or that we can not regulate our procedure in any way whatever, as to cases in which foreigners are parties. Admit that we may create Courts and that these Courts may entertain jurisdiction in cases of violation of the Convention, and the right to procedure must be admitted. It is not for the citizens of the United States to complain. They have carried the law respecting attachments, proceedings *in rem*, and constructive service far beyond the bounds of anything in British or British colonial legislation.

It is unnecessary to vindicate such laws after an existence on the Statute Books of both countries for so many years. The necessity for such provisions, to prevent infractions of the revenue laws and to secure their proper administration, has long been established. Difficulties of detecting frauds, of procuring proof, of detecting officers in the *bonâ fide* administration of the laws, of compelling the injured person to move promptly, while the proofs may be obtained, have compelled the Legislature to adopt such deviations from the ordinary procedure. And if such provisions are justifiable in the administration of laws to prevent smuggling and other infringements of the customs laws, why should they not be applied to seizures for violation of the municipal regulations of the country in respect to its fisheries? The law is administered in much the same way. The difficulty of detecting infringements and the necessity of protecting officers in the discharge of their duty are quite as great in the one case as in the other.

The power to make restrictions to prevent the abuse of the privileges reserved by the Convention must have been reserved for the purpose of making the Convention effective. A Statute must have been contemplated, for without a Statute it was clearly a dead letter. Procedure must have been contemplated, for without procedure the Courts would be helpless to enforce its provisions. This must have been clear to the minds of the framers of that Convention, who were well versed in the laws of England.

In respect to the amendment made by the Act of 1886, there were never better grounds in any case for the intervention of the Legislature. If the Convention prevented vessels from entering the bays and harbours within the area therein mentioned, the Legislature had the absolute right to make the provision effective. That amendment did make it effective; and it did so in the only feasible way. It is true a penalty against the master was provided for in the English Act, although not in the Canadian Act; but such a remedy was entirely insufficient. Judgment was recovered in the Supreme Court of Nova Scotia against Alden Kinney, the master of the "David J Adams," for the penalties in the Imperial Act, but he has never since visited our shores to pay it. The procuring and serving of process upon the master, with a fast ship at sea, is out of the question; and the fruit of a Judgment against a fisherman would not, perhaps, be abundant. Service was effected in Kinney's case, only in consequence of his vessel being first detained. Canada has so far avoided enacting laws for arresting and imprisoning for such a penalty, or making a breach of fishery laws a criminal offence, and for throwing into prison helpless seamen who may be doing their master's bidding. Imprisonment is a remedy more "harsh" and "unjust" than a proceeding *in rem* against the offending ship, trespassing for the benefit of the owner as well as for those on board. Canada, at least, has not adopted both of these modes of concurrent remedies for enforcing the laws relating to territorial waters.

But a stronger ground for the intervention of the Canadian Parliament was afforded. The expression, "preparing to fish," in the Statute, had caused debate. Whether purchasing bait in the harbours of Nova Scotia, involving a violation of the Convention by an entry into the prohibited waters, was itself a violation or not, evoked discussion. This happened in consequence of conflicting decisions. The decision of the Admiralty Judge, Sir William Young, the Chief Justice of Nova Scotia, in the case of the "J. H. Nickerson," has been often referred to. It was there held that procuring bait was a violation of the Statutes, and a cause of forfeiture. Judge Hazen, a Judge of the County Court in St. John, also sitting as a Vice-Admiralty Judge, had previously held that it was not a cause of forfeiture, under the Statute, to purchase bait, unless it was purchased with the intention of catching fish with it in the prohibited waters.

After the termination of the Washington Treaty, when it again became necessary to administer the Statutes which had been debated in the foregoing cases—pending immediately before it was framed—it was proper to create a remedy for what was deemed a conflict of decisions in two Courts of equal jurisdiction. A conflict of decisions, or even differences of opinion in a divided Court, when the reasons of dissenting Judges are weighty, have frequently called forth the intervention of the Legislature. Not only is Parliament justified in such interference when it does not affect existing litigation, as this Statute did not in any pending case, but it is its duty to remedy such an evil, and it does, as it apparently did in this case, adopt what it considered to be the more correct of the opposing contentions, and by legislation establish what was its original intention, although defectively expressed.

If there had been no decision but that of Judge Hazen, it was obvious, if he was correct, that there was a *casus omissus*, and that there was a necessity for a statutory provision to make effective the negative terms of the Convention, and to impose, as had been contemplated by its framers, such restrictions as might be necessary to prevent any abuse of its provisions. Admit the necessity of pro-

tecting fishery limits when fleets of prohibited fishing-vessels are near, and the necessity and wisdom of legislation are admitted.

The day after the Convention was ratified, Parliament might, in ratifying it and rendering it operative, have plainly said, as the Act of Canada now does, that vessels should be forfeited for violating its provisions.

The Statute does not conflict with the words or spirit of the Convention. Such a provision had been suggested by the Law Officers of the Crown, in their opinion given the 25th September, 1852. They had advised that there could be no forfeiture excepting for fishing or preparing to fish, that for other infractions of the Convention there only existed the remedy by collecting the penalty provided by the Imperial Act, which it is clear was useless, and the remedy given by nature of warning fishermen off and compelling them to desist from fishing and to depart, by the exercise of whatever force was reasonably necessary for that purpose, which would indeed, in the words of Edmund Burke, be like "shearing wolves." The Law Officers had advised, by way of remedy, that if it should be deemed expedient that a power should be conferred to seize vessels in other cases of infringement than those already covered by the Statute, it might be done by Order in Council.

It is hardly a happy suggestion that the enforcement of a Statute which provides for the forfeiture of a vessel violating the obligations of a Treaty, as sacred to the one country as to the other, would involve "a conflict with the United States of a serious character." It is thought that any unintentional violation of the Statute, or any "hard case" whatever arising under it, could fairly be left to the leniency of the Governor in Council. At least, Parliament has made a provision applicable to such cases in the following terms:—

"In cases of seizures under this Act the Governor in Council may, by order, direct a stay of proceedings, and in cases of condemnation, may relieve from the penalty, in whole or in part, and on such terms as may be deemed right."

It is true that at various times representations have been made to the British Government by the Government of the United States in respect to the colonial legislation respecting fishing by foreign vessels. Indeed, it can not be a matter of complaint that the latter has not been fully heard on every application from the Colonies for the approval of such legislation. It is also worthy of mention that every provision embodied in these Acts has, at one time or another before it became law, received the approval of the Sovereign's eminent advisers in the mother country. The Law Officers of the Crown in Great Britain have also more than once been called upon to advise upon them. The names of such men as Westbury, Chelmsford, Cockburn, Kelly, and Harding, in this connection, afford a sufficient guaranty that these laws are within the limits of propriety and fair play.

Practical Construction of the Treaty.

The contention is made, under this head, that the present mode of enforcing the terms of the Convention is new, and that a practical acquiescence by Imperial and Colonial authorities for very many years after the making of the Convention, in the exercise of the privileges now claimed for American fishermen of entering the bays and harbours for other than the four specified purposes, and of using commercial privileges therein, has established a construction of the Treaty which should not now be disturbed.

On this subject the facts must again be appealed to.

During a long course of years succeeding the Treaty it was claimed on the part of the people of the British North American Colonies that the fishermen of the United States habitually encroached on their fishing-grounds on the coasts of the Atlantic provinces.

The complaints consisted principally of remonstrances by the Provincial Governments and Legislatures to the Imperial authorities against the United States' fishermen fishing within 3 miles of the coast, and within 3 miles of lines drawn from headland to headland, and against their entering ports, bays, and harbours for the purposes of trading, procuring bait, and for other purposes not named in the Convention.

Numerous seizures were made by the provincial marine police vessels and by British gun-boats.

In 1823 the "Charles" was seized for being at anchor in Shelburne Harbour, "into which she had not been driven by stress of weather or any other fortuitous circumstance."

In 1824 the "William" and the "Galeon" were seized for being within the bays and harbours at anchor without lawful excuse.

In 1836 the Nova Scotian Statute, which has been often denounced by the American authorities as extreme and severe, was adopted. It was followed by similar enactments in New Brunswick and Prince Edward Island. There was not much indication in this of "the practical construction" of the Convention according to the American contention. As has already been said, year after year the fishermen of the United States maintained a system of encroachment and of trespass by fishing within 3 miles of the coast, and by entering, without due justification, the bays and harbours of the provinces. Marine police cruizers were kept up by the Provincial Governments, and the Imperial ships of war aided these in seizing from time to time the vessels which were so found trespassing. Condemnations of these took place under the Imperial and Colonial Statutes.

In some cases these seizures were made for violations of the Customs Laws. They were, nevertheless, in nearly every case, seizures practically for violations of the Convention of 1818 and of the Fishery Laws.

The vessels seized were United States' fishing-vessels; the Customs officers along the line of coast of the different provinces were in reality the fisheries police of British North America. The vessels, in most instances, frequented the harbours, ports, and bays of Nova Scotia and New Brunswick for purposes other than the four allowed by the Convention of 1818, viz., the purchase of wood and the obtaining of water, and for shelter and repairs. The enforcement of the Customs Regulations was for

the avowed purpose of denying to such vessels all rights of access, excepting those which related to the right of asylum as recognized and preserved in express words by the Treaty of 1818.

The following is a list of the offences for which condemnation of United States' fishing-vessels took place:—

(*a.*) Violation of Customs Laws.
(*b.*) Fishing within the forbidden limits.
(*c.*) Anchoring or hovering inshore without necessity.
(*d.*) Lying at anchor inside bays, &c., to clean and pack fish.
(*e.*) Entering the forbidden limits to buy bait.
(*f.*) Preparing to fish within the prescribed limits.
(*g.*) Purchasing supplies.
(*h.*) Landing and transhipping cargoes of fish.

For upwards of twenty years this course of proceeding was carried on, with hardly any complaint from the Government of the United States against the British construction of the Treaty as to the headland question, or as to the right to purchase bait and supplies or to tranship cargoes. Any complaints which were transmitted were based on controversies as to the facts on which the seizures were made. The complaints, indeed, at that period were more frequent on the part of the British authorities. In January 1836 the President directed the Secretary of the Treasury "to instruct the Collectors to inform the masters, owners, and others engaged in the fisheries that complaints had been made, and to enjoin upon those persons a strict observance of the limits assigned for taking, drying, and curing fish by American fishermen under the Convention of 1818."

The Government of Nova Scotia not only maintained an effective marine police, by which numerous seizures were made, but they took steps to close the Strait of Canso against fishermen of the United States.

In 1841 Mr. Forsyth, United States' Secretary of State, directed Mr. Stevenson, Minister at London, to complain to Her Majesty's Government of the headland rule, of the closing of the Strait of Canso, and of the severe methods of procedure prescribed in the Nova Scotia Statute. This led to a reference to the Law Officers for an Opinion, which was given in favour of the provincial contention; and Lord Stanley, in November 1842, in transmitting the Opinion to the Governor of Nova Scotia, stated that the precautions taken by the provincial authorities were "practically acquiesced in by the Americans."

In 1843 and 1844 strong remonstrances were made by the Government of the United States. It was contended that the views of the provincial authorities, especially on the two questions as to a line drawn from headland to headland and as to the exclusion from harbours, &c., were in excess of the provisions of the Treaty. The Imperial Government, however, sustained the views of the Colonial authorities, and the seizures were continued. The question was formally raised as to the headland doctrine in reference to the Bay of Fundy. The schooner "Washington" had been captured in that bay 10 miles from the shore. The bay is about 40 miles wide and 130 to 140 miles long. One of the headlands, it was urged, was in United States' territory, and the Island of Little Menan belonged to the United States, and was situated nearly on the line from headland to headland, if the outer headlands were to be taken.

In 1853 a Convention was made between Great Britain and the United States for the settlement of claims made by the citizens of either country upon the other country since the Treaty of Ghent. Commissioners were to be appointed to hear the claims, and, in case of disagreement, an umpire was to be chosen. The owner of the schooner "Washington," which had been seized in the Bay of Fundy, presented his claim to the Commissioners, and a disagreement resulted thereon as to whether he was entitled to recompense or not. Mr. Joshua Bates was chosen as umpire, and his view was that the claimant should receive 3,000 dollars, on the ground that the "Washington" was not liable to seizure in that part of the bay where she was fishing. This was in 1854.

The details involved in this decision, and the effect of the decision itself, will be referred to more fully hereafter. It is only necessary to say here that the decision had no binding effect, excepting as to the claim presented by the owner of the "Washington." It did not conclude all question as to the Bay of Fundy, and had no applicability to any of the other bays on the British North American shore.

In 1845, however, Lord Aberdeen, in a letter under date of the 10th March, consented that United States' fishermen should be admitted to the Bay of Fundy "as the concession of a privilege." Mr. Everett, on the 25th March, 1845, accepted the concession as a matter of right, and it is worthy of note that this document, written twenty-seven years after the Treaty was made, and after it had been many years enforced according to the "headland" interpretation, was the first dissent expressed by the Government of the United States to that interpretation. (Sabine, 419.) A long correspondence ensued, in which the British Government insisted that the admission to the Bay of Fundy was a "liberal concession," and that the headland doctrine could not be given up. The concession of the privilege with regard to the Bay of Fundy was never made in any binding form.

In 1845, Lord Stanley intimated to Lord Falkland, Lieutenant-Governor of Nova Scotia, that the British Government "contemplated the further extension of the same policy by the adoption of a general regulation that the American fishermen should be allowed freely to enter all bays of which the mouths were more than 6 miles wide." This proposal was met by a strong remonstrance from the Governments of Nova Scotia and New Brunswick, and on the 17th December, 1845, Lord Stanley informed Lord Falkland:—

"We have abandoned the intention we had entertained on the subject, and shall adhere to the strict letter of the Treaties . . . except in so far as they may relate to the Bay of Fundy, which has been thrown open to the North Americans under certain restrictions."

After the termination of the Reciprocity Treaty, the system of giving licences to American fishermen continued in vogue down to 1870, giving absolute freedom to those American fishing-vessels which

obtained licences. In the meantime, however, in 1868, the Parliament of Canada adopted the legislation of Nova Scotia, New Brunswick, and Prince Edward Island, by its "Act respecting fishing by foreign vessels," 31 Vict., cap. 61. This Act, with its amendments, in 1870 and 1871, was applied against unlicenced vessels during the period of licences, and against American fishing-vessels generally after the licencing system ceased.

In May, 1870, a Circular was issued by the Secretary of the Treasury at Washington, warning masters of fishing-vessels that the Dominion of Canada would issue no more fishing-licences. The Circular recites the Convention and the Dominion Act of 1868 prohibiting the fishing by foreign vessels. It goes on to say that the Canadian Government has ordered that vessels "be chartered and equipped for the service of protecting the Canadian inshore fisheries against illegal encroachments by foreigners, these vessels to be connected with the police force of Canada, and to form a marine branch of the same."

Another Circular was issued by the same authority, dated the 9th June, 1873, calling attention to an amendment which had been passed to the Canadian Statute.

This Circular says:—

"Fishermen of the United States are bound to respect the British laws for the regulation and preservation of the fisheries to the same extent to which they are applicable to the British and Canadian fishermen."

Referring to the amendment made in 1870, the Circular goes on to say:—

"It will be observed that the warning formerly given is not required under the amended Act, but that vessels trespassing are liable to seizure without such warning."

Twelve seizures took place in 1870, three of these having been made by Her Majesty's war vessels. Two out of the twelve were for purchasing bait, and were made subjects of contests in the Courts of Vice-Admiralty in St. John and Halifax. These were the "White Fawn" and "J. H. Nickerson."

Then came the Treaty of Washington in 1871, the Fishery Articles of which expired in 1885, and the benefits of which were extended to American fishermen to the close of that year. Since that time, it is perhaps unnecessary to say, in view of the statement of "selected cases of maltreatment of American fishing-vessels," that there has been any "practical construction" of the Convention favourable to the American contention. Indeed the whole contention on this subject is new and inconsistent with the strictures which have been applied to the conduct of Colonial authorities for many years past.

The views of Her Majesty's Government on this subject have not been misunderstood in times past. Mr. Everett, on the 25th May, 1844, wrote thus to Lord Aberdeen:—

"It was notoriously the object of the Article of the Treaty in question to put an end to the difficulties which had grown out of the operations of the fishermen from the United States along the coasts and upon the shores of the settled portions of the country, and for that purpose to remove their vessels to a distance not exceeding 3 miles from the same. In estimating this distance, the Undersigned admits it to be the *the intent of the Treaty as it is in itself reasonable to have regard to the general line of the coast, and to consider its bays, creeks, and harbours—that is, the indentations usually accounted—as included within that line.* But the Undersigned cannot admit it to be reasonable, instead of thus following the general directions of the coast, to draw a line from the south-westernmost point of Nova Scotia to the termination of the north-eastern boundary between the United States and New Brunswick and to consider the arms of the sea which will thus be cut off, and which cannot, on that line, be less than 60 miles wide, as one of the bays on the coast from which American vessels are excluded. By this interpretation the fishermen of the United States would be shut out from the waters distant, not 3 but 30 miles, from any part of the colonial coast. The Undersigned cannot perceive that any assignable object of the restriction imposed by the Convention of 1818, on the fishing privilege accorded to the citizens of the United States by the Treaty of 1783, requires such a latitude of construction. It is obvious that by the terms of the Treaty the farthest distance to which fishing-vessels of the United States are obliged to hold themselves from the colonial coasts and bays is 3 miles. But owing to the peculiar configuration of these coasts, there is a succession of bays indenting the shores both of New Brunswick and Nova Scotia, within any distance not less than 3 miles—a privilege from the enjoyment of which they will be wholly excluded—in this part of the coast, if the broad arm of the sea which flows up between New Brunswick and Nova Scotia is itself to be considered one of the forbidden bays."

On the 10th March, 1845, Lord Aberdeen wrote to Mr. Everett thus:—

"The Undersigned will confine himself to stating that, after the most liberal reconsideratian of the subject, and with every desire to do full justice to the United States, and to view the claims put forward on behalf of United States' citizens in the most favourable light, Her Majesty's Government are, nevertheless, still constrained to deny the right of United States' citizens under the Treaty of 1818 to fish in that part of the Bay of Fundy, which, from its geographical position, may properly be considered as included within the British possessions.

"Her Majesty's Government must still maintain, and in view of this they are fortified by high legal authority, that the Bay of Fundy is rightfully claimed by Great Britain, as a bay within the meaning of the Treaty of 1818. And they equally maintain the position which was laid down in a note of the Undersigned, dated the 15th April last, that, with regard to the other bays on the British American coast, no United States' fisherman has, under that Convention, the right to fish within 3 miles of the entrance of such bays, as designated by a line drawn from headland to headland at that entrance.

"But while Her Majesty's Government still feel themselves bound to maintain these positions as a matter of right, they are nevertheless not insensible to the advantages which would accrue to both countries from a relaxation of the exercise of that right to the United States, as conferring a material benefit on their fishing trade, and to Great Britain and the United Ltates, conjointly and equally, by the removal of the fertile source of disagreement between them.

"Her Majesty's Government are also anxious at the same time that they uphold the just claims of the British Crown, to evince by every reasonable concession their desire to act liberally and amicably towards the United States.

"The Undersigned has accordingly much pleasure in announcing to Mr. Everett the determination to which Her Majesty's Government have come, to relax in favour of the United States' fishermen that right which Great Britain has hitherto exercised, of excluding those fishermen from the British portion of the Bay of Fundy, and they are prepared to direct their colonial authorities to allow henceforward the United States' fishermen to pursue their avocations in any part of the Bay of Fundy, provided they do not approach, except in the cases specified in the Treaty of 1818, within 3 miles of the entrance of any bay on the coast of Nova Scotia or New Brunswick.

"In thus communicating to Mr. Everett the liberal intentions of Her Majesty's Government, the Undersigned desires to call Mr. Everett's attention to the fact that the produce of the labour of the British colonial fishermen is at the present moment excluded by prohibitory duties on the part of the United States from the markets of that country, and the Undersigned would submit to Mr. Everett that the moment at which the British Government are making a liberal concession to United States' trade might well be deemed favourable for a counter concession on the part of the United States to British trade by the reduction of the duties which operate so prejudicially to the interests of the British colonial fishermen."

Remonstrances from the Governments of Nova Scotia and New Brunswick against this policy followed, as regards the other bays on the coasts, and on the 17th September, 1845, Lord Stanley wrote to Lord Falkland stating that the policy would not be extended to the other bays.

It is observed by Sabine that nothing passed on this subject between the two Cabinets for more than six years, "though England retraced no steps after opening the Bay of Fundy."

A copy of the letter of Mr. Forsyth to Mr. Stephenson, dated the 27th March, 1841, having been sent to Lord Falkland, Lieutenant-Governor of Nova Scotia, on the 28th April, 1841, Lord Falkland wrote in reply to Lord John Russell, Secretary for the Colonies, stating that the greatest anxiety was felt by the inhabitants of the provinces that the Convention of 1818 should be strictly enforced, and inclosing a copy of a Report of a Committee on the Fisheries of Nova Scotia, which had been adopted by the House of Assembly, and a case which had been stated at the request of that body for the opinion of the Law Officers of the Crown in England.

The questions submitted for the opinion were as follows:—

"1. Whether the Treaty of 1783 was annulled by the war of 1812, and whether citizens of the United States possess any right of fishery in the waters of the lower provinces other than ceded to them by the Convention of 1818, and, if so, what right?

"2. Have American citizens the right, under that Convention, to enter any of the bays of this province to take fish, if, after they have so entered, to prosecute the fishery more than 3 marine miles from the shores of such bays, or should the prescribed distance of 3 marine miles be measured from the headlands, at the entrance of such bays, so as to exclude them?

"3. Is the distance of 3 marine miles to be computed from the indents of the coasts of British America, or from the extreme headlands, and what is to be considered a headland?

"4. Have American vessels, fitted out for a fishery, a right to pass through the Gut of Canso, which they cannot do without coming within the prescribed limit, or to anchor there or to fish there, and in casting bait to lure fish in the track of the vessels fishing, within the meaning of the Convention?

"5. Have American citizens a right to land on the Magdalen Islands and conduct the fishery from the shores thereof, by using nets and seines, or what right of fishery do they possess on the shores of those islands, and what is meant by the term shore?

"6. Have American fishermen the right to enter the bays and harbours of this province for the purpose of purchasing wood or obtaining water, having provided neither of these articles at the commencement of their voyage in their own country, or have they the right only of entering such bays and harbours in cases of distress, or to purchase wood and obtain water, after the usual stock of those articles for the voyage of such fishing craft has been exhausted or destroyed?

"7. Under existing Treaties, what rights of fishery are ceded to the citizens of the United States of America, and what reserved for the exclusive enjoyment of British subjects?"

These questions were submitted to the Law Officers of the Crown, Sir John Dodson and Sir T. Wylde (afterwards Lord Truro), and answered as follows:—

"We have the honour to report that we are of opinion that the Treaty of 1783 was annulled by the war of 1812, and we are also of opinion that the rights of fishery of the citizens of the United States must now be considered as defined and regulated by the Convention of 1818, and with respect to the general question, 'If so, what right?' we can only refer to the terms of the Convention as explained and elucidated by the observations which will occur in answering the other specific queries.

"2. Except within certain defined limits, to which the query put to us does not apply, we are of opinion that, by the terms of the Treaty, American citizens are excluded from the right of fishing within 3 miles off the coast of British America, and that the prescribed distance of 3 miles is to be measured from the headlands or extreme points of land next the sea of the coast, or of the entrance of the bays, and not from the interior of such bays or inlets of the coast, and consequently that no right exists on the part of the American citizens to enter the bays of Nova Scotia, there to take fish, although the fishing, being within the bay, may be at a greater distance than 3 miles from the shore of the bay, as we are of opinion that the term headland is used in the Treaty to express the part of the land we have before mentioned, excluding the interior of the bays and the inlets of the coast.

"4. By the Treaty of 1818 it is agreed that American citizens should have the liberty of fishing in the Gulf of St. Lawrence, within certain defined limits, in common with British subjects, and such Treaty does not contain any words negativing the right to navigate the passage of the Gut of Canso,

and therefore it may be conceded that such right of navigation is not taken away by that Convention but we have now attentively considered the course of navigation to the gulf by Cape Breton, and likewise the capacity and situation of the passage of Canso, and of the British dominions on either side, and we are of opinion that, independently of Treaty, no foreign country has the right to use or navigate the passage of Canso, and attending to the terms of the Convention relating to the liberty of fishery to be enjoyed by the Americans, we are also of the opinion that the Convention did not either expressly or by implication concede any such right of using or navigating the passage in question. We are also of opinion that casting bait to lure fish in the track of any American vessel navigating the passage would constitute a fishing within the negative terms of the Convention.

"5. With reference to the claim of a right to land on the Magdalen Islands, and to fish from the shores thereof, it must be observed that, by the Treaty, the liberty of drying and curing fish (purposes which could only be accomplished by landing) in any of the unsettled bays, &c., of the southern part of Newfoundland, and of the coast of Labrador, is specifically provided for, but such liberty is distinctly negatived in any settled bay, &c., and it must therefore be inferred that if the liberty of landing on the shores of the Magdalen Islands had been intended to be conceded, such an important concession would have been the subject of express stipulation, and would necessarily have been accompanied with a description of the inland extent of the shore over which such liberty was to be exercised, and whether in settled or unsettled parts; but neither of these important particulars is provided for, even by implication, and that, among other considerations, leads us to the conclusion that American citizens have no right to land or conduct the fishery from the shores of the Magdalen Islands. The word 'shore' does not appear to be used in the Convention in any other than the general or ordinary sense of the word, and must be construed with reference to the liberty to be exercised upon it, and would therefore comprise the land covered with water, as far as could be available for the due enjoyment of the liberty granted.

"6. By the Convention the liberty of entering the bays and harbours of Nova Scotia, for the purpose of purchasing wood and obtaining water, is conceded in general terms, unrestricted by any restriction, expressed or implied, limiting it to vessels duly provided at the commencement of the voyage, and we are of the opinion that no such condition can be attached to the enjoyment of the liberty.

"7. The rights of fishery ceded to the citizens of the United States, and those reserved for the exclusive enjoyment of British subjects, depend altogether upon the Convention of 1818, the only existing Treaty on this subject between the two countries, and the material points arising thereon have been specifically answered in our replies to the preceding queries.

"We have, &c.
(Signed) "J. DODSON.
"THOS. WILDE.

"Viscount Palmerston, K.B.,
&c. &c. &c."

This opinion has excited much comment, because it referred to the word "headland" as having been used in the Treaty, whereas that word is not there. But it is submitted that a careful examination of the opinion will lead to the conclusion that it did not by any means rest solely on the assumption that the word "headland" had been used. The language of the third paragraph of the opinion seems to make this plain.

From that time forward, until a comparatively recent period, the fishermen of the United States were excluded from the bays by lines drawn from headland to headland, except as to the Bay of Fundy, which, in 1845, was opened to American fishermen as a privilege, and the purpose and right were announced of preventing them from passing through the Strait of Canso.

In 1843 the United States' fishing-schooner "Washington," of Newburyport, was seized in the Bay of Fundy for fishing 10 miles from the coast. Her seizure was made the subject of much diplomatic correspondence.

In a letter from Lord Aberdeen to Mr. Everett, dated the 15th April, 1844, the former says:—

"Mr. Everett, in submitting this case, does not cite the words of the Treaty, but states, in general terms, that by the first Article of such Treaty the United States renounced any liberty heretofore enjoyed, &c. Upon reference, however, to the words of the Treaty, it will be seen that the American vessels have no right to fish, and indeed are expressly debarred from fishing in any bay on the coast of Nova Scotia.

". . . . If the Treaty was intended to stipulate simply that American fishermen should not take fish within 3 miles of the coast of Nova Scotia, &c., there was no occasion for using the word "bay" at all. But the proviso at the end of the Article shows that the word "bay" was used designedly, for it is expressly stated in that proviso that under certain circumstances the American fishermen may enter bays, by which it is evidently meant that they may, under these circumstances, pass the sea-line which forms the entrance to the bay."

This contention was replied to by Mr. Everett, but the British authorities adhered to their interpretation.

In 1852 it was not contended by the American authorities that any "practical construction" favourable to them had been adopted. Daniel Webster, then Secretary of State, the 6th July, 1852, wrote thus:—

"It would appear that by a strict and rigid construction of this Article, fishing-vessels of the United States are precluded from entering into the bays or harbours of the British provinces, except for the purposes of shelter, repairing damages, and obtaining wood and water. A bay, as is usually understood, is an arm or recess of the sea, entering from the ocean between capes and headlands, and the term is applied equally to small and large tracts of water thus situated. It is common to speak of Hudson's Bay, or the Bay of Biscay, although they are very large tracts of water.

"The British authorities insist that *England has a right to draw a line from headland to headland,*

and to capture all American fishermen who may follow their pursuits inside of that line. It was undoubtedly an oversight in the Convention of 1818 to make so large a concession to England, since the United States had usually considered that those vast inlets or recesses of the ocean ought to be open to American fishermen as freely as the sea itself to within 3 marine miles of the shore."

"Mr. Webster, it is true, concludes this paper by a paragraph containing the words, "Not agreeing that the construction thus put upon the Treaty is conformable to the intentions of the Contracting Parties;' but these words, coupled with what has just been quoted, rather imply that the Contracting Parties intended to say something different from what they actually said than that what they have said will bear any other meaning than the British interpretation.

The "Statement" under review quotes a letter from the Honourable Joseph Howe, Provincial Secretary of Nova Scotia, in which he states to Captain Daly, of the cruizer "Daring," that "American vessels which have regularly entered at a port where there is a revenue officer, can land fish or purchase barrels, &c. The argument is then made that Mr. Howe must have referred to American fishing-vessels, as Captain Daly had been inquiring about such. It is probable, however, that Mr. Howe had not in view the distinction between the two classes of vessels, as Captain Daly's letter rather confuses the two. Mr. Howe never acquiesced in the "practical construction" now referred to. He was of the foremost among colonial statesmen in insisting on the strict enforcement of the Convention. He said, in a letter to the commander of the revenue cruiser "Responsible." dated the 28th August, 1852:—

"Sir,

"I have to acknowledge the receipt of your letter of the 23rd instant, and to acquaint you, in reply to your inquiry, that no American fishing-vessels are entitled to commercial privileges in provincial ports, but are subject to forfeiture if found engaged in traffic. The colonial collectors have no authority to permit freight to be landed from such vessels, which under the Convention can only enter our ports for the purposes specified therein, and for no other. ('Journals of House of Assembly,' 1853. Appendix 4, p. 141.)"

In the same year, at the instance of the Government of which Mr. Howe was a member, the Law Officers of the Crown, in England, on the 25th September, 1852, viz., Sir J. D. Harding, Advocate-General, Sir F. Thesiger, Attorney-General, afterwards Lord Chelmsford, and Sir F. Kelly, Solicitor-General, afterwards Chief Baron of the Exchequer, gave an opinion, in reply to certain questions submitted by Vice-Admiral Seymour, then engaged in the protection of the fisheries. It and the questions submitted will be found in the "Journals of the House of Assembly" for Nova Scotia for 1853, Appendix 4, pp. 138 to 141.

The parts material to the question are extracted. The Memorandum submitted says:—

"The fishing-vessels of the United States are found in great numbers at Port Hood and adjacent harbours in Cape Breton, New Brunswick, and those of Prince Edward Island, where they pass their Sundays, and the men land in great numbers, which leads to illegal traffic and an undue influence over the inhabitants, and from their numbers, are beyond control.

"Such entry not being included under causes admitted by the 3rd clause of 59 George III, cap. 38, can a vessel so offending be seized by Her Majesty's ships for a contravention of the Act? Or if she remains or returns after receiving due notice of the illegality of the practice? Or is the offence only punishable under the 4th clause, by the Colonial authorities, after notice has been given, by imposition of penalty recoverable in the supreme Court of the Colony? And how are the offenders to be detained in the latter case?

* * * * *

Additional query. I subjoin some queries or points respecting the construction of the Convention, which were held doubtful in this province when the late instructions to their vessels were framed. First, has an American fishing-vessel a right to enter a harbour of Nova Scotia in serene weather, and afterwards proceed to sea without purchasing wood and water, or is she liable to seizure under existing laws?

In the Opinion these questions were answered as follows:—

"My Lord,

"We are honoured with your Lordship's commands signified in Mr. Addington's letter of the 16th instant, stating that with reference to the Queen's Advocate's letter of the 30th July last, requesting to be furnished with certain documents relating to the North American fisheries, to enable the Law Officers of the Crown to furnish your Lordship with a Report upon certain points connected with that subject, he was directed to transmit to us therewith two letters and their inclosures from the Admiralty and from the Colonial Office, containing the information specified in the Queen's Advocate's letter above referred to, and Mr. Addington is pleased to request that we would report to your Lordship, at our earliest convenience, upon the points stated in Vice-Admiral Seymour's Memorandum, which was referred to us on the 26th June last.

"In obedience to your Lordship's commands, we have the honour to report that—

"1st. We are of opinion that the Commanding Officers of Her Majesty's ships or vessels are empowered to seize fishing-vessels only in the cases mentioned in the 2nd section of the 59th Geo. II, Icap. 38, viz., if found fishing, or to have been fishing, or preparing to fish, within the prescribed limits: and that they do not require any commission from the Governor, or Officers administering the Government of the Colonies, to carry out the stipulations of the Convention of 1818; but that they may, by virtue of their instructions, enforce the terms of the Convention by interrupting intruders, warning them off, and compelling them to desist from fishing.

"2nd. With respect to the resort of fishing-vessels of the United States to British harbours, in violation of the Convention, but without the taking, or curing, or drying of fish, we are of opinion that vessels so offending can not be seized by Her Majesty's naval officers, but that such offence is only

punishable under the 4th section of the Statute 59 George III, cap. 38; whether persons so offending may or may not be detained during the proceedings depends upon the local law of each Colony.

"We are also of opieion that, independently of the express provisions of the Statute, vessels so offending may be warned off, and, in default of obedience, may be compelled to depart by the exercise of whatever force is reasonably necessary for that purpose, and this may be done either by the Governor or those acting under his orders, or by the Commanders of Her Majesty's ships acting under the instructions to Sir George Seymour.

"If it be deemed expedient that a power to seize vessels in such case should be conferred upon naval officers or others, this must be done by Order in Council.

"3rd. We are of opinion that neither the drying and curing of fish at the Magdalen Islands nor the fishing from the shores of those islands (if the persons so fishing are on the land when fishing) will render vessels liable to seizure for infraction of the Treaty.

"Upon the general question as to the right of fishing from the shores of the Magdalen Islands, we are disposed to agree with the opinion thereon by Sir J. Dodson and Sir Thomas Wylde in their Report dated the 30th August, 1841. If it should be considered advisable to prevent the commission of any such acts upon the Magdalen Islands (which are, in our opinion, in contravention of the Convention), it may be done after warning, and without seizing vessels, by interrupting the fishermen and compelling them to depart. With reference to the further or additional queries or points subjoined to the Memorandum of Vice-Admiral Sir George Seymour, we have the honour to report as follows:—

1st (additional). We presume that the harbour of Nova Scotia here referred to is among the waters forbidden by the Convention. If this be so, a fishing-vessel of the United States can not lawfully enter it at all in serene weather, or otherwise than for shelter. If such a vessel should enter in violation of the Convention, it may be dealt with, not by seizure, but by interruption or compelling the fishermen to depart, or by proceeding under section 4 of 59 Geo. III, cap. 38.

"2nd (additional). An American fishing-vessel, if found either actually fishing or preparing to fish or to have been fishing within the prohibited waters, may be pursued by any officer having competent local authority under the Statute 59 George III, cap. 38, in any vessel (whether colonial or of Her Majesty's navy), beyond the limits of prohibition, and may be, by any such officer, seized on the high seas; but we would recommend this course to be adopted only in very clear cases, and with extreme caution.

"3rd (additional). We think that under the Colonial Act (Nova Scotia) 6 William IV, cap. 8, and the Order in Council, the 15th June, 1836, the right to enforce the observance of the Regulations in question is limited to the officers specified in that Act and to the coasts of that Colony, and that it can not be exercised beyond those limits by any vessel commissioned by the Governor of Nova Scotia only.

"We have, &c.
(Signed) "J. D. HARDING.
"FRED. THESIGER.
"FITZROY KELLY.

"The Earl of Malmesbury,
&c. &c. &c."

At the last Session of Congress a Report was presented by the Committee on Foreign Relations which was intended to be a complete definition of the rights of American fishing-vessels under the Convention.

In it we have the following conclusions:—

"Concluding, then, from what has been before stated, that there is no serious difficulty in respect of the question where American fishermen can carry on their operations, it would seem to be easy to know precisely what our fishermen may and may not do in the territorial waters adjacent to the British dominions.

"What they may do may be stated as follows:—

"1. They have the liberty to take fish 'on that part of the southern coast of Newfoundland which extends from Cape Ray to the Rameau Islands.'

"2. They have the right to take fish 'on the waters and northern coast of Newfoundland from the said Cape Ray to the Quirpon Islands.'

"3. Also 'on the shores of the Magdalen Islands.'

"4. 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', subject to any exclusive rights of the Hudson's Bay Company.

"5. The right 'to dry and cure fish in any of the unsettled bays, harbours, and creeks of the southern part of the coast of Newfoundland,' before described, and of the coast of Labrador, without interfering with the rights of settlers, &c.

"6. The right of American fishermen, in their character as such, to enter the bays and harbours of Great Britain in America for the purpose (*a*) of shelter, (*b*) of repairing damages, (*c*) of purchasing wood, (*d*) of obtaining water, and for no other purpose whatever.

"But they are under such restrictions in respect to their entry into bays and harbours where they are not entitled to fish 'as may be necessary to prevent their taking and drying or curing fish therein, or in any other manner whatever abusing the privileges reserved to them.'

"The things that by this Article American fishermen must not do are:—

"1. Fish within 3 miles of any of the shores of the British dominions, excepting those specially above named.

"2. *Enter within this 3-mile limit except for the purposes last stated.*

"The American fishermen, in their character as such, purely, *must not enter the prohibited waters other than for the purposes of shelter, repairing damages, purchasing wood, and obtaining water*, and in doing

this they are subject to such reasonable restrictions as shall be necessary to prevent their fishing or *having fish* in prohibited waters or on prohibited shores, and thereby abusing the *privilege* of entering those waters for the necessary purposes stated. (For. Cor. N. A. Fisheries, 1886-87, *No. 2.*")

If there was, in early years, a practical construction of the Convention favourable to the American contention, Mr. John S. Payne, who, in 1832, was in command of a United States' vessel on the fishing-grounds, must have strangely misunderstood the situation. He reported to the President, December 29, 1839:—

"If the ground maintained by the Americans (fishermen) *be admitted it will be difficult* to prevent their procuring articles of convenience, and *particularly bait, from which they* are precluded by the Convention, and which a party in the provinces seems resolved to prevent. (Senate Doc., first Session Thirty-second Congress, 10th Dec.")

The instructions which are referred to in the Statement, restricting seizures to the offence of fishing committed within 3 miles off land, were issued in view of negotiations which were in progress *for a new Treaty*, and which, it was feared, might be prejudiced by a full enforcement of the Convention. They expressly asserted that the right to pursue the terms of the Convention by a more stringent procedure was not given up.

The references to the Reports of the Consul at Halifax and the Consul-General at Montreal can hardly have any force in view of the facts above presented. Those officers had no personal knowledge of the events of which they wrote prior to 1854, and it will be remembered that from 1854 to 1866 the Reciprocity Treaty was in force, and perfect freedom was given to the American fishermen; that they enjoyed the same freedom under the licensing system to 1870; that in 1870 the negotiations for the Treaty of Washington tempered the procedure, and that this latter Treaty prevailed to the close of 1885. There can be no claim by adverse user when the user was under titles which had expired.

Mr. Jackson, the United States' Consul at Halifax, did not place undue reliance on his information, for, on the 1st September, 1870, he wrote to Vice-Admiral Wellesley thus:—

"Since addressing you I have understood that the Commanders of Her Majesty's vessels, acting under the authority of your Excellency, have notified American fishermen bound to the fishing banks that they would not be permitted to procure ice or other supplies in any of the colonial ports, and that any attempt to procure such supplies would subject their vessels and cargoes to seizure and confiscation. As Consul of the United States, I am frequently applied to by American citizens engaged in the deep-sea fisheries for information on this subject."

The reply was:—

"Although it is not within the scope of my authority to furnish you with these documents, I may state in general terms, which will probably be sufficient for the purpose you have in view, that the duty enjoined on the commanding officers of Her Majesty's ships is to prevent any infringement of the arrangement agreed on between the two Governments in respect of the fisheries in the Treaty of 1818.

"That Treaty expressly defines the purposes for which alone United States' fishing-vessels are to be allowed to enter ports within certain limits. The words used are as follows:—'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, and curing fish therein, or in any other manner whatever abusing the privileges hereby reserved to them.'

"It appears to me that the expression 'for no other purpose whatever' excludes them from procuring ice, bait, and other supplies; and the officers have, therefore, in my judgment, properly notified fishermen against any attempt to infringe the Treaty, and by so doing also disobey the British and Colonial laws in reference thereto, in which the very same terms are used."

The citations from Lieutenant Cochrane and from Commanders Bateman and Poland only indicated that at the close of the licensing system, and while the negotiations for the Treaty of 1871 were in progress, the Collectors in many places appear not to have received the orders which were certainly given to the officers of the vessels to prevent American fishing-vessels going in for salt, bait, ice, stores, and supplies. The passage quoted from the Lieutenant-Governor of Prince Edward Island of the 18th November, 1870, only indicates the expectation that the American fishermen, in the following season, under a Treaty which was then regarded as certain to be made, would come in for the purchase of supplies.

The argument on this branch of the subject in the "statement" concludes with a quotation from Earl Kimberley's despatch to Lord Lisgar, dated 17th March, 1871, in which that nobleman suggests that the exclusion of American fishermen, although perhaps warranted by the letter of the Treaty of 1818, and by the terms of the Imperial Statute, seems to Her Majesty's Government an extreme measure, inconsistent with the policy of the Empire, and stating that Her Majesty's Government feel disposed to concede this point to the United States' Government under certain restrictions. This suggestion was never adopted, acted on, or adhered to, or even repeated; the point has never been conceded to the United States' Government, the policy pursued by Her Majesty's Government embodies no such view, and it is difficult to understand how a mere suggestion, never acted on, that a certain course might be pursued as a matter of policy, can be used as "a practical construction of the Treaty."

Benefits which Canada, and especially the Maritime Provinces, are receiving from the United States in matters of Fisheries.

Bait.—It is not established that clams are the best bait for bank cod-fishing. The opposite seems better established.

1. Because with fresh bait larger and better fish are obtained.

Mr. Baird says:—

"Gloucester fishermen claim that they get more and larger fish by the use of fresh bait." (American Fisheries, 1887, p. 55.)

Captain John McQuin, of Gloucester, testified before the Edmunds' Senate Committee (see p. 128):—

"For hand-line fishing for cod around the Georges, of course salt bait ain't no account."

Mr. Thomas A. Rich, of Boston, testified (p. 24):—

"Vessels formerly took salt mackerel, and then clams. Of late years, however, they think fresh bait is better, and I suppose it is."

2. Because purchasing bait from Nova Scotia effects a saving of time.

George Steele, of Gloucester, testified (p. 18, evidence before Senate Committee):—

"It was a saving of time to go to the shore to buy bait."

3. Because the Nova Scotian bait is cheaper.

Mr. G. A. Watts, of Boston, testified before the same Committee (p. 4):—

"United States' fishermen go to Canadian ports because they get bait so cheap there."

4. Because it would not be deemed a *privilege* to be able to go to Canadian ports for fresh bait if clam bait were the best.

Mr. John Swett, of Provincetown, when asked, "How do you regard the importance of buying bait in Canadian waters?" replied:—

"That seems to me a privilege that ought not to be denied."

The Canadian fishermen do not use clam bait, except in cases of emergency and in small quantities.

During the existence of the Treaty of Washington (1871) considerable quantities of clam and other bait were imported into Canada for the purpose of supplying American fishermen, whose prejudices were in favour of clam bait. This bait so imported was either sold to American fishermen in Canadian ports or reshipped to St. Pierre.

Since the abrogation of the fisheries clauses the import of clam bait has largely decreased.

IMPORT of Clams, Fish Bait, &c., into the Dominion from the United States.

Years.	Barrels.	Amount.
		Dollars.
1881	4,642	25,426
1882	3,788	24,506
1883	4,395	34,992
1884	5,420	37,244
1885	6,676	40,404
1886	7,450	27,076
1887	3,033	17,433

The American fishermen were denied the privilege of buying bait in Canadian waters in 1886 and 1887, which fact sufficiently accounts for the large diminution of imports of clam bait. The Returns for 1886 include six months of the calendar year of 1885.

The statistics of imports, both in Canada and the United States, are much more accurate than are the statistics of exports. This fact American experts have, on many occasions, pointed out.

Mr. J. N. Larned says:—

"On each side there is strong probability of the near accuracy of the *import* Returns, and we may safely accept them as representing the commercial exchanges of the two countries." (Larned's Report of 1871.)

It is the custom, in studying the trade of the two countries, to rely upon the statistics of *imports* as the more accurate. There is even greater accuracy now than when Mr. Larned accepted them.

There was no change in the condition of things in 1886 as compared with 1885. Bait was admitted into Canada free in both years There was no export duty placed on it by the United States in 1886. The one change to affect the business was that the American fishermen were not allowed to purchase bait in Canadian ports in 1886 and 1887 as they had been allowed in previous years.

The accuracy of the statistics on this subject presented by the Statement under review is questioned.

Free Fish.—The importation into the United States of fish from British North America has enabled the people of the United States to obtain a cheaper food supply than they could have had if they had been obliged to rely upon their domestic supply.

For their fresh fish supply they have largely depended upon Canada. Of a total of free fish imported by the United States, amounting to 1,071,226 dollars for the year 1886, no less than 670,550 dollars was for fresh fish.

The admission of these fresh fish free has resulted in great benefit to the people of the United States—(1) in cheapening the fish food supply; (2) in aiding in the development of the trade and commerce of the United States.

The introduction of so large a proportion of free fresh fish tends to keep down the prices of fish other than fresh. Thus the admission of fresh fish free is not a boon to the Canadian fisherman alone.

The proportion of free fresh fish imported by the United States has increased since the repeal of the Treaty of 1871. The import of free fresh fish in 1880 was under 320,000 dollars; it was 670,550 dollars last year.

Pressure was put upon the Government of the United States for the abandonment of duties on frozen fresh fish, showing that the people of the United States, by whom the pressure was brought to bear, realize that the admission of fresh fish free was a boon to them.

During the three years immediately preceding the active operation of the Treaty, 1870, 1871, and 1872, the total exports of fish caught by American fishermen were 4,084,726 dollars. During the same period the imports of fish were 6,970,557 dollars, showing that the United States could not themselves provide their own wants by 2,885,831 dollars.

During the last three years of the Treaty, 1883, 1884, and 1885, the total export of domestic fish, and fish caught in American vessels on Canadian waters, was 14,166,382 dollars; the total imports were 15,309,197 dollars, leaving more than the United States could provide themselves with, 1,142,815 dollars.

The difference between 2,885,831 dollars and 1,142,815 dollars, or 1,743,016 dollars, is the measure of the benefit derived by the United States from Canadian fisheries.

It is plain, therefore, that as the people of the United States need Canadian fish, both for their domestic use and for their foreign commerce, the freer the fish the greater the benefit to them.

The removal of all duties on fish would benefit the United States' consumer quite as much as the removal of the duties on fresh fish have done.

Some of the evidence given before the Edmunds Senate Committee was that the United States' fishermen are not injured by freedom from duty of British North American fish in the United States; that most of the United States' mackerel fleet lost money in 1886; that taking off the duty under the provisions of the Treaty of 1871 resulted in an increased importation of the cheaper grades of fish; that the tonnage of American fishing-vessels, which averaged during the Reciprocity Treaty 155,179 tons, fell from 1866 to 1886, when the duty was reimposed, to 89,034 tons; that United States' fishermen will receive more damage than benefit from the duties, because of the loss caused by the derangement of, and consequent decrease of, the export trade; that the higher prices diminish the consumption; that the trade in the South is very much affected by the duties, because there they use a cheaper grade of herring; that the duties imposed had cost one large fish-dealer a loss of as much as 5,000 dollars a-year, and others proportionately; that the duties in 1886 had a decided effect in raising the prices; that during the time of free trade, before the duty was put on, the American fishermen were paid from 225 dollars to 240 dollars a-season, but that sum has now been cut down to about 125 dollars.

These statements are corroborated by the official statistics of the United States. For example, the United States' statistics show that the tonnage of American fishing-vessels over 20 tons (other than whale) averaged, during the Reciprocity Treaty of 1854, 142,177 tons; that during the five years between the abrogation of that Treaty and the enforcement of the Treaty of Washington, the tonnage of American fishing-vessels fell to an average of 72,730 tons, rising again under the operation of the Treaty of Washington, and falling again after the abrogation of the Fishery Clauses to 70,439 tons in 1886.

Transhipment in Bond.—It is urged that large quantities of Dominion fish in ice and Dominion frozen fish are admitted free of duty into the United States, and distributed throughout the Eastern States, competing with and driving out fish cured by United States' fishermen.

Either the consumer is benefited or the salt fish are not reduced in price. If the price is reduced in consequence of the competition, the consumer obtains the benefit. If the price is not reduced, then demand and supply have kept pace with each other, and in that case the salt fish cured by the United States' fishermen are not driven out.

General Reciprocal Benefits.—The farm products of Canada find their way to countries other than the United States in annually increasing quantities. Since the union of the provinces the farm products of Canada have found a market in other countries to the amount of 351,500,000 dollars, or 65,800,000 dollars more than in the United States during the same period.

It is not, therefore, correct to say that substantially all our agricultural products find their way to the United States' market.

As regards the general course of trade, the figures are as follows:—

During the Reciprocity Treaty of 1854 United States' imports from Canada were—

	Dollars.
Dutiable	14,556,175
Free	239,792,284
Total	254,348,459

Canada's imports from United States were—

	Dollars.
Dutiable	89,209,554
Free	124,272,223
Total	213,581,777

During the past twelve years, 1875-86, United States' imports from Canada were—

	Dollars.
Dutiable	289,280,017
Free	133,000,235
Total	422,280,252

Canadian imports from the United States were—

	Dollars.
Dutiable	327,507,492
Free	225,798,597
Total	553,306,089

From these figures it appears that under the Treaty of Reciprocity (1854-66) 364,164,000 dollars fulfilled the condition of the Treaty—being free interchange. Of this amount the United States secured benefit equal to 66 per cent. and Canada equal to 34 per cent.

It also appears that during the past twelve years 358,798,832 dollars of the total interchange was free. This inured to the benefit of the two peoples as follows: to the United States 37 per cent., to Canada 63 per cent.

Under the present arrangement Canada has the advantage.

Under the Treaty of 1854 the United States had the advantage.

The Reciprocity Treaty of 1854 was abrogated by the United States and not by Canada, the former maintaining that Canada had the best of the bargain.

Port Dues, Compulsory Pilotage, and other charges of like class.

The complaints under this head indicate that after the very thorough search that has been made by the United States' authorities, and after the public invitation which has been given for the statement of complaints against the Colonial authorities, the maltreatment which can be charged against Canada in this respect is that after the thousands of entries made by American fishing-vessels during the past two years, the gross sum of 2 dol. 50 c. has been collected by the Canadian authorities and 32 dol. 44 c. by the harbour officers of Newfoundland.

Canada has no light dues or buoy dues.

In some other cases demands were made for pilotage dues, but the right was controverted.

It is not asserted that the demands made were not in compliance with the law of the country, applicable, as regards some of the charges, to all vessels, and as regards others to all foreign vessels entering port. Since the Convention of 1818 enormous expenditures have been made by the Colonial Governments in lighting the harbours along the coast and in erecting breakwaters for shelter and in making places of refuge secure. Appliances for saving life and property have been multiplied in many directions, and a pilotage system organized. In former years the absence of such safeguards was felt as much by American fishermen as by any other class. On the 28th October, 1852, the United States' Consul at Pictou, Nova Scotia, wrote thus to the Lieutenant-Governor of Prince Edward's Island:—

"It has been satisfactorily proved by the testimony of many of those who escaped from a watery grave in the late gales, that had there been beacon-lights upon the two extreme points of the coast, extending a distance of 150 miles, scarcely any lives would have been lost, and but a small amount of property been sacrificed. And I am satisfied, from the opinion expressed by your Excellency, that the attention of your Government will be early called to the subject, and that but a brief period will elapse before the blessings of the hardy fishermen of New England and your own industrious sons will be gratefully returned for this most philanthropic effort to preserve life and property, and for which benefit every vessel should contribute its share of light-duty.

"It has been the means of developing the capacity of many of your harbours, and exposing the dangers attending their entrance and the necessity of immediate steps being taken to place buoys in such prominent positions that the mariner would in perfect safety flee to them in case of necessity, with a knowledge that these guides would enable him to be sure of shelter and protection."

The suggestion herein contained does not appear to have been repudiated by the United States.

The subject of the rights and privileges of American fishing-vessels under the law of nations and the Convention, and the limitations to which such rights and privileges must necessarily be subject, have already been so fully dealt with elsewhere that it is not deemed necessary to repeat the arguments in this place.

While it is not disputed, as was contended for by Mr. Bayard, that Customs duties should not be exacted upon the cargo of a vessel driven into port for shelter, and that such a vessel should not be unduly invaded, or the relations between her master and those on board disturbed, it does not follow that the vessel seeking shelter is free from the laws of the port which she visits.

It seems clear that from reasons of public policy, well established and defined, the American fishing-vessels were, as to the coasts of the British North American Provinces, a specially prohibited class under the Convention. The American contention that the right of entry was to be superior to all restrictions and regulations, would have made them a specially privileged class.

Warnings.

A perusal of the annexed Instructions, issued in 1886 and 1887 respectively, will show that the Canadian Government was animated by a spirit entirely the reverse of "inhospitable" or "hostile." In these the officers of the Government were enjoined to use the greatest possible courtesy and forbearance in their dealings with United States' fishing-vessels, in so far, of course, as was compatible with a due enforcement of Canadian rights.

The privileges and rights reserved to United States' fishermen under the Treaty of 1818 were expressly guarded, and the most liberal construction given with respect to their privileges of fishing around Magdalen Islands, and of landing in unsettled places on the coast, where, by the Treaty, they had the right to land upon conditions duly set forth. Vessels found within the limit were not to be seized or detained, if reasonable grounds existed for believing that they had been driven there by the force of unfavourable winds or tides; and the instructions concluded with the following:—

"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 instructions of 1887 were still more explicit in regard to the privileges to be accorded to United States' fishermen, and special provisions were made for the entry and clearance of United

States' fishing-vessels, which were not contemplated by the customs law of Canada, by authorizing the Captains of Government cruizers to enter and clear such vessels at any time of the day or night in order to avoid any possible detention or inconvenience in going to a custom-house. That no active service of hospitality should be withheld, the officers of cruizers were enjoined:—

"In cases of distress, disaster, need of provisions for the homeward voyage, of sickness or death on board a foreign fishing-vessel, all needful facilities are to be granted for relief, and both you and your officers will be carrying out the wishes of the Department in courteously and freely giving assistance in such instances."

The Canadian Government has the best of reasons for knowing that its officers cheerfully carried out the spirit of these instructions, and with a discretion and forbearance which entitled them to great credit in view of the difficult and delicate duties they were called upon to perform. There is no instance in the knowledge of the Government in which anything that can be construed into harshness or inhumanity in dealing with the fishermen of the United States during the years 1886 and 1887 can be authenticated.

It is but fair to add that many of these charges arose from a misconception of the rights which could be claimed by United States' vessels in Canadian ports, and from misstatement of facts, on the part of persons in charge of the same.

Whenever distress, sickness, or death, want of necessary provisions, or other circumstances occurred, calling for the exercise of hospitable and humane treatment, these services were cheerfully rendered.

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

"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, the 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 first Article of which provides:—

"'Whereas differences have arisen respecting the liberty claimed by the United States, for the inhabitants thereof to take, dry, and cure fish, on certain coasts, bays, harbours, and creeks of His Britannic Majesty's dominions in America, it is agreed between the High Contracting Parties, that the inhabitants of the said United States shall have, forever, in common with the subjects of His Britannic Majesty, the liberty to take fish of every kind, on that part of the southern coast of Newfoundland

which extends from Cape Ray to the Rameau Islands, on the western and northern coast of Newfoundland, from the said Cape Ray to the Quirpon Islands, on the shores of the Magdalen Islands, and also on the coasts, bays, harbours, and creeks from Mount Joly, on the southern coast of Labrador, to and through the Straits of Belle Isle, and thence northwardly indefinitely along the coast, without prejudice, however, to any of the exclusive rights of the Hudson's Bay Company; and that the American fishermen shall also have liberty, forever, 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 forever 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, or 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, 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 exclusoin 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 cited, 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 in 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 cruizers. 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 the 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.
(Signed) "GEORGE E. FOSTER,
"*Minister of Marine and Fisheries.*"

"*Special Instructions to Fishery Officers in command of Fishery Protection Vessels.*

"Sir, "*Department of Fisheries, Canada, Ottawa, April* 16, 1887.

"In reference to the letter of this Department, dated 16th March, 1886, I have to intimate to you that, during the present season and until otherwise ordered, you will be guided in the performance of the duties intrusted to you by the instructions contained in that letter. I have every reason for believing that these have been executed with efficiency and firmness, as well as with discretion and a due regard to the rights secured by Treaty to foreign fishing-vessels resorting to Canadian waters.

"I desire, however, to impress upon you that, in carrying out those instructions and protecting Canadian inshore fisheries, you should be most careful not to strain the interpretation of the Law in the direction of interference with the rights and privileges remaining to United States' fishermen in Canadian waters under the Convention of 1818. To this end the largest liberty compatible with the full protection of Canadian interests is to be granted United States' fishing-vessels in obtaining in our waters shelter, repairs, wood, and water. Care should be taken that while availing themselves of these

privileges such vessels do not engage in any illegal practices, and all proper supervision necessary to accomplish this object is to be exercised, but it is not deemed necessary that, in order to effect this, an armed guard should be placed on board, or that any reasonable communication with the shore should be prohibited after the vessel has duly entered, unless sufficient reasons appear for the exercise of such precautions.

"In places where United States' fishing-vessels are accustomed to come into Canadian waters for shelter only, the captain of the cruizer which may be there is authorized to take entry from and grant clearance to the masters of such fishing-vessels without requiring them to go on shore for that purpose. Blank forms of entry and clearance are furnished to the captains of cruizers; these, after being filled in, are to be forwarded by the captain of the cruizer to the Customs officer of the port within whose jurisdiction they have been used. In cases of distress, disaster, need of provisions for the homeward voyage, of sickness or death on board a foreign fishing-vessel, all needful facilities are to be granted for relief, and both you and your officers will be carrying out the wishes of the Department in courteously and freely giving assistance in such instances.

"The above special instructions, while designed with regard to the fullest recognition of all lawful rights and reasonable liberties to which United States' fishermen are entitled in Canadian waters, are not to be construed as authorizing a lax enforcement of the provisions of the laws for the protection of the Canadian fisheries. Fishing, preparing to fish, procuring bait, trading, or transhipping of cargoes by the United States' fishing-vessels within the 3-mile limit, are manifest violations of the Convention of 1818 and of the Imperial and Canadian Statutes, and in these cases your instructions, which are explicit, are to be faithfully followed."

"I am, &c.
(Signed) "GEO. E. FOSTER,
"*Minister of Marine and Fisheries.*"

Some complaint appears to be made on the ground that these instructions were not communicated early to the Government of the United States. Inasmuch as the orders which they convey to the officers are to act much within the interpretation of the Treaty which the United States' Government well knew would be acted on, it is difficult to see any ground for this objection.

Another complaint of a still more untenable character is, that Her Majesty's Government should have given greater warning of the enforcement of the Convention. Even the extent of the "publication" of the warnings issued by the Department of Fisheries in Ottawa has been excepted to. It may be worth while to consider this matter under the two questions: (1) Of what was warning required to be given? (2) What warning is one Government bound to give to the people of another country, as to abstaining from encroachment on its rights?

1. Of what was warning required to be given? Certainly not of the revival of the Convention of 1818. That revival had taken place at the instance of the Government that now complains of want of warning. After giving notice of the abrogation of the Fishery Articles of the Treaty of Washington, which alone had suspended the operation of the Convention of 1818, it was surely unnecessary to give notice to the United States' Government of their own act. But there was another step taken after the abrogation of the Fishery Articles. As already stated, the Government of the United States procured an extension of the privileges of American fishermen from the 1st July, 1885, to the end of that fishing season. The six months of indulgence was surely ample time for notice and preparation of every kind. This concession was obtained by a promise of certain recommendations to Congress. It was hardly necessary for Her Majesty's Government to notify the people of the United States that Congress was indisposed to respond to the overtures thus made, and preferred the revival of the Convention.

It can hardly be supposed that there was a necessity to give warning of what the British construction of the Convention was. That construction had been declared ever since 1818, excepting during the time when the Convention was suspended, and for many years was hardly denied by the United States' Government. The task of announcing the meaning of a Treaty can hardly be said to rest upon the Power which adheres to its plain language without resorting to any ingenious methods of interpretation.

2. What warning could Her Majesty's Government be called on to give the people of the United States? The warning should surely have come from the Government of the latter country.

It alone had the methods of making that warning effective in the United States, and could alone judge of the necessity for widespread publication.

It has been shown that the warning of 1870 was issued by the Treasury Department at Washington by Circular.

The fishermen of the United States were by that Circular expressly warned of the nature of the Canadian Statute, which it is now once more pretended is without force, but no intimation was given to those fishermen that these provisions were nugatory, and would be resisted by the United States' Government. Lest there should be any misapprehension on that subject, however, on the 9th June of the same year, less than a month after that Circular, another Circular was issued from the same Department, stating again the terms of the Treaty of 1818, and then containing the following paragraph:—

"Fishermen of the United States are bound to respect the British laws for the regulation and preservation of the fisheries to the same extent to which they are applicable to British and Canadian fishermen."

The same Circular, noticing the change made in the Canadian Fishery Act of 1868 by the Amendment of 1870, makes this observation:—

"It will be observed that the warning formerly given is not required under the amended Act, but that vessels trespassing are liable to seizure without such warning."

A full and explicit warning was issued by the Department of Fisheries at Ottawa on the 5th March, 1886, and was given as much publicity as was possible for such a document to obtain when promulgated in Canada.

On the 19th March, 1886, Sir Lionel Sackville West asked Mr. Bayard "whether it was intended to give notice to the United States' fishermen that they were now precluded from fishing in the British North American territorial waters." This expression referred to the Convention, and was always understood as embodying the view of Her Majesty's Government on the scope of the Convention.

Mr. Bayard replied on the 23rd March, 1886, that the President's Proclamation of the 31st January, 1885, was deemed sufficient.

On the 2nd June, 1886, Mr. Phelps complained to Lord Rosebery that "American fishermen had no notice of the action that was going to be taken." Lord Rosebery replied that on the 18th March he had telegraphed to Sir Lionel West asking him to request the Secretary of State "to issue such a notice as we were about to issue to Canadian fishermen, and he declined to do so." Lord Rosebery adds, "Mr. Phelps was not aware of this."

Yet the Statement under review intimates that the "Home Government" had the first intimation of the Canadian warning on the 3rd June, 1886.

The assertion in the Statement that the Canadian warnings were contradictory, inconsistent, and misleading must be left to be judged by those who read them. No one appears to have been misled; no one who knew the terms of the Convention, as United States' citizens were bound to know them (it being part of the law of their country), should have been misled by them. The Statement shows that the master of the "Adams" was not misled, and it is repeated that if warnings were wanted, or if those issued were inadequate, the blame must rest with the Government of the United States.

Sub-Appendix (E) No. 2.

Reply of the Government of Canada to the Observations of the Government of the United States on the Answer to the "Proposal."

(Presented to the British Plenipotentiaries in Conference, November 28, 1887.)

Department of Fisheries, Ottawa, November 15, 1887.

ON a reference from the Privy Council under date the 7th September, 1887, covering copy of a despatch from Sir H. T. Holland to his Excellency the Governor-General, in which was transmitted copy of a letter from the Foreign Office, inclosing a note from the American Minister at London, replying to the criticisms of Her Majesty's Government on the interim arrangements with regard to the fisheries question proposed by Mr. Bayard, the Undersigned has the honour to state, with reference thereto:—

Article 1. It is not denied that a prior agreement between the two Governments as to the proper definition of the bays and harbours from which United States' fishermen are to be excluded would facilitate the labours and give finality to the action of the proposed Conference. But the Canadian Government objects to the making of any such Agreement on the basis proposed, on the grounds that it would place a new and unwarranted interpretation upon the Convention of 1818, would make common those waters which by the law of nations long usage and the terms of the Convention have been considered as exclusively Canadian, and involve the surrender of old and well-recognized Canadian fishing rights.

The contention that the privileges enjoyed by the United States' fishermen under the Reciprocity Treaty of 1854 and the Treaty of Washington respectively, and that the instructions under which the Canadian cruizers exercised their police powers in 1870-72 furnish adequate proof that Canada did not consider herself possessed of an exclusive right to these territorial waters does not appear to be well founded.

United States' fishermen enjoyed the freedom of our inshore fisheries from 1854 to 1866, and from 1871 to 1885, by virtue of express Treaty stipulations, which have ceased to operate, and in consideration of compensating advantages by way of participation in the inshore fisheries of the United States, as far south as the 36th and 39th parallels of latitude respectively, of admission of Canadian fish and other natural products free of duty to United States' markets, and by the payment in addition of a large money award. It cannot be contended that privileges granted by Treaty, for a limited period, and in consideration of material compensations, should be held to warrant their assumption as a right after the Treaty has expired and the compensations are no longer given. The United States' fishing-vessels were permitted from 1866 to 1870 to have access to our inshore fisheries on payment of a licence fee, or that after the abolition of the licence system they were allowed to fish to within 3 miles of our shores, does not constitute a waiver of exclusive rights of fishing within the bays and harbours. In fact, the taking of such licences by the United States' fishermen may be considered a recognition of the right of Canada to the exclusive enjoyment of these fishing grounds. These rights were, during this time, expressly and repeatedly asserted, and the privileges granted to the United States' fishermen were those of friendly concession and not of right, and were made in view of pending negotiations which it was hoped would result in the conclusion of a new Treaty, as in fact they did. The arrangement was expressly declared to be exceptional, and the waters in respect of which the licences were given were expressly declared to be the "exclusive property of Canada."

The Baie des Chaleurs was cited to illustrate the nature of the concessions which Canada would be called upon to make under the proposed 10-mile limit, as, in this case, a bay of large extent, almost landlocked and extending 70 miles inland, and which has always been held as territorial waters, would be thrown open to United States' fishermen. It was not cited for the purpose of showing the inappli-

cability to Canada under existing Treaties of the rule adopted in the Fishery Convention of 1839 between France and Great Britain. The inapplicability rests upon other and well-defined grounds.

The opinion of the umpire, to whose decision the cases of the "Washington" and "Argus" were finally referred, as to the headland question, cannot be considered binding upon the Government of Canada and Great Britain in the matter of interpreting a Treaty. It had been agreed by the two Governments to submit the special cases of the "Washington" and "Argus" to arbitration, and each Government was in duty bound to acquiesce in the decision of the arbitrators, in so far as related to the compensation awarded, but it cannot surely be held that the views of any member of the Board of Arbitrators, expressed by him as reasons for his judgment, are to be taken as authoritative in the matter of interpretation of a Treaty or settlement of questions of international law. The Statute 14 and 15 Vic., cap. 63, 7th August, 1851 (Imp.), has a bearing on the present discussion because it is part of the evidence that the Baie des Chaleurs has been subject to the sovereignty of Great Britain for many years. The Baie des Chaleurs cannot be governed by different principles in this respect from the Delaware Bay or any other of the bays on the coasts of the United States which have been held to be territorial waters by the Tribunals of that country.

The observations on the restrictions contemplated by the Convention cannot be acquiesced in by the Government of Canada, but a further discussion of them may be deferred in view of the time for the opening of the Conference having so nearly approached.

Article 2.—It does not appear that a reference to Article 6 of the United States' proposal removes the serious objections which were urged by the Canadian Government to the adoption of Article 2 of Mr. Bayard's Memorandum.

By that Article, all the Statutes and Regulations of Canada and Great Britain would be suspended in so far as United States' fishing-vessels are concerned, with the exception of those relating to United States' vessels found fishing, to have been fishing, or preparing to fish in Canadian waters. Article 6 promises merely the co-operation of the United States' authorities in securing obedience by its fishermen to the Canadian Customs Laws. The amalgamation of the two sections would therefore have the effect of suspending all other Statutes of Canada and Great Britain except those relating to the three offences above named, and preclude all action by British authorities with regard to violation by the United States' fishermen of the Customs Laws, and substitute therefor whatever may be meant by a friendly admonition and co-operation of a foreign Power in securing the observance by United States' fishing-vessels of these laws. This would greatly tend to widen the scope of the Convention of 1818, to abrogate Canadian laws, and take away from Canadian authority its right to enforce obedience to its laws within its own territorial jurisdiction.

Article 3.—The objections taken by the Canadian Government to the proposal embodied in Article 3 of Mr. Bayard's Memorandum are fundamental, and are not to be met by an enlargement of the list of enumerated offences so as to include infractions of Regulations established by the Commission. These objections are not answered in the reply of the United States. The practical difficulties in the way of any effective working of such a proposed Court of Inquiry constitute, it is believed, an insurmountable obstacle to its establishment.

Article 4.—The Treaty of 1818 was for the purpose of restricting the rights and privileges which United States' fishing-vessels had previously to 1812 enjoyed in the waters of the British provinces, and for preventing the abuse of those rights and privileges.

One express provision of this Treaty was that United States' fishing-vessels should enter the bays and harbours in these waters for the purpose of shelter and repairs, taking wood and water, and for no other purpose whatever; and it is held that no subsequent Treaty between Great Britain and the United States gave the United States' fishing-vessels any commercial status. That this was not vigorously insisted upon in the years 1854-66 and 1872-85 was due to the friendly spirit of the provincial and Dominion authorities, which, under the mutually beneficial conditions consequent upon the Treaties in force during these periods, chose to allow their well-understood rights in this regard to remain in abeyance. But it surely cannot be contended that this friendly course, pursued under widely different conditions, is now to be construed into an abandonment of well-defined Treaty rights when the compensating advantages of mutually favourable Treaties no longer exist.

Earl Kimberley's opinion, as cited by the United States, was at the time of its utterance a mere suggestion; it was not acquiesced in by the Canadian Government, nor has it been since embodied in the policy of Great Britain with relation to the fishing interests of this country. The right to obtain bait, which was asked for by the American negotiators, but not allowed, was not the right to catch bait, but to obtain it by purchase. The right to catch fish for any purpose had been already renounced, without any qualification, and this right was asked for in the enumeration of privileges altogether irrespective of fishing, such as shelter, repairs, and the obtaining of wood and water.

Article 5.—The vessels seized are held to have been lawfully seized, and whatever proceedings have been taken are held to have been lawfully taken; and a request cannot be justly made against the Government of Her Majesty, or that of Canada, for a reference to any Tribunal for claims for damages arising out of the seizures that have been made. The Canadian Courts have been, and still are, open to any person deeming himself aggrieved, and in these Courts citizens of the United States have precisely the same standing as citizens of Canada. In no case, however, has any claim of the kind indicated in the Article been presented to the Courts, and the Government of Canada has no knowledge of their existence.

There does not seem to be any greater reason for making any claims of that character subjects of reference to a special Tribunal than to demand that any other instance of the enforcement against citizens of another country of the Revenue Laws, the Pilotage Laws, or the laws relating to shipping and harbours, or that any other part of our body of municipal laws should be subject to revision by arbitration or other exceptional mode of adjudication.

The whole respectfully submitted,

Minister of Marine and Fisheries.

No. 91.

Her Majesty's Plenipotentiaries at the Fisheries Conference to the Marquis of Salisbury.—(*Received December* 12.)

(No. 4. Confidential.)

My Lord, *Washington, December* 2, 1887.

WE have the honour to inclose herewith, for your Lordship's information, a Memorandum of the proceedings of the Fishery Conference at their meeting of the 30th ultimo.

We have, &c.

(Signed) J. CHAMBERLAIN.
L. S. SACKVILLE WEST.
CHARLES TUPPER.

Inclosure in No. 91.

WASHINGTON FISHERY CONFERENCE, 1887.

Third Meeting.—November 30, 1887.

THE Conference met according to adjournment on Wednesday, the 30th November, at 2 P.M., all the Plenipotentiaries being present.

Mr. Bayard states that he will postpone any detailed answer to the British reply to the United States' Memorandum till the corrected proofs are complete. It is, however, due to the spirit of conciliation in which this great and important matter should be discussed that the whole case of the United States should be put before the Conference fairly and squarely. He desires the British Plenipotentiaries to know in advance every point which the United States wish to bring forward. The United States' Memorandum was therefore somewhat long and comprehensive in order to show fully the bases on which the claims of the United States rest. They wish, however, now to give full particulars of every ground of complaint they have to urge. These complaints rest on the laws of Canada and on the mode in which those laws have been enforced in the seizures which have taken place. The interpretation of the Convention of 1818 must necessarily be discussed in order to ascertain whether these seizures were lawful under international law, which the United States hold was not in any way suspended by the Convention of 1818. Ordinary commercial facilities are a right under the comity of nations; also the right of transit of fish as bonded merchandize is conferred by Article XXIX of the Treaty of 1871. These are the grounds of complaint, and no other matter will be presented as an afterthought. He has thought it right to mention this because the British reply to the United States' Memorandum states that specific information has not been supplied on certain points. As to this he quotes a passage from the British reply.

He will now submit some suggestions embodied in a Memorandum, not perhaps for discussion to-day, but for consideration when the British Plenipotentiaries are ready. This Memorandum is not submitted as necessarily a definitive proposal, but as a basis of discussion. (Reads Memorandum, Appendix F.)

He would, however, like to bring before the Conference to-day the question of Article XXIX of the Treaty of Washington of 1871, to which only a brief allusion was made in the United States' Memorandum, and he desires to explain the grounds of his complaint on that point. It is agreed on both sides that Article XXIX aforesaid is still in force, and he reads a passage from the British reply to the United States' Memorandum and the full text in question. Under the broad language of this Article any merchandize may be carried in bond from any port to any place. By their practical action Canada has included bonded fish as coming within the class of merchandize mentioned in this Article, as her merchants have continually entered fish for bonded transit across the United States. There is nothing in the Treaty which stipulates as to the vehicle by which merchandize may be brought in for transit, or what class of goods shall be carried. He alludes to the Canadian Act 46 Vict., which makes no distinction between fishing and trading vessels, but applies to every vessel, and on the strength of this Act Canada assumes to subject fishing-vessels to the formality of reporting to the Customs, &c. Canada has no right to exclude the entry of fish for transit.

He reads from the proceedings of the Halifax Commission, and continues his argument that the action of the Canadian authorities was a violation of Article XXIX of the Treaty of 1871, and states that a claim for damages will consequently be prepared.

There has been no mention of the bonded transit of Canadian-caught fish, but there has been a denial of transhipment of fish caught in the open sea. It is true the Article in

question could be denounced by either party; but it has not been so denounced, and, being now in force, it cannot have its effect lessened by an anterior and wholly independent Treaty stipulation.

Sir C. Tupper asked if Mr. Bayard claimed that any fish which was brought in by merchant-vessels had been denied the privilege of transit.

Mr. Bayard did not think so, but his contention was that fishing-vessels had the same right of entering fish for bonded transit as would merchant-vessels. Article XXIX of the Treaty of 1871 did not depend on anything but itself, and could not be affected by the provisions of the precedent Convention of 1818.

Sir C. Tupper reserved any full comment on the subject till the next meeting, when he would reply fully to the complaint now urged.

Mr. Chamberlain wished to make some general observations.

In the view of the British Plenipotentiaries the Conference had two distinct objects:—

1. The discussion of claims on both sides; and

2. The settlement of principles upon which the whole question can be regulated for the future.

The second point ought properly to come first, for, if we could settle the principles for future action no difficulty would probably arise as to any claims, whereas if a settlement, even of all the claims, were reached it would not in the least help to a solution of the question for the future.

Suppose that Great Britain admitted the case as put by Mr. Bayard with regard to transhipment, even so, Canada was justified in passing an Act to prevent the entry of fishing-vessels into her territorial waters, for under the Convention of 1818 United States' fishermen could not even enter the ports except for four specified purposes, and might be arrested before they reached the shore to tranship. The British Plenipotentiaries have tried to make it clear that they entered on the Conference in the hope and expectation that proposals would be made for extended commercial intercourse as a mode of settlement on the lines suggested by Mr. Bayard in his letter to Sir C. Tupper. They find, however, no such proposal made by the United States, but only a suggestion for an interpretation of the Convention of 1818.

At the last meeting two conclusions had seemed to be reached: (1) that the United States' Plenipotentiaries were not now in a position to propose commercial reciprocity as a basis; and (2) that the discussion showed we could not agree as to the true interpretation of the Convention of 1818. He had, therefore, hoped to receive some definite alternative proposal from the United States, but if the paper read by Mr. Bayard is the only proposal they have to make, it is one of a very disappointing character. The British view is that Canada has privileges to grant, for which an equivalent is asked. If that equivalent cannot take the shape of reciprocity, can the United States offer anything else? But the proposals now made contain no equivalent at all. They are simply to modify the Convention of 1818 so as to make it correspond with the United States' contention, and would amount to a complete surrender on our part. They did not even afford room for discussion.

Mr. Bayard agreed that the correct plan was, if possible, to settle principles in the first place; but he reminds the Plenipotentiaries that is was not without notice that the course of procedure he recommends has been proposed. He refers to the United States' Memorandum to prove this.

He then reverted to the question of transhipment, repeating his previous arguments.

Mr. Chamberlain did not wish to contest the right of the United States to introduce the question of transhipment, but only wished to question the expediency of the order of discussion proposed.

Sir C. Tupper asked if the present United States' proposal was the only one they had to make.

Mr. Bayard was understood to reply in the affirmative.

Then *Sir C. Tupper* would like to ask whether he considered that it covered in any way the ground upon which this Conference was convened, or if he could say that it corresponded to the views as to the proper mode of settling the question expressed by Mr. Bayard in his correspondence with himself. If this were the only proposal, agreement was utterly impossible.

On the question of transit he entirely denied *in limine* that Article XXIX of the Treaty of Washington permitted United States' fishing-vessels to enter even one dozen of fish. Under the Convention of 1818 no United States' fishing-vessel could enter a Canadian port. No such prohibition existed against Canadian fishing-vessels entering United States' ports. Any United States' merchant-vessel may no doubt exercise the

privileges stipulated in Article XXIX, but not so fishing-vessels, and the contention that they could do so was a complete surprise to him. He concluded by saying that if the line now taken by the United States' Plenipotentiaries were persisted in no beneficial result could be anticipated from the present Conference.

Mr. Bayard said that he could add to the proposals just made the proposals already made by Mr. Phelps (the *ad interim* arrangement), and he believed the two would form a fair basis of discussion. If the Conference is to lead to any result, which he prays God it may, we must in the end come to an agreement as to what the Conventional rights are on each side. If these are to be subject solely to the interpretation of one party, they will be rendered entirely nugatory, and it would be better for the United States' fishermen not to try to make use of them. It would then be a matter for the United States to consider whether they would abandon those rights, or insist upon obtaining them.

He challenged the British Plenipotentiaries to produce a single direct admission on the part of the Imperial British Government that they supported the Canadian view as to the right of United States' fishing-vessels to obtain supplies in Canadian ports. He proceeded to quote from correspondence in support of this view.

Mr. Chamberlain, after commenting on the correspondence first quoted, said that if the discussion were continued on these lines, the British Plenipotentiaries would be obliged to develop and insist on their view that the Conference was assembled on the faith of Mr. Bayard's proposals in his letter to Sir C. Tupper. When it was found that the United States were indisposed to carry out Mr. Bayard's promises, the British Plenipotentiaries had at least expected some other offer, but the proposal now made by the United States was utterly unacceptable.

Mr. Angell said that, when the proposal came to be considered, it would be found to contain concessions on the United States' side. In view of the suggestion that equivalents were demanded, he felt constrained to state that persistence in that line would make it useless to go on. The American people felt that they were not asking for any grant or concession, but that they were fully entitled, by the strict terms of the Treaty, to all they claimed. Under these circumstances, the matter should be approached in a friendly spirit, not as a matter of bargain, and the United States' Plenipotentiaries would welcome any proposal made in such a spirit by the British side.

Sir C. Tupper said that he accepted the challenge to produce a direct expression of view by the Imperial Government on the question of access to ports. He would undertake to show that Great Britain entirely indorsed the action of the Canadian authorities in this respect. He reverted to the proposal now made by the United States as a sort of ultimatum, and insisted that it was impossible to maintain that it corresponded with the assurances contained in Mr. Bayard's correspondence with himself. It was simply an invitation to a complete surrender.

Mr. Bayard again alluded to his correspondence with Sir L. West respecting a temporary arrangement, and said that the question had now grown into one of national sentiment. If the differences of opinion could first be removed, it might be possible even to negotiate a Commercial Treaty, or to arrange for Tariff concessions by mutual legislation. But the fishery disputes now prevented the question of Tariff exchanges being approached. If the proposal on the British side is that some sort of Commercial Treaty is desirable, could not the object be attained as readily by mutual legislation instead of by Treaty? Differences which should never exist between neighbouring and kindred States have undoubtedly arisen on the Fishery question, and might lead to a situation beside which all questions of commerce would be insignificant. If these differences could be removed, a very strong feeling of propinquity and good neighbourhood would spring up.

The word "ultimatum" had been used, but as long as an effort could be made to settle the question, he would be there to listen to it. He asks Mr. Chamberlain what are the equivalents he wants. He had told him the other day in private conversation that the United States' Government were engaged in a great fiscal struggle; this was a difficulty no doubt, but even if the duties on fish could be taken off to-morrow, that would not permanently settle the question. The rights of the United States on certain parts of the coast would still remain. He did not think any amount of time could be wasted if it led to the restoration of good relations between two countries which he might call the guardians of the world's civilization. He would rather settle this question than have all that Canada could produce in 100 years. To prevent a collision between the United States and Great Britain no effort should be spared.

Explanations can still be offered as to the United States' proposal, and he will be ready to consider alternative proposals from the British side. If, therefore, equivalents are desired, they should be stated.

Mr. Chamberlain said that when the British Plenipotentiaries suggested a commercial settlement, it was solely from the wish to secure peace. Great Britain, as distinct from Canada, would secure no commercial advantages from such a settlement, but would be happy to treat for any settlement acceptable to Canada which might secure an accord; and in the past a settlement on commercial lines had always had that result. He still thought that this was the best mode of settlement, and regretted that the United States had abandoned it.

There remained the question of sentiment; but how could sentimental objections be met by an arrangement which would put one party in the position of surrendering, without equivalents, all for which she had been contending for seventy years, and practically to put her in the position of a country defeated in a great war? Great Britain needed concessions to sentiment as well as the United States. The British Plenipotentiaries had considered Mr. Bayard's position by putting aside the proposal originally made by him for a commercial settlement, and they now looked for some alternative proposal from the United States. On examining the nature of the United States' proposal just made, it is difficult to find in it anything in the nature of concession on their side. It must be the United States' view only of what they want. We reply, "Very well, we may be ready to give it you if you will suggest some equivalent; are you prepared to abrogate the Convention of 1818? It is a bilateral Treaty. If we give up what you want, will you give up what you have received under that Convention?"

Mr. Putnam said that the Foreign Office has never sustained the contention of Canada on these questions.

Sir C. Tupper.—There is a good deal of force in what Mr. Bayard has said as to the difficulty of making a Reciprocity Treaty; but if we are asked what we want, we reply that it is a Reciprocity Treaty. The responsibility of abrogating the settlements of 1854 and 1871 rests with the United States. Canada cannot, therefore, fairly be charged with any difficulties that have arisen. They were created by the sole action of the United States. How do the United States now propose to remove those difficulties? They say that Tariff changes will be easier to effect if the fishery difficulties were removed. But are we to trust to that only? Suppose this was a controversy between private parties claiming a strip of land, and A proposed that B should, as a first step, give up all the rights he claimed, and that A might then be disposed to do something for B, would that seem a practical proposal?

Mr. Putnam said that he had just seen a private case where that was done; to which *Sir C. Tupper* replied that the more practical plan seemed to be for the United States to propose some concession in return for the surrender of Canadian rights.

Mr. Putnam wished to make a personal explanation as to the circumstances under which he accepted the post of United States' Plenipotentiary. No one, he thought, would suppose that any difference had wilfully arisen as to the objects for which the Conference had been summoned. Before accepting he had read the correspondence, and if on a careful consideration of it he had supposed that reciprocity would be discussed, he would not have been here; not because he did not favour Tariff changes, but for other reasons. The Reports of Sir L. West must have convinced Her Majesty's Government that a Reciprocity Treaty would never pass the Senate; and they would not therefore suppose that such a scheme could be the basis of a Conference.

Sir C. Tupper said that argument was effectually disposed of by the passage in the instructions to the British Plenipotentiaries which they had produced, which proved that such a scheme was contemplated by Her Majesty's Government.

Mr. Putnam, continuing, said that he admitted the broad language used in Mr. Bayard's letter to Sir C. Tupper, but he attached no importance to it on account of the subsequent correspondence. He admitted the bearing of the instructions to the British Plenipotentiaries, but he had not seen that when he accepted, and took the correspondence as he read it; and must frankly confess that, to his mind, it entirely bore out the view expressed by Mr. Bayard as to the basis of discussion. Matters of a grave importance had occurred since the Conference was convened which might even now make a settlement impossible. He referred to the imposition of pilotage dues on the "Eliza M. Doughty," in the teeth of Lord Chelmsford's decision in 1852. He desired to add a word as to equivalents, and said that Mr. Chamberlain and Sir C. Tupper took different views. Sir Charles looked to a renewal of the Treaty of 1854. Mr. Chamberlain apparently contemplated some other concession. He (Mr. Putnam) would be glad to hear any proposal, but it was no use to contemplate a Treaty which could not be got through the Senate. Could not Canada consent to regard the admission of one-half of her fish duty free, as it now is, as an equivalent? He spoke with entire impartiality, his views were not coloured by any local interest, but he regarded the matter from the same standpoint as his colleagues on the Conference.

Mr. Bayard said that no one was more conscious than himself that his manner of treating the subject might have been defective. But he could not judge what construction might be placed on his letter to Sir C. Tupper. "Had Mr. Chamberlain seen it before coming here?"

Mr. Chamberlain.—"Yes, certainly."

Mr. Bayard.—"Now what did you think you were coming here for?"

Mr. Chamberlain.—"To make an arrangement of a commercial nature which should dispose of the Fishery question."

Mr. Bayard then read his correspondence with Sir L. West in May 1886, as showing what he regards as the inception of the idea of a Conference. What he himself wanted was an interpretation of the Convention of 1818. Sir L. West had proposed a system of licences, but Canada had objected to that; such a plan might, however, have relieved the situation.

Though personally in favour of a freer system of trade, his personal views would not suffice to carry such a policy. His one and only object was to remove a serious cause of difference between two countries which ought always to be friendly.

The discussion was continued as to the bases on which the Conference assembled.

Sir C. Tupper, recurring to the question of obtaining bait, said that the Canadian fisheries had a right under the Convention to be protected against foreigners who wished to use the Canadian ports as a base of supplies, whilst the United States' market was closed to Canadian-caught fish. What the United States professed to regard as a monstrous injustice Canada regarded only as a proper protection due to their own fishermen; and he repeated that if the result were damaging to the United States' fishermen, they had only to thank for it their own Government, who, by their own sole act of denunciation, had created the difficulties of which United States' fishermen complained.

Mr. Bayard's contention was practically that the Conference was summoned to accept unconditional surrender of all that Great Britain has contended for for seventy years. He reserved a reply on the question which had been raised as to pilotage dues which the United States' Plenipotentiary seemed to treat as almost a *casus belli*.

Sir Charles concluded by stating that he did not regard the remission of duty on Canadian fresh fish as any equivalent. It was simply a measure of advantage to the United States' people.

Mr. Bayard says the question now is not one of buying the inshore fisheries, but the vexed interpretation of the Convention of 1818.

Mr. Chamberlain still regrets that a settlement cannot be reached on the basis of free fishing and free access to ports for supplies, &c., in return for commercial concessions.

If the decision of the United States' Plenipotentiaries on that point is irrevocable, they ought to offer something else; but he is bound to say that, unless he had altogether misunderstood the proposal made to-day, it affords no prospect whatever of a settlement.

Mr. Bayard, before adjourning, would like to ask Mr. Chamberlain if he wished himself to make any suggestion of a mode of settlement.

Mr. Chamberlain said he would prefer not to answer that question to-night.

The Conference was then adjourned to Saturday, 3rd December, at 2 P.M.

(Initialled) . J. C.
L. W.
C. T.
J. H. G. B.

Appendix (F).

THE American Plenipotentiaries present for discussion the following suggestions, not intending to submit them as definite propositions in the precise terms in which they are now expressed:—

In view of the progress of settlement and growth of population and property since 1818 in the maritime provinces and Newfoundland, modifications are suggested by the American Plenipotentiaries of certain of the liberties enumerated in Article I of the Treaty of 1818, so that American fishing-vessels resorting to the waters as to which the right to take, dry, and cure fish is renounced in said Treaty, shall exercise and enjoy the liberties of purchasing wood and obtaining water in those ports and places only where trading-vessels may lawfully resort. And whenever any American fishing-vessel shall so enter any port for wood or water, she may be required to enter and clear in the same manner provided for trading-vessels.

And American fishing-vessels shall be entitled, within the eastern and north-eastern waters of British North America, including all the waters of Newfoundland, to like privileges of obtaining outfits and supplies as trading-vessels, including obtaining outfits and supplies suitable for fishing.

No American fishing-vessel within the eastern and north-eastern waters above described, including all the waters of Newfoundland, need enter or clear unless she voluntarily communicates with the shore or traffics; and no such vessel while using only the liberties enumerated in said Article I can be

compelled to pay light dues, harbour dues, buoy dues, or pilotage when no pilot is voluntarily taken; but this enumeration of certain dues shall not be construed as permitting other dues or charges inconsistent with the free enjoyment of said liberties.

No. 92.

Foreign Office to Colonial Office.

(Secret.) *Foreign Office, December* 12, 1887.

[Transmits copy of Mr. Chamberlain's telegram of December 11, 1887: *ante*, No. 89.]

No. 93.

Her Majesty's Plenipotentiaries to the Fisheries Conference to the Marquis of Salisbury.—(*Received December* 19.)

(No. 5. Confidential.)

My Lord, *Washington, December* 4, 1887.

WE have the honour to inclose herewith, for your Lordship's information, a Memorandum of the proceedings of the Fishery Conference at their meeting of the 3rd instant.

We have, &c.

(Signed) J. CHAMBERLAIN.
L. S. SACKVILLE WEST.
CHARLES TUPPER.

Inclosure in No. 93.

WASHINGTON FISHERY CONFERENCE.

Fourth Meeting.—December 3, 1887.

THE Conference met, according to adjournment, on Saturday, the 3rd December, at 2 P.M., all the Plenipotentiaries being present.

Mr. Chamberlain said that, at the last meeting, Mr. Bayard had challenged the production of any direct evidence to show that Her Majesty's Government had accepted and sustained the Canadian contention as to the question of the right of United States' fishing-vessels to commercial intercourse in Canadian ports.

He had been somewhat surprised that Mr. Bayard, with the correspondence before him, should have felt any doubt on the subject, but he would now proceed to show clearly that none could possibly exist.

It was necessary, in the first place, to draw a distinction between special cases now *sub judice* and the general principle in question.

As to the former, it would have been obviously improper for Her Majesty's Government to have expressed any opinion. The Canadian Courts had still to give their decision, and the cases might then be carried, on appeal, to the British Privy Council, and even after that might possibly form the subject of diplomatic correspondence.

But the general principle in question was that the terms of Article I of the Convention of 1818, and especially the words, "for no other purpose whatever," entitled Canada to legislate so as to absolutely exclude American fishing-vessels from her ports, except for the four specified purposes as to which the claims of common humanity required exception to be made in the Convention. He would refer, in the first place, to the Dominion Act of 1886. This was called for because previous legislation only prescribed forfeiture for "fishing or preparing to fish;" and Canada had a perfect Treaty right to legislate in a manner consistent with the terms of the Convention. This Act accordingly prescribed penalties for fishing-vessels entering the territorial waters of the Dominion for any but the four specified purposes.

It received Imperial assent in November 1886, and in this way Her Majesty's Government had accepted and confirmed the Canadian contention.

Although that was satisfactory evidence of the acceptance by Her Majesty's Government of the contention of Canada, it might be called only indirect evidence. He would therefore strengthen the argument by showing that successive Secretaries of State for Foreign Affairs had sustained the Canadian view. In support of this contention Mr. Chamberlain quoted the following extracts from correspondence:—

"*The Earl of Rosebery to Mr. Phelps.*

"*May* 24, 1886.

"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."*

Mr. Phelps, on the 29th May, 1886, communicated to Lord Rosebery a copy of a telegram from Mr. Bayard of the 27th of the same month, in which these words occurred: "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."†

In answer to this Lord Rosebery had replied in a despatch to Sir L. West, dated the 29th May, 1886:—

"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."‡

In a despatch of the 23rd July, 1886, Lord Rosebery stated to Sir L. West:—

"I have to add that Her Majesty's Government entirely concur in the views expressed by the Marquis of Lansdowne in this extract, of which you will communicate a copy to Mr. Bayard, together with a copy of the present despatch."§

The extract contains the following passage:—

"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. 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 competency 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."‖

On the 30th November, 1886, Lord Iddesleigh, replying to Mr. Phelps' note of the 11th September, 1886, expressed his disappointment at the nature of the American Minister's proposals for a settlement, which his Lordship described as a suggestion "that Her Majesty's Government, in order to allay the differences which have arisen, should temporarily abandon the exercise of the Treaty rights which they claim, *and which they conceive to be indisputable*, for Her Majesty's Government are unable to perceive any ambiguity in the terms of Article I of the Convention of 1818."¶

On the 24th March, 1887, Lord Salisbury, replying to Mr. Phelps' note of the 3rd December, 1886, after stating that the 1st Article of the *ad interim* Arrangement proposed by the United States' Government comprised the elements of a possible accord, said that it was followed by Articles which would be "fatal to the prospect of any satisfactory arrangement, inasmuch as they appear, as a whole, to be based on the assumption that upon the most important points in the controversy the views entertained by Her Majesty's Government and that of Canada are wrong, and those of the United States' Government are right, and to imply an admission by Her Majesty's Government and that of Canada that such assumption is well founded."**

A perusal of the Articles of the Arrangement above referred to would show that they related to the right of access of United States' fishing-vessels to Canadian ports for commercial intercourse.

The passages above quoted conclusively answered Mr. Bayard's challenge, and showed that, whether the Canadian contention were right or wrong, it had been entirely sustained by the Imperial Government.

* Confidential Print No. 5307, p. 136. † Ibid., p. 137. ‡ Ibid., p. 138.
§ Confidential Print No. 5358, p. 31. ‖ Ibid., p. 32. ¶ Ibid., p. 133.
** Confidential Print No. 500, p. 107.

Sir C. Tupper said that he would now make a statement in reply to the points which had been raised at the last meeting relative to transit of goods in bond and to pilotage dues.

The statement as to transit was, at Mr. Bayard's request, subsequently handed in in writing, and will be found in Appendix (G); and as to pilotage, Sir Charles said, in regard to this question, to which so much importance had been attached by Mr. Putnam, that the laws of humanity demanded that pilots should be maintained for the protection of life and property, and to prevent the obstruction of harbours by wrecks. It had been found necessary, in order to sustain this service, which involved much danger and exposure, to make pilotage compulsory to a certain extent. He gave a statement of the Canadian Act showing that all vessels under 80 tons were exempt, and that American fishing-vessels were treated in the same manner as British and foreign vessels.

In the course of Sir C. Tupper's statement *Mr. Putnam* stated that there were five cases in which United States' fishing-vessels had been compelled to pay 8 dollars each for pilotage dues.

Sir C. Tupper stated that that was an insignificant amount, and concluded his remarks by saying that if there was any strong feeling on so paltry a matter, he would be greatly disposed to recommend that United States' fishing-vessels should be exempted from the tax.

Mr. Bayard thought there was no charge whatever for light dues in the United States, and that the American Law respecting compulsory pilotage would not apply to vessels seeking shelter. But shelter when guaranteed by Treaty was a very different thing. Even granting that the four purposes mentioned in the Convention of 1818 excluded all other means of intercourse known to humanity, which was not an extravagant statement of the Canadian interpretation of the Convention, were those four purposes thus so literally construed to be interpreted by other canons when it became a question of pilotage?

He quoted Mr. Marshall's views as to questions of taxation in general as being relevant to the issue raised. The power to tax involved the power to destroy, and were the four purposes for which access to the British bays and harbours was granted by the Convention granted subject to the imposition of any taxation at all? He put this matter forward by way of emphasizing the value which Canada ought to attach to the modification of two of these Conventional purposes, as suggested in the United States' proposal made at the last meeting.

The United States could make the operation of these four purposes very injurious to Canada if they pleased. He would not, however, advise that this should be done, because a Treaty of Amity ought never by a narrow construction to be turned into a means of offence and injury.

Pilotage Laws were wise laws devised in the interest of humanity, but in this case it is clear that rights exist which are not subject to the exclusive control of one of the parties to the Convention. What the United States wanted was to come to an agreement as to what the measure of those rights should be henceforward.

Before Canada could lay a tax on United States' fishing-vessels they must obtain the consent of the other Contracting Party, and could not by any means divest the United States of the extra-territorial rights granted by the Convention of 1818. This brought him back once more to the necessity for an interpretation of the Convention.

Mr. Chamberlain said the United States' contention appeared to be that the British interpretation of the Convention was almost an abuse, and that if the United States construed their rights as strictly as Canada construed hers, it might be very bad for Canada.

He would, however, observe that the United States are prohibited by the express words of the Convention from abusing the privileges thereby reserved to them; and that if they claimed to use the privileges so as to override laws passed for the common benefit of humanity they would be debarred from doing so, even under the strictest construction of the Convention.

Mr. Bayard replied that maritime rights and certain further rights in the territory of another nation had been granted by Treaty. The Convention of 1818 was, no doubt, an exceptional and unusual arrangement. It, however, gave an extra-territorial right as to the interpretation of which each party must be consulted. The matter would, therefore, need a strong spirit of conciliation, and he wished that the United States' proposal which had been made to this Conference might be considered in that light.

The rights granted by the Convention were, no doubt, privileges of humanity, but they would be nullified unless they were allowed in a spirit of accommodation, but if they were insisted on in a spirit inconsistent with the mutual convenience they might

become a source of grave disagreement. The rights would be entirely destroyed if held to be subject to taxation.

Sir C. Tupper did not attach much importance to the question of taxation. As an illustration why vessels ought to be required to take pilots, he instanced the case when a vessel wished to run into a port the entrance to which was a narrow inlet. If the master refused to take a pilot he would probably run his vessel aground, and so would block the port entirely. The refusal to take a pilot in such a case would infringe the Treaty stipulations as to abuse of the privileges granted thereby.

He recurred to the charges of unfriendly action which had been made against the Dominion Government, and referred to the instructions given on the 16th April, 1887, and quoted from them to refute such charges.

Mr. Putnam said it was very unfortunate that these instructions had not been published, as, not being aware of them, United States' fishing-vessels had kept away from the Canadian shores during the past season in the belief that they would be subject to the same restrictions as in 1886. He thought the instructions were conceived in a very commendable spirit.

Mr. Bayard, however, desired to read some statements by fishermen which had recently been laid before him, in order to show in what spirit these apparently conciliatory instructions were really carried out. (Reads Appendix H.)

Mr. Chamberlain said that it was impossible that an *ex parte* statement of that kind could be answered here. He would merely remark that many charges of a similar kind which had been previously urged were refuted in the most conclusive manner.

Mr. Bayard said that he did not wish to prejudge that point. He had merely read these statements to show how necessary it was to come to an agreement as to the true measure of the Treaty rights.

He went on to refer to the cases of the "Everett Steele" and "Pearl Nelson" (see previous printed correspondence), which had been captured for violation of the Customs Laws, and he quoted from the Report of the Canadian Privy Council upon those questions.

In order to show the extent of the jurisdiction exercised by Canada, he mentioned the port of Shelburne, which consisted of an upper and lower basin, and where, for vessels plying along the coast, as was done by fishing-vessels, the question of going into the upper or lower harbour was a serious one. If they were compelled by the Customs Regulations to go into the upper harbour, it interfered materially with their success.

Sir C. Tupper said that the peculiar situation of Shelburne Port in this respect had not been unnoticed, and in order to avoid any possible grievance to United States' fishermen a Customs official had been stationed at the mouth of the bay to make all necessary arrangements for fishing-vessels.

Mr. Bayard said, however, that fishermen had certainly suffered great losses in that port, and could have showed the Conference a bill of claims made by a fishermen in such a case. But he was not prepared to support the consequential damages for prospective profits which was comprised in the claim in question.

He continued his argument by referring to the case of the "Crittenden," and again reverted to Lord Bathurst's correspondence in 1815, which he quoted; Sir C. Tupper quoting in opposite sense the opinion of Senator Tuck.

Sir C. Tupper said that this prolonged discussion was only straying from the real point at issue, and that it must eventually only lead to the conclusion that the only reasonable mode of settlement lay in reverting to an arrangement on the lines of the Reciprocity Treaty of 1854, as indicated in Mr. Bayard's correspondence with himself and in his instructions to Mr. Phelps. He thought that we ought now to consider seriously whether there was still any possibility of reaching such a settlement. He begged leave, therefore, formally to hand in the following proposal from the British Plenipotentiaries:—

"That with the view of removing all causes of difference in connection with the fisheries, it is proposed by Her Majesty's Plenipotentiaries that the fishermen of both countries shall have all the privileges enjoyed during the existence of the Fishery Articles of the Treaty of Washington in consideration of a mutual arrangement providing for greater freedom of commercial intercourse between the United States and Canada and Newfoundland."

Mr. Angell asked if that meant that the present Conference shall make such an arrangement.

Sir C. Tupper.—Yes.

Mr. Bayard inquired whether this was the proposal which he had understood that Mr. Chamberlain had hinted he might put forward.

Mr. Chamberlain said that he could scarcely say that he had any precise scheme to propose. He thought, however, that we were absolutely bound, in the first place at all events, to exhaust the question of reciprocity. This was the declared object of the Conference, and we must therefore put the proposal of reciprocity directly and formally before the United States' Plenipotentiaries. If they felt obliged to refuse this absolutely, the Conference must then either break up or some alternative method must be found.

Mr. Bayard was of opinion that the question of the object for which the Conference was summoned was so important that he must go back to that point in detail at the next meeting.

Mr. Chamberlain said that the position was now that:—

The United States' Plenipotentiaries have put in a Memorandum of their proposals. This the British Plenipotentiaries consider utterly inadmissible, and do not propose to consider it further as a possible basis. They had, however, been invited to make a counter-proposal. This had now been done, and to it they wished to have a formal and definite reply. If it were found to be impossible for the United States to entertain any proposal in the shape of commercial reciprocity, we should have reached a very critical stage in the negotiations, but the question would still remain whether any alternative course could be found.

Mr. Bayard said the United States' Plenipotentiaries felt it to be their duty further to develop their own proposal before going any further at present.

Mr. Chamberlain said that in that case he begged to hand in a Memorandum which contained in detail the views of the British Plenipotentiaries on the United States' proposal:—

"*Memorandum in reply to the Proposal put forward by the United States' Plenipotentiaries for discussion as a Method of Settlement.*

"The British Plenipotentiaries regret that they do not find in this proposal any satisfactory basis for a settlement, either of the Fishery question or any approach to the treatment of the larger question of extended commercial intercourse.

"It is entirely one-sided and offers no suggestion of mutual concession.

"It presupposes an admission by Her Majesty's Plenipotentiaries that, in the controversy that has arisen, the United States are entirely in the right, and Her Majesty's Government and that of Canada are entirely in the wrong.

"The proposition would secure for United States' fishing-vessels—

"1. A commercial status in Canada equal for their purposes to that enjoyed by trading-vessels, with the sole exception of transhipment, which, however, according to the contention of the United States' Plenipotentiaries, is already secured by Article XXIX of the Treaty of Washington.

"2. Two immunities not now enjoyed by trading vessels, viz., freedom from dues of all kinds, and freedom from Customs Regulations when they enter harbour but do not communicate with shore. Trading-vessels entering port, whether they trade or not, must pay the port charges and enter at the Customs.

"If the proposals of the United States' Plenipotentiaries were accepted, the United States' fishermen would get a basis for their fishing operations in British waters from 400 to 800 miles nearer than they now possess.

"They would get the best bait at cheapest rate close to the grounds. Herring, squid, and capelin abound on the shores of British North America. If bait, ice, or supplies ran short before they obtained full fares, as often happens, they would avoid the loss of time and expense of going to distant home ports to refit.

"In competition with Canadian fishermen in United States' markets they would then gain a new and immense advantage in addition to that now possessed in matter of duty.

"On the other hand, by these proposals Canada and Newfoundland will gain absolutely nothing by way of equivalent. They amount, therefore, to an absolute and unconditional surrender of the whole case of Her Majesty's Plenipotentiaries, and in this light it is impossible for Her Majesty's Plenipotentiaries to treat them seriously as affording any basis for negotiation."

Mr. Bayard said that the United States' Plenipotentiaries, knowing the scope of their powers, which were drawn according to the terms of reference, must, nevertheless, accompany their proposal by a full statement of their own views on it in order that it might still be kept first in the order of discussion.

Then, as to the British proposal, it would be for the United States' Plenipotentiaries

to consider whether their powers sufficed to enable them to discuss it, or whether it was desirable for them to ask for extended powers.

The Conference was then adjourned to Wednesday, the 7th December, at 2 P.M.

(Initialled) J. C.
L. W.
C. T.
J. H. G. B.

Appendix (G).

Paper submitted by British Plenipotentiaries in relation to Transit in Bond under Article XXIX of the Treaty of Washington.

CANADA has never refused to receive goods for transit in bond. She has merely said that American fishing-vessels cannot enter the bays and harbours for the purpose of delivering such goods.

Mr. Bayard admits that Article XXIX is silent as to the vehicle in which the goods may be carried, and yet he argues that Article XXIX makes all vehicles lawful, whether unlawful before or not.

At the Halifax Conference, on the 5th September, 1877, this motion was made by the Agent for the United States.

"*Mr. Foster.*—I will read the motion that was presented on the 1st instant:—

"'The Counsel and Agent of the United States ask the Honourable Commissioners to rule declaring that it is not competent for this Commission to award any compensation for commercial intercourse between the two countries, and that the advantages resulting from the practice of purchasing bait, ice, supplies, &c., and from being allowed to tranship cargoes in British waters, do not constitute a foundation for award of compensation, and shall be wholly excluded from the consideration of this Tribunal.'"

In the answer filed by the United States to the British Case it was said:—

"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."—"Proceedings of Halifax Commission," vol. i. p. 136.

"That the various incidental and reciprocal advantages of the Treaty, such as the privileges of traffic, purchasing bait and other supplies, are not the subjects 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 re-enactment of former oppressive statutes.*"—Ibid., p. 136.

The Counsel for Great Britain insisted that these advantages were conceded by the Treaty of Washington, 1871, as incidental to the enlarged rights to fish thereby granted, or that they were not conceded at all. The Counsel for the United States failed to point out any stipulation whatever existing between the two countries under which their people enjoyed these privileges. They resisted the contention that by implication the Washington Treaty secured to the United States these advantages, and preferred the alternative that they were not conceded at all, at least not by any express stipulation.

Mr. Foster, Agent for the United States, said:—

"The Treaty of Washington confers upon us no right whatever to buy anything in Her Majesty's dominions."—Ibid., p. 1541.

And after a reference to the Treaties of 1794 and 1815, which it is quite clear did not secure what was attempted to be secured in 1818, and was only secured in 1830, he said:—

"Gentlemen,—Such I understand to be the footing on which commercial intercourse stands between the two countries to-day, *if there is any Treaty* that governs commerce between the British North American provinces and the United States. And if this is not the case the relations between the two countries stand upon that comity and commercial freedom which exist between all civilized countries."—Ibid., p. 1542.

Mr. Dana, Counsel for the United States, said:—

"May it please your Honours, it is clear to our minds that the Treaty of Washington does not give us those advantages. That subject has been elaborated by the Agent of the United States and by my learned friend (Mr. Trescot). In the first place, it has been said in answer to that contention, or rather it has been suggested, for it was not said with earnestness as if the Counsel for the Crown thought it was going to stand as an argument, that those were Treaty gifts to the United States, and though they could not be found in any Treaty, yet they were necessarily implied in the Treaty of Washington. Take the Treaties of 1783, 1818, 1854, and 1871, and they are nowhere referred to according to any ordinary interpretation of language. The only argument I can perceive is this: You have enjoyed those rights. They do not belong to you by Nature or by usage, and must, therefore, be Treaty gifts; though we cannot find the language, yet they must have been conferred by the Treaty of 1871 and the Treaty of 1854. May it please this learned Tribunal, we exercised all those rights and privileges before any Treaty was made, except the old Treaty, which was abolished by the war of 1812. Almost the very last witness we had on the stand told your Honours that before the Reciprocity Treaty was made we were buying bait in Newfoundland," &c.

The Commissioners consequently held that compensation could not be awarded for commercial

intercourse between the two countries, nor for the advantages of purchasing bait, ice, supplies, &c., nor for the permission to tranship cargoes in British waters.

Sir A. T. Galt, one of the Commissioners, as if to emphasize the position taken by the United States, said, in the opinion given by him:—

"But I am now met by the most authoritative statement as to what were the intentions of the parties to the Treaty. There can be no stronger or better evidence of what the United States proposed to acquire under the Washington Treaty than the authoritative statement which has been made by their Agent before us here, and by their Counsel. We are now distinctly told that it was not the intention of the United States, in any way, by that Treaty, to provide for the continuation of these incidental privileges, and that the United States are prepared to take the whole responsibility, and to run all the risk of the re-enactment of the vexatious Statutes to which reference has been made.

"I cannot resist the argument that has been put before me, in reference to the true, rigid, and strict interpretation of the clauses of the Treaty of Washington. I therefore cannot escape, by any known rule concerning the interpretation of Treaties, from the conclusion that the contention offered by the Agent of the United States must be acquiesced in.

"There is no escape from it. The responsibility is accepted by, and must rest upon, those who appeal to the strict words of the Treaty as their justification. I therefore, while I regret that this Tribunal does not find itself in a position to give full consideration to all the points that may be brought up on behalf of the Crown as proof of the advantages which the United States derive from their admission to fish in British waters, still feel myself, under the obligation which I have incurred, required to assent to the decision which has been communicated to the Agents of the two Governments by the President of this Tribunal."

The United States' Counsel were willing, rather than admit the right of Great Britain to compensation, to have the American fishing-vessels found their right to such important privileges upon the very vague references to sufferance or custom, or to be excluded altogether. They preferred to admit that during the periods covered by the Treaties of 1783, 1854, and 1871 they had enjoyed these privileges, not as incidental to the enlarged rights to fish thereby conferred upon them, but without any leave or licence, and *that* merely to escape the consequence of the British contention that they must pay for the twelve years' period covered by the Washington Treaty.

The prohibition of the Convention of 1818 was not expressly repealed by Article XXIX of the Treaty of Washington. Was it impliantly repealed? Such a construction is to be avoided.

Maxwell, in his book on the construction of Statutes, p. 212, says:—

"It is but a particular application of the general presumption against an intention to alter the law beyond the immediate scope of the Statute to say that a general Act is to be construed as not repealing a particular one—that is, one directed towards a special object or a special class of objects. A general later law does not abrogate an earlier special one by mere implication. *Generalia specialibus non derogant*, the law does not allow the exposition to revoke or alter, by construction of general words, any particular Statute where the words may have their proper operation without it. It is usually presumed to have only special cases in view, and not particular cases which have been already otherwise provided for by the special Act, or what is the same thing, by a local custom."

The system of bonded transit existed long prior to the Treaty of Washington, and transhipment from fishing-vessels was prevented both before and after the Reciprocity Treaty; but the United States made no pretension that the prohibition in the Convention was inconsistent with the system of bonded transit.

How did the question stand in 1871 after the Treaty was made? Article XXIX stood alongside the Fishery Articles, but Article XXIX, with those Fishery Articles in force, could not be said to have repealed the prohibition *quoad* transhipment.

The Counsel and Agent for the United States repudiated this idea before the Halifax Commission. The Commission ruled according to their contention, and the United States were relieved from the compensation which they would have had to pay if the right to tranship had been given by the Treaty of Washington.

Can Article XXIX have a wider scope (the scope of repealing, *quoad* transhipment, the prohibition of the Convention) by the renunciation of the Fishery Articles? If so, by tearing the Treaty in two they obtain a wider construction for the remaining half than it previously bore.

The view of the Canadian Government was emphatically indorsed by the Imperial Government.

As regards "instructions" issued on the 25th March, 1886. A copy of instructions to be issued to the Captains of cruizers was sent to Earl Granville. One clause of these reads as follows:—

"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."

While exceptions were taken to the Customs warnings, and emendations made in them as suggested, *no exception was taken to the "instructions."* These went into force, and have continued in force for two seasons.

It was after these had been fully considered by the British Government that Lord Rosebery and Lord Iddesleigh affirmed expressly the Canadian contention by assenting to legislation destined to enforce the prohibition of transhipment.

The Imperial Statute (59 Geo. III, cap. 38) and the existing Canadian legislation provided no effectual penalty for violations of the Convention other than "fishing," "having fished," or "preparing to fish" within the limits.

The Canadian Bill of 1886 proposed the penalty of *forfeiture* for violations of the Convention other than those mentioned above.

This Bill was sent to the British Government on the 19th May, 1886, with explanatory despatch

(p. 55, Canadian Correspondence). To this Bill Mr. Bayard objected by a strongly-worded protest (p. 64).

Lord Rosebery's attention was called to it on the 3rd June, as follows:—

"*Earl Granville to the Marquis of Lansdowne.*

"(No. 83.)
"(Telegraphic.) "*June* 3, 1886.

"The following telegram has been handed to Lord Rosebery by the United States' Minister. The telegram commences as follows:—

"'Direct Lord Rosebery's attention immediately to the Bill No. 136, now pending in the Canadian Parliament. This Bill assumes power to execute the Convention of 1818. You will also call his attention to the Circular No. 371, issued by the Commissioner of Customs for the Dominion, Mr. Johnson, which orders the seizure of vessels on violation of the Convention. Both of these are unwarranted and arbitrary assumptions of power, against which you are desired to make an early protest. You are instructed, in doing so, to state that the Government of Great Britain will be held responsible by that of the United States for whatever losses may be incurred by American citizens growing out of the dispossession of their property, detention or sale of their vessels lawfully within British North American territorial waters.'

"The telegram ends here.

"Please telegraph the purport of Circular No. 371 referred to."

Previous to and after this the attention of the British Government had been called to the matter of transhipment in the instructions and by despatches, yet on the 26th November, 1886 (p. 165), *the Bill was assented to, and is now law.*

The British Government was advised of Canada's position on this point.

The subject of transhipment was specifically brought up. Consul-General Phelan raised the question, and it was brought to the attention of the Canadian Government by Sir L. West:—

"*From Minister at Washington to Governor-General.*

"(No. 30.)
"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 a marketable condition at any Canadian port and transhipping 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.

"His Excellency the Governor-General."

April 6. The Governor-General forwards to Earl Granville the reply of the Dominion Government as follows:—

"*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 transhipping them in bond to the United States, either 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.

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 transhipping cargoes, and that it is not material to the question that such fishermen may have been engaged in fishing outside of the '3-mile' limite xclusively, or that the fish which they may desire to have transhipped have been taken outside of such limit.

"That to deny the right of transhipment 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 Conven-

tion, 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."

"The Earl of Rosebery to Sir L. West.

"(No. 21A. Treaty.)

"Sir, *"Foreign Office, May 29, 1887.*

"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 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 communications, 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."

"The Earl of Rosebery to Sir L. West.

"(No. 24. Treaty.)

"Sir, *"Foreign Office, June 2, 1886.*

"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 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."

It is to be borne in mind that Earl Rosebery made these statements after—

1. The receipt of "Canadian Instructions" sent 25th March, 1886.
2. The receipt of Report on Phelan's contention *re* transhipment, sent 6th April.

The "Novelty" Case.

July 1.—Permission was asked by the master of the "Novelty," as follows, to which reply as follows was made:—

"Hon. George E. Foster,
"Minister of Marine and Fisheries, Ottawa. "*Pictou, N. S., July* 1, 1886.
"Will the American fishing steamer now at Pictou be permitted to purchase coal or ice, or to tranship fresh fish, in bond, to the United States' markets? Please answer.
(Signed) "H. B. JOYCE,
"*Master of Fishing-steamer 'Novelty.'*"

July 2.—Reply of the Minister of Marine and Fisheries thereto:—

"To H. B. Joyce,
"Master American steamer 'Novelty,' Pictou, N. S. "*Ottawa, July* 1, 1886.
"By terms of Treaty 1818, United States' fishing-vessels are permitted to enter Canadian ports for shelter, repairs, wood, and water, and for no other purpose whatever. That Treaty is now in force.
(Signed) "GEO. E. FOSTER,
"*Minister of Marine and Fisheries.*"

July 10.—Mr. Bayard made formal protests (p. 101, Canadian Correspondence).

This specific case was immediately brought to the attention of the British Government, and the reply on behalf of Canada was sent to England on the 21st August, 1886.

The following extract from Lord Iddesleigh's despatch is conclusive as to the opinion of Her Majesty's Government on this question:—

Lord Iddesleigh's Despatch.

"(Page 133 [53 98]. Confidential.) "*November* 30, 1886.

"For Her Majesty's Government are unable to perceive any ambiguity in the terms of Article I of the Convention of 1818, nor have they as yet been informed in what respects the construction placed upon that instrument by the Government of the United States differs from their own.

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

* * * * * *

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

"Her Majesty's Government are quite unable to accede to this view, and I must express my

regret that no reply has yet been received from your Government to the arguments on this and all other points in controversy which are contained in the able and elaborate Report (as you courteously describe it) of the Canadian Minister of Marine and Fisheries, of which my predecessor communicated to you a copy."

In that Report reference is made to the argument of Mr. Bayard drawn from the fact that the proposal of the British negotiators of the Convention of 1818, to the effect that American fishing-vessels should carry no merchandize, was rejected by the American negotiators; and it is shown that the above proposal had no application to American vessels resorting to the Canadian coasts, but only to those exercising the right of inshore fishing, and of landing for the drying and curing of fish on parts of the coasts of Newfoundland and Labrador.

The Report, on the other hand, shows that the United States' negotiators proposed that the right of "procuring bait" should be added to the enumeration of the four objects for which the United States' fishing-vessels might be allowed to enter Canadian waters, and that such proposal was rejected by the British negotiators, the conclusion being that there could be no doubt in the minds of either party at the time that the "procuring of bait" was prohibited by the terms of the Article.

The Report, moreover, recalls the fact that the United States' Government admitted, in the case submitted by them before the Halifax Commission in 1877, that neither the Convention of 1818 nor the Treaty of Washington conferred any right or privilege of trading on American fishermen; that the "various incidental and reciprocal advantages of the Treaty, such as the privileges of traffic, purchasing bait and other supplies, are not the subjects 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."

Appendix (H).

Recent Cases affecting the Right of Shelter.

Mr. Phelan to Mr. Ader.

United States' Consulate-General, Halifax, N. S., November 8, 1887.

Sir, (*Received November* 12.)

REFERRING to my despatch No. 190, dated 3rd September last, on the liability of American fishing-vessels for pilotage upon entering a Canadian port for shelter under the Treaty of 1818, as stated in that despatch, I addressed the following communication to the Minister of Marine and Fisheries:—

"Hon. George E. Foster,

"Minister of Marine and Fisheries, Ottawa.

"Sir, "*United States' Consulate-General, Halifax, N. S., September* 1, 1887.

"On the 19th ultimo five American fishing-vessels entered the outer harbour of Halifax and anchored under Meagher's Beach for shelter. They entered at the Halifax Custom-house, and on the following day applied for clearances, which were refused because they had not paid pilotage, amounting to 8 dollars for each vessel. The captains say they did not need a pilot; that they came in for shelter only, which was within their Treaty rights. An explanation was made to the Secretary of the Pilot's Commission, who replied that all foreign vessels of over 80 tons were liable for pilotage, and that he could not clear the vessels until it was paid. This Office could not acquiesce in this ruling, and the following telegram was sent to you:—

"'Hon. Minister Foster, Ottawa. "'*Halifax, August* 20, 1887.

"'Are American fishing-vessels anchoring at the outer entrance Halifax Harbour for shelter liable for pilotage when use of pilot not required, and when such pilotage not exacted of domestic vessels of same class?

(Signed) "'M. H. PHELAN.'

"After waiting a reasonable time for a reply, and not wishing to detain the vessels, this Consulate-General guaranteed the pilotage if, after an examination, it was found to be conformable to Treaty rights. The vessels were accordingly cleared. The Pilot Commissioners held a meeting and sustained the Secretary in his rulings, but suspended further action pending a decision from you. As the question has arisen several times, it should be settled; and with that end in view, I would ask you to pass upon the question submitted in the telegram above.

"I am, &c.

(Signed) "M. H. PHELAN, *Consul-General U. S.*"

To-day I received the following reply:—

"Sir, "*Marine Department, Ottawa, November* 4, 1887.

"I am directed by the Minister of Marine and Fisheries to acknowledge the receipt of your letters of the 1st and 21st September last, relative to certain pilotage dues collected from United States' fishing-vessels in the port of Halifax, and your objections to the payment of the same. From a careful examination of the papers submitted the Minister is of the opinion that the Pilotage Commissioners

acted in this case entirely within the scope of their powers as defined by chapter 80, Revised Statutes of Canada, and by rules framed thereunder and approved by Order in Council.

"As to your contention that United States' fishing-vessels seeking shelter in Canadian ports under the provisions of the Treaty of 1818 can claim exemption from pilotage dues, the Minister is of the opinion that all vessels, whether foreign or not, coming within the limits of a pilotage district, and not exempted by the above-mentioned Act or by the Pilotage Commissioners, under Regulations approved by Governor-General in Council, are liable to a compulsory payment of pilotage dues. The mere fact of the recognition by a Treaty of the right of vessels to come into a harbour for shelter is not of itself a ground of exemption from the payment of such dues.

"I am, &c.

(Signed) "JOHN HARDIE, *Deputy Minister of Marine.*"

The above practically adds a proviso to the Treaty of 1818 something like this:—

Provided such vessels shall pay pilotage, signal, entrance, harbour, and such other dues as the Canadian Government may think proper to impose.

Canadian vessels of 120 tons and under are exempt from pilotage and all other dues. The pilotage claimed from these vessels is in my hands. I do not think they are liable, and submit the question as to payment to the Department. The right claimed by Canada to impose burdens on our fishing-vessels entering her harbours under the Treaty, which are denied all commercial privileges, should be settled; and the fact should be made known that Canada has one law for American vessels and another for her own of the same class.

I am, &c.

(Signed) M. H. PHELAN.

Hon. Thomas F. Bayard,
Secretary of State, Washington, D. C.

Sir, *Gloucester, Mass., November* 18, 1887. (*Received November* 21.)

I respectfully submit herewith my affidavit in regard to the treatment received by me from Captain McLean, of the Canadian cruizer "Vigilant," at Malpeque, Prince Edward Island, to which I beg leave to call your attention. The action of Captain McLean and the Collector of Customs seemed unfriendly and harsh, and seriously impaired the success of my voyage.

I am, &c.

(Signed) SOLOMON A. ROWE,
Master of schooner "William H. Foye."

United States of America.

I, Solomon A. Rowe, master of the schooner "William H. Foye," of Gloucester, being duly sworn, do depose and say:—

That on Saturday, the 23rd July, 1887, I was compelled by stress of weather to go into the harbour of Malpeque, Prince Edward Island, for shelter, and came to anchor there about 8 o'clock P.M. of that day. On the next morning (Sunday, 24th July) we commenced to heave up our anchor, preparatory to going to sea, when we were boarded by an officer from the Canadian cruizer "Vigilant," Captain McLean, who forbade our going to sea because we had not entered and cleared. I then went alongside of the cruizer, and asked Captain McLean for entry and clearance, as the weather was fine and we wanted to continue our voyage. He refused me a clearance, saying he was going to make us Sunday-keepers. I then went to the custom-house and asked the Collector for a clearance, which he also refused, although he had cleared the American schooner "Fred P. Frye" that morning. This treatment was not accorded to me alone, but to many other American fishermen, among them the schooners "Fannie W. Freeman," "Foe. F. Edmunds," "Volunteer," and "Mary H. Thomas," whose captains will corroborate my statements. We were therefore compelled to remain in the harbour that day and until Monday morning, when we obtained our clearance from the custom-house and sailed for the fishing-grounds. During the time we were detained the mackerel showed up, and the vessels which were on the fishing-grounds, where we would have been but for our detention, secured from 50 to 140 barrels each; and I believe that by the action of Captain McLean we suffered a serious loss to our voyage.

(Signed) SOLOMON A. ROWE.

Mass., Essex, ss. *November* 18, 1887.

Personally appeared Solomon A. Rowe, and made oath to the truth of the above statement.

Before me,

(Signed) AARON PARSONS, *Notary Public.*

(Seal.)

Hon. Thomas F. Bayard,
Secretary of State, Washington, D. C.

Sir, *Gloucester, November* 26, 1887. (*Received November* 28.)

I very respectfully submit for your consideration the inclosed sworn statement of treatment received by me from Captain McLean, of the Canadian cruizer "Vigilant," in the harbour of Malpeque, Prince Edward Island, on Sunday, the 26th July, 1887.

I am, &c.

(Signed) HENRY B. THOMAS,
Master of American schooner "Mary H. Thomas."

United States of America.

I, Henry B. Thomas, master of the American schooner "Mary H. Thomas," of Gloucester, being under oath, do depose and say:—

That on Saturday, the 25th July, 1887, I was compelled by stress of weather to seek shelter in the harbour of Malpeque, Prince Edward Island, arriving there about 6·30 o'clock P.M. on that day. On the next day, Sunday, the 26th July, 1887, at about 6 o'clock A.M., as I was about to heave up anchor preparatory to going to sea, Captain Poole, of the American schooner "George F. Edmunds," came alongside and told me that an officer from the Canadian cruizer "Vigilant," Captain McLean, had forbidden him to go to sea until entry and clearance had been made at the custom-house; and immediately after the same officer boarded my vessel and gave me the same orders.

In company with Captain Poole, I then went to Captain McLean and asked him for a clearance, which I had been informed he had authority to give, and was told by him that he had no authority to give me a clearance, and referred me to the Collector of Customs. I then went ashore and started for the custom-house, 3 miles distant, when I met Captain Walen, of the American schooner "Fannie W. Freeman," and Captain Rowe, of the American schooner "William H. Foye," who informed me they had been to the custom-house for clearances and the Collector had refused them, although he had cleared the American schooner "Fred P. Frye" that morning. Upon receipt of this information I returned to my vessel, and waited until Monday morning, when, having obtained a clearance from the Collector, I was allowed to proceed to sea. This detention undoubtedly caused a serious loss to my voyage, as on the day we laid in the said harbour the mackerel showed up some 7 to 8 miles off, and all vessels there got some, their catches that day averaging 100 barrels each.

(Signed) HENRY B. THOMAS.

Mass., Essex, ss. *November* 26, 1887.

Personally appeared Henry B. Thomas, and made oath to the truth of the above statement.

Before me,

(Signed) AARON PARSONS, *Notary Public.*

(Seal.)

No. 94.

Her Majesty's Plenipotentiaries to the Fisheries Conference to the Marquis of Salisbury.—(*Received December* 19.)

(No. 6. Confidential.)

My Lord, *Washington, December* 8, 1887.

WE have the honour to inclose herewith, for your Lordship's information, a Memorandum of the proceedings of the Fishery Conference at their meeting of the 7th instant.

We have, &c.

(Signed) J. CHAMBERLAIN.
L. S. SACKVILLE WEST.
CHARLES TUPPER.

Inclosure in No. 94.

WASHINGTON FISHERY CONFERENCE.

Fifth Meeting.—December 7, 1887.

THE Conference met on Wednesday, the 7th December, pursuant to adjournment, all the Plenipotentiaries being present.

Sir C. Tupper said that he would hand in a Memorandum on Pilotage (Appendix I*). As to the Canadian Instructions of 1887 which Mr. Putnam had stated were not published, he might say that they were presented to Parliament in Canada in order to give them all possible publicity.

Mr. Putnam said that might be so, but from papers he had read since he came here it appeared that these instructions had not been carried out in a really conciliatory spirit. He instanced some cases in point.

Sir C. Tupper said that it was obviously impossible to investigate particular cases at this Conference, but that if details were given full investigation should be made in the proper manner.

Mr. Bayard having explained that the cases to which Mr. Putnam had referred had already formed the subject of communications addressed to the British Minister at Washington.

* Not yet printed: will be sent by next messenger.

Mr. Chamberlain deprecated the discussion at the Conference of cases based on *ex parte* statements to which complete answers could probably be produced. He instanced the cases of the "Pearl Nelson" and "Everett Steele," which had been alluded to at the last meeting, and in regard to which he would now read the refutation of the allegations which had long ago been communicated to the United States' Government.

The British Plenipotentiaries were prepared to discuss questions of principle at the Conference, but inquiry into the facts of particular cases could only be properly dealt with by quasi-judicial Tribunals.

The discussion was then continued as to the manner in which the Canadian instructions were executed.

Sir C. Tupper observing that these instructions had certainly been published, but that great difficulty had been experienced in obtaining the insertion in the United States' newspapers of anything tending to allay irritation on the Fisheries question, and that the American fishermen were consequently very likely to be unacquainted with the conciliatory nature of the arrangements made by the Canadian Government.

Mr. Bayard disclaimed any intention to urge individual cases for discussion at the Conference, but these cases had only been cited by way of illustration. As an instance of the delay in meeting cases of complaint, he would read a note he had received yesterday from the British Minister respecting the case of the "Golden Hind."

[Reads note dated the 6th December, 1887.]

Mr. Bayard then stated that the United States' Plenipotentiaries had carefully considered the proposal made by the British Plenipotentiaries at the last meeting, and begged to read and hand in in writing the following reply:—

"While continuing their proposal heretofore submitted on the 30th ultimo, and fully sharing the desire of Her Britannic Majesty's Plenipotentiaries to remove all causes of difference in connection with the fisheries, the American Plenipotentiaries are constrained, after careful consideration, to decline to ask from the President authority requisite to consider the proposal conveyed to them on the 3rd instant as a means to the desired end, because the greater freedom of commercial intercourse so proposed would necessitate an adjustment of the present Tariff of the United States by Congressional action, which adjustment the American Plenipotentiaries consider to be manifestly impracticable of accomplishment through the medium of a Treaty under the circumstances now existing.

"Nor could the American Plenipotentiaries admit that such a mutual arrangement as is proposed by Her Britannic Majesty's Plenipotentiaries could be accepted as constituting a suitable basis of negotiation concerning the rights and privileges claimed for American fishing-vessels. It still appears to the American Plenipotentiaries to be possible to find an adjustment of differences by agreeing on an interpretation or modification of the Treaty of 1818 which will be honourable to both parties, and remove the present causes of complaint, to which end they are now, as they have been from the beginning of this Conference, ready to devote themselves."

Mr. Chamberlain said we had now reached a position which he could not but regard as very critical. The United States' Plenipotentiaries had made a proposal which the British Plenipotentiaries had felt it to be their duty to decline as one-sided, and as offering no equivalent for the concession asked. A counter-proposal had therefore been put forward on the British side, which had now also been categorically declined.

In the present grave position the only question remaining was therefore apparently whether any *modus vivendi* or modification of the Convention of 1818 could be found which would be acceptable to both parties. He felt it to be his duty most seriously to ask the United States' Plenipotentiaries whether they were in a position to make any further offer, or whether they had already exhausted their efforts at conciliation.

Mr. Bayard inquired whether it was possible that any amplification or development of the United States' proposal might open a basis of discussion.

Mr. Chamberlain replied that unless the amplification consisted in reciprocal concessions on the part of the United States, it would be absolutely useless to discuss it.

Mr. Bayard asked whether a modification of the United States' proposal in the sense of making it extend to all four Conventional purposes, instead of to two only as originally suggested, would be likely to lead to any result.

Mr. Chamberlain said "No," because the British Plenipotentiaries felt that any modifications of the Convention in the sense suggested would be absolutely valueless to Canada. They were impracticable in operation, and could never be adhered to. The four Conventional purposes were purposes of common humanity, and could never be denied in

any port. For example, if a vessel were blown by storm on a certain part of the coast, did the United States' Plenipotentiaries suppose it would be possible to deny her shelter in the nearest port, whatever might be the restrictions imposed by Treaty?

Mr. Bayard said that the use of a law lay in its fair interpretation. The Canadian construction of the Convention of 1818 would deny the ordinary intercourse of humanity to fishing-vessels.

He went on to discuss at length the question of the interpretation of the Convention of 1818 insisted on by Canada, and ended by recurring to the necessity for thoroughly exhausting the question of an interpretation of that Convention.

Sir C. Tupper, reverting to the discussion at the last meeting on the question of pilotage, asked whether Mr. Bayard could give a single instance of the exemption of fishery vessels from pilotage dues in United States' ports.

Mr. Bayard replied that the pilotage dues were beyond the Federal control, being regulated by State law. But he had never heard of a case in which they were demanded from fishing-vessels.

Mr. Chamberlain said that he did not think there had been a single sustained case where a fishing-vessel in distress had been refused any reasonable facilities in Canadian ports. But Canada had, within her strict Treaty right, endeavoured to prevent the use of her shores as a base of supplies for deep-sea fishing. There was no reason why she should permit this without equivalent, and the British Plenipotentiaries could not accept any proposal tending to concede this right without corresponding concession on the United States' side.

Mr. Bayard replied that it was plain that for the past two years no use had been made by United States' fishermen of the Canadian shores, either for fishing or supplies; but the question remained whether access for the four Conventional purposes had not been denied. Two cases only had been substantiated according to the Canadian reply, but even those were enough to prove the fact that such access had been denied. He thought it was quite impossible to estimate the number of cases in which casualties had been actually caused by the rigid enforcement of the Canadian laws: and he alluded to the action of Captain Quigley, of the "Terror."

He reverted to the necessity for an interpretation of the Convention of 1818, for if that is left to Canada it is admitted that she will use it to prevent competition in the American market.

Sir C. Tupper said that he could establish incontrovertibly that existing Canadian law imposed no restrictions in Canadian ports which were not also imposed in United States' ports on all vessels entering. Fishing-vessels had no title to be exempted from ordinary Customs surveillance, which was evidently one of the restrictions against abuse contemplated by the words of the Convention; but he understood Mr. Bayard to contend that fishing-vessels might treat the Customs officers with contempt, pay no dues, and generally be exempt from the operation of all laws enacted for the public safety and welfare.

The existing Canadian law did not in any way curtail the privileges granted by Treaty to United States' fishing-vessels, and it was manifestly unjust to say that Canada refused anything which she was not bound by her duty to her own fishermen to refuse. It was only American fishermen who sought to obtain privileges to which they had no right, in order to obtain an unfair advantage in trade competition.

The United States' Statutes granted nothing to foreign vessels which was not equally granted by Canada to United States' vessels.

Alluding to Newfoundland, he stated that during the past two seasons United States' fishing-vessels, to the number of 128 during the past season, had been admitted to obtain bait and supplies on the shores of Newfoundland; and in conclusion he deprecated any further reference to "inhuman" or "inhospitable" laws of Canada. All complaints on this score had been fully answered and disproved, and if any excess of power had by chance been exercised by any Canadian official he had been promptly punished.

Mr. Bayard said that he was quite sensible of the difference which had distinguished the Newfoundland from the Canadian interpretation of the Convention of 1818, and he referred to the action of Sir Ambrose Shea in London when he had stated that he was disposed to accept the United States' construction of the Convention.

Mr. Chamberlain replied that the action of Newfoundland had been dictated by the hope that they might secure a free market in the United States for fish and fish-oil; but if they found that they would get nothing they would probably enforce the prohibition against obtaining bait, as they had a right to do under the Convention.

Mr. Bayard said that proved his contention that the action of the Colonial Governments was directed to wring Tariff concessions from the United States.

Mr. Chamberlain said that the Colonial Governments having rights to confer were perfectly justified in withholding them unless a satisfactory equivalent were given.

The discussion was then continued as to the wish of Canada to obtain reciprocity.

Sir C. Tupper denied that Newfoundland accepted the United States' interpretation of the Convention of 1818, and adduced the fact that she had recently passed a stringent Act against the supply of bait, which would come into operation next year.

The charges made by Mr. Bayard of a harsh construction of the Treaty were unfair and undeserved.

Mr. Bayard would substitute the word "rigid" for "harsh;" and the discussion was then continued as to the action of the Canadian authorities and Sir A. Shea's views on the bait question.

Sir C. Tupper inquired whether, as Mr. Bayard had drawn an invidious distinction between the action of Canada and Newfoundland; he approved of the Bait Bill introduced by the latter Government.

Mr. Bayard disclaimed any intention to be invidious, but the action of the two Governments was, in fact, different. He thought the Newfoundland Bait Bill a very unwise measure.

He went on to say that his personal opinion was in favour of extended commercial intercourse, and that this view had been indorsed by the recommendations of Congress recently made in a higher quarter.

Mr. Chamberlain said that the proceedings of the Conference seemed now to have reached a deadlock.

Mr. Putnam referred to Sir C. Tupper's statement that the United States' Navigation Laws were as strict as those of Canada. That was incorrect; and he feared that the "selected cases of maltreatment" handed in by the United States' Plenipotentiaries had not been sufficiently studied. He proceeded to quote from them at length. He went on to contrast the action of Newfoundland and Canada as to seizures without warning; when

Mr. Chamberlain interposed, saying that it was impossible here to argue particular cases. The principle was clear, and no fisherman could possibly misunderstand the words, "for no other purpose whatever," and he believed that if they could bring any fisherman before them he would say he knew perfectly well what was the prohibition of the Convention, and was aware that he risked seizure by going in for prohibited purposes. Ample notice had been given by the Canadian Government that the Convention of 1818 was revived.

The discussion on this point was continued by *Mr. Putnam*, *Mr. Chamberlain*, and *Sir C. Tupper*.

Mr. Bayard now wished to go into the question of the indorsement by the Imperial Government of the Canadian policy as to access to ports for commercial facilities. The extracts from the correspondence read by Mr. Chamberlain were not direct communications in writing from the British to the American Government, but were merely records of conversations. He enlarged on this view, and quoted from the correspondence in support of it. He then argued at great length the question of the rights conferred by the Convention upon United States' fishermen at the Magdalen Islands, and concluded by drawing special attention to the condition of the United States' political parties as to the Tariff. He hinted that the item of fish might be found on the free list. This might relieve the situation, but would not remove the difficulty, since Canada might still interpret the Convention in a manner unfavourable to United States' interests. Reform of the Tariff was a purely domestic measure, and had no reference to international questions. It should, however, be taken into account as influencing the judgment of the Conference on the questions now before it. But the Canadian attempt to coerce United States' legislation as to Tariff had provoked opposition to any commercial settlement by Treaty.

Mr. Chamberlain observed that if the recommendations in the President's Message had the force of law, they might give all Canada required. But these recommendations might not be carried out by the Legislature, in which case, how were we to provide for the intervening period?

He must, therefore, finally and seriously ask the United States' Plenipotentiaries if they had any other solution to propose; if not, it would be for the British Plenipotentiaries to consider whether they must leave at once, and await the result of Congressional action on the Tariff. Great Britain was willing, however, to abandon the exercise of the rights complained of if a fair and honourable equivalent were given.

Mr. Bayard agreed that the President's Message was speculative. He wished, therefore, also to put the question to Mr. Chamberlain, "Have you any alternative to propose?"

Mr. Chamberlain replied that he could make no proposal now, but being deeply

impressed with the gravity which the question would assume if the Conference broke up without agreement, he thought that no possible effort should be spared to seek a solution. He would therefore endeavour to submit an alternative proposal at the next meeting, if the United States' Plenipotentiaries were not prepared to make one.

Mr. Angell asked if a proposal that Dominion vessels should have all the facilities in United States' ports which United States' vessels now claimed in Canadian ports would be acceptable.

Mr. Chamberlain replied "No," the cases were not parallel. The United States had not entered into any Convention surrendering rights for ever in her territorial waters. But Great Britain had done so, and, in return, the United States had recognized her right to exclude fishing-vessels in other portions of her waters, except for the four specified purposes. It had been shown again and again that this exclusion was valuable as preventing United States' fishermen from making Canada a base of supplies in their competition with Canadian fishermen. If they wanted this advantage, they ought to pay for it, and Mr. Angell's suggestion offered no equivalent of any value whatever.

Mr. Putnam said that the United States' fishing interests will probably seek to deprive Canada of the advantage they now possess in the admission of fresh fish duty free; to which

Mr. Chamberlain replied that he believed the small American fishing interest would be willing to embroil the two countries in order to preserve their monopoly. But such a course would not, he thought, commend itself to any reasonable American.

Mr. Putnam said that the representatives in Congress of the fishing interests did, however, in fact, support that course.

After some further discussion, *Mr. Bayard* reverted to the *ad interim* arrangement, saying that, if the difficulties could be smoothed by some prompt and simple mode of procedure in cases of seizure, reciprocity of trade might grow up of itself. The United States' proposals for an *ad interim* arrangement ought not, therefore, to be dismissed as unimportant.

The discussion then turned on the suggestion made by Mr. Angell, which was considered to be inadmissible by the British Plenipotentiaries.

Mr. Chamberlain said that if he found himself in a position to make an alternate proposal he would submit it in writing at the next meeting.

Mr. Bayard then entered on a lengthy argument as to the right of one party to a Treaty to be the sole interpreter thereof, and illustrated it by allusion to the North Sea Fishery Convention, the spirit and wording of which he commended; and the discussion was then continued as to the relative value of the fisheries on the Canadian and United States' coasts;

Mr. Bayard eventually inquiring whether the Conference could not sign some instrument defining the interpretation of the Convention of 1818; to which

Mr. Chamberlain replied that the Convention might possibly be modified if something in the shape of equivalent were given.

The discussion was continued, and turned on the question of pilotage and as to the right of United States' fishing-vessels to get water at any place, not merely at ports; on which latter point

Mr. Bayard contended that they had such right, and that the restrictions he proposed would prevent smuggling.

Sir C. Tupper said Mr. Bayard had conceded the whole question, as nothing in the Convention could be construed so as to permit United States' fishermen to engage in smuggling, and this admission showed the restrictions adopted to be required.

The Conference was then adjourned to Saturday, the 10th December, at 2 P.M.

(Initialled) J. C.
L. W.
C. T.
J. H. G. B.

Appendix (I).

Memorandum as to Pilotage Fees and other Port Charges imposed on United States' Vessels.

THE general rule in regard to legislation on this subject is thus stated by Right Honourable Dr. Lushington:—

"In the case of the 'Annapolis,'—the 'Johanna Stoll' (1st Lushington's Admiralty Reports, 295), the Right Honourable Dr. Lushington held that within British jurisdiction, namely, 'within British territory, and at sea, within 3 miles from the coast, and within all British rivers, *intra fauces*, and over foreigners in British ships, I apprehend that the British Parliament has an undoubted right to legislate. I am further of opinion that Parliament has a perfect right to say to foreign ships that they shall not, without complying with British law, enter into British ports, and that if they do enter they shall be subject to penalties, unless they have previously complied with the requisitions ordained by the British Parliament: whether these requisitions be, as in former times, certificates of origin, or clearances of any description from a foreign port, or clean bills of health, or the taking on board a pilot at any place in or out of British jurisdiction."

And Phillimore gives the following general rule:—

"With respect to merchant or private vessels, the general rule of law is that, except under the provisions of an express stipulation, such vessels have no exemption from the territorial jurisdiction of the harbour or port, or—so to speak—territorial waters ('mer littorale') in which they lie."—(Phillimore, vol. i., p. 483.)

Qualifications.

Vessels seeking shelter are to some extent, it is true, entitled to different treatment from that to which vessels resorting to ports for commercial purposes may properly be subjected. Thus:—

The *ship* entering for shelter is not liable to *forfeiture* if driven by stress of weather into a blockaded port.—(The "Fortuna," 5 Christopher Robinson's Rept., 27.)

Slaves on board a vessel driven by distress are not to be confiscated or released.—(The "Industria," cited in Forsyth's "Opinions," p. 399.)

In the case of the American brig "Creole" (1841) the slaves had revolted, had carried the brig into Nassau, 113 of them had been set free. Lord Ashburton refused to restore them. The matter was submitted to arbitration, and the Commissioners awarded compensation.

Note.—The awards of Commissioners do not settle anything except the claim referred to them. Their award does not establish any principle for other cases. Mr. Bayard said in his despatch to Mr. Muruaga, the 3rd December, 1886:—

"Decisions of International Commissioners are not to be regarded as establishing principles of international law."—(Wharton's Appendix to his "Digest of International Law," sec. 238.)

Result.

The qualifications proceed on a different principle, and do not vary the rule laid down by Dr. Lushington and Phillimore as above cited.

They merely establish that the *status* of the ship driven in by stress of weather is not to be that of a ship voluntarily resorting there. Hence she is not to be liable—

(*a.*) To penalties for entering, though vessels are forbidden to enter on pain of forfeiture, as in the case of the "Fortuna."

(*b.*) To forfeiture of her cargo, although such cargo is contraband, as in the case of the "Industria."

(*c.*) To customs duties on her cargo, or "customs exactions," as Mr. Bayard expressed it in his letter to Mr. Phelps of the 6th November, 1886.

(*d.*) To have the control of her captain interfered with, if we are to accept (contrary to Mr. Bayard's opinion) the decision of the Commission in the case of the "Creole."

In all other cases it is submitted that Phillimore's rule applies, and that even the ship in distress is amenable to the laws of the port, which—

(*a.*) Protect the revenue of the country in which refuge is sought (as the obligation to report to the Customs officers).

(*b.*) Protect the inhabitants from danger (as quarantine laws and laws relating to combustibles and explosives).

(*c.*) Relate to the preservation of property in the harbour visited (as salvage laws, pilotage laws, and laws relating to places of anchorage, and the laws which impose a tax on vessels entering, in order to maintain the system by which property is preserved, as the tax for pilotage, the tax for the Harbour-masters' fees, &c.).

Extreme Contention of the United States' Authorities.

In the case of the "Creole" some very extreme contentions were made by Mr. Webster, such as the following:—

"The rule of law and the comity and practice of nations allow a merchant-vessel coming into an open port of another country voluntarily, for the purpose of lawful trade, to bring with her and keep over her, to a very considerable extent, the jurisdiction and authority of the laws of her own country. A ship, say the publicists, though at anchor in a foreign harbour, possesses its jurisdiction and its laws. . . . . It is true that the jurisdiction of a nation over a vessel belonging to it, while lying in the port of

another, is not necessarily wholly exclusive. We do not so consider, or so assert it. For any unlawful acts done by her while thus lying in port, and for all contracts entered into while there, by her master or owners, she and they must doubtless be answerable to the laws of the place. Nor, if the master and crew while on board in such port break the peace of the community by the commission of crimes, can exemption be claimed for them. But, nevertheless, the law of nations, as I have stated it, and the Statutes of Governments founded on that law, as I have referred to them, show that enlightened nations in modern times do clearly hold that the jurisdiction and laws of a nation accompany her ships not only over the high seas, but into ports or harbours, or wheresoever else they may be water-borne, for the general purpose of governing and regulating the rights, duties, and obligations of those on board thereof; and that to the extent of the exercise of this jurisdiction they are considered as part of the territory of the nation itself.

"He (Mr. Webster) went on to argue that slaves, so long as they remained on board an American vessel in English waters, did not fall under the operation of English law."—(Mr. Webster to Lord Ashburton, August 1, 1842; "State Papers," 1843, vol. lxi, p. 35.)

Much that is here contended for has not been acknowledged by any country. Hall says, after citing the above passage:—

"Mr. Webster would have been embarrassed if he had been compelled to prove the legal value of all that he above states to be law by reference to sufficient authority."—(Hall's "International Law." p. 168.)

It is a Matter for express Stipulation.

This matter is sometimes made the subject of express stipulation, the inference from which is that, in the absence of such stipulation, the rule, as stated by Phillimore, is applied, and the vessel becomes subject to the law of the port in the cases last enumerated. Thus:—

In the Treaty between France and England of 1826, express provision is made for exemption from compulsory pilot dues on vessels seeking shelter.

The Treaty between France and San Salvador (2nd January, 1858) provides for exemption of vessels seeking shelter from all dues excepting pilot dues.

Like provisions are in the Treaty between France and New Grenada, 15th May, 1856.

Express stipulations are also in the Treaty between France and Hanover, 10th April, 1856, and in that between the United States and the Two Sicilies, 1st October, 1855.

The Treaty between the United States and New Grenada, 10th June, 1848, provides for exemption of distressed vessels from all but pilotage dues.

Also the following Treaties of the United States with—

The Dey of Algiers, September 5, 1795.
" June 30 and July 6, 1815.
" December 22, 1822.
The King of the Belgians, April 16, 1859.
Bolivia, November 9, 1862.
The Federation of the Centre of America, August 2, 1826.
The Republic of Chile, April 29, 1834.
The Republic of Colombia, May 27, 1825.
The Republic of Costa Rica, May 26, 1852.
The Dominican Republic, October 5, 1867.
Ecuador, April 9, 1842.
France, August 11, 1853.
The German Empire, April 29, 1872.
Hanover, November 14, 1840, and March 5, 1847.
Hawaiian Islands, August 26, 1850.
The Republic of Haïti, May 22, 1865.
The Republic of Honduras, May 5, 1865.
Italy, November 18, 1871.
The Republic of Liberia, February 17, 1863.
Mecklenburg-Schwerin, December 9, 1847.
Mexico, April 5, 1832.
Morocco, July 18, 1787.
The Sultan of Muscat, September 21, 1833.
The Netherlands, October 8, 1782.
Prussia, June 22, 1800.
San Salvador, June 2, 1852.
Sardinia, March 18, 1839.
Spain, April 25, 1796.
Sweden and Norway, September 4, 1816.
Tripoli, November 4, 1796.
The Two Sicilies, November 7, 1856.
Venezuela, May 31, 1836, and August 9, 1861.

In exercising the right to make American fishing-vessels subject to the law of the port, Canada and Newfoundland are not seeking to make any addition to the Convention of 1818; they are simply claiming that the rights recognized by the Treaty are to be exercised according to the law of nations. Rather the United States' authorities, in seeking exemption, are endeavouring to add to the terms of the Convention the exemption which they obtained by express stipulation in all the Treaties which have just been enumerated, but which are not given by this Convention.

It has been contended that the right to tax involves the right to destroy. To apply such an argument to this subject is manifestly fallacious. Every right of placing imposts on the property of citizens of another country is subject to the limitations of reason and necessity. Does the exaction of tonnage dues by the United States on foreign vessels imply the power to take away the rights of such vessels? Surely the right to quarantine a vessel during pestilence does not involve the right to confiscate her. So the right to impose pilotage dues, salvage, &c., must be limited to what is reasonable and what is necessary to the proper maintenance of the system for which the tax is imposed, and the proper and fair reward of the services of those engaged under it.

The pilotage system is necessary in the interests of humanity, necessary for the preservation of the port, and necessary for the preservation of the vessels seeking to resort to the port, whether for shelter or otherwise. All nations agree that it can only be maintained by being compulsory.

Article 177 of the "General Regulations under the Customs and Navigation Laws of the United States" is as follows:—

"In the case of a vessel from a foreign port or place compelled by stress of weather or other necessity to put into any other port or place than that of her destination, the master or person in command or charge thereof, together with the mate or person next in command, within twenty-four hours after arrival, shall make protest in the usual form, upon oath, before the Collector of the district of arrival, or other person duly authorized, setting forth the causes or circumstances of such necessity.

"The protest, if not made before the Collector, must be produced to him and the naval officer, if any at the port, and a copy thereof lodged with them.

"If such master or other person in charge of the vessel so forced into port by distress shall also make report to the Collector within forty-eight hours after arrival, as in other cases, and if it shall be made to appear to the Collector, by the certificate of the Wardens of the port or other officers accustomed to ascertain the condition of vessels arriving in distress, or, if there be no such officers, by the certificate of two reputable merchants to be named for that purpose by the Collector, that it is necessary to unload the vessel, the Collector and naval officer, if any, will grant a permit therefor, and appoint an inspector to oversee the unlading and keep an account thereof, to be compared with the report of the master of the vessel; and the merchandize so unladen will be stored under custody of the Collector.

"At the request of the master or other person in command or charge of the vessel, or of the owner thereof, the Collector, together with the naval officer where there is one, and alone where there is none, shall grant permission to enter and pay the duties on, and dispose of, such part of the cargo as may be of a perishable nature, or as may be necessary to defray the expenses attending the vessel and her lading.

"And if the delivery of the cargo do not agree with the master's report, and the difference be not satisfactorily explained, the master or other person in command or charge of the vessel will become subject to the penalties provided in like cases by law.

"The merchandize, or the residue thereof not so disposed of, may be reladen on board the vessel, under the inspection of the officer who superintended the landing or other proper officer, and the vessel proceed with the same to her place of destination, subject only to the charge for the storing and safe-keeping of the merchandize and the fees to the officers, and in other cases."—(Revised Statutes, 2891, 2892, 2893, 2894.)

This is an example of legislative restrictions placed on foreign vessels seeking shelter in ports of the United States.

The contention that "shelter, when granted by Treaty, is a different thing" from shelter as allowed by the comity of nations, cannot be admitted. The permission to enter for the four purposes mentioned in the Convention of 1818 was a permission which the comity of nations would recognize [illegible] as fully as the Convention does. The Convention merely preserved that privilege, and it is the only one that it preserved in relation to United States' fishing-vessels. The Convention preserved it subject to the reasonable and fair limitations by which the law of nations has, consistently with humanity and courtesy, allowed the privilege to be surrounded.

Moreover, the Convention expressly provides that the enjoyment of the permission shall be subject to such restrictions as may be necessary to prevent its abuse.

Legislation on Pilotage in the United States.

In the United States, pilotage regulations are made by the various State Legislatures, or by local authorities constituted by State legislation. There is little uniformity in the laws, and none whatever in the exemptions. None of the United States, so far as can be discovered, has an express enactment exempting a foreign fishing-vessel from pilotage dues. Four States have legislation exempting "fishing-vessels" from pilotage fees, namely, *Masachusetts, Rhode Island, Oregon,* and *Maine* in the case of vessels bound outwards. The expression "fishing-vessels," in the Statutes of these States is liable to be construed as applying only to fishing-vessels of the United States. By the law of some of the States "coasting-vessels" also are exempt from pilotage dues. But the expressions "fishing-vessels" and "coasting-vessels" are expressions used in other Statutes of the United States to designate those well-known classes of vessels embraced within specific legislation, namely, vessels licensed to engage in the fisheries and vessels licensed to carry on the coasting trade. They could not then, in laws relating to pilotage, be construed to refer to other classes, and be held applicable to foreign vessels, merely because they, in their own country, have ordinarily been employed in fishing or coasting. It cannot be said that in the ports of these States fishing-vessels are exempt by legislative enactment from the payment of pilotage dues.

There is no room for the contention that Canadian fishing-vessels are thus exempted in any of the following States, viz.:—

New Hampshire, where the exception in the Statute is restricted to "coasting and fishing vessels of the United States."

New York, where fishing-vessels are not mentioned, and "coasting-vessels under licence" are exempted.

Connecticut, where "vessels engaged in the coasting trade and coming by way of New York, fishing-smack vessels, engaged in the oyster trade, canal-boats, barges, and tug-boats" are not subject to the payment of pilotage dues.

Maryland, where foreign vessels, and vessels having registers, are subject to the payment of pilotage dues.

Delaware, where an exception prevails in favour of vessels "licensed for the coasting trade" only.

In the remaining States—Virginia, North Carolina, South Carolina, Georgia, Florida, California—bordering on the Atlantic and Pacific Oceans, it does not appear that fishing-vessels are mentioned, or that any provision exists under which an exemption from pilotage dues could be claimed by a Canadian fishing-vessel, if by any possibility one should visit ports there. In *New Jersey* alone, where the pilotage fees are exacted from "merchant-vessels," there might be a successful contention raised that Canadian fishing-vessels could not be covered by such an expression.

It is worthy of notice that in the Pilotage Laws of two States, namely, Pennsylvania and Delaware, there are provisions respecting vessels in distress, not by any means a complete exemption, but an exemption, but an exemption from more than twice the ordinary amount of pilotage dues.

In Purdon's "Digest," p. 750, sec. 33" (Pennsylvania), we find the following:—

"The compensation to be paid to pilots for conducting to or from the city of Philadelphia all dismasted or crippled vessels, or vessels which shall have been in anywise injured, so as to occasion to the said pilots any extraordinary care or trouble, shall not exceed double the amount which they otherwise would have been entitled to, of which the Board of Wardens shall judge."

The same provision relative to the Bay or River Delaware will be found in the Statutes of Delaware of 1881, vol. xvi, ch. 474, sec. 11—"Of Pilotage."

The laws of humanity demanded that pilots should be maintained for the protection of life and property, and to prevent the obstruction of harbours by wrecks.

It had been found necessary, in order to sustain this service, which involved much danger and exposure, to make pilotage compulsory.

The Canadian Act exempts all vessels under 80 tons, and American fishing-vessels were treated in the same manner as British and foreign vessels.

Congress has power to enact laws in relation to this subject. It has enacted that until further provision be made by Congress the laws of the respective States shall be in force. (Revised Statutes of United States, sec. 4235.)

No. 95.

Sir L. West to the Marquis of Salisbury.—(*Received December* 19.)

(No. 336.)

My Lord, *Washington, December* 6, 1887.

IN accordance with the instructions contained in your Lordship's despatch No. 278 of the 24th ultimo, I have communicated to the Secretary of State the papers therein alluded to, relative to the action of the officer in command of the Canadian cruizer "Conrad" in the case of the United States' fishing schooner "Golden Hind."

I have, &c.

(Signed) L. S. SACKVILLE WEST.

No. 96.

Colonial Office to Foreign Office.—(*Received December* 19.)

Sir, *Downing Street, December* 17, 1887.

SIR HENRY HOLLAND forwarded to the Governor-General of Canada in a despatch, of which a copy is inclosed, your letter of the 18th August last, with the note which accompanied it from the United States' Minister at this Court, replying to the criticisms of Her Majesty's Government on the *ad interim* arrangement with regard to the Fishery question proposed by Mr. Bayard.

I am now to inclose, to be laid before the Marquis of Salisbury, a copy of a despatch which has been received from the Governor-General, with copy of a Minute of his Privy Council, upon the subject of Mr. Bayard's arguments.

Sir Henry Holland understands that this Minute of the Privy Council is only sent

here to be recorded, and he does not, therefore, propose to do more than acknowledge its receipt.

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

Inclosure 1 in No. 96.

Sir H. Holland to the Marquis of Lansdowne.

(Secret.)
My Lord, *Downing Street, August* 25, 1887.

WITH reference to my despatch of the 14th April last, I have the honour to transmit to you, for communication to your Ministers, a copy of a letter from the Foreign Office, inclosing a note from the American Ambassador at this Court, replying to the criticisms of Her Majesty's Government on the *ad interim* arrangement with regard to the Fisheries question proposed by Mr. Bayard.

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

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

Inclosure 2 in No. 96.

The Marquis of Lansdowne to Sir H. Holland.

(Secret.)
Sir, *Government House, Ottawa, November* 22, 1887.

I HAD the honour of receiving your Secret despatch of the 25th August last, transmitting a copy of a letter from the Foreign Office, with a note from the United States' Minister in London, in reply to the criticisms which had been made by Her Majesty's Government upon the *ad interim* arrangement with regard to the Fisheries question proposed by Mr. Bayard on the 15th November, 1886.

In view of the approaching discussion of this question by the Conference of Plenipotentiaries now assembled at Washington, it was not thought necessary to deal at once with Mr. Bayard's observations. As, however, some of these are of a nature calling for comment, and, as it is desirable that the correspondence recording the negotiations which have hitherto taken place should contain a complete record of the views of the Canadian Government, I now beg to forward herewith a copy of a Minute of the Privy Council of Canada, in which you will find a statement of some of the reasons for which my Government takes exception to Mr. Bayard's argument.

I have, &c.
(Signed) LANSDOWNE.

Inclosure 3 in No. 96.

Report of a Committee of the Honourable the Privy Council for Canada, approved by his Excellency the Governor-General in Council on the 21*st November*, 1887.

THE Committee of the Privy Council have had under consideration a despatch dated the 25th August, 1887, from the Right Honourable the Secretary of State for the Colonies, transmitting copy of a letter from the Foreign Office, inclosing a note from the American Ambassador at London replying to the criticisms of Her Majesty's Government on the *ad interim* arrangement with regard to the Fisheries question proposed by the Honourable Mr. Bayard.

The Minister of Marine and Fisheries, to whom the despatch and inclosure were referred, observes with reference thereto: Article 1.—"It is not denied that a prior agreement between the two Governments as to the proper definition of the bays and harbours from which United States' fishermen are to be excluded would facilitate the labours and give finality to the action of the proposed Conference." But the Canadian Government objects to the making of any such agreement on the basis proposed on the grounds that it would place a new and unwarranted interpretation upon the Convention of 1818, would make common those waters which, by the law of nations, long usage and

the terms of the Convention have been considered as exclusively Canadian, and involve a surrender of old and well-recognized Canadian fishing rights.

The contention that the privileges enjoyed by United States' fishermen under the Reciprocity Treaty of 1854 and the Treaty of Washington respectively, and that the instructions under which the Canadian cruizers exercised their police powers in 1870-2, furnish adequate proof that Canada did not consider herself possessed of an exclusive right to these territorial waters, does not appear to be well-founded.

United States' fishermen enjoyed the freedom of our inshore fisheries from 1854 to 1866, and from 1871 to 1885, by virtue of express Treaty stipulations which have ceased to operate, and in consideration of compensating advantages by way of participation in the inshore fisheries of the United States, as far south as the 36th and 39th parallels of latitude respectively, of admission of Canadian fish and other natural products, free of duty, to United States' markets, and by the payment, in addition, of a large money award. It cannot be contended that privileges granted by Treaty for a limited period, and in consideration of material compensations, should be held to warrant their assumption, as a right, after the Treaty has expired, and the compensations are no longer given. That United States' fishing-vessels were permitted from 1886 to 1870 to have access to our inshore fisheries on payment of a licence fee, or that after the abolition of the licence system they were allowed to fish to within three miles of our shores, does not constitute a waiver of exclusive rights of fishing within the bays and harbours. In fact the taking of such licences by the United States' fishermen may be considered a recognition of the right of Canada to the exclusive enjoyment of these fishing-grounds. These rights were, during this time, expressly and repeatedly asserted, and the privileges granted to United States' fishermen were those of friendly concession and not of right, and were made in view of pending negotiations which it was hoped would result in the conclusion of a new Treaty, as, in fact, they did. The arrangement was expressly declared to be exceptional, and the waters, in respect of which the licences were given, were expressly declared to be the "exclusive" property of "Canada."

The "Baie des Chaleurs" was cited to illustrate the nature of the concessions which Canada would be called upon to make under the proposed 10-mile limit, as in this case a bay of large extent, almost land-locked, and extending 70 miles inland, and which has always been held as territorial waters, would be thrown open to United States' fishermen. It was not cited for the purpose of showing the inapplicability to Canada under existing Treaties of the rule adopted in the Fishery Convention of 1839 between France and Great Britain. That inapplicability rests upon other and well-defined grounds.

The opinion of the umpire to whose decision the cases of the "Washington" and "Argus" were finally referred, as to the headland question, cannot be considered binding upon the Government of Canada or Great Britain in the matter of interpreting a Treaty. It had been agreed by the two Governments to submit the special cases of the "Washington" and "Argus" to arbitration, and each Government was in duty bound to acquiesce in the decision of the Arbitrators, in so far as related to the composition. awarded, but it cannot surely be held that the views of any member of the Board of Arbitrators, expressed by him as reasons for his judgment are to be taken as authoritative in the matter of interpretation of a Treaty or settlement of questions of international law

The Statute 14 and 15 Vict., cap. 63, 7th August, 1851 (Imp.), has a bearing on the present discussion, because it is part of the evidence that the "Baie des Chaleurs" has been subject to the sovereignty of Great Britain for many years. The "Baie des Chaleurs" cannot be governed by different principles in this respect from the Delaware Bay or any other of the bays on the coasts of the United States which have been held to be territorial waters by the Tribunals of that country.

The observations on the restrictions contemplated by the Convention cannot be acquiesced in by the Government of Canada, but a further discussion of them may be deferred in view of the time for the opening of the Conference having so nearly approached.

Article 2. It does not appear that a reference to Article 6 of the United States' proposal removes the serious objections which were urged by the Canadian Government to the adoption of Article 2 of Mr. Bayard's Memorandum. By that Article all the Statutes and Regulations of Canada and Great Britain would be suspended in so far as United States' fishing-vessels are concerned, with the exception of those relating to United States' vessels found fishing, to have been fishing, or preparing to fish in Canadian waters. Article 6 promises merely the co-operation of the United States' authorities in securing obedience by its fishermen to the Canadian Customs Laws. The combined effect of these two sections would therefore be to suspend all other Statutes of Canada and Great Britain, except those relating to the three offences above-named, and

preclude all action by British authorities with regard to violation by United States' fishermen of the Customs Laws, and substitute therefore whatever may be meant by a friendly admonition and co-operation of a foreign Power, in securing the observance by United States' fishing-vessels of these laws. This would greatly tend to widen the scope of the Convention of 1818, to abrogate Canadian laws, and take away from Canadian authority its right to enforce obedience to its laws within its own territorial jurisdiction.

Article 3. The objections taken by the Canadian Government to the proposal embodied in Article 3 of Mr. Bayard's Memorandum are fundamental, and are not to be met by an enlargement of the list of enumerated offences so as to include infractions of Regulations established by the Commission. These objections are not answered in the reply on behalf of the United States. The practical difficulties in the way of any effective working of such a proposed Court of Inquiry constitute, it is believed, an insurmountable obstacle to its establishment.

Article 4. The Treaty of 1818 was for the purpose of restricting the rights and privileges which United States' fishing-vessels had previously to 1812 enjoyed in the waters of the British Provinces, and for preventing the abuse of those rights and privileges. One express provision of this Treaty was that United States' fishing-vessels should enter the bays and harbours in these waters for the purposes of shelter and repairs, taking wood and procuring water, and for no other purpose whatever, and it is held that no subsequent Treaty between Great Britain and the United States gave to United States' fishing-vessels any commercial status. That this was not rigorously insisted upon in the years 1854-66 and 1872-85 was due to the friendly spirit of the Provincial and Dominion authorities, which, under the mutually beneficial conditions consequent upon the Treaties in force during these periods, chose to allow their well-understood rights in this regard to remain in abeyance. But it surely cannot be contended that this friendly course pursued under widely different conditions, is now to be construed into an abandonment of well-defined Treaty rights, when the compensating advantages of mutually favourable Treaties no longer exist.

Earl Kimberley's opinion, as cited by the United States, was, at the time of its utterance, a mere suggestion, it was not acquiesced in by the Canadian Government, nor has it been since embodied in the policy of Great Britain with relation to the fishing interests of this country.

The right to obtain "bait," which was asked for by the American negotiators, but not allowed, was not the right to catch bait, but to obtain it by purchase. The right to catch fish for any purpose had been already renounced without any qualification, and this right was asked for in the enumeration of privileges altogether irrespective of fishing, such as shelter, repairs, and the obtaining of wood and water.

Article 5. The vessels seized are held to have been lawfully seized, and whatever proceedings have been taken are held to have been legally taken, and a request cannot be justly made against the Government of Her Majesty or that of Canada for a reference to any Tribunal of claims for damages arising out of the seizures that have been made. The Canadian Courts have been and still are open to any person deeming himself aggrieved, and in these Courts, citizens of the United States have precisely the same standing as citizens of Canada. In no case, however, has any claim of the kind indicated in the Article been presented to the Courts, and the Government of Canada has no knowledge of their existence.

There does not seem to be any greater reason for making any claims of that character, subjects of reference to a Special Tribunal, than to demand that any other instance of the enforcement against citizens of another country, of the revenue laws, the pilotage laws, or the laws relating to shipping or harbours, or of any other part of our body of municipal laws should be subject to revision by arbitration or other exceptional mode of adjudication.

The Committee, concurring in the above Report of the Minister of Marine and Fisheries, advise that your Excellency be moved to transmit a copy of this Minute to Sir Henry Holland, as requested in his despatch of the 25th August last, upon the communication under consideration.

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

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

No. 97.

Colonial Office to Foreign Office.—(Received December 21.)

Sir, *Downing Street, December 20, 1887.*

WITH reference to the letter from this Department of the 30th ultimo, I am directed by the Secretary of State for the Colonies to transmit to you, to be laid before the Marquis of Salisbury, a copy of a letter from the Board of Trade on the subject of the project of a Commercial Union between the United States and Canada.

I am to request that the inclosures, which are sent in original, may be returned when done with.

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

Inclosure 1 in No. 97.

Board of Trade to Colonial Office.

(Confidential.)

Sir, *Board of Trade, London, December 13, 1887.*

I AM directed by the Board of Trade to acknowledge the receipt of your letter of the 30th November, inclosing copy of despatch from the Marquis of Lansdowne with reference to suggested proposals which have been discussed in Canada for a Commercial Union between that Colony and the United States.

It is understood that the Secretary of State for the Colonies desires that the despatch generally should not be the subject of Departmental discussion, but that the Board of Trade should confine their observations simply to the bearing of the suggestion upon the obligations of international Treaties and the like matters.

I am therefore directed by the Board to point out that the suggestion appears to be in conflict with the most-favoured-nation clause in one of the Commercial Treaties of the United Kingdom, viz., the Treaty with the Zollverein, dated the 30th May, 1865, which now regulates the commercial relations between the United Kingdom and Germany (See Parliamentary Paper C.—2424, September, 1879). This Treaty, it will be seen, provides (Article VIII) that in the Colonies "the produce of the States of the Zollverein shall not be subject to any higher or other import duties than the produce of the United Kingdom of Great Britain and Ireland, or of any other country of the like kind."

Under this Article, as the Board of Trade understand it, Germany might claim to send goods into Canada on the same terms as the United States, so that the project of forming what would practically be a Zollverein between Canada and the United States is really, to all appearances, inconsistent with the terms of the Commercial Treaty between the United Kingdom and Germany.

Possibly there may be some grounds for interpreting the Article differently, but the wording seems nevertheless so clear as to make the point deserving of consideration, in the event of the suggestions for a Commercial Union between Canada and the United States becoming in any way definite proposals.

The Board would suggest that, in the latter contingency, the effect of the Treaty in question on this point should be referred to the Law Officers.

I am also to transmit to you, for the information of the Secretary of State, the accompanying Tables:—

1. A Table comparing the existing Tariffs of the United States and of Canada respectively, as far as they affect, or would affect, the principal articles now exported from the United Kingdom to Canada, and showing that the Tariff of the United States is, on the whole, higher as regards such articles than that of Canada; and:—

2. A Table showing, for each of the last fifteen years, the total exports of home produce and manufacture from the United Kingdom to Canada, as well as the principal items, this trade being a not unimportant part of the total export trade of the United Kingdom.

I am, &c.
(Signed) R. GIFFEN.

Inclosure 2 in No. 97.

I.—STATEMENT showing approximately the Duties imposed in Canada, and the United States respectively, on certain descriptions of Articles corresponding to the main Articles of Export from the United Kingdom to Canada, as stated in the accompanying Table No. II.

United States' Tariff.			Canadian Tariff.		
Articles.		Rates of Duty.	Articles.		Rates of Duty.
		Dol. c.			Dol. c.
Clothing— *Apparel.*			*Apparel.*		
Cotton		35 per cent. *ad val.*	Clothing, cotton		35 per cent. *ad val.*
Linen		40 ,,	Shirts, cotton *or* linen	Dozen	1 00
Woollen, made up by tailor or seamstress	Lb.	0 40 and 35 per cent. *ad val.*	Clothing, woollen, made up by tailor *or* seamstress	Lb.	0 10 and 25 per cent. *ad val.*
Cloaks, dolmans, &c., and other outside garments for ladies and children		0 45 *and 40 per cent. ad val.*			
Silk		50 per cent. *ad val.*	Clothing, silk		30 per cent. *ad val.*
Haberdashery.			*Haberdashery.*		
Cotton cords, gimps, braids, galloons, webbing, braces, &c.		35 per cent. *ad val.*	Laces, braids, fringes, embroideries, cords, tassels, and bracelets		30 ,,
Cotton laces, embroideries, handkerchiefs, &c.		40 ,,	*Cotton* sewing thread, on spools		25 ,,
Spool thread of cotton, *not exceeding 100 yards*	Doz. spools	0 07	,, ,, *in banks, black and bleached, 3 and 6 cord*		12½ ,,
,, ,, *exceeding 100 yards, for each 100 yards or fraction thereof*	,,	0 07			
Flax or linen thread, bindings, braids, cords, fringes, gimps, &c.		40 per cent. *ad val.*	Handkerchiefs *of cotton or linen*		25 ,,
,, laces and embroideries		30 ,,			
Woollen webbings, braces, bindings, braids, galloons, fringes, gimps, cords, &c.	Lb.	0 30 and 50 per cent. *ad val.*	Braces		35 ,,
Haberdashery of silk		50 per cent. *ad val.*	Sewing silk and silk twist		25 ,,
Cotton tissues— *Cotton Piece Goods.*			Cotton tissues— *Cotton Piece Goods.*		
Piece goods—			Grey or unbleached and bleached, sheetings, drills, ducks, cotton or canton flannels, not stained, painted, or printed	Sq. yard	0 01 and 15 per cent. *ad val.*
Not exceeding 100 threads to the square inch, counting the warp and filling—					
Unbleached	Sq. yard	0 02½	*All other denims, drillings, bed-ticking, ginghams, plaids, cotton* or canton flannels, ducks and drills, dyed or coloured, checked and striped shirtings, cottonades, Kentucky jeans, pantaloon stuffs, and goods of like description		0 02 and 15 per cent. *ad val.*
Bleached	,,	0 03½			
Dyed, coloured, or printed		0 04½			
Exceeding 100 and not exceeding 200 threads to the square inch, counting the warp and filling—					
Unbleached	,,	0 03	Printed and dyed cotton fabrics, *not otherwise specified*		32½ per cent. *ad val.*
Bleached		0 04	Damask of cotton, of linen, or of cotton and linen, bleached, unbleached, *or* coloured		25 ,,
Dyed, coloured, or printed		0 05			
Note.—On all unbleached cotton cloth not exceeding 200 threads to the square inch, counting the warp and filling, valued at over 8 cents per square yard; bleached, valued at over 10 cents per square yard; dyed, coloured, stained, painted, or printed, valued at over 13 cents per square yard, a *duty of 40 per cent. ad val.* is levied.					

United States' Tariff.			Canadian Tariff.		
Articles.		Rates of Duty.	Articles.		Rates of Duty.
		Dol. c.			Dol. c.
Cotton tissues (*continued*)—					
Piece goods—					
Exceeding 200 threads to the square inch—					
Unbleached	Sq. yn ..	0 04			
Bleached	,, ..	0 05			
Dyed, coloured, or printed	,, ..	0 06			
Note.—On unbleached cotton cloth, exceeding 200 threads to the square inch, valued at over 10 cents per square yard; bleached, valued at over 12 cents per square yard; and dyed, coloured, stained, painted, or printed, valued at over 16 cents per square yard, a duty of 40 per cent. *ad val.* is levied.					
Cotton Hosiery.			*Cotton Hosiery.*		
Stockings—					
Hose, half-hose, shirts and drawers, and all cotton goods made on knitting frames, composed wholly of cotton, and not otherwise mentioned	..	35 per cent. *ad val.*	Socks and stockings	Lb. ..	0 10 and 30 per cent. *ad val.*
Fashioned, narrowed or shaped, wholly or in part by knitting machines or frames, or knit by hand, and wholly of cotton	..	40 ,,			
Linen Piece Goods.			*Linen Piece Goods.*		
Burlaps—					
Not exceeding 60 inches in width, of flax, jute, or hemp, or of which either of those substances is the component material of chief value	..	30 per cent. *ad val.*			
Exceeding 60 inches in width	..	40 ,,			
Brown and bleached linens, ducks, canvas, diapers, crash, huckaback, handkerchiefs, lawns, or other manufactures, not otherwise specified, of flax, hemp, or jute, or of which either of those substances is the component material of chief value	..	35 ,,	Canvas	..	5 per cent. *ad val.*
Russia and other sheetings	..	35 ,,			
Silk Manufactures.			*Silk Manufactures.*		
All manufactures of silk, or of which silk is the component material, not elsewhere specified	..	50 per cent. *ad val.*	Silk velvets, and all manufactures of silk, or of which silk is the component part of chief value	..	30 per cent. *ad val.*
Button makers' wares	..	10 ,,			
Woollen and Worsted Piece-goods.			*Woollen and Worsted Piece-goods.*		
Flannels, blankets, and hats, of wool—					
Valued at—			Blankets, flannels, cloths, cassimeres, tweeds, and coatings, wholly or in part of wool or worsted	Lb. ..	0 07½ and 20 per cent. *ad val*
Not exceeding 30 cents per lb.	Lb. ..	0 10 } and			
Over 30 and under 40 cents per lb.	,, ..	0 12 } 25 per			
,, 40 ,, 60 ,, ...	,, ..	0 18 } cent.			
,, 60 ,, 80 ,, ...	,, ..	0 24 } *ad val.*			
,, 80 cents per lb.	,, ..	0 35 and 40 per cent. *ad val.*			

United States' Tariff.			Canadian Tariff.		
Articles.		Rates of Duty.	Articles.		Rates of Duty.
		Dol. c.			Dol. c.
Hosiery, knit goods, and all goods made on knitting frames, balmorals, and all articles composed wholly or in part of worsted, alpaca, goat, or other animal hair (except such as are composed in part of wool), not otherwise specified—			Shirts, drawers, and hosiery	Lb. ..	0 07½ and 20 per cent. *ad val.*
Valued at—					
Not exceeding 30 cents per lb.	Lb. ..	0 10 } and			
Over 30 and under 40 cents per lb.	,, ..	0 12 } 35 per			
,, 40 ,, 60 ,, ...	,, ..	0 18 } cent.			
,, 60 ,, 80 ,, ...	,, ..	0 24 } *ad val.*			
,, 80 cents per lb.	,, ..	0 35 and 40 per cent. *ad val.*			
Woollen cloths, shawls, and all manufactures of wool, pure or mixed with other materials not otherwise specified—					
Valued at—					
Not exceeding 80 cents per lb.	Lb. ..	0 35 and 35 per cent. *ad val.*			
Over 80 cents per lb.	,, ..	0 35 and 40 per cent. *ad val.*			
Women's and children's dress goods, and *real or imitation* Italian cloths—			All fabrics composed wholly or in part of wool or worsted, not otherwise provided for—		
Composed in part *of wool*, worsted, alpaca, goat, or other animal hair, and valued at 20 cents or under per square yard	Sq. yard ..	0 05 and 35 per cent. *ad val.*	Costing 10 cents and under per yard	..	22½ per cent. *ad val.*
			,, over 10 cents and under 14 cents per yard	..	25 ,,
Ditto, and valued at over 20 cents per square yard	,, ..	0 07 and 40 per cent. *ad val.*	,, 14 cents and over per yard..	..	27½ ,,
Composed *wholly of wool, worsted, alpaca, goat, or other animal* hair, or of a mixture of *them*	,, ..	0 09 and 40 per cent. *ad val.*			
Note.—All such goods with selvedges wholly or in part of other materials, or with threads of other materials introduced for the purpose of changing the classification, are dutiable at 9 cents (4½*d.*) per square yard, and 40 per cent. *ad val.*; but on all such goods weighing over 4 ounces per square yard a duty of 35 cents per lb. (8*l.* 3*s.* 4*d.* per cwt.), and 40 per cent. *ad val.* is levied.					
Carpets—			Carpets, viz.—		
Anbusson and Axminster, and carpets woven whole for rooms ..	Sq. yard ..	0 45 } and	Brussels, tapestry, Dutch, Venetian, and damask, carpet mats and rugs of all kinds, and all other carpets and squares, *not otherwise* provided for	,,	25 per cent. *ad val.*
Saxony, Wilton, and Tournay velvet carpets	,, ..	0 45 } 30 per			
Brussels	,, ..	0 30 } cent.	Treble ingrain, three-ply and two-ply carpets, composed wholly of wool	Sq yard ..	0 10 and 20 per cent. *ad val.*
Patent velvet and tapestry velvet, printed on the warp or otherwise..	,, ..	0 25 } *ad val.*			
Tapestry Brussels, printed on the warp or otherwise	,, ..	0 20 }	Two-ply and three-ply ingrain carpets, of which the warp is composed wholly of cotton or other material than wool, worsted, or goat's hair	..	0 05 and 20 per cent. *ad val.*
Treble ingrain, three-ply, and worsted chain Venetian carpets ..	,, ..	0 12 }			
Yarn, Venetian, and two-ply ingrain carpets	,, ..	0 08 }			
Druggets and bockings, printed, coloured or otherwise	,, ..	0 15 and 30 per cent. *ad val.*			

United States' Treaty.			Canadian Tariff.		
Articles.		Rates of Duty.	Articles.		Rates of Duty.
		Dol. c.			Dol. c.
All other carpets and carpetings not otherwise specified		40 per cent. *ad val.*			
Note.—Mats, rugs, screens, covers, bassocks, bedsides, and other portions of carpets or *carpetings are* subject to the same rate of duty as the carpets or carpetings *of like character or description.* On all other mats (not exclusively of vegetable material), screens, bassocks, and rugs, a duty of 40 per cent. *ad val.* is charged.					
Hats.			*Hats.*		
Hats—					
Of silk or felt	..	30 per cent. *ad val.*	Caplins, unfinished Leghorn hats	..	20 per cent. *ad val.*
Of wool—			All others, generally	..	25 ,,
Value not exceeding 30 cents per lb.	Lb. ..	0 10 and			
Valued at over 30 and not over 40 cents (1*s.* 8*d.*) per lb. ..	,, ..	0 12 35 per			
,, 40 ,, 60 ,, (2*s.* 6*d.*) ,, ..	,, ..	0 18 cent.			
,, 60 ,, 80 ,, (3*s.* 4*d.*) ,, ..	,, ..	0 24 *ad val.*			
,, 80 cents per lb.	,, ..	0 35			
		and 40 per cent. *ad val.*			
Jute Piece-goods.			*Jute Piece-goods.*		
Jute burlaps, not exceeding 60 inches in width, or of which jute is the component material of chief value	..	30 per cent. *ad val.*			
Ditto, exceeding 60 inches in width	..	40 ,,			
Jute cloth, or *cloth of which* jute is the component material of chief value	..	35 ,,	*Jute cloth, unfinished, not* less than 40 inches in *width, when imported* by manufacturers of jute bags for use in their own factories	..	Free.
Bagging, for cotton—					
Valued at 7 cents or less per square yard	Lb. ..	0 01½			
,, over 7 cents per square yard	,, ..	0 02			
Other bagging or similar material composed wholly or in part of jute ..	..	40 per cent. *ad val.*			
Jute carpeting	Sq. yard ..	0 06	Jute carpeting or matting	..	25 per cent. *ad val.*
All other manufactures of jute	..	35 per cent. *ad val.*	Jute manufactures generally	..	20 ,,
Earthenware and Chinaware.			*Earthenware and Chinaware.*		
Large stoneware vessels	..	20 per cent. *ad val.*	Earthen and stone ware—		
Brown earthenware and common stoneware, not ornamented, gas retorts, &c.	..	25 ,,	Drain pipes and sewer pipes, glazed	..	35 per cent. *ad val.*
Earthen, china, porcelain, and parian ware—			Demijohns or jugs, churns, and crocks	..	3 cents per gallon of holding capacity.
White, not decorated	..	55 ,,	Earthen and stoneware, brown or coloured, and Rockingham ware,	..	35 per cent. *ad val.*
Coloured, gilt, or in any way decorated	..	60 ,,	white granite or iron stoneware, and "C. C." or cream-coloured		
Tobacco pipes, common	..	35 ,,	ware, decorated, printed or sponged		
Tobacco pipe bowls..	..	70 ,,	China and porcelain ware	..	30 ,,

United States' Tariff.			Canadian Tariff.		
Articles.		Rates of Duty.	Articles.		Rates of Duty.
		Dol. c.			Dol. c.
Hardware and Cutlery.			*Hardware and Cutlery.*		
Coach and harness furniture of all kinds, coach and harness hardware..	..	35 per cent. *ad val.*	Builders', cabinet-makers', carriage and harness-makers' and saddlers' hardware, including curry-combs	..	35 per cent. *ad val.*
Vessels of cast iron, smoothing irons, tailors' and hatters' irons, stoves and stove plates, and iron castings not specially mentioned	Lb. ..	0 01¼	Cast-iron vessels, plates, stove plates and irons, sad irons, hatters' irons, tailors' irons, and castings of irons not elsewhere specified	Ton ..	16 00 but not less than 30 per cent. *ad val.*
Hollow ware, glazed or tinned	,, ..	0 03	House-furnishing hardware generally	..	30 per cent. *ad val.*
Cutlery—			Cutlery—		
Razors	..	50 per cent. *ad val.*	Plated cutlery, viz., knives, plated wholly or in part, costing under 3 dol. 50 c. per dozen	Dozen ..	0 50 and 20 per cent. *ad val.*
Penknives, jack-knives, and pocket-knives of all kinds	..	50 ,,	Cutlery, not otherwise provided for	..	25 per cent. *ad val.*
Table knives and forks	..	35 ,,			
Scissors and cloth shears	..	35 ,,			
Cutlery not specially mentioned, including butchers' knives, carvers, daggers, &c.	..	35 ,,			
Iron and Steel, Wrought and Unwrought.			*Iron and Steel, Wrought and Unwrought.*		
Iron—			Iron—		
In pigs, iron kentledge	Lb. ..	0 00$\frac{3}{10}$	In pigs, and iron kentledge..	Per ton ..	4 00
Hammered or rolled—					
In bars, comprising flat bars—			In slabs, blooms, loops, puddled bars, or other forms less finished than iron in bars, and more advanced than pig-iron, except castings	,, ..	9 00
Not less than 1 inch wide, nor less than $\frac{1}{8}$ths. of an inch thick..	.. ..	0 00$\frac{7}{10}$			
Less than 1 inch wide, or less than $\frac{1}{8}$ths. of an inch thick ..	,, ..	0 01$\frac{1}{10}$			
In bars, square bars—					
Not less than $\frac{1}{4}$ths. of an inch square	.. ..	0 01	Bar-iron, rolled or hammered, comprising flats, rounds, and squares, and bars and shapes of rolled iron	,, ..	13 00
Less than $\frac{1}{4}$ths. of an inch square..	.. ..	0 01$\frac{1}{10}$			
Rods—					
Not less than $\frac{1}{4}$ths. of an inch in diameter	,, ..	0 01	Provided that on all iron or steel bars, rods, strips, or steel sheets, of whatever shape, and on all iron or steel bars of irregular shape or section, cold rolled, cold hammered, or polished in any way, in addition to the ordinary process of hot rolling or hammering, there shall be paid in addition to the rates imposed on the said materials	..	0 00$\frac{1}{2}$ per lb. additional.
Less than $\frac{1}{4}$ths. of an inch, but not less than $\frac{1}{10}$ths. of an inch in diameter	,, ..	0 01$\frac{1}{10}$			
Note.—All iron in slabs, blooms, loops, or other forms, less finished than iron in bars, and more advanced than pig-iron (except castings), pay as bar-iron.					
No articles in the above classes are to pay less than 35 per cent. *ad val.*			Swedish rolled iron nail rods, under ½ inch in diameter, for manufacture of horse-shoe nails	..	20 per cent. *ad val.*
All iron in bars, blooms, billets, or shapes or sizes of any kind, in the manufacture of which charcoal is used as fuel, will pay a duty of 22 dollars per ton.					
Round iron, in coils or rods, less than $\frac{7}{16}$ths. of an inch in diameter, and bars or shapes of rolled iron, not otherwise mentioned	,, ..	0 01$\frac{9}{10}$			
Iron T-rails, weighing not over 25 lbs. to the yard	,, ..	0 00$\frac{9}{10}$			
Iron flat rails, punched	,, ..	0 00$\frac{9}{10}$			
Railway bars, weighing more than 25 lbs. to the yard	,, ..	0 00$\frac{7}{10}$	Iron or steel railway bars, and rails for railways and tramways, o any form, punched or not punched	Per ton ..	6 00

United States' Tariff.			Canadian Tariff.		
Articles.		Rates of Duty.	Articles.		Rates of Duty.
		Dol. c.			Dol. c.
Iron (*continued*)—			Iron (*continued*)—		
Boiler and other plate iron, sheared or unsheared, skelp iron, sheared or rolled in grooves	Lb. ..	0 01¼	Boiler or other plate iron, sheared or unsheared, skelp iron, sheared or rolled in grooves, and sheet iron, common or black, not thinner than No. 20 gauge, including nail-plate of iron or steel, 15 gauge and thicker	Per ton ..	13 00
Sheet-iron, common or black—			Sheet-iron, common or black, smoothed or polished, and coated or galvanized, thinner than No. 20 gauge, Canada plates, and plates of iron or steel, not less than 30 inches wide, and not less than ¼ inch in thickness	..	12½ per cent. *ad val.*
Thinner than 1½ inches, and not thinner than No. 20 wire gauge ..	,, ..	0 01$\frac{1}{10}$			
Thinner than No. 20, but not thinner than No. 25 wire gauge ..	,, ..	0 01$\frac{2}{10}$			
Thinner than No. 25, but not thinner than No. 29 wire gauge ..	,, ..	0 01½			
Thinner than No. 29 wire gauge		30 per cent. *ad val.*			
Common or black taggers iron, in boxes, bundles or not	..	30 ,,			
Note.—Sheet or plate iron (except tin-plates, terne-plates, and taggers tin, otherwise provided for), when galvanized or coated with zinc or spelter, or other metals, or alloy of such metals, pay ½ cents per lb. in addition to the above rates.					
Sheet iron, polished, planished, or glanced, by whatever name designated	Lb. ..	0 02½			
Note.—Cold rolled plate, sheet, or taggers iron, pickled or cleaned by acid, or by any other process, but not polished, planished, or glanced, is charged ½ cent per lb. more duty than the corresponding ganges of common or black sheet, or taggers iron.					
Tin plates, terne plates, and taggers tin	,, ..	0 01			
Sheet iron, corrugated or crimped	,, ..	0 01$\frac{4}{10}$			
Hoop, band, or scroll iron—			*Hoop, or* band, or scroll, or other iron—		
8 inches or less in width, and not thinner than No. 10 wire gauge.	,, ..	0 01	*8 inches or less in width, and not thinner than No. 20 gauge* ..	*Per ton* ..	13 00
Thinner than No. 10, and not thinner than No. 20 wire gauge ..	,, ..	0 01$\frac{7}{10}$	8 inches or less in width, and thinner than No. 20 gauge ..	..	12½ per cent. *ad val.*
Thinner than No. 20	,, ..	0 01$\frac{4}{10}$			
Note.—All articles not specially enumerated, manufactured wholly or in part of sheet, plate, hoop, band, or scroll iron, or of which such materials are the component parts of chief value, are charged ½ cent per lb. more duty than that imposed on the iron from which they are made, or which is the material of chief value.					
Hoops for bales, and cotton ties, not thinner than No. 20 wire gauge.	..	35 per cent. *ad val.*			

United States' Tariff.			Canadian Tariff.		
Articles.		Rates of Duty.	Articles.		Rates of Duty.
		Dol. c.			Dol. c.
Steel—			Steel—		
Ingots, blooms, or slabs, billets and bars; bands, hoops, strips, and sheets of all gauges and widths; plates, without reference to width or thickness; shafts for steamers, cranks, and other uses; wrist or crank pins; piston or connecting rods; pressed, sheared, or stamped shapes or blanks of sheet or plate steel, or of steel and iron, punched or not; hammer moulds or swaged steel; gun moulds not in bars; alloys used as substitutes for steel tools; and all shapes of dry sand, loam, or iron moulded steel castings not otherwise mentioned—			Steel ingots, cogged ingots, blooms, and slabs, by whatever process made, billets and bars, bands, hoops, strips, and sheets of all gauges and widths, all of above classes of steel not otherwise provided for, valued at 4 cents or less per lb.	..	30 per cent. *ad val.*, but not less than 12 dollars per ton.
Valued at 4 cents per lb. or less	..	45 per cent. *ad val.*			
.. above 4 cents, but not above 7 cents per lb. ..	Lb. ..	0 02			
.. above 7 cents, but not above 10 cents per lb. ..	.. ..	0 02⅝			
.. above 10 cents per lb.	.. ..	0 03¼			
Ingots, cogged ingots, blooms or blanks of iron or steel for the manufacture of wheels, tyres, &c., for railways	.. ..	0 02	Except ingots, cogged ingots, blooms and slabs, upon which the specific duty shall not be less than..	Per ton ..	8 00
Steel in sheets—					
Smoothed or polished	.. ..	0 02½	When of greater value than 4 cents per lb.	..	12½ per cent. *ad val.*
Coated with lead or tin	.. ..	0 01			
Corrugated or crimped	.. ..	0 01⅜			
Note.—All iron or steel bars, rods, strips, or steel sheets of whatever shape, and all iron or steel bars of irregular shape or section, cold rolled, cold hammered, or polished in any way in addition to the ordinary process, are charged ¼ cent per lb. in addition to the above rates. On steel circular-saw plates 1 cent per lb. additional is levied.					
Hoops for bales, and cotton ties not thinner than No. 20 wire gauge .	..	35 per cent. *ad val.*			
Steel T rails weighing not more than 25 lbs. to the yard	Lb. ..	0 00$\frac{6}{10}$			
Steel flat rails, punched	.. ..	0 00$\frac{8}{10}$			
Steel railway bars, and railway bars made in part of steel, weighing more than 25 lbs. to the yard	Ton ..	17 00	Iron or steel railway bars and rails for railways and tramways, of any form, punched or not punched	Per ton ..	6 00
Steel not specially mentioned	..	45 per cent. *ad val.*	Steel rails, weighing not less than 25 lbs. per lineal yard, for use in railway tracks	..	Free.
Iron or steel wire—			Iron and steel wire—		
Smaller than No. 5 and not smaller than No. 10 wire gauge ..	Lb ..	0 01½	Galvanized or not, No. 15 gauge and coarser, not elsewhere specified	..	25 per cent. *ad val.*
Smaller than No. 10 and not smaller than No. 16 wire gauge ..	.. ..	0 02	Galvanized or tinned, No. 16 gauge or smaller..	..	Free.
Smaller than No. 16 and not smaller than No. 26 wire gauge ..	.. ..	0 02½			
Smaller than No. 26	.. ..	0 03			
Note.—On iron or steel wire covered with silk, cotton, or other material, and on all crinoline, corset, or hat wire, 4 cents per lb. additional is levied. No article made from iron or steel wire, or of which iron or steel wire is the component part of chief value, will pay a less rate of duty than the wire of which it is composed.					

United States' Tariff.			Canadian Tariff.		
Articles.		Rates of Duty.	Articles.		Rates of Duty.
		Dol. c.			Dol. c.
Iron or steel wire (*continued*)—			Iron or steel wire (*continued*)—		
Galvanized iron or steel wire, except fence wire, in addition to the duty payable on the wire of which made	Lb. ..	0 00½			
Iron or steel wire-cloths and nettings made in meshes of any *form, in addition to* the duty payable on the wire	,, ..	0 02			
Iron wire *rope and wire strand*, in addition to the duty payable on the wire of *which composed*	,, ..	0 01	Wire rope of iron or *steel, not otherwise* provided for	..	25 *per cent. ad val.*
Steel ditto, in addition to the *duty payable on* the wire of which made	,, ..	0 02			
Iron or steel screw, nail, rivet, and fence wire rods (round), in coils *or loops*, not lighter than No. 5 wire guage, valued at 3½ cents or less per lb.	..	0 00$\frac{6}{10}$			
Iron or steel wire flats, with longitudinal ribs, for the manufacture of fencing	,, ..	0 00$\frac{6}{10}$			
Iron or steel wares—			Iron or steel wares—		
Iron or steel beams, girders, joists, angles, channels, car-truck channels, T T columns and posts, or parts or sections *thereof*, deck and bulb beams and building shapes, and all structural shapes of iron or steel	,, ..	0 01¼	Rolled iron or steel angles, channels, structural shapes and special sections, weighing less than 25 lbs. per lineal yard, not elsewhere specified	Lb. ..	0 00½ and 10 per cent. *ad val.*
			Rolled iron *or steel* beams, girders, joists, angles, channels, structural *shapes and special sections*, weighing not less than *25 lbs. per lineal yard*	..	12½ *per cent. ad val*
			Rolled *iron or steel* beams, girders, joists, angles, channels, eyebar blanks made by the Kloman process, together with all other structural shapes of rolled iron or steel, including rolled iron or *steel bridge* plate not less than three-eighths of an inch thick, nor *less than* 15 inches wide, when imported by manufacturers *of bridges for use* exclusively in the manufacture of iron and steel bridges	..	*12½ per cent. ad val.*
Iron or steel railway fish plates, chairs, or splice bars	,, ..	0 01¼	Railway fish plates	Ton ..	12 00
Malleable iron castings, not otherwise provided for	,, ..	0 02	Malleable iron castings and steel castings not elsewhere specified ..	,, ..	25 00 but not less than 30 per cent. *ad val.*
Cast iron pipes of every description	,, ..	0 01	Cast iron *pipe of every* description	Per ton ..	12 00 but not less than 33 per cent. *ad val.*
Mill irons and mill cranks of wrought iron, and wrought iron for ships, steam engines, and locomotives, or parts thereof, weighing 25 lbs. or more each	,, ..	0 02			
Anvils, anchors, and parts thereof	,, ..	0 02			
Boiler tubes, flues, or stays of wrought iron or steel	,, ..	0 03	Boiler tubes of wrought iron or steel	..	15 per cent. *ad val.*
Other wrought iron or steel tubes or pipes	,, ..	0 02½	Lap-welded iron tubing, threaded and coupled or not, 1¼ inch in diameter and over, but not over 2 inches, for use exclusively in artesian wells, petroleum pipe lines, and for petroleum refineries	..	20 ,,
			Tubes not welded, nor more than 1¼ inch in diameter, of rolled steel	..	15 ,,
			Wrought iron tubing, threaded and coupled or not, over 2 inches in diameter	..	15 ,,

United States' Tariff.			Canadian Tariff.		
Articles.		Rates of Duty.	Articles.		Rates of Duty.
		Dol. c.			Dol. c.
Iron or steel wares (*continued*)—			Iron and steel wares (*continued*)—		
			Other wrought iron tubes or pipes	Per lb. ..	0 00$\frac{5}{16}$ and 30 per cent. *ad val.*
Cables and chains of all kinds, of iron or steel—					
Not less than $\frac{3}{4}$ of an inch in diameter	Lb. ..	0 01$\frac{1}{4}$	Chains (iron or steel) over $\frac{9}{16}$ of an inch in diameter	..	5 per cent. *ad val.*
Less than $\frac{3}{4}$ but not less than $\frac{3}{8}$ of an inch in diameter	,, ..	0 02			
Less than $\frac{3}{8}$ of an inch in diameter	,, ..	0 02$\frac{1}{2}$			
Blacksmiths' hammers or sledges of iron or steel, track tools, wedges, and crowbars	,, ..	0 02$\frac{1}{2}$			
Iron or steel axles or parts thereof, axle bars or blanks, or forgings for axles, in whatever stage of manufacture	Lb. ..	0 02$\frac{1}{2}$	Axles and springs of iron or steel, parts thereof, axle bars, axle blanks or forgings for carriages other than railway and tramway vehicles, without reference to the stage of manufacture	Per lb. ..	0 01 and 30 per cent. *ad va* .
			Iron or steel car axles, parts thereof, axle bars, axle blanks or forgings for axles, and car springs of all kinds, and all other springs not elsewhere specified, without reference to the stage of manufacture	Per ton ..	30 00 but not less than 35 per cent. *ad val.*
Steel wheels and steel-tyred wheels for railways, and iron or steel railway tyres, or parts thereof, whether finished or not	,, ..	0 02$\frac{1}{2}$			
Iron or steel rivets, bolts with or without threads or nuts, and bolt blanks	,, ..	0 02$\frac{1}{2}$	Iron or steel rivets, bolts with or without threads, or nut or bolt blanks, less than three-eighths of an inch in diameter	Per lb. ..	0 01$\frac{1}{2}$ and 30 per cent. *ad val.*
			Wrought iron or steel nuts and washers, iron or steel rivets, bolts with or without threads or nuts and bolt blanks, and finished hinges or hinge blanks not elsewhere specified	,, ..	0 01 and 25 per cent. *ad val.*
Butts and finished hinges, or hinge blanks	,, ..	0 02$\frac{1}{2}$			
Wrought iron or steel spikes, nuts, washers, and horse-shoes ..	,, ..	0 02			
Horse-shoe nails, hobnails, and wire nails, and all wrought iron and steel nails not specially mentioned	Lb. ..	0 01	Nails and spikes, wrought and pressed, galvanized or not, horse-shoe nails, hobnails, and wire nails, and all other wrought iron or steel nails not elsewhere specified, and horse, mule, and ox shoes	Lb. ..	0 01$\frac{1}{2}$ but not less than 35 per cent. *ad val.*
			Composition nails and spikes and sheathing nails	..	20 per cent. *ad val.*
Cut nails and spikes of iron and steel	,, ..	0 01$\frac{1}{4}$	Cut nails and spikes of iron or steel	Lb. ..	0 01
Cut tacks, brads, or sprigs—			Cut tacks, brads, or sprigs—		
Not exceeding 16 ozs. to the thousand	Thousand ..	0 02$\frac{1}{2}$	Not exceeding 16 ozs. to the thousand	Thousand ..	0 02
Exceeding 16 ozs. to the thousand	Lb. ..	0 03	Exceeding 16 ozs. to the thousand	Lb. ..	0 02
Screws—			Screws of iron, steel, brass, and other metal, not otherwise provided for	..	35 per cent. *ad val.*
2 inches and above in length	,, ..	0 06			
Above 1 but less than 2 inches in length	,, ..	0 08			
Above $\frac{1}{2}$ an inch and less than 1 inch in length	,, ..	0 10			
Of $\frac{1}{2}$ an inch or less in length	,, ..	0 12			
Forged iron or steel, of whatever shape or stage of manufacture, not otherwise mentioned	,, ..	0 02$\frac{1}{2}$	Forgings of iron and steel, or forged iron of whatever shape or in whatever stage of manufacture, not elsewhere specified	Lb. ..	0 01$\frac{1}{2}$ but not less than 35 per cent. *ad val.*
Manufactures of steel or iron, not otherwise provided for	..	45 per cent. *ad val.*			

II.—QUANTITY and Value of each of the unaermentioned *Articles of* British Produce and Manufacture exported from the United Kingdom to the Dominion of Canada in each of the Years *from* 1872 to 1886, and Total Value of the Goods of British Produce and Manufacture exported from the United Kingdom to that Colony during each of those years.

QUANTITIES.

		1872.	1873.	1874.	1875.	1876.	1877.	1878.	1879.	1880.	1881.	1882.	1883.	1884.	1885.	1886.
Apparel and haberdashery	...							Entered at value.								
Cottons, entered by the yard	Yards ...	39,524,253	40,663,876	44,844,230	46,118,150	31,306,200	39,609,950	36,625,200	29,952,900	36,542,200	47,208,800	51,782,600	54,055,100	27,647,600	32,192,600	31,736,900
„ „ value	...															
Earthen and china ware	...							Entered at value.								
Hardwares and cutlery, unenumerated	...															
Hats of all sorts	Dozens ...	28,817	21,851	25,631	68,325	54,842	81,431	77,427	70,965	102,380	116,857	137,718	120,264	100,901	115,809	148,370
Jute manufactures, piece goods	Yards ...					Not separately shown.						2,609,500	2,672,500	3,841,000	4,406,000	5,198,800
Linens, entered by the yard	„ ...	5,858,349	4,406,511	6,074,550	7,452,120	5,898,590	6,418,274	5,850,700	4,811,800	7,552,700	6,162,600	5,785,900	6,495,300	6,065,500	6,157,800	6,473,800
Metals, iron, wrought and unwrought	Tons ...	264,802	149,722	163,576	174,659	132,928	120,353	104,378	147,132	213,700	236,272	254,565	232,151	181,109	194,121	256,406
Silk manufactures	...							Entered at value.								
Woollens, entered by the yard	Yards ...	16,911,270	12,391,893	16,040,307	19,291,240	18,899,720	23,688,355	17,599,600	11,199,800	,918,400	18,149,500	16,283,000	17,856,700	19,916,700	17,943,000	20,730,900

VALUES.

	£	£	£	£	£	£	£	£	£	£	£	£	£	£	£
Apparel and haberdashery	1,291,170	1,223,678	1,193,298	1,263,865	953,954	950,819	887,918	749,340	773,550	1,004,518	1,137,533	1,013,046	807,032	679,123	670,878
Cottons, entered by the yard	828,677	889,441	904,641	973,884	622,426	750,944	660,176	483,900	633,927	910,576	1,050,881	1,084,975	551,603	609,019	617,474
„ „ value	159,449	110,051	143,593	208,817	215,331	189,229	205,476	216,500	244,067	279,491	402,881	383,323	374,450	406,285	404,437
Earthen and China ware	135,377	116,881	127,807	102,741	87,255	91,124	90,005	61,290	73,848	102,064	126,114	110,179	93,061	104,392	132,941
Hardwares and cutlery, unenumerated	275,970	224,324	248,805	246,216	143,663	150,642	123,025	98,080	134,057	177,561	195,381	166,244	110,897	103,779	121,803
Hats of all sorts	32,247	36,873	34,425	41,027	65,845	99,276	78,186	68,470	95,735	116,586	125,867	111,847	96,990	111,179	140,504
Jute manufactures, piece goods					Not separately shown.						39,966	41,022	49,704	52,443	57,070
Linens, entered by the yard	191,507	151,067	190,207	206,076	155,235	161,080	146,822	107,100	185,581	153,014	153,593	148,411	148,781	139,665	147,836
Metals, iron, wrought and unwrought	2,011,721	2,104,758	1,964,189	1,556,651	1,236,672	1,134,416	837,362	1,022,690	1,691,649	1,779,741	1,898,698	1,654,751	1,316,527	1,302,160	1,455,575
Silk manufactures	153,933	114,647	163,297	112,812	138,349	172,388	147,497	114,010	135,531	201,691	349,750	305,930	148,428	122,330	163,530
Woollens, entered by the yard	1,233,420	956,458	1,233,911	1,416,197	1,181,216	1,358,312	1,099,726	765,200	1,075,122	1,345,227	1,299,261	1,343,458	1,391,671	1,278,991	1,496,784
Total of British produce and manufacture	9,637,133	8,112,751	8,849,747	8,401,993	6,902,723	7,000,419	5,926,908	5,040,524	6,816,128	7,959,388	9,111,329	8,592,280	8,104,686	6,838,634	7,546,902

No. 98.

Her Majesty's Plenipotentiaries at the Fisheries Conference to the Marquis of Salisbury.—(*Received December* 27.)

(No. 7. Confidential.)

My Lord, *Washington, December* 12, 1887.

WE have the honour to inclose herewith, for your Lordship's information, a Memorandum of the proceedings of the Fishery Conference at their meeting of the 10th instant.

We have, &c.

(Signed) J. CHAMBERLAIN.
L. S. SACKVILLE WEST.
CHARLES TUPPER.

Inclosure in No. 98.

WASHINGTON FISHERY CONFERENCE.

Sixth Meeting.—December 10, 1887.

THE Conference met on Saturday, the 10th December, pursuant to adjournment, all the Plenipotentiaries being present.

Sir C. Tupper handed in a paper showing that the negotiations preceding the Convention of 1818 had reference chiefly to the deep-sea fisheries (Appendix K).

Mr. Bayard called attention to some statements in the paper which had been handed in by Sir C. Tupper at the last meeting, respecting pilotage (Appendix I).

These statements seemed to imply some misunderstanding of the United States' position on this point.

It was eventually agreed that the paper in question should not, for the present, be considered as being formally put in, but might be subject to some revision before being put in at the next meeting.

Mr. Bayard then proceeded to make a long statement as to the position of the United States' Plenipotentiaries upon the whole question.

This he subsequently promised to put in in writing, after consultation with his colleagues (Appendix L).

Mr. Chamberlain, without attempting to reply fully to this statement at present, said that the question of inshore fishery being eliminated (on which he understood both parties to be agreed), the British contention rested entirely on the Treaty right of Canada and Newfoundland to prevent their shores from being made a base of supplies for the deep-sea fishery.

As to this he would ask three plain questions:—

1. Did any one doubt or deny that American fishermen wished to use Canadian and Newfoundland ports as a base of supplies?

2. If it is conceded that they wish to do so, is it denied that Great Britain has the Treaty right to prevent them?

3. American fishermen having that wish—and Great Britain having the right to prevent its accomplishment—was it asserted that the Colonies had shown unnecessary harshness in carrying out measures of prevention?

If that could be shown to be the case, the British Plenipotentiaries were ready to consider whether anything could be done to alleviate any harshness. All complaints hitherto preferred had been fully answered, and the Canadian Government had recently modified their instructions in a spirit which Mr. Putnam had commended. If it could be shown that in any particular they now exceeded the strict Treaty right, every desire would be found to exist for their further amendment.

Great Britain could not abate one jot of her Treaty rights—on these she took her stand, and she could not surrender them without equivalents. At the same time she was ready and anxious to consider all means of alleviating any harshness which might be specifically indicated, and the removal of which would not place our Treaty rights in jeopardy. He would now ask whether both sides were agreed that Great Britain had a Treaty right to exclude United States' fishermen from Canadian ports except for the four specified purposes? Great Britain acknowledged that she had no right to limit access for those four purposes except by any of the needful restrictions mentioned in the

Convention. Do the United States agree that Great Britain may exclude them for any other purpose?

Mr. Putnam gave no direct reply to this question, but said that a distinction ought not to be drawn between fishing-vessels and merchant-vessels.

Mr. Chamberlain said that he wished to keep the question strictly to fishing-vessels, and the terms of the Convention.

Mr. Bayard said that the United States held that questions of commerce had no place in that Convention; and that Great Britain had no right to so interpret it as to deny commercial facilities. It related solely to the fisheries.

Mr. Chamberlain said that it was useless now to enter on that argument, on which, however, he took direct issue with Mr. Bayard.

If we could be so far agreed as to admit that Great Britain had the right to make regulations for the exclusion of United States' fishermen from Canadian ports for any but the four specified purposes, we might be able to consider together the terms of such regulations.

Mr. Bayard did not deny for a moment the right of Canada or Newfoundland to prohibit the sale of bait.

Mr. Chamberlain then said that the British Plenipotentiaries were not able at present to make any alternative suggestion, and it might be necessary for them to go to Canada to consult the Canadian Government. He therefore asked for an adjournment to Wednesday, the 4th January.

Mr. Putnam would first like to make a few general remarks.

He thought that the issues had got confused by the different meanings attached to the words "rights" and "commerce."

In the first place, he held that to levy pilotage dues, and to insist on reporting to the Customs in an arbitrary way, &c., were violations of the Convention if applied to fishing-vessels.

In the second place, bait and supplies were not matters within the purview of the Convention. But they were matters of comity, and if they were denied, would it not justify the United States in regarding the denial as an unfriendly act, giving them reason for retaliation?

Mr. Chamberlain said if that contention were correct it would be impossible to account for the words, "for no other purpose whatever," in Article I of the Convention.

Mr. Putnam did not agree to this, and said that the common rule of law was that when an instrument was worded in general terms, the subject-matter must be interpreted by the intention, not by the letter. He took, as an illustration, the case where a man should have a well on his property, and gave to a neighbour the right to come in to draw water, and for no other purpose; ought that to be held to prohibit the neighbour from coming in in the ordinary course of social intercourse?

Now, the intention of the Convention of 1818 was not to deal at all with the question of the right of entry to ports for commercial purposes.

Sir C. Tupper said that the difficulty on the British side was to find in the words, "for no other purpose whatever," an interpretation which covered half-a-dozen other purposes, such as obtaining bait, ice, supplies, transhipping, &c. How could the United States, in common fairness, having for a valuable consideration expressly and in terms by the Convention agreed not to ask for certain things, now turn round and say that it is unneighbourly of Canada not to grant them?

The Conference then adjourned to Wednesday, the 4th January, 1888.

(Initialled) J. C.
L. W.
C. T.
J. H. G. B.

Appendix (K).

Memorandum as to Deep-sea Fisheries and Use of Canadian Ports as a Base of Supplies.

THE cod fishery, and other fisheries in the *deep sea*, in North America, were the principal objects (in America) of the various struggles which took place between France and England prior to the American War of Independence.

By the Treaty of 1763 between France and England, although fishing rights were conceded to France, it was stipulated that her vessels were not to take fish within 9 miles (3 leagues) of the shores of the Gulf of St. Lawrence, or within 45 miles (15 leagues) of the shores of Cape Breton.

Indeed, at that time, when the "British fisheries" were spoken of, they were understood to include, not only fisheries at distances of that extent, but likewise the fisheries on the banks of Newfoundland. This will more fully appear hereafter.

By the Treaty of 1778 between France and the United States (Article X) the United States agreed that France should not be disturbed "in the enjoyment and exercise of the right of fishing on the Banks of Newfoundland."

It is apparent from this that the United States contemplated making a struggle for the fisheries on the Banks, as being held by the British, instead of claiming them as the property of the whole world, according to the modern doctrine. It shows likewise that France thought it necessary to guard them by express Treaty stipulation. (The right of fishing on the Banks was expressly mentioned in the Treaty of 1783.)

Lord Dundonald, in August 1852, wrote a letter to the London "Times" referring to the fisheries on the Banks as a maritime subject of vital importance, and he refers to them as "the British North American fisheries."

He says that—

"The British Bank, or deep-sea fishery, formerly employed 400 sail of square-rigged vessels and 12,000 seamen, and that now not one of these follow their vocation, in consequence of the ruinous effect of bounties awarded by the French and North American Governments."

In 1793 a witness before a Committee of the House of Commons said that—

"The Island of Newfoundland had been considered in all former times as a great English ship moored near the Banks during the fishing season for the convenience of English fishermen, and that the Governor was considered the ship's captain, and all those concerned in the fishing business as his crew, and subject to naval discipline."

When this state of affairs is recalled, one can understand the immense expenditures made by France in fortifying Louisburg and in holding her possessions in North America. It is the key likewise to the struggles made by England and the New England Colonies to dispossess her, and explains the two expeditions which came from New England for the capture of Louisburg. The success of these expeditions was declared to have counterbalanced the ill success of England on the Continent of Europe.

Chesterfield wrote:—

"I would hang any man who proposed to exchange Louisburg for Portsmouth."—(Correspondence of the Duke of Bedford, vol. i, p. 18.)

These fisheries were described in the British House of Commons as being worth more than the whole of Canada.

A further proof that the United States had reason to apprehend exclusion from the *deep-sea* fisheries in North America, and that these were the fisheries which they had in view in these Treaties with Great Britain, is furnished by the fact that on the 10th February, 1775, Lord North introduced a Bill in the British House of Commons which became law, and which prevented the inhabitants of Massachusetts, New Hampshire, Connecticut, Rhode Island, and Providence "from carrying on any fishery on the Banks of Newfoundland" and certain other places.

Lord North argued that the fishery on the Banks of Newfoundland and the other Banks in America was the undoubted right of Great Britain, and that therefore such disposition might be made of it as she pleased. In the long debate which took place on this Bill the Opposition resisted it on the ground that it would have the effect of starving the colonists. When it was replied that the colonists would have the inshore fisheries and the river fisheries, Burke replied thus:—

"Nothing can be more foolish, more cruel, and more insulting than to hold out as a recourse to the starving fishermen, ship-builders, and others employed in the trade and fisheries of New England that after the plenty of the ocean they may poke in the brooks and rake in the puddles, and diet on what we consider as husks and draught for hogs."

In 1779, when propositions were made to open a negotiation for peace, Mr. Gerry moved in Congress, *inter alia*:—

"1. That it is essential to the welfare of these United States that the inhabitants thereof, at the expiration of the war, should continue to enjoy the free and undisturbed exercise of their common right to fish *on the Banks of Newfoundland and the other fishing banks and seas of North America*, preserving inviolate the Treaties between France and the said States."

Mr. Adams' instructions in 1779 adopted these exact words.

A somewhat famous expression by Mr. Adams in course of negotiations for the Treaty of 1783 shows that the *deep-sea* fisheries were the principal subjects of controversy. In discussing whether the enjoyment of them should be called a "liberty" or a "right," he said:—

"When God Almighty made the Banks of Newfoundland *at 300 leagues' distance from the people of America* and 600 leagues from those of France and England, did he not give as good a right to the former as to the latter?"

Again:—

"If occupation, use, and possession give a right, we have it as clearly as you. If war and blood and treasure give a right, ours is as good as yours. We have constantly been fighting in Canada, Cape Breton, and Nova Scotia for the defence of this fishery, and have expended beyond all proportion more than you."

In the Convention of Virginia Mr. Payson affirmed:—

"It is well known that the Newfoundland fisheries and the Mississippi are balances for one another."

In the first Congress, on the proposal to impose duties on the deep-sea-caught fish, the Honourable Fisher Ames, in 1794, said:—

"The taking of fish on the Banks is a very momentous concern. It forms a nursery for seamen, and this will be the source from which we are to derive maritime importance. It is the policy of some nations to drive us from this prolific source of wealth and strength, but what their detestable efforts have in vain endeavoured to do you will accomplish by a high duty on this article."

Sabine, in his Report on the fisheries, p. 148, referring to the war of 1812, shows that in the framing of the Convention of 1818 the United States' negotiators must have had in view principally the deep-sea fisheries. He says:—

"During the war with England the distant fishing-grounds were abandoned. The British colonists determined that we should never occupy them more. The duties which devolved on Messrs. Adams, Clay, Gallatin, Bayard, and Russel, the American Commissioners at Ghent, were consequently difficult and arduous."

The Treaty of Ghent left this question unsettled.

The cod-fishery, at the time when the Convention was being negotiated for, and before, was actively pursued by both American and colonial fishermen. The former had the advantages of an extensive market, improved vessels and outfits, and skilled labour; and, besides all this, the policy of the United States was to give a bounty to their fishermen. Complaints against the severity of the competition which resulted were rife in all the provinces. From 1815 to 1818 the bounty paid in the United States to cod fishermen rose from 1,811 to 148,915 dollars. After the Convention it gradually rose to 314,149 dollars in the year 1838. In 1814, from the Island of Newfoundland alone were exported about 1,200,000 quintals, valued at more than 12,000,000 dollars (Sabine, p. 230). Referring to the difficulties which occurred in the enforcement of the Convention, Schuyler, in his work on "American Diplomacy," says:—

"It will be seen that most of these difficulties arose from a change in the character of the fisheries. Cod, being caught on the Banks, were seldom pursued within the 3-mile limit, and yet it was to cod, and perhaps halibut, that all the early negotiations had reference."

Messrs. Rush and Gallatin, in their letter of the 20th October, 1818, to the Secretary of State, admit that they had in view the effect that the renunciation would have on the deep-sea fishery. They said they considered the renunciation only applied to the distance of 3 miles from the coasts, but they add:—

"This last point was the more important, as, with the exception of the fishing in open boats, within certain harbours, it appeared . . . . that the fishing-ground on the whole coast of Nova Scotia is more than 3 miles from the shore, whilst, on the contrary, it is almost universally close to the shore on the coast of Labrador. It is in that point of view that the privilege of entering the ports for shelter is useful, and it is hoped that with that provision a considerable portion of the actual fisheries on the coast (Nova Scotia) will, notwithstanding the renunciation, be preserved." ("Annals of Congress," 1819, p. 1527.)

Mr. Dwight Foster, Agent of the United States, said at the Halifax Commission:—

"It was the cod fishery and the whale fishery that called forth the eulogy of Burke over a hundred years ago. It was the cod fishery and the whale fishery for which the first and second Adams so strenuously contended." ("Halifax Commission Papers," p. 1592. American edition.)

In the fifth volume of the "American Law Review," p. 410, was inserted an able article, which is understood to have been written by Mr. Pomeroy, the writer on international law. The following extract shows how the author regarded this question:—

"3. *The claim of right to sell goods and buy supplies, other than wood and water, in the Canadian ports and harbours.*

"Information, furnished by various Consuls residing in the Dominion, shows that for a number of years past our fishing-vessels have been permitted to carry merchandize, enter at the custom-houses, and buy supplies other than wood and water, but that this practice has recently been stopped. The President of the United States, in his last Annual Message to Congress, asserts that the right exists, and recommends measures for its protection. This particular claim has not yet been made the subject of diplomatic correspondence between the two Governments; but among the documents laid before Congress at its present Session is a Consular letter, from which we quote:—

"'It (the Treaty of 1818) made no reference to, and did not attempt to regulate, the deep-sea fisheries, which were open to all the world. . . . . It is obvious that the words "for no other purpose whatever," must be construed to apply solely to such purposes as are in contravention to the Treaty, namely, to purposes connected with the taking, drying, or curing fish within 3 marine miles of certain coasts, and not in any manner to supplies intended for the ocean fisheries, with which the Treaty had no connection.'

"All this is clearly a mistake, and if the claims of American fishermen, partially sanctioned by the United States' Executive, rest upon no better foundation, they must be abandoned. In fact, the stipulation of the Treaty in which the clause occurs has reference alone to vessels employed in deep-sea fishing. It did not require any grant to enable our citizens to engage in their occupation outside the territorial limits, that is, upon the open sea; but they were forbidden to take, dry, or cure fish in the bays and harbours. They were permitted, however, to come into those inshore waters for shelter,

repairs, wood, and water, ' and for no other purpose whatever.' To what American vessels is this privilege given? Plainly to those that fish in the open sea. To say that the clause ' for no other purpose whatever ' applies only to acts connected with taking, drying, or curing fish within the 3-miles limit, which acts are in terms expressly prohibited, is simply absurd. It would be much more reasonable to say that, applying the maxim *noscitur a sociis*, the words, ' for no other purpose whatever,' are to be construed as having reference solely to matters connected with regular fishing voyages, necessary, convenient, or customary in the business of fishing, and are not to be extended to other acts of an entirely different and purely commercial nature."

In the course of a debate in the United States' Senate on the 12th August, 1852, the following observations were made by Senator Tuck :—

" Perhaps I shall be thought to charge the Commissioners of 1818 with overlooking our interests. They did so, in the important renunciation which I have quoted; but they are obnoxious to no complaints for so doing. In 1818 we took no mackerel on the coasts of British possessions, and there was no reason to anticipate that we should ever have occasion to do so. Mackerel were then found as abundantly on the coast of New England as anywhere in the world, and it was not till years after that this beautiful fish, in a great degree, left our waters. The mackerel fishery on the provincial coasts has principally grown up since 1838, and no vessel was ever licensed for that business in the United States till 1828. The Commissioners in 1818 had no other business but to protect the cod fishery, and this they did in a manner generally satisfactory to those most interested."

Mr. Dwight Foster, the Agent for the United States before the Halifax Commission, gave the following historical review :—

" Early in the diplomatic history of this case we find that the Treaty of Paris in 1763 excluded French fishermen 3 leagues from the coast belonging to Great Britain in the Gulf of St. Lawrence and 15 leagues from the Island of Cape Breton. We find that the Treaty with Spain in the same year contained a relinquishment of all Spanish fishing rights in the neighbourhood of Newfoundland. The Crown of Spain expressly desisted from all pretensions to the right of fishing in the neighbourhood of Newfoundland. Those are the two Treaties of 1763—the Treaty of Paris with France and the Treaty with Spain. Obviously, at that time, Great Britain claimed for herself exclusive sovereignty over the whole Gulf of St. Lawrence and over a large part of the adjacent seas. By the Treaty of Versailles, in 1783, substantially the same provisions of exclusion were made with reference to the French fishermen. Now, in that broad claim of jurisdiction over the adjacent seas, in the right asserted and maintained to have British subjects fish there exclusively, the fishermen of New England, as British subjects, shared. Undoubtedly, the pretensions that were yielded to by those Treaties have long since disappeared. Nobody believes now that Great Britain has any exclusive jurisdiction over the Gulf of St. Lawrence or the Banks of Newfoundland, but at the time when the United States asserted their independence, and when the Treaty was formed between the United States and Great Britain, such were the claims of England, and those claims had been acquiesced in by France and by Spain. That explains the reason why it was that the elder Adams said he would rather cut off his right hand than give up the fisheries at the time the Treaty was formed, in 1783, and that explains the reason why, when his son, John Quincy Adams, was one of the Commissioners who negotiated the Treaty of Ghent, at the end of the war of 1812, he insisted so strenuously that nothing should be done to give away the rights of the citizens of the United States in these ocean fisheries. Those are the fisheries which existed in that day, *and those alone*. The mackerel fishery was unknown. It was the cod fishery and the whale fishery that called forth the eulogy of Burke over a hundred years ago. It was the cod fishery and the whale fishery for which the first and second Adams so strenuously contended; and inasmuch as it was found impossible in the Treaty at the end of the war of 1812 to come to any adjustment of the Fishery question, all mention of it was omitted in the Treaty. The Treaty was made leaving each party to assert his claims at some future time. And so it stood; Great Britain having given notice that she did not intend to renew the rights and privileges conceded to the United States in the Treaty of 1783, and the United States' giving notice that they regarded the privileges of the Treaty of 1783 as of a permanent character, and not terminated by the war of 1812 ; but no conclusion was arrived at between the parties. What followed ? The best account of the controversy to be found is in a book called, ' The Fisheries and the Mississippi,' which contains John Quincy Adams' letters on the subject of the Treaty of Ghent and the Convention of 1818.

" Mr. Adams in that book says that the year after peace was declared British cruizers warned all American fishing-vessels not to approach within 60 miles of the coast of Newfoundland, and that it was in consequence of this that the negotiations were begun which led to the Convention of 1818 ; and the Convention of 1818, in the opinion of Mr. Adams, conceded to the United States all that they desired. He believed and asserted that Great Britiain had claimed, and intended to claim, exclusive jurisdiction over the Gulf of St. Lawrence and over the Banks of Newfoundland, and he considered and stated that the Treaty of 1818, in setting at rest for ever those pretensions, obtained for the United States substantially what they desired. A passage is quoted in the reply of Her Majesty's Government to the United States' Answer, from this book, in which Mr. Adams says: ' The Newfoundland, Nova Scotia, Gulf of St. Lawrence, and Labrador fisheries are in nature, and in consideration both of their value and of the right to share in them, *one* fishery. To be cut off from the enjoyment of that right would be to the people of Massachusetts similar in kind, and comparable in degree, with an interdict to the people of Georgia and Louisiana to cultivate cotton or sugar. To be cut off even from that portion of it which was within the exclusive British jurisdiction in the *strictest sense* within the Gulf of St. Lawrence and on the coast of Labrador would have been like an interdict upon the people of Georgia or Louisiana to cultivate cotton or sugar in three-fourths of those respective States.' But he goes on to speak of the warning off of American vessels 60 miles from Newfoundland, and then says: ' It was this incident which led to the negotiations which terminated in the Convention of the 20th October, 1818. In that instrument the United States *renounced for ever* that part of the fishing liberties which they had enjoyed or claimed in certain parts of the exclusive jurisdiction of the British provinces, and

within 3 *marine miles* of the shores. *This privilege, without being of much use to our fishermen,* had been found very inconvenient to the British; and, in return, we have acquired an enlarged liberty, both of fishing and drying fish, within other parts of the British jurisdiction for ever.'"

His statement that the mackerel fishery was unknown in 1812 is probably too strong, but in the main his outline is correct.

It will be seen, from these passages, that Mr. Bayard was mistaken in his letter of the 10th May, 1886, to Sir Lionel West, in which he said: "*It is admitted that the deep-sea fishing was not under consideration in the negotiation of the Treaty of* 1818, *nor was affected thereby.*"

Appendix (L).

[It was originally intended that a Statement embodying Mr. Bayard's notes should be put in for this Appendix, but this method having been abandoned by him, the following abstract of his speech is substituted.—W. M.]

MR. BAYARD, reading from notes, said that the United States believed that the substantial and main question was good neighbourhood, and that friendly relations should not be imperilled or impaired without sufficient cause. The locality which is the scene of disputed right is within British control, and consequently in their hands lies the main discretion. It is the mode of administering the law and the spirit of its administration that unquestionably is wholly within Canadian hands. Of these laws and their administration the United States have complained, and asked redress. Canada has pressed into the front for consideration a commercial arrangement, which is made a condition precedent, and is treated as an equivalent for a strict and oppressive administration and interpretation of the Treaty of 1818, and this dominates their negotiations. What is this "equivalent," described as a condition for the relaxation of the Canadian action and contention? For two seasons (1886-87) the fisheries have been prosecuted in accord with their insistance and without regard to our protests, and in the strictest and fullest sense their territories have not been allowed to be used by American fishermen as a base of deep-sea fishing—no bait, nor supplies, nor facilities of any kind permitted in their ports. Even sufficient food for home-bound vessels has been denied; heavy fines have been imposed, and severe losses by enforced delays and detentions have been caused. Two vessels have been in the meshes of the law since May 1886, and although supplied with the best professional assistance no decision has been reached in the cases, in which it is still insisted that the jurisdiction and laws were clear and unambiguous.

A single infraction of actual fishery rights within the 3-mile limit has been followed by summary condemnation and forfeiture, and no complaint has been made.

What is the unfavourable discrimination of the United States' laws which Canada insists prevents the fair competition of her fishermen in the United States' markets? One law, and one only: a Tariff duty on *cured* fish which is a little less than 20 per cent. *ad valorem.*

It must be observed that while the stringency of Canadian construction of the Treaty and commercial rights of our fishermen had increased in 1886 and 1887, on the other hand a growing relaxation and liberality of construction has marked the action of the United States' authorities, so that the amount of Canadian fish admitted free of duty to the markets of the United States considerably exceeds the amount of dutiable fish.

The effect of modern invention in France and everywhere now facilitates the keeping of fish fresh at little cost and for months. It is obvious that, with or without a change in the Tariff, the increase of fish kept fresh and a decrease of cured fish will progress.

That there is no discrimination against Canada in our Tariff Laws, and especially upon the item of fish, is proven by the fact that the United States' Tariff averages $47\frac{8}{10}$ per cent.; and that portion of Canadian fish which is not admitted free, being less than one-half, pays $19\frac{8}{10}$ per cent.

At the same time, *per contra,* Canada imposes a Tariff duty of about 14 per cent. *ad valorem* on American fish, and collected it in 1886.

	Dollars.
Dutiable Canadian fish paid at United States' custom-houses in 1886	191,540
United States' fish paid in Canada	56,262
Difference	135,278

In the same period Canada sent in free 1,065,416 dollars' worth of fish.

The area of exclusive mackerel fishery within the 3-mile belt is estimated by the best authorities to be 1 per cent. of the whole fishery-ground for mackerel.

Whenever the American Plenipotentiaries have urged that the same friendly treatment should be given to our fishermen when they go into Canadian ports which is given freely to Canadian fishermen in our ports, they present as a reason for withholding it the words of the Treaty connected with four specified purposes, "and for no other purpose whatever," and justify the refusal of all other possible communication. They assume, too, the right to make these four purposes, for which entry was secured by Treaty, subject to conditions, and to arrange these conditions without the consent or against the protest of the other Contracting Party. It is stated by Lord Lansdowne, and sustained by his Government, that for the American fishermen to find a convenience in these four purposes for carrying on their open-sea fisheries is such an "abuse" of the four privileges as would authorize the application of the restrictions which are mentioned, and was to be guarded against. That any indirect advantage to

the fishing-vessels admitted by Treaty within the 3-mile belt may be prevented by Canada if it results in competition with her citizens engaged in open-sea fishing. In effect, the Treaty thus becomes wax in the hands of one party and marble in the hands of the other. The words, "for no other purpose whatever," bind the American fishermen in iron, and become "any other purpose whatever" in the hands of the Canadians when seeking to impose restrictions.

As yet we have had no definite reply to our complaint as to the treatment of our fishermen in the Magdalen Islands. The Home Government has indicated its desire to see justice done, and its correspondence, as published, indicates its disapproval of Canadian action; but nothing has been done.

The attention of Her Majesty's Plenipotentiaries is drawn to this apparent intention to apply the same construction of the Treaty, and the force of the words, "for no other purpose whatever," to these coasts, bays, harbours, &c., upon which the liberty of enjoyment is for ever secured, as is applied to the portion as to which the liberty is renounced, so as to encumber the enjoyment and place them virtually at the sole will and discretion of the Canadian officials.

Excepting in the case of the Magdalen Islands (and then not) no relaxation, nor relief, nor reform has followed our representations and protests to Her Majesty's Government.

The claim is made and carried out by Canada of imposing such conditions on the exercise of the four purposes as though renunciation was qualified and modified, without the slightest concession or heed to our remonstrances. This is unjust and disrespectful, and cannot be held to be permissible.

The effect of this is strongly felt in the United States, and has been exhibited in a storm of assaults upon the State Department and the Administration.

From Canada not a word or act calculated to support the friendly attitude of the President has proceeded since the seizure of the "Adams" and "Doughty;" but the Ottawa Government has refused supplies of the most trivial nature to vessels homeward bound.

When charges have not been met they have attacked the private character of the fishermen making them. Lord Lansdowne trades upon our supposed inconvenience, and Captain Quigley upon the fears and humanities of our people.

How long is the patience of the President supposed to last?

(Mr. Bayard had before him the following Statement as to duties, &c.:—)

TOTAL Exports and Imports, United States and Canada, 1886, from United States' Treasury Tables:—

	Dollars.
Imports into United States from—	
(*a.*) Nova Scotia, New Brunswick, and Prince Edward Island	4,556,980
(*b.*) Quebec, Ontario, Manitoba, and the North-west Territory	31,263,469
(*c.*) British Columbia	1,488,587
(*d.*) Newfoundland and Labrador	192,302
Total	37,496,338
Exports (domestic) from the United States to—	
(*a.*) Nova Scotia, &c.	2,502,011
(*b.*) Quebec, &c.	26,301,962
(*c.*) British Columbia	1,840,312
(*d.*) Newfoundland	1,308,839
Total	31,953,124

[NOTE.—The Canadian official Returns of the trade of the Dominion in 1886 give the exports from Canada to the United States at 36,578,769 dollars, and the imports into Canada from the United States at 44,858,039 dollars. The discrepancies cannot be explained by adding in the export from the United States of *foreign* products, which amounted to 2,831,897 dollars by the United States' Treasury Tables.]

AMOUNT of the above dutiable, and Amount of Free Imports into the United States from Canada.

	Free of Duty.	Dutiable.
	Dollars.	Dollars.
(*a.*)	1,845,586	3,530,362
(*b.*)	12,911,559	24,317,090
(*c.*)	441,018	1,812,424
(*d.*)	Not included.	Not included.
Total	15,198,163	29,659,876
Duties		6,769,354 (22·8 per cent.)

AVERAGE *ad valorem* Duties, Dutiable Goods only being regarded.

	Per cent.
In United States on Canadian goods	
In Canada on United States' goods	22·8

AMOUNT of Fish imported from Canada.

	Dollars.
Free	1,065,416
Dutiable	957,540
Total	2,022,956

AMOUNT of Fish imported from the United States by Canada.

	Dollars.
Free	919
Dutiable	395,520
Total	396,439

Canada imposes an *ad valorem* duty of 14·2 per cent. on American fish (dutiable) imported into the Dominion.

The United States imposes on Canadian fish an *ad valorem* duty of dollars.

Amount of duty collected by Canada on American fish, 56,762 dol. 98 c.

Ditto, by United States on Canadian fish, dollars.

No. 99.

Foreign Office to Colonial Office.

Foreign Office, December 31, 1887.

[Transmits copy of Sir L. West's No. 336 of December 6, 1887: *ante*, No. 95.]

Printed for the use of the Foreign Office. January 1888.

CONFIDENTIAL.

(5566.)

FURTHER CORRESPONDENCE

RESPECTING THE

TERMINATION OF THE FISHERY ARTICLES

OF THE

TREATY OF WASHINGTON

OF THE

8TH MAY, 1871.

[In continuation of Confidential Paper No. 5510.]

October to December 1887.