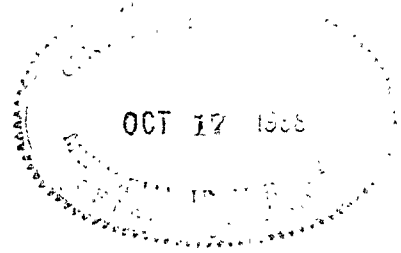




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CONFIDENTIAL.

(2952.)



## FURTHER CORRESPONDENCE

RESPECTING THE

BRITISH NORTH AMERICAN FISHERIES,

THE

HALIFAX COMMISSION,

AND THE

NEGOTIATIONS FOR THE RENEWAL OF THE  
RECIPROCITY TREATY

BETWEEN

CANADA AND THE UNITED STATES.

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1874-76.



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CONFIDENTIAL.

Further Correspondence respecting the British North American Fisheries, the Halifax Commission, and the Negotiation for the Renewal of the Reciprocity Treaty between Canada and the United States: 1874-76.

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No. 1.

*Mr. Watson to the Earl of Derby.—(Received October 24.)*

(No. 134. Confidential.)

My Lord,

*Washington, October 12, 1874.*

IN my despatch No. 22, Confidential, of the 9th of July last, I informed your Lordship that the chief of the Bureau of Statistics had set out on a visit to certain centres of industry, with a view to ascertaining the feeling with regard to the Reciprocity Treaty, and I have now the honour to transmit copies of the written replies which Mr. Young has received from certain representative men to the inclosed questions. These replies have been communicated to me by Mr. Young, confidentially, with the condition that his correspondents shall not be quoted in published papers.

I shall transmit copies of these inclosures to the Earl of Dufferin.

I have, &c.

(Signed) R. G. WATSON.

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Inclosure in No. 1.

*Replies received by Mr. Young, Chief of the Bureau of Statistics at Washington, respecting the Reciprocity Treaty.*

(Confidential.)

Sir,

*Ogdenburg, October 2, 1874.*

In reply to the inquiry whether the proposed Reciprocity Treaty with Canada would prove beneficial or injurious to the industry in which we are engaged, in other words, whether we would be able to compete successfully with Canadian manufacturers of a similar kind, we have to state that, in our opinion, the proposed Treaty would result to the benefit of this country, and that the branch in which we are particularly engaged would suffer no injury therefrom, for the following reasons:—

We can import logs from Canada, and manufacture them here cheaper than to manufacture them in Canada, because we utilize the waste. The best lumber comes from "board timbers," on which there is duty. If it was free, we could bring board or square timber from Canada and manufacture it here at a profit, whereas now we are injured by the duty.

Taking off the duty on lumber would not lower the price here more than a dollar a thousand feet.

(Signed) L. HARBRUCK, Jr., and Co.

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Goddard, Brothers, manufacturers of cotton goods, of Providence, think that the proposed Treaty will be of benefit, for it will extend the trade of the country, and open markets for the products of American industry, to which they now have but partial access. The tendency of an extension of commercial intercourse between the two countries is, they think, to promote a demand for the various manufactures of the United

States in exchange for the articles imported from Canada. They do not fear the competition of Canadian manufactures, and believe that, after the adoption of the Reciprocity Treaty, the labour of Canada will continue to seek employment in the United States rather than in Canada. A less rigorous climate and political institutions, more acceptable to working men, give them great and lasting advantages over Canada.

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The Cleveland Paper Company state that, on general principles, we can manufacture cheaper than they can, and they would have no advantage over us in raw material, fuel, &c., except it must be on chemicals. They think it should also include mapping a few papers as well as printing paper.

Some New York manufacturers of street cars and omnibuses state that it will be of benefit, as they have facilities of manufacture and skill greatly superior, and can produce better work at less cost.

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Amasa Walker, of North Brookfield, Massachusetts, manufacturers of boots and shoes, state that it will be to their advantage, as, while the late Reciprocity Treaty existed, Canada and the other British provinces furnished an excellent market for boots and shoes, and the trade was constantly increasing. Since then, the trade has been nearly extinguished, and the Canadians have erected manufactories of their own.

Were the proposed reciprocity established, he would doubtless be able to send some of his manufactures, but the currency is at present so expended as to raise the cost of goods 50 per cent., so that he cannot now profitably manufacture to any considerable extent for the Canadian, Australian, or any other foreign market, as he did before the war, and there is no prospect of recovering the export trade, until the circulating medium of this country is brought to par with the currency of commerce.

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Wanskirek and Co., of Providence, manufacturers of woollen goods, state that they believe that it will be to their benefit, for reciprocal trade is always profitable to both parties, and, in the case of Canada, a new market is opened for the skilled productions of this country, which they cannot compete with, and it will hasten the time when Canada must be annexed to the United States.

They notice the Treaty does not affect the interest they are engaged in, viz., the woollen manufactures.

Their objections to the Treaty are, that it does not go far enough as to enable the Canadians to trade with them, the United States should be allowed to take their products of the soil in return, making all such products absolutely free.

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Hart and Malone, manufacturers of furniture, state that it will be beneficial, for they can manufacture furniture, and ship same to Canada at prices to compete advantageously with Canadian manufactures, as they do often sell and ship to parties there now, when duties have to be paid.

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R. H. Allen and Co., manufacturers of agricultural implements, state that it will be decidedly beneficial, for agricultural implements and machines are manufactured largely in the United States of a quality much superior to those of any other country, and at prices much less than similar articles of Canadian manufacture.

They are now exported to some extent to Canada, and the enhanced price from the duty is the only cause of the sale there being so limited.

The removal of the duty will increase the trade four-fold, and they trust the extract above will be amended by making the Act take effect immediately and not gradually.

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Messrs. Joseph F. Paul and Co., manufacturers of building materials, are of opinion that the Treaty would be advantageous to their trade. Canada is a part of this country by nature, and should be so in fact, and no detriment could come from Reciprocity Treaty between the two countries than occurs to either Maine or Massachusetts in consequence of the same state of affairs now existing between these States, as is proposed to have existed between Canada and the United States. No man who will travel down the St. Lawrence on the one side, and up on the other, will say that freedom of trade between the two countries should not be as free as between the United States. This bugbear of protection to keep up the price of this, and reducing that, is played out; transit is too

quick, and intelligence too general to prevent the intelligent mechanic from finding the best market for his labour.

*Boston, October 6, 1874.*

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McKesson and Robbins, manufacturers of chemicals, are of opinion that the Treaty will be beneficial to their trade. They are extensively engaged in the importation and sale of drugs, dyes, chemicals, &c., and are also manufacturers of chemicals in variety, in Williamsberg, near New York. They think they have no reason to fear competition with Canada, and that a more free and reciprocal intercourse will prove beneficial.

They are pleased to state that within a few years important additions have been made to the free list, so that at the present time almost all Canadian crude products in number, are free, as important examples : cod-liver oil, Canada balsam, wood ashes, &c., and if to these could be added mineral coal and potash, it would, in their judgment, be desirable.

They are decidedly in favour of Reciprocity.

*New York, September 19, 1874.*

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Messrs. John Cummings and Co., manufacturers of leather, state as follows:—

“The admission of bark and tanning material from Canada would do more good to the trade of manufacturing leather than the admission of leather from Canada would do harm.”

*Boston, October 8, 1874.*

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Younglove, Mussey, and Co., manufacturers of agricultural implements, and general founders, state as follows:—

“We are manufacturers of agricultural implements, and also in the general foundry business. Our implements being patented, that branch of our business we do not think would be materially affected; but our foundry business would be injured from the fact that castings can be made in Canada at a less cost than in this country, owing to the fact that the raw material and labour are both cheaper there than here.

“We think that the business of the country, so far as it is represented in the industries named above, would be generally injured by the proposed Reciprocity Treaty.”

*Cleveland, September 21, 1874.*

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Root, Whitelaw, and Co., manufacturers of leather, state as follows:—

“In the manufacture of calf and kid skins we have to compete with the French and German goods, and find it difficult to get a profit in the business. If present duties are made less, to the extent above stated, we think it would ruin our business, and we should be obliged to abandon the tanning of calf skins altogether.”

*Cleveland, Ohio, September 19, 1874.*

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Messrs. Shephard, Hall, and Co., manufacturers of lumber, state as follows:—

“We believe we could get back the trade with South America largely for lumber, which has gone largely to Montreal direct, owing to the difficulties and trouble in bonding lumber to bring through the States for shipment, also we believe it well to reserve on our timber as much as possible, and draw from Canada.”

*Boston, September 23, 1874.*

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Pound Manufacturing Company, manufacturers of steam tugs, steam engines, &c., state as follows:—

“We have many calls from the Canadians for steam engines, steam dredges, steam derricks, and other machinery in our line, and find their Tariff on these articles very injurious to our trade with them. We feel assured that we could compete successfully with their manufacturers in our line, and would derive great benefit if the proposed Treaty were made a Law.

We also think that the United States would be greatly benefitted by carrying the proposed Treaty into effect, as we sincerely believe that arbitrary restrictions on the

freedom of trade are always injurious to the great majority of the communities concerned."

*Lockport, New York, September 28, 1874.*

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American Tack Company, manufacturers of tacks, brads, shoe-nails, &c., state as follows:—

"Iron from which we make tacks and brads is much cheaper in Canada than here, as also is labour, and the tack manufacturers are able to sell their goods much lower than we. This we know by experience in the export trade. Many of our tacks are made of Swedish iron on which we pay a duty of at least 22 dol. 40 c. per ton, less 10 per cent.

The effect of the Treaty would be very injurious to our business if tacks are included. With those articles excluded, the results of the reciprocity would doubtless be beneficial, but we wish to protest earnestly against tacks and brads being included as articles to be admitted free."

*Fairhaven, Mass., September 19, 1876.*

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J. B. Wayne, Treasurer of the manufacturers of steam engines and mill machinery, states as follows:—

"We could never compete against the cheap labour and small taxation of Canada without reducing our own labourers to a similar condition, and to reduce our taxation to a par with that of Canada, means stagnation to public improvements, and a retrogression in place of advancement of the material interests of our own country, and of the building up of a foreign one in close proximity. When this law passes (as we trust it never will) the best move we can make will be to move our works to Windsor in Canada."

*Detroit, September 21, 1874,*

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Bymand manufacturing Company, manufacturers of iron goods, state as follows:—

"Manufacturers are able to make the class of goods which we manufacture cheaper in Canada than in the United States, because labour is cheaper, and iron being free of duty there, is cheaper than here. If the markets of this country are thrown open to them it will give them an advantage for which the poor markets of that country can in no way compensate."

*Medina, New York, September 25, 1874.*

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T. W. Palmer and Joseph A. Whittier, manufacturers of lumber, state as follows:—

"We, in common with other manufacturers of the United States, are suffering from over production of our respective staples, and the general stagnation of all trade. Canada is alike suffering from over production of lumber, and looks to the proposed Reciprocity Treaty for relief, which will enable her to flood our markets with lumber, and still further depress our products.

"Owing to the direct aid given by Canada to her lumbermen, and the low price of her serf labour, she can undersell us, burdened as we are, and as our labour is, with multifarious taxes, Town, County, State, and National. The Memorial Congressional Committee have nearly prepared a compilation of statistics and arguments which we will see forwarded to you."

*Detroit, October 5, 1874.*

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E. B. Ward, manufacturer of iron and lumber, states as follows:—

"Iron, raw material free from England, and cheap Canadian labour would make Reciprocity practically free trade with England,—as the 'Sheffield Telegraph' (British) well says, 'Free Trade is the thick edge of the wedge of which Reciprocity is the thin edge,' and Free Trade is pauper wages for our workmen.

"Lumber-Canadian 'land limits' at low rates, and with no taxes, or risks by fire (as such risks are borne by Government there on the 'land limits') and our taxes and growing fire risks (I have had 35,000,000 feet burned over in the forest this season), and wages 25 per cent. higher than in Canada make so-called Reciprocity discrimination in favour of foreigners."

*Detroit, September 28, 1874.*

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## No. 2.

*Lord Tenterden to Mr. Herbert.*

Sir,

*Foreign Office, October 28, 1874.*

I AM directed by the Earl of Derby to transmit to you, to be laid before the Earl of Carnarvon, for his perusal, a despatch from Her Majesty's Chargé d'Affaires at Washington, upon the proposed Reciprocity Treaty.\*

I am, &c.  
(Signed) TENTERDEN.

## No. 3.

*Sir E. Thornton to the Earl of Derby.—(Received November 16.)*

(No. 30. Commercial.)

My Lord,

*Washington, November 2, 1874.*

I HAVE the honour to inclose a copy of a speech made on the 28th ultimo at Philadelphia, by Mr. Kelley, a Member of Congress from Pennsylvania, giving his reasons for urging the people of the United States to oppose the project recently entered upon for concluding a Treaty of Reciprocity with regard to Canada between the United States and Great Britain.

Mr. Kelley has for several years been the champion of Protection in the House of Representatives, and it may be observed that the inclosed speech was made on the eve of the elections in that State, when it will be decided whether Mr. Kelley is to retain his seat in the House. It was, therefore, addressed more particularly to his constituents, who will doubtless entirely sympathize with his feelings upon that question.

Mr. Kelley endeavours to prove that the people both of the United States and of Canada will be seriously injured by, and are entirely opposed to, the conclusion of the proposed Treaty, and that it is Great Britain alone which will profit by it. He asserts that it is by the latter that the Canadian Ministers have been induced to consent that the negotiation should be entered upon; and he even insinuates that Mr. George Brown, the joint Plenipotentiary with myself, who, as he says, was formerly a violent opponent of Reciprocity, has been converted by Her Majesty's Government.

Mr. Kelley wishes to show also that the manufacturers and shipbuilders in the United States will be ruined by allowing free competition on the part of Canada, which, as he asserts, will also give rise to the free admission into the United States of British manufactures and ships; and he affirms that this power will enable England to put an end to all manufacturing establishments in Canada.

It is somewhat satisfactory to observe that Mr. Kelley lays great stress upon the danger that the Treaty might give rise to disputes between the two countries and to a probable war; for he thus tacitly admits that the audience which he was addressing is not in any way disposed to risk a conflict with Great Britain.

Mr. Kelley finishes his speech by saying that trade can be reciprocal between Canada and the United States only when the two countries shall be united under one flag; but he deprecates the conclusion of a Treaty which would deprive the House of Representatives of their right to regulate the revenue; and suggests that the Constitution of the United States should be amended, so as to limit the Treaty-making power now held by the Executive and the Senate.

I have, &c.  
(Signed) EDWD. THORNTON.

Inclosure in No. 3.

*Extract from the "American and Gazette."**"Washington, D.C., May 20, 1874.*

CANADIAN RECIPROCITY TREATY.—AN EXHAUSTIVE ADDRESS BY HON. WILLIAM D. KELLEY—AN ABSTRACT OF HIS REMARKS.—A large audience assembled last evening at the Academy of Music to hear the Hon. William D. Kelley discuss the proposed Reciprocity Treaty. The stage was occupied by a number of prominent citizens. The

\* No. 1.



music was furnished by an orchestra of thirty pieces, under the leadership of Carl Sentz. The meeting was called to order by Hon. Morton McMichael, who nominated as President General Robert Patterson, who was unanimously elected. The following Vice-Presidents and Secretaries were also elected :—

Vice-Presidents—Hon. Henry C. Carey, Hon. Morton McMichael, James Rowland, Edwin H. Fidler, Edward Browning, James Long, Samuel J. Reeves, Joseph Wharton, J. B. Winpenny, Henry Disston, Samuel Riddle, of Delaware County, Thomas H. Powers, William Gulager, David Trainor, William C. Allison, Samuel S. White, Samuel A. Crozer, of Delaware County, Stephen T. M. Tasker, William Cramp, Charles Magarge, Henry C. Lea, George A. Burnham, Thomas Moore, Charles Lenning, William W. Harding, William Lucas, Clayton French, Richard Peterson, Edward Blanchard, of Centre County, Robert Cornelius, Captain W. W. Nevin, David Landreth, of Bucks County, Sylvester J. Megargee, George D. Rosengarten, Lemuel Coffin, Edward Claxton, William M. Seyfert, William Adamson, Bloomfield H. Moore, Henry Cartwright, Edward T. Townsend, Benjamin J. Leedom, Charles Spencer, John Dobson, Samuel C. Collins, Samuel J. Cresswell, Jun., T. Ellwood Zell, George Russell, John A. Miskey, Thomas A. Mackellar, Edwin R. Cope.

Secretaries—Edward R. Wood, Jas. F. Magee, George F. Collom, Charles Kurlbaum, Jun., Samuel C. Powell, William E. S. Baker, J. Howard Mitchell, Edmund N. Grundy, Thomas Scattergood, Henry Bower, J. Frank Garde.

Judge Kelley, amid considerable applause, was then introduced by General Patterson, and spoke to the following effect :—

Ladies and Gentlemen—Regarding the so-called Reciprocity Treaty now pending before the Senate of the United States as one of the most important measures ever submitted to that body, I cheerfully comply with the request to express my views, and will proceed at once to the subject.

The story of the British army and navy is a continuous page of glory. Yet in no sense has England made her most remunerative conquests by her army and navy. Diplomacy is the instrumentality by which these have been achieved, and should the Treaty now pending be submitted to by the American people it would be the greatest of her diplomatic conquests. The Imperial Government, so they would make us believe, does not consent that the Canadian Government may propose to the United States the terms of such a Treaty, and that its Minister at Washington may conduct negotiations, in conjunction with a representative of Canada. Meanwhile we are not to be permitted to know that England is the party supremely interested, and the only one to whose profit the Treaty will redound.

The Canadian people do not ask for a renewal of reciprocity, are opposed to almost every provision of the scheme proposed, and will suffer from some of its provisions more vitally than we can. They number but 4,000,000, and will bind them in perpetual vassalage; but as we number 40,000,000 we may emancipate ourselves. Many of the Canadians denounce it as a job put up by the British Government and the ambitious leaders of their own Dominion, who recognize the Imperial Government as the fountain of wealth and honour.

Before proceeding to consider the details of the Treaty, and point out the dangers with which its provisions threaten the industries and finances of Canada and the United States, let me call your attention to a few of England's diplomatic conquests, which will illustrate the means by which she forces her productions upon foreign nations, to the destruction of their enterprise and the prevention of the development of their natural resources. In 1535 Europe trembled before Solyman, the Sultan of Turkey. But notwithstanding this fear, Francis I and Charles V found time for war between France and the German Empire. In this war England was not engaged, yet one of its incidents paved the way to her conquest of Turkey, which she now holds almost as completely as she does Ireland or India, both of whom are victims rather of her diplomacy than of her prowess. Francis made secret proposals to the Porte for an alliance by which he could threaten the introduction of the Moslem into Italy. The Turks entered into stipulations with France. Francis brought himself into discredit with all Christian Powers by having thus recognized the Moslem. He was denounced in every Court. But the denunciations were withdrawn when it was discovered that the terms were good for trade.

Having discovered this, others hastened to enter into like capitulations. England did not succeed until 1579. Among the renewed capitulations was a provision that the duties on the importation of manufactures into Turkey should be 3 per cent. *ad valorem*, and of this provision England got the benefit. The practice has been for foreign exporters to fix their value and thus determine the amount on which the 3 per cent.

should be paid, Of course, the glories of the Ottoman Power vanished, and Turkey has been known as the Sick Man of Europe. The Turk, invincible in arms, was enslaved by diplomacy.

Encouraged by her success at Constantinople, England sought similar Treaties with Tunis, Tripoli, Morocco, and forced such provisions upon Persia, Muscat, Siam, Japan, and China. In some instances she permitted her victim to exact 5 per cent. duty on the English valuation of goods.

A writer to whom I acknowledge my indebtedness, says :—

“In the same way and at the same time, we have everywhere obtained that our goods shall be imported into all these countries at duties of either 3 or 5 per cent. We are continuing to apply to eastern nations this double system of tariffs and jurisdiction of goods and judges. To attain those ends we use all sorts of means, from courteous invitations to bombardments. We prefer to employ mere eloquence, because it is cheap and easy ; but if talking fails we follow it up by gun-boats, and in that convincing way we induce hesitating ‘barbarians’ not only to accept our two unvarying conditions, but also to pay the cost of the expedition by which their consent to these conditions was extorted from them. We tried patience and polite proposals with Tunis, Tripoli, and Morocco. China was so unwilling to listen to our advice, so blind to the striking merits of our opium and our Consuls, that we were obliged, with great regret, to resort to gentle force with her. Japan presents the most curious example of the series ; it is made up of ignorance circumvented, and of indignation frightened.”

Unlike these cases was that of the Methuen Treaty of 1684 with Portugal. The Portuguese had made great progress in the manufacture of woollen goods, and had become immense producers of wool. The people increased in prosperity, and the Government found increasing revenues. Tracing these good results to manufactures, it prohibited the introduction of woollen goods, but named the articles prohibited. English manufacturers evaded the prohibition by changing the names of their productions. Serges and druggets were soon flooding their markets, competing with their own productions under these hitherto unknown names. Determining to protect the industries of its people and its own revenues, the Portuguese prohibited the importation of articles bearing these names and of woollen cloths generally.

English manufacturers, excluded from Portuguese markets, invoked the aid of their Government, and demanded that it should destroy these industries which threatened their profits. The establishment of manufactures was, however, not a recognized cause of war. The British Government would try what diplomacy might accomplish, and Methuen, her wily representative, whispering reciprocity to the Portuguese Government, suggested commercial greatness. What if Portugal, by the admission of her wines free of duty into British ports, should enjoy a monopoly of the British wine market ? Having thus touched the ambition of the Government, it was easy to suggest that Portugal and England should by perpetual Treaty agree that the wines of the former and the woollen manufactures of the latter should be admitted free of duty. The spider charmed the fly. The Treaty was made.

Of the effect of this reciprocity upon Portugal and England, a writer in the “British Merchantman,” a few years after, said :—

“Before the Treaty our woollen goods, woollen serges, and cloth products were prohibited in Portugal. They had set up fabrics there for making cloth, and proceeded with very good success, and we might justly apprehend they would have gone on to erect other fabrics, until at last they had served themselves with every species of woollen manufactures. The Treaty takes off all prohibitions, and pledges Portugal to admit, for ever, all our woollen manufactures. Their own fabrics, by this means, were perfectly ruined, and we exported 100,000*l.* sterling value, of the single article of cloths the very year after the Treaty. The Court was pestered with remonstrances from their manufacturers, when the prohibition was taken off, pursuant to Mr. Methuen’s Treaty ; but the thing was passed, the Treaty was ratified, and their looms were all ruined.”

I do not mean to intimate that the ratifications of the pending Treaty would reduce the United States to the condition of Turkey, Portugal, or China. What I affirm is that, while closing the mines and destroying many of the industries of Canada, it would revive the trade of England, and reduce a number of our leading industries to such a condition as would impel the impoverished people to demand of the Government to disregard the Treaty, though it should involve us in war.

In order that you may judge whether this suggestion is extreme, let me invite your attention to some provisions of the Treaty. It proposes to restore to us the right we held prior to 1818, of taking, curing, and drying fish in and along the inshore fisheries

of the Dominion ; and that in consideration of this, the fishermen of the Dominion may enjoy the same rights on our coast so far south as the 39th parallel, which they have not hitherto done. In so far I can discover only harmless and substantial reciprocity.

It is proposed that the articles, being the growth, produce, or manufacture of the Dominion, or of the United States, enumerated in three schedules, shall, on their importation from the one country into the other, from the 1st of July, 1875, to the 30th of June, 1876, pay only two-thirds of the duties payable at the date of the Treaty, and from the 1st July, 1876, to the 30th of July, 1877, shall pay only one-third of such duties, and on and after July, 1877, for twenty-one years, such goods shall be admitted free of duty.

It proposes to extend the British frontiers to and through Lake Champlain and the Hudson River to the wharves of New York, and along the St. Clair Flats Canal and the Sault Ste. Marie Canal, and to so improve these channels that British vessels of war drawing twelve feet may traverse them, and in the event of war, occupy these great channels, harass our lake ports, and invest cities and towns upon the lakes.

In making this statement I express a possibility its projector evidently had in view. The Treaty being one of amity, such suggestions could have no place in its text.

Article V stipulates that the Canadian canals from Lake Erie to Montreal shall be enlarged so as to pass vessels drawing 12 feet of water; the locks not to be less than 270 feet in length, 45 feet in width; and that the channel of the St. Lawrence shall be deepened between the canals, so as to allow the passage of vessels drawing 12 feet.

Article VI stipulates that Canada shall, before January, 1880, construct a canal of like dimensions to connect the St. Lawrence with Lake Champlain, and binds the United States to urge New York to cause the canal from Whitehall to Albany to be enlarged and extended, or another constructed of equal capacity with the Caughnawaga Canal; and the navigation of the Hudson River improved so as to admit the passage to the lower waters of the Hudson River of vessels drawing 12 feet of water.

When this shall have been accomplished, will not the maritime frontier of the British provinces have been extended to the wharves of New York, and an ample channel have been provided for the approach of English war vessels of light draught to our commercial metropolis?

The provisions of Article VIII, which secures the free use of these channels to Canadian vessels, are so complicated that I state them in the language of the Treaty. They are as follows:—

It is agreed that, for the term of years mentioned in Article XIII of this Treaty, the citizens of the United States shall enjoy the use of the Welland, the St. Lawrence, and other canals in the Dominion of Canada (including the proposed Caughnawaga Canal), on terms of equality with the inhabitants of the Dominion, and that without interfering with the right of the Government of Canada to impose such tolls on the aforesaid Canadian canals respectively as it may think fit; the tolls shall be levied in relation to the number of the locks in each canal, without any drawback or discrimination, whatever the destination of the vessel, or part of a canal be passed.

And it is also agreed that for the like term of years the inhabitants of Canada shall enjoy the use of the St. Clair Flats Canal on terms of equality with the inhabitants of the United States; and that the navigation of Lake Champlain and Lake Michigan shall be free and open for the purpose of commerce to the inhabitants of Canada, subject to any laws or regulations of the United States, or of the States bordering thereon, not inconsistent with free navigation.

And the United States further engage to urge upon the Governments of the States of New York and Michigan to secure to the inhabitants of Canada the use of the Erie, the Whitehall, the Sault Ste. Marie canals, and of any enlarged or new canal or other improvement connecting Lake Champlain with the lower waters of the Hudson River, which may be made, on terms of equality with the United States.

And it is agreed that full power shall be given to transship cargo from vessels into canal boats, and from canal boats into vessels, at either terminus of every canal.

And further, that if the use of the canal connecting Lake Champlain, with the lower Hudson and of Sault Ste. Marie canal, be not granted to the inhabitants of Canada on terms of equality contemplated in this Article, then the use of the proposed Caughnawaga canal by the citizens of the United States, as above contemplated, shall cease until the use of the said canals in the United States shall be secured to the inhabitants of Canada.

The remarkable growth of our ship-yards and increase of our commercial marine

was secured by the Administration of Washington, when they carried into effect navigation laws, which provided that all exchange of commodities between United States' ports should be carried in vessels built in the country and owned exclusively by American citizens residing in the country. Our domestic and coastwise commerce is more than thirty times as great as our foreign commerce, and by securing it to American-built vessels, owned and manned by American citizens, the fathers assured the growth of our ship-building and the maintenance of a training school for sailors. But the English draftsman of this Treaty has discovered a commercial Republic will best consult its interests by permitting the subjects of its rival to build its vessels and conduct the carrying trade between its ports. Lest it may be doubted whether British effrontery could go so far, let me remind you that we import most of our ship-timber from Canada, that wages in the Dominion are but 66 to 75 per cent. of those we pay, and invite your attention to Article IX, which is as follows:—

“For the term of years mentioned in Article XIII of this Treaty, vessels of all kinds built in the United States may be purchased by inhabitants of Canada, subjects of Great Britain, and registered in Canada as Canadian vessels, and, reciprocally, vessels of all kinds built in Canada may be purchased by citizens of the United States and registered in the United States as United States' vessels.”

It may not be improper to remark that a vessel registered as a United States' vessel may sail under our flag and engage in our domestic or coastwise carrying trade; and that as timber is so much cheaper, and wages so much lower in Canada than in the United States, we would under this stipulation soon count ship-building as a lost art. Whether at the end of twenty-four years Congress could revive it by annulling the Treaty and reviving the wise navigation laws of the fathers, no thoughtful man will attempt to say.

Having thus illustrated the modesty of British diplomacy, the Treaty provides that after twenty-one years from July, 1875, either of the Contracting Parties may give notice of its wish that at the end of three years the Treaty shall terminate. As it would require Congress to instruct the President to give such notice, more than a quarter of a century must elapse before we will be able to escape from the enfeebling provisions of this Treaty. What Minister or Senator has the prescience to determine the fiscal policy this country will require ten years hence? Has the Executive the right to deprive Congress of its constitutional control of the revenue-system of the country for a quarter of a century? And will the American people consent to be impoverished for so long a period by such an assumption of power by any Executive? One thing is certain, if we wish to avoid such “entangling alliances” as this, and grow at our normal rate, the American people will a quarter of a century hence number nearly, if not quite, one hundred millions.

What will be their condition as to wealth, refinement and power I will not attempt to suggest, but a brief retrospect may help you to conceive.

A quarter of a century ago there was no San Francisco, California, Nevada, Arizona and New Mexico were still Mexican territory. Neither science nor observation had detected gold and silver, or the agricultural capabilities of that vast country. The great railroad centre of the West had not yet come into public view. The 10,000 people who had gathered at Chicago had no presentiment that the swamp in which they dwelt would be filled up and raised nearly twenty feet, to provide drainage for the streets of the city. Michigan then had a population of less than 250,000, and Missouri and Iowa each but 100,000, and civilization had not penetrated Minnesota, where the census-takers four years later found but 6,038 people. Four years later there were but 91,635 people in California, which had been admitted to the Union, and whose deposits of gold attracted immigrants. There was no Government in Kansas and Nebraska, that whole region being in possession of the Indian and buffalo. The name of Omaha had not been heard, and the vast mineral, grazing and agricultural region through which the Union and Pacific Railroad is now doing a rapidly-increasing business, was the “Great American Desert.” Philadelphia had no railroad connection with Pittsburg, Pittsburg none with Cincinnati or Chicago, nor any of these with St. Louis. The north-western portion of our State was known as the “Wildcat Country,” in which it was regarded as a misfortune to own land; and properties in which coal and petroleum have been discovered were sold every few years for taxes.

Surely the world moves, and time does work wonders. What railroads we have you know; what railroads we are to have you only begin to suspect. In Europe the increase of population has been scarcely perceptible. The oppressions of the feudal past linger there, and cannot be shaken off. But here, where man is free, and Nature offers boundless returns to enterprise, empires have risen, and millions of people, born in many lands, are, as American citizens, enjoying all the comforts of civilization, and originating enter-

prises which are in the next quarter of a century to work marvellous changes. Our extension of territory, great as it has been, is of small consequence in comparison with the achievements in science and art, whereby man is enabled to produce ten-fold, and in many departments of productive industry a hundred-fold as he could twenty-five years by the same labour. New roads are to be built, new towns, cities, and States to be created, new resources to be developed; and the sluggish people of the Orient are to contribute their share to the commerce of the world.

The people of Canada do not desire this Treaty. They justly dread it more than we have reason to. They see that it is replete with causes of misunderstanding, and more than one of these are grave enough to be a possible cause of war. In such a case Canada would be the battle-field. I have observed several allusions to this possibility in Canadian discussions. But on other points they speak more freely. The "Hamilton Spectator" said:—

"Not only does this Treaty propose free trade between us and the United States, but it involves free trade between us and Great Britain. It is not to be supposed that the British Government has consented to the Treaty without stipulating for the same privileges for their own people as are to be accorded to those of the United States. Is there a sane man in Canada who believes our infant manufacturing can withstand that assault? This free trade also dries up the main source of our present revenue. Now the national works which the faith of the country is pledged to carry out, require that our revenue should be increased. From what source, then, is that increase and the deficiency caused by the Treaty to be made good? Direct taxation is our only resort."

In another article, approving the protest of the Dominion Board of Trade against the Treaty, the same paper says:—

"It is folly any longer to disguise the fact that unless we are saved by the Senate we are on the eve of a crisis which ought to make thoughtful men pause. If this 'leap in the dark' is once taken it cannot, unfortunately, be recalled. For nearly a quarter of a century the Treaty moulds our fiscal policy. No matter what changes may take place in our condition we leave ourselves powerless to take advantage of either. Our people may grow restive under direct taxation which the Treaty will impose, but they will be bound to it. The United States can afford the experiment, because if it should prove injurious to them it will be but a drop in the bucket, but to us the question is vital."

On the 23rd of September a large meeting assembled in Toronto to consider the Treaty. The time of the meeting was selected with reference to the assembling at Toronto of a political convention, and the holding of a provincial exhibition of productions. Quite a number of gentlemen addressed the meeting, and I will quote briefly from some.

Mr. Hewitt said that "their country had not long emerged from a wilderness. They ought to try to develop the mineral resources and to develop manufactures. It would not be well for Canada to remain simply agricultural. It had never been asserted by those who desired to see the Treaty passed that it would benefit the iron, leather, or paper trade, but it had been said that the agricultural classes would be benefitted." He also observed that "it was well for a country to develop its own resources, and also to consume its own productions. The Treaty would entail many difficulties, for if it were found to be impossible for Canada to fulfil the obligations regarding the canal it would bring about a quarrel with the United States."

Mr. Reynolds said that "the Treaty would probably bring about direct taxation."

Mr. E. O. Bickford said "George Brown was the cause of this Treaty, and he only did so for self-aggrandisement. It had been argued that England did well under a policy of free trade; but the trade of England had been built up under a protective policy, and England only desired free trade when her manufactures had been thoroughly built up. If Canada passed the Reciprocity Treaty the manufacturing interests of the country would be done away with. Under the present circumstances emigrants could always get work, but if the Treaty were adopted there would be no work for persons who arrive from Europe."

Dr. Rolles reminded the meeting that it had come to consider a matter affecting the social welfare of the country for twenty years, and that it was the general opinion in Canada that the Treaty had not been negotiated in a constitutional manner. Mr. Brown had objected to endeavouring to get the United States to grant a Treaty, but now he was suing for one.

Other gentlemen spoke, making it clear that none of them regarded the movement

as originating with the Canadian people, or desired by them. The most authoritative of these expressions was that of the Dominion Board of Trade, which expressed its disapproval of the Treaty by the vote of twenty-seven to six.

The Canadian papers speak of the Board as a representative body, coming from every section of the Dominion, and say that it was governed by purely commercial considerations.

I might adduce much additional evidence of the hostility of the people of the Dominion to the proposed Treaty, but will exhibit other confirmations of my theory that the Treaty is a job, put up by the British and Canadian Ministers, of which the people of the North American Colonies are, in common with the people of the United States, to be the victims.

Let us glance at a chapter from the British Blue Book, entitled, "North America, No. 4, 1874. Correspondence relating to the Negotiations for a Reciprocity Treaty between Canada and the United States."

I pray you keep in mind that Mr. George Brown had been the persistent adversary of reciprocity. You will then wonder at the part assigned him, and ask yourselves what made him the fittest man in the Dominion to aid Sir Edward Thornton in the arrangement of the terms and the promotion of the proposed Treaty.

The correspondence in the Blue Book shows that in February, 1874, he and Mr. Mackenzie discovered a favourable opportunity for the renewal of negotiations by which the claim for compensation as regards the fisheries might be settled without the reference provided for by the Treaty of Washington. How do we arrive at this information? Why, No. 1 of this correspondence is from a letter of the Earl of Dufferin to the Earl of Carnarvon, with one inclosure. It is dated February 24, 1874, and reads as follows:—

"I have the honour to send herewith an approved copy of the Order in Council of the 23rd of February. My advisers are very anxious to take advantage of the opportunity to re-establish a Reciprocity Treaty between Canada and the United States of America. I imagine that the course they contemplate will be generally approved, and they assure me that it will meet with the approbation of Parliament."

The inclosure is dated the 23rd of February, and is a report of the Privy Council, setting forth that the Committee of Councils had a memorandum, dated that day, from the Honourable Mr. Mackenzie, in which he states that he considers the present a most favourable opportunity, &c., so that it appears that the matter was brought to the attention of Councils on the 23rd of February, and was acted upon forthwith, and a minute transmitted by telegraph to the Imperial Government the same day, and a full copy forwarded by mail the next. But the Earl of Carnarvon did not wait the full copy.

On the 5th of March his Lordship replied to Lord Dufferin, approving the proposal, and informing the Canadian Ministers that they "might rest assured that Her Majesty's Government are desirous to meet the wishes of the Canadian Ministers, and that they will give careful consideration to any further proposals which may be made by them during the negotiations;" and his Lordship added that "with view to saving delay you are at liberty to communicate with Sir Edward Thornton the views of your Government, taking care to transmit to me copies."

Here it becomes apparent that part of the correspondence has been withheld, even from Parliament.

The next communication is from the Earl of Dufferin to the Earl of Carnarvon, dated March 17, 1874, in which the Governor-General says:—

"I have the honour to acknowledge the telegram dated March 14, in which you signify your assent to the request that a Canadian should be associated with Sir Edward Thornton in the negotiation with the United States for the renewal of the Reciprocity Treaty."

His Lordship then conveys to the Earl of Carnarvon "the sense of Mr. Mackenzie and his colleagues in the Administration," and informs his Lordship that "it is perfectly understood by the Dominion Government that Her Majesty's Government, in the substitution of a Reciprocity Treaty in lieu of the money payment secured to Canada by her fishery claims in the Treaty of Washington, have done so at the solicitations of the Canadian Government;" and adds that "it is also understood that the Canadian Commissioners will act under Imperial instructions, and that all propositions to be made to the United States' Government will be previously submitted to the Secretary of State."

Just here questions obtrude. Can you help asking why the communication of the Governor-General conveying the request that a Canadian gentleman might be associated



with Sir Edward Thornton, is not given in this Blue Book? The request had been made before the 14th of March, for on that day it was granted by telegram. Could the request have been enforced by the suggestion that a Canadian might avail himself of agencies which diplomatic propriety would prevent Her Majesty's Minister from resorting to? Circumstances may shed some light on the point. Again, if these negotiations had been instituted at the special instance of the Canadian Government, why did the Earls of Dufferin and Carnarvon feel it necessary to spread the fact so broadly upon the face of the correspondence published? If the Canadian people had impelled their Government to ask for a Reciprocity Treaty some of them would have known the fact before reading this diplomatic assurance. Yet their knowledge depends upon this assurance alone.

Why, if Mr. George Brown's conversion had been sudden, and he had been inspired to move the Privy Council and the Governor-General with such zeal that his idea must be telegraphed to England on the day, was not Lord Dufferin content to let the world accept the fact without putting it so prominently before the public? And if the movement was of Canadian origin, and for the benefit of Canada, and consented to by the British Government, why does Dufferin take such pains to assure Carnarvon that it is understood that the Canadian Commissioner "will act under Imperial instructions, and that all propositions to be made to the United States' Government will be previously submitted to the Secretary of State?"

But if these negotiations were initiated and conducted at the instance of the Canadian Government, Mr. Brown imparted his own fiery zeal to Her Majesty's Ministers. This subject was first suggested in the Privy Council on the 23rd of February, and the Earl of Derby, February 27, transmitted to Sir Edward Thornton a copy of the telegraphic despatch received from the Governor-General of Canada, "informing Sir Edward that Her Majesty's Government are ready to make the proposals which the Council desire, and authorize you to propose to the United States' Government to enter into a Treaty to renew the 11th Article of the Reciprocity Treaty of 1854, with a provision for preserving in force Articles XXII to XXV of the Treaty of Washington, in case the arrangement now proposed should fail to be carried out."

In view of these facts is there room to doubt that Mr. George Brown's inspiration came from the British Government? The unbroken current of events showed that the American people were hostile to such a project.

Congress availed itself of the earliest opportunity to give notice of the termination of the Treaty of 1854, and its action had been approved by the entire country. In the early part of the Session of 1865-66 the Committee of Ways and Means reported a Bill to the House which, by a reduction of the duties on Canadian productions would practically revive some of the provisions of the expiring Treaty, but it was so roughly handled that the Chairman withdrew the Bill. The Representatives of the people would not tolerate even this modified reciprocity, though it would be under their control and liable to revision as business might require.

But, as if to emphasize the national hostility to the measure, the Congress by a joint resolution, June 23, 1870, required the Secretary of the Treasury to appoint a special agent to inquire into the extent and state of the trade between the United States and the dependencies of Great Britain in North America. The Secretary confided that duty to Mr. J. N. Larned. This report was made January 28, and transmitted to Congress the 3rd of February, 1871, and from that day till the coming among us of Mr. George Brown, no expression in favour of reciprocity had been heard. That opinion had to be created, and Mr. Brown concluded that he could, if the British Government would furnish him with what he deemed the proper appliances, come to this country and create it.

Mr. Brown does not lack confidence. It was not till the 21st of March that the Earl of Derby informed him of Her Majesty having been pleased to appoint him Joint Plenipotentiary with Her Majesty's Minister, for negotiating a Treaty with the United States, and acquainting him with the fact that Her Majesty had granted to him and Sir Edward Thornton full authority. But anticipating his appointment, Mr. George Brown had come early in February, and begun to manufacture the opinion which was to justify his assertion.

During that visit he seems to have done little else than confer with Sir Edward Thornton, and ascertain the material out of which he could organize lobbyists to influence public sentiments. He made the intimate acquaintance of some newspaper managers. Having accomplished this much, he returned to Canada to induce the Privy Council to act, and did not return till he had been commissioned. But he was not demonstrative. To have opened the subject in March or April might have aroused

opposition, and it was not till about the 10th that the articles which he had prepared began to appear in free-trade journals. Mr. Brown is evidently industrious. Having seen his articles in the papers he republished them in broadsides, and flooded the mails of unsuspecting members and Senators. They failed to convince the judgment or awake the enthusiasm of any portion of the people. In justice to Mr. Brown I should, perhaps, suggest that it must have been his love of editorial labour that tempted him to so flagrantly transcend the limits of an accredited Diplomatic Agent as to thus attempt to influence popular and Senatorial action on questions pending before the Government.

Boston rejoices in an organ of British trade known as the "Boston Journal of Commerce." Its Washington correspondent seems to have been admitted freely to the councils of the British Plenipotentiaries, and when Sir Edward Thornton and Mr. George Brown had sufficiently matured their plans their ally laid this communication before the readers of the "Boston Journal of Commerce":—

"Washington, District of Columbia, May 20, 1874.

"To New England the question of Canadian reciprocity and the freedom of the inshore fisheries of the maritime Provinces of the New Dominion must be of paramount importance. There is no doubt whatever, that the British Government has made proposals to us looking toward the negotiation of a new Reciprocity Treaty.

"Early in the present season, Mr. Brown, editor of the 'Toronto Globe,' appeared here with Mr. Shaw, the United States' Consul at that place. Several weeks after Mr. Brown returned alone, and took up his residence at Sir Edward Thornton's, the sagacious and suave diplomat who represents Great Britain at this Government. Mr. Brown has remained here since, few persons seeming to know that he was the confidential agent of the Dominion Government in working up a reciprocity Treaty. This fact did not fasten itself on my mind until seeing articles, evidently inspired by one source, in the press of different sections. I do not say the inspiration is that of Mr. Brown, but I am inclined to attribute some of them to the State Department itself. Mr. Fish is quite shrewd; he knows how to use as well as to abuse the press. A well-informed Washington journalist will, however, be sure to suppose, when he sees an elaborate despatch relating to foreign affairs, that the same has been inspired by the State Department. The gentleman who is at the head of their office would avoid one relating to diplomacy, unless it came by authority. As a proof of the movements in the direction of reciprocity negotiations, let me cite a very elaborate Associated Press despatch from Washington, under date of the 12th instant; to an editorial in the 'Tribune' of the 15th; to one in the 'World' of the 9th; to an editorial in the 'Times' of the 16th; of the 'Chicago Post' and 'Mail' of the 13th; of the 'Tribune' thereof, same date; and to articles in the 'Evening Post,' 'Springfield Republican,' and other papers. Mr. Brown understands the way to influence the American public, and Sir Edward Thornton appears to have well selected the means of reaching the American Senate. A series of very quiet *petit* dinners have been in progress at the British Embassy. To these attractive affairs Senators and public men are invited. They have courses of Brown and reciprocity mingled with the soups, joints, and *entrées*.

"A leading Member of the House dined there a few evenings since. The conversation turned on 'reciprocity,' Canada, its relations with the United States. Mr. Brown was eloquent on the advantages of such a Treaty, which it is understood has been proposed by Sir Edward, and an answer is expected by the 10th of June from the State Department. The Minister, while Mr. Brown was arguing that the Dominion would and need not gravitate to the United States, and that it would be better for both to be separate, remarked to the guest referred to, 'Of course, General, I would not say so to Mr. Brown, for he is a Canadian, and all his interests are there, but speaking for myself I should not care at all if the Provinces were to be annexed to the United States tomorrow; nor do I believe the result would greatly annoy the British Government.' Perhaps this may have been undiplomatic, but it was significant. It is rumoured here that the visits of the editorial Warwicks of the Liberal movement, Horace White, 'Sam' Bowles, Murat Halstead and Watterson, had something to do with pushing Mr. George Brown's mission."

Before passing from this curious epistle, which contains more truth than poetry, I must declare that I cannot believe; and that no one who knows the present Secretary of State will believe, that he was capable of conspiring against the interests of the trade and commerce of his country, and of forwarding such a negotiation, while carefully concealing the fact from those Senators and Members of Congress who, it might be fair to presume, might warn the country of the impending danger. But it remains a curious fact that, while certain friends of free trade in and out of Congress appear to have been



fully apprized of the progress of the scheme, others could obtain no information. The letter I have just read and other papers overcame my incredulity, and seven days after the date of that letter I asked consent to submit the following resolution. It was read and objected to by Mr. Cox, the Representative of the foreign trade of New York. It, however, went to the Associated Press, and served to warn the country and call forth many protests.

“Whereas, by section 7, Article 1 of the Constitution of the United States, it is provided that all Bills for raising revenue shall originate in the House of Representatives, and by section 9 of said Article it is further provided that Congress shall have power to levy and collect taxes, duties, imposts, and excises, and to regulate commerce with foreign nations ; therefore be it—

“Resolved, That the President of the United States be and he is hereby requested to inform this House whether the Executive Department of the Government is at this time considering the terms of a Treaty by which commerce between the United States and the British Provinces of North America is to be regulated, and by which Congress will be deprived of its constitutional right to control these important subjects thus specifically confided to it by the express terms of the Constitution.”

One line of proof in addition to those adduced that this Treaty is an English job I must refer to. It is the jubilant tone of the home organs of British manufacturers at the prospect of free trade with the United States. I shall detain you by reading but one sample of many. Referring to the meetings held after the plot had been discovered in various parts of Pennsylvania, by the representatives of a number of industries, to protest against the ratification of this Treaty, the “Sheffield Telegraph” of August 22, says:—

“What wonder these gentlemen indulged in heated speeches and passed condemnatory resolutions. They know that the Reciprocity Treaty once passed, the days of monopoly are numbered. Congressional mills grind slowly, but with the new Democratic blood being introduced they will grind monopoly to an impalpable powder. Meantime, in the wrath of Pennsylvania manufacturers at the probable introduction of the thin edge of the wedge, the thick end of which is free trade, English manufacturers in general should see that something is transpiring worthy of their earnest attention. Since Pittsburg is so enraged at the distant prospect of being brought into a neck-and-neck race with Sheffield—Sheffield only handicapped with the cost of freight, it is time for Sheffield to get itself into training. This event is yet in the distance, but we desire to point out to Sheffield manufacturers that there may be a field in which they can, the Reciprocity Treaty ratified, compete with Pennsylvania manufactures on their own ground, when free trade, of which reciprocity is the first fruits, opens that ground to international competition. England has been emphatically assured by the Canadian Prime Minister, the Canadian Plenipotentiary, and lastly and most strongly—by Lord Dufferin, in his speech at Chicago, that Canada will not consent to a differential arrangement to the prejudice of the mother-country. In other words, what the United States is permitted to import into Canada at specific duty or free of duty, that also it will be arranged may be imported from the United Kingdom on precisely the same terms. Well, then, shall not our iron and hardware manufacturers go up and possess the land. The import duties into Canada of the articles named are as follows:—

	Per cent.
Canada plates and tin plates .. .. .	5
Sheet iron .. .. .	5
Nail and spike rod iron .. .. .	5
Bar, rod or hoop iron .. .. .	5
Boiler plate iron .. .. .	5
Rolled plate iron .. .. .	5
Brass or copper, manufactured .. .. .	15
Hardware .. .. .	15
Plated ware .. .. .	15

“Now, free admission of all, or nearly all, these articles into Canada will no doubt be stipulated on behalf of the American manufacturers. If such a stipulation is ratified the same privilege will be conferred on English manufacturers. Surely they will not fail to take advantage of it when the disadvantages they will labour under will be merely the difference in freight—a difference which very slight economy would surmount. Shoals of American citizens are passing over to Canada in the summer, and as we, when in a Continental country, buy our box of cigars or other cheap product, so American citizens in Canada ransack the cities and towns for cheap purchases, articles of British manufacture being specially in demand. Our serious advice to manufacturers is: Leave no stone unturned to take the leading position in the

Canadian markets when the Reciprocity Treaty is ratified. Send to the New Dominion the best specimens of your manufacture, and charge the lowest practicable price, because in so doing you will be hastening the downfall of American monopoly, and, by your excellent workmanship and reasonable charges in the smaller market of Canada, throwing open for yourselves the almost unlimited market of the American Union, and obtaining a foothold there from which, if you act with energy and discretion, you can never be driven."

The editor of the "Sheffield Telegraph" was slightly mistaken when he supposed that American manufacturers would stipulate for the free admission of all or any of the articles he enumerated. Indeed, he was mistaken in supposing that the tactics of the British Government would permit the American manufacturers to have any voice in the matter or propose any stipulations. The cunningly-devised plan of Her Majesty's Representatives was to negotiate in secret, and have the Treaty sent to the Senate for confirmation in the closing hours of the Session, before the protest of the people could be heard. In relation to the so-called Treaty of Reciprocity one side only was to be heard.

I have here a copy of a "Memorandum of the Commercial Relations of the British North American Provinces with the United States," which was circulated confidentially in Washington during the last Session of the Senate. It is dated Washington, 27th of April, 1874, and is signed Edward Thornton and George Brown. It says: "An impartial examination of the commercial relations for fifty years cannot fail to establish that the traffic has been exceedingly valuable to both countries, but that the United States have reaped the largest advantage." Time will not permit me to bring to your notice the briefest abstract of this statement, but I may remark, in passing, that if it be full and frank, Sir Edward Thornton and Mr. George Brown must feel that the injunction "Do unto others as you would have others do unto you," should read, "Do unto others a great deal more than you would hope or expect anybody to do unto you." So surprised was I that I determined to compare the statement with facts found by the American Agent. Mr. Larned is not hostile to reciprocity. Speaking of the trade under the former Treaty, Mr. Larned says: "The actual trade which occurred between the two countries during the Covenant of 1854, shows an inequality of exchanges nearly in the proportion of two to one. 239,000,000 of dollars' worth of Canadian products found a free market in the United States, under the provisions of the Treaty, against 124,000,000 dollars of American products for which the Treaty opened a free market in the Canadas. Of the total Canadian products sold in the United States during a twelve years' period 94 per cent. came free and but 6 per cent. paid duty, while 58 per cent. only of the American commodities sold in Canada passed free to their market; and 42 per cent. of all paid tribute to the Custom-houses of the Provincial Government. Moreover, the entire sales from this country to Canada, free goods and dutiable goods, domestic products and foreign re-exports, altogether aggregate less for the twelve years by 26,000,000 dollars than the free goods which Canadian producers were enabled by the Treaty to sell in the United States.

In considering the question whether reciprocal free trade between the Dominion and the United States is practicable, Mr. Larned says: "We want not simply to exchange breadstuffs, and provisions and coals, and hides and tallow with them, but to sell them our own cottons, our boots and shoes, our machinery, and our manufactures generally, in trade for their lumber, their live stock, their ashes, their plaster, their furs, their minerals, and the general products of their farmers. We want, in fact, such an adjustment of the trade that the provinces shall not sell what they have to sell in the United States and buy what they have to buy in Great Britain."

The facts, figures, and deductions of Mr. Larned cannot be reconciled with those presented in this pamphlet to the American press and chosen members of the United States' Senate, and embodied in the chapter of the British Blue Book to which I have referred.

But let us turn to the schedules containing the articles in which Canada is to enjoy by virtue of the proposed Treaty free trade with both England and the United States. They are constructed with great ingenuity, and leave open irritating questions enough to involve us in war twenty times over. The editor of the "Sheffield Telegraph," though mistaken in supposing that the American manufacturers would stipulate for the free admission of the articles he enumerated, was right when he suggested that they would be found in these schedules. Here they are: Iron—Bar, hoop, pig, puddled, rod, sheet, or scrap; iron nails, spikes, bolts, tacks, brads, or sprigs; iron castings, axes, axles, spades, shovels, snaths; locomotives for railways or parts thereof; lead, sheet, or pig; mill or factory, or steam-boat, fixed engines and machines, or parts thereof; printing

type, presses, and folders, paper cutters, ruling-machines, page-numbering machines, stereotyping and electrotyping apparatus, or parts thereof; railroad cars, carriages, and trucks, or parts thereof; steel, wrought or cast, and steel plates and rails; tin tubes and piping; waterwheel machines and apparatus, or parts thereof; tweeds of wool solely; printing paper for newspapers, &c., &c., *ad infinitum*.

In examining the list of articles you will be struck by the ingenuity with which many of our industries which give work and wages to great numbers of people are to be involved in free competition with the lower wages of England and Scotland, and with which grave questions are left open for future settlement. The terms of the Treaty refer to articles, the growth, production, or manufacture of the Dominion or the United States. If difference arise as to the construction, shall we refer our Tariff Laws and Customs Regulations to a Joint High Commission? Under the teachings of the representatives of the Manchester school of economy, the spade would enter free as a manufacture. Mr. Edward Atkinson asserts that pig-iron and cast-steel are raw material, because pig-iron will certainly be advanced, and cast-steel is used as the material out of which tools, surgical instruments, and other articles are manufactured; thus, broadcloth, in his loose way of thinking, is not only the material, but the raw material of the tailor. More accurate thinkers, while admitting that broadcloth is the material of the tailor, and steel the material from which saws and other tools are fashioned, take care to define them as the manufactured or advanced materials which others, by their skill and labour, will still further advance.

Again, we find in this same schedule printing paper for newspapers. But suppose our market should be flooded with the fine-sized paper upon which our best illustrated journals are printed, and it should be found, as has been the case in our experience, that the dimensions had been so arranged as to permit them to be cut without any loss into foolscap, post, and note paper. We could not prevent parties from using it as foolscap, post, or note paper, though the Treaty brought it free as printing paper. And again, we have tweeds of wool solely. What are tweeds? It is a commercial designation, and the articles to which it applies change with the fashion, and the same might cover in our markets as many varieties of woollen cloths as were once called serges and druggets in Portugal.

But, if this be regarded as an imaginary danger, is there not a real and grave one in the probability of yarns being spun and dyed and brought free of duty into Canada, to be woven or manufactured into every kind of cloth for free entry into our market? Am I wrong in thinking the American people would compel the Government, even at the cost of war, to disregard a Treaty so replete with fraudulent devices by which to work their ruin?

Reciprocity between our northern neighbour and ourselves, if possible, would be beneficial. Whatever increases the productive activities of a people is a blessing to their country, and those of the Canadian people, numbering about 4,000,000, would be quickened could they have access to our markets, while we should not fail to receive some slight advantage from freer access to their more limited markets; but the contrast between the markets of 4,000,000 of people, whose rivers and lakes are ice-bound nearly half the year, during which they have no commercial outlet except through our territories by rail, and those of 40,000,000 of more active and prosperous people, whose rivers are never obstructed by ice, are by no means reciprocal.

But will we derive no advantages from the widening and deepening of the Welland Canal, and the improvement of the Channel of the St. Lawrence? Yes, the people inhabiting limited sections would be greatly benefitted, but it is a privilege they need not purchase; they must get it. The very existence of the Dominion demands the speedy completion of these works. Without them all their interests languish, and an ample answer to the sophistical Memorandum of Commercial relations prepared by Sir Edward Thornton and Mr. George Brown, by which they show such marvellously-favourable results to the United States from reciprocity, are answered by the indisputable fact that during the existence of that Treaty few or no Canadians emigrated to the United States, but that with the cessation of that Treaty there began a flow of Canadian immigrants into this country which has been so steady and so large, that Canadian French is found to be the prevailing language in many of the new manufacturing districts of New England. Indeed, so great has been the immigration of French Canadians to this country, that a public effort has recently been set on foot to induce them to return. It will not be easy to persuade the American people that the Canadians adhered to their native land for twelve years, during which the people of the United States were absorbing their wealth, and that when the cause of their suffering had been removed, they emigrated from their more prosperous country by hundreds of thousands.

On this point one of the daily newspapers of Montreal said, in October 1870:

“Statistics tell us that we annually suffer heavier losses from native persons leaving the country than the total immigration returns. There are, at a low computation, 500,000 native Canadians now domiciled in the United States. They have established themselves in the Republic because the spirit of enterprise seems to have died out on this soil, and they see no field open to skilled industry.” That was in less than four years from the termination of the Reciprocity Treaty. It was said in a public address, by one of the most prominent men of Quebec, a year before the date of his report, that “the immigration of common labourers to the States is alarming, and our water-powers are neglected, our mines are closed, and we have no means of furnishing employment to our people;” and he adds, “within a few weeks past, to cite one more authority, the leading newspaper of the City of Quebec, the ‘Daily Chronicle,’ made the following statement: ‘Ship-building, formerly the main industry of Quebec, has almost ceased to exist, and, consequently, our labouring population are commencing to seek in the adjoining Republic that employment which can no longer be found here.’”

The truth is that Canada cannot exist without our carrying trade. It is our traffic that is making Montreal a great shipping port, whence western grain and provisions are sent to British ports, thus supporting the Canadian railway system, ship-yards, and steam marine. Without this trade no railroad or Canal in the Dominion would be a remunerative property. Mr. Larned says: “No one will question that we find convenience in the use of Canadian channels, and that we find profit in acting as the carriers of so large a part of the commerce of Canada with the outside world. Both these arrangements are of important value to the country, and its interests would suffer materially from any suspension; but the difference in the situation of the two countries with reference to that is very marked. To the Canadian provinces their importance is nothing less than vital, since, on the one hand, the very sustenance of the arterial system of the Canadas is derived from the American commerce which circulates through it; while, on the other hand, their own commerce with the world abroad can only be conducted at exceeding disadvantage, if at all, for five months of the year, otherwise than across the territory of the United States.”

If, therefore, the Dominion desires to promote immigration and settlement, and to develop the mineral resources of the country, she must open such channels as will accommodate it, and must manage them in such a way and for such rates of toll as will transport our products through her territory cheaper and more expeditiously than it can be done over our own. Why, then, should we endanger our industries and involve ourselves in entanglements with England from which war alone can relieve us, as consideration for her doing that without doing which she cannot live and grow?

Trade between the Dominion and us can be reciprocal only when the same flag shall wave over both countries, and the people of each shall bear their share of the burdens imposed upon us by the recent war, which the Canadians did so much to prolong. Then labour in either country will find equal rewards, which it does not now. Meanwhile, ladies and gentlemen, I say to you, as I said to the House of Representatives when addressing it on this subject on the 7th of March, 1866, “Let us maintain our rights, our interests, and our country’s dignity. Let us go our way as though there were no British provinces; and the mere action of British legislation constraining their people to unrequited agricultural labour will make them sigh for our prosperity, and then we shall find that the American Constitution is as elastic as it is grand and enduring. It has expanded to embrace immense tracts of territory. Our flag has swept from the limits of the thirteen original States to the Pacific and southward to the Rio Grande; and, Sir, when the people of Canada shall, as they will, if we protect our labour, ask to unite their destinies with ours, the world will receive additional proof that when Providence impelled our fathers to the creation of our Government, it gave them the wisdom to bless us with a Constitution which is the fit canopy of a continent, and will yet crown one.”

Here I should pause, but you will bear with me a few minutes more. I cannot believe—indeed, I will not believe, that the Senate will consent to the ratification of this Treaty.

But the fact that a Treaty which would deprive the House of Representatives of their right to regulate the revenues, revolutionize our revenue system, and compel us to depend chiefly on direct taxation as this one would, illustrates a possibility of danger against which the people should demand a constitutional safeguard. The next amendment to the Constitution should, in my judgment be one limiting the Treaty-making power and guarding against executive encroachment upon the constitutional right of the representatives of the people to regulate the revenues of the country.

*Sir E. Thornton to the Earl of Derby.—(Received November 22.)*

(No. 306. Confidential.)

My Lord;

*Washington, November 9, 1874.*

WITH reference to Mr. Watson's confidential despatch No. 134, of the 12th of October last, transmitting copies of the opinions of certain manufacturers of this country, relative to the proposed Reciprocity Treaty with Canada, which he had obtained confidentially from Mr. Young, Chief of the Bureau of Statistics, I have now the honour to inclose copies of some further communications of the same nature, furnished by Mr. Young to Mr. Watson, on condition that the names of the manufacturers who have given these opinions shall not be published.

Copies of these documents shall be forwarded to the Governor-General of Canada.

I have, &c.  
(Signed) EDWD. THORNTON.

**Inclosure in No. 4.**

*Further Opinions on Reciprocity Treaty.*

PUSEY, SCOTT, AND CO., manufacturers of morocco, think the proposed Treaty would be injurious to this country, and their branch would suffer very seriously, for the following reasons:—

“That it is a free-trade dodge to make us a port of free entries under cover of Canada, and as no morocco is manufactured in that country (or, at least, very little) we would be flooded with that commodity from all Europe through Canada, and we cannot compete with foreign labour. It would necessarily have the effect of closing that branch of industry in this country.”

*Wilmington, September 21, 1874.*

The Harlan and Hollingsworth Co., manufacturers of railroad cars, steam engineers, &c., are of opinion that the proposed Treaty would result to the advantage of this country, and that their business would not suffer.

*September 1874.*

Messrs. Push and Co., manufacturers of morocco, think the Treaty would be injurious to this country, and that their business would suffer much for the following reasons:—

Because the admission of “boots and shoes of leather” would be injurious to the shoe manufacturers of this country, by bringing them in competition with the cheaper labour of Canada and dividing our home trade with the shoe manufacturers of Canada. The admission of “leather sole or upper” would be injurious to the manufacturers of upper leather, morocco, &c., because Sicily, Sumac, tanned goat skins, and finished leather from Europe are all admitted into Canada free, while we have to pay our Government a duty of from 10 to 25 per cent., and because it would bring us in competition with the cheaper labour of Canada, and divide our home trade with Canadian manufacturers.

*Wilmington, Delaware, October 7, 1874.*

Pack, Jinks, and Co., manufacturers of lumber, think the Treaty would result to the injury of this country, and that the branch in which we are particularly interested would suffer special injury therefrom for the following reasons:—

“It would flood this country with Canadian produce, such as wheat, peas, oats, and barley; also tend to lower the price of lumber and salt, which, at present prices, will hardly pay price of production, and lumbermen are obliged to keep on manufacturing or suffer large losses by reason of fires or general waste.

*Land Beach, Michigan, October 29, 1874.*

Goddard, Bros., manufacturers of cotton goods, think the Treaty would benefit this country, and their business would not suffer therefrom, for the following reasons :—

“The proposed Treaty will extend the trade of the country and open markets for the products of our industry, to which we now have but partial access. The tendency of an extension of commercial intercourse between the two countries is, we think, to promote a demand for the various manufactures of the United States in exchange for the articles imported from Canada. We do not fear the competition of Canadian manufactures, and believe that after the adoption of the Reciprocity Treaty, the labour of Canada will continue to seek employment in the United States rather than in Canada. A less rigorous climate and political institutions more acceptable to working men give us great and lasting advantages over Canada.

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Jackson and Sharp, manufacturers of passenger and freight cars, Wilmington, think that the proposed Treaty will be of benefit to the country, and that their branch of trade will suffer no injury, for, “at the present moment, their cars are burdened with a duty of 17 per cent., which alone protects Canadian manufactures. They are confident that if this incubus was removed they would have a flourishing trade with Canadian railways.”

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The Diamond State Iron Co., Wilmington, are of opinion that it will result to the injury of this country, and that their special branch will suffer great injury therefrom, for it would bring the labour of this country in competition with the cheap labour of Canada and England, which would result in the stoppage of many of the iron works, and have the general effect of the reduction or abolition of the Tariff on the articles named in the Treaty; the articles would be sent from England to Canada in an advanced state of manufacture, and receive the slight finishing in Canada, and be called Canadian manufacture; we consider the whole protective system might as well be abolished as to make such a Treaty.

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Jessup and Moore, paper manufacturers, Wilmington, think that it would prove of injury to the country, and that their trade would suffer very serious injury, for the following reasons :—

- 1st. Because of the lower labour.
  - 2nd. Because of the cheap coal and water powers.
  - 3rd. Because of the greatly inferior cost of construction and repairs.
  - 4th. Because of the lower cost, owing to lower duties upon felts, wires, chemicals, &c., entering into consumption.
  - 5th. Because of the lower taxation.
  - 6th. Because it would be the means of forcing us to compete with England as well as with Canada.
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Taft, Weeden, and Co., manufacturers of woollen goods, of Providence, with whom concur five other woollen manufacturers, are of opinion that it would result to the injury of the country, and that their trade would suffer very great injury therefrom, for the following reasons :—

Because the Treaty provides for the admission of “tweeds of wove solely;” this is a very broad term, and will cover a wide class of goods. All goods imported for suitings are called tweeds, both in England and Canada, of which there is a large consumption in the United States, and now principally made here; it will open the door to smuggling, by sending the goods to Canada to be finished and then sent here as products of Canada. The manufacturers of Canada have fine wools free, while we pay a large duty, and if no fraud is exercised in bringing in English goods, we cannot compete with Canada for wool and their cheap labour. In their opinion it will practically stop the woollen machinery of the United States within a very few years.

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Messrs. Smith, Nichols, and Rogers, of Providence, with whom concur ten other manufacturers of cotton goods, are of opinion that it will result to the disadvantage of the country, and that their trade would suffer serious injury, because the cotton

manufacturing establishments in Canada could be erected at one-third cost of ours in the States, labour and material being certainly not over one-third cost; machinery would be obtained from England at decidedly less cost, labour in operating the mills one-half, and supplies would naturally rule much lower than in the States, all living materials being not over 40 per cent. for some article in the States.

*Providence, Rhode Island, September 17, 1874.*

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## No. 5.

*Lord Tenterden to Mr. Herbert.*

(Confidential.)

Sir,

*Foreign Office, November 24, 1874.*

WITH reference to my letter of the 28th ultimo, I am directed by the Earl of Derby to transmit to you, to be laid before the Earl of Carnarvon, a despatch from Her Majesty's Minister at Washington, forwarding further confidential opinions of manufacturers in the United States, in regard to the proposed Reciprocity Treaty between Canada and the United States.

I am to request that Sir E. Thornton's despatch, which is sent in original, may be returned to this Office when done with.

I am, &c.  
(Signed) TENTERDEN.

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## No. 6.

*Memorial of the Chambers of Commerce of Batley, Bradford, Dewsbury, Halifax, Heckmondwike, Holmfirth, Huddersfield, Leeds, Morley, Sheffield, and Wakefield.*

To the Right Honourable the Earl of Derby, K.G., Her Majesty's Principal Secretary of State for Foreign Affairs.

The Memorial of the Chambers of Commerce of Batley, Bradford, Dewsbury, Halifax, Heckmondwike, Holmfirth, Huddersfield, Leeds, Morley, Sheffield, and Wakefield, in Special Meeting assembled, at Bradford, on the 11th day of November, 1874,

Showeth,—

THAT Her Majesty in closing the last Session of Parliament was graciously pleased to announce that negotiations had been undertaken for the renewal of the Reciprocity Treaty formerly in force between the Dominion of Canada and the United States of America, and that negotiations for that purpose would be revived at an early date.

That early date being probably December, when the American Senate usually reassembles, your Memorialists consider it their duty to call the immediate attention of Her Majesty's Government to the prejudicial effects which the IVth Article of the draft Treaty, if retained as it was submitted to the Senate of the United States, would have upon the trade of the district whose interests are represented by your Memorialists.

That the said IVth Article, with Schedules B and C, will require very considerable alteration in order to prevent the anomaly of England stipulating for or consenting to differential duties in favour of foreign fabrics, to the prejudice of her own manufactures.

That to avoid such a possibility your Memorialists would respectfully suggest that a clause be added to Article IV, providing that, notwithstanding the gradual reductions and eventual abolition of duties upon some articles, the produce of both the contracting countries, the duties imposed in Canada upon any article the growth, produce, or manufacture of the United States, shall not be lower than those respectively levied upon like articles, the growth, produce, or manufacture of the United Kingdom.

That Schedule C, attached to the IVth Article of the draft Treaty, contains many conventional terms and an arbitrary nomenclature, which would create endless difficulties with the Customs, and become a serious impediment to trade.

Your Memorialists, therefore, respectfully suggest that on the renewal of negotiations the attention of the negotiators be drawn to the desirability of simplifying any Tariff they may ultimately agree upon, by the adoption of a classification based upon the preponderance of the raw material which enters into the composition of the manufactured article. (See Appendix.)



Your Memorialists are well aware that the Memorandum on the Commercial Relations of Canada with the United States (dated Washington, April 27, 1874) contains a provision that any article made free in Canada, under agreement with any foreign country, must be made free to Great Britain, but considering that a mere Memorandum cannot be deemed binding, your Memorialists trust that on the renewal of negotiations Her Majesty's Government will obviate the possibility of differential duties in favour of their produce being claimed by the United States, or of privileges or immunities being granted to any foreign Power, which are not to be equally shared by all Her Majesty's subjects.

Bradford, November 11, 1874.

On behalf of the above-named Chambers,  
(Signed) CHARLES STEAD, *Chairman*.

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APPENDIX.

Schedule C includes among the articles upon which the duties are to be gradually reduced and finally abolished, "satinets of wool or cotton and tweeds of wove solely." These are such wide and indefinite terms that they may be applied to almost every woven, cotton, worsted, or woollen fabric for which the privilege given by Article IV may therefore be claimed or denied, according to the interpretation which it is possible to put upon them. Such uncertainty would be avoided if the above-mentioned words were struck out, and replaced by a general and well-understood classification, such as "manufactures of wool, or wool combined with other materials."

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No. 7.

*Memorial of the Association of Chambers of Commerce of the United Kingdom.*

To the Right Honourable the Earl of Carnarvon, K.G., Secretary of State for the Colonies.

The humble Memorial of the Association of Chambers of Commerce of the United Kingdom, of which the following Chambers of Commerce are members:—Aberdeen, Batley, Belfast, Birmingham, Bradford, Bristol, Cardiff, Coventry, Darlington, Derby, Dewsbury, Dover, Dublin, Dundee, Exeter, Falmouth, Gloucester, Goole, Halifax, Heckmondwike, Holmfirth, Huddersfield, Hull, Jersey, Kendal, Lees, Limerick, Macclesfield, Middlesbrough-on-Tees, Morley, Newcastle-on-Tyne, Newport (Monmouthshire), Northampton, Nottingham, North Shields, Plymouth, Rochdale, Sheffield, Shoreham, Southampton, South of Scotland, Staffordshire Potteries, Stockton-on-Tees, Sunderland, Swansea, Wakefield, West Hartlepool, Wolverhampton, Worcester,

Respectfully sheweth,

That your Memorialists, having seen that Her Majesty's Government was in negotiation with the Government of the United States for the establishment of a Treaty of Reciprocity between the United States and Canada, applied to the Foreign Office in reference thereto, and received a copy of the "Correspondence relating to the negotiations for a Reciprocity Treaty between Canada and the United States."

That your Memorialists observe therein that it is proposed by Article IV of the said Treaty to grant to the United States certain preferential terms in the Canadian Tariff.

That your Memorialists observe, with great pleasure, in the said correspondence, *videlicet*, on the seventeenth page, that the Joint Plenipotentiaries of Her Majesty informed Mr. Fish, the United States' Plenipotentiary, "that any articles made free in Canada under agreement with any foreign country must be made free to Great Britain."

That your Memorialists, feeling that, unless this were assured to British producers and manufacturers, their trade would be most seriously injured by the proposed Treaty, desire to approach your Lordship respectfully, to urge that, in this particular case, care may be taken to secure that the United States' producers and manufacturers gain no advantage over British producers and manufacturers.



Your Memorialists further suggest that, in all future negotiations with foreign Powers, on behalf of any Colony of the British Empire, or Dependency of the British Crown, it may be an absolute rule that the produce and manufactures of England shall not be subjected to any duties or charges of any kind, higher than those laid upon the produce and manufactures of such foreign countries.

Signed on behalf of the Association,

(Signed)

SAMPSON S. LLOYD, *Chairman.*

1, *Great College Street, Westminster,*  
November 26, 1874.

## No. 8.

*Extracts from the "Times" of November 27, 1874.*

DEPUTATIONS.—CANADA AND THE UNITED STATES.—Yesterday a large deputation from the Chambers of Commerce waited upon Lord Derby, with whom was Lord Carnarvon, at the Foreign Office. to express to him their opinion, "that the proposed Reciprocity Treaty between Canada and the United States is, in its present form, prejudicial to some important branches of British industry," and they presented a memorial praying that steps should be taken to secure to British producers and manufacturers the same duties upon imports into Canada as may be granted to the United States by this Treaty when carried into effect. There were present Mr. S. S. Lloyd, M.P., who introduced the deputation; Mr. H. W. Ripley, M.P.; Serjeant Simon, M.P.; Mr. C. M. Norwood, M.P.; Lord F. Cavendish, M.P.; Mr. Jacob Behrens, Mr. W. Hirst, Mr. L. Bruton, Mr. T. F. Firth, Mr. Edmund Hewitt, Mr. K. Skilbeck, Mr. Pesel, and many other representatives of Leeds, Bradford, Birmingham, Sheffield, Heckmondwike, Northampton, Huddersfield, Dewsbury, and other manufacturing towns.

*Lord Derby* said that, understanding that the deputation desired to see Lord Carnarvon, he had asked his Lordship to be present, so that the whole matter on which the deputation was about to speak should be considered by the two Departments at the same time.

*Mr. Lloyd, M.P.*, thanked his Lordship for his consideration, and then proceeded to say that the deputation would urge upon his Lordship, as a general principle from which there should be no deviation, that when a British Colony negotiated a Treaty with any country there should be nothing in that Treaty which should place the mother-country in a worse position commercially than other countries, in regard to their goods being imported into that Colony. As far as the Treaty under consideration went, it was understood that this principle had been set aside, and, too, with the prospect of acting injuriously on British goods. He then presented the Memorial.

*Lord Derby* said he desired, before anything more was stated, to declare that there was no difference of opinion between the deputation and Her Majesty's Government on the principle which had been laid down by Mr. Lloyd. And in that opinion his Lordship said he entirely concurred, for he certainly held that in such Treaties the mother-country should not be placed in a worse position than other countries. (Applause.)

*Mr. Ripley, M.P.*, then introduced a Bradford deputation, who also presented a Memorial, and Mr. Stead, Mr. Barron, and Mr. Behrens addressed their Lordships. The last gentleman said that they did not think that any other opinion than that expressed by Lord Derby would have come from Her Majesty's Government, and it was because the Chambers held a strong opinion on the negotiations that they had come before the Government. He urged upon the attention of the Government that the Treaty gave the United States the right to demand that the duties at present existing, which stood at 17½ per cent., should be reduced one-third the first year, two-thirds the second year, and entirely abolished the third year. It was well known that the financial system of the Canadian Exchequer was entirely based upon indirect taxation, and 60 per cent. of the income of the country was derived from the duties on foreign goods. Of the duties thus raised, 75 per cent. was derived from the import duties on what were called "dry goods," the principal of which were manufactured in the counties of Yorkshire and Lancashire, while some came from France and Germany. It was to be feared that the necessities of the Canadian Government, from the expenses of carrying out the Treaty and from the loss on United States' goods, would oblige them not to lower the duties on these goods, but to raise them, notwithstanding the wish of the Canadians not to injure English trade. Moreover, as there were Treaties with all other foreign countries, with the exception of France, that goods should be admitted to Canada at the same rates as

the United States' goods were, the effect would be that Belgium, Germany, Austria, and other countries would have their goods admitted at differential rates to our own goods and those of France. It was, therefore, asked with fairness that in any future Treaties no rights should be given to other countries in the imports to the Colonies which were not given to British goods. He also drew attention to the schedules, and said the words used should be based upon clear definitions, as some words became obsolete, and others, describing goods, changed their character, and thus difficulties were likely to arise between importers and the Custom-houses.

*Mr. Firth*, of Heckmondwike, addressed the Ministers, and urged that the canal works which the Canadians were to carry out were a sufficient *quid pro quo* for any benefits the Canadians would receive; and he considered, too, that Canada would not be so favourably regarded here if British goods were differently received to United States' goods.

*Mr. Barber*, of Sheffield; *Mr. Wenbon*, of Northampton; and *Mr. Hawkes*, of Birmingham, also addressed the Ministers.

*Lord Derby* congratulated the deputation upon the clearness with which they had expressed their views, and he reiterated his concurrence in their view that the British Government should see that English trade was not placed at a disadvantage, as compared with other countries, in any Treaties which were made by Colonies, and on that principle there was entire and absolute agreement between the deputation and Her Majesty's Government. The Government would have failed most grossly in its duty if, for any political reason, or for any diplomatic advantage, or for any other consideration, differential duties should have been allowed in favour of the United States as against our own country in any such Treaty. (Applause.)

There had been no intention on the part of Her Majesty's Government to allow such a thing, and there was nothing in the Treaty which would lead to such a conclusion. It was with great surprise that he had heard that apprehension was entertained upon that subject. They would excuse him if he did not go into some of the minor matters; but he would say in regard to the matter which had been mooted of Canadian finance, that while that was a matter which demanded very grave consideration, yet the gentlemen of the Department and those negotiating the Treaty were acquainted with the local necessities, and it was only necessary for the British Government to see that nothing was done which would be unfair to Imperial interests. The gentlemen who had negotiated the Treaty were eminently qualified to make the definitions of Articles sufficiently distinct to meet the difficulties which the deputation anticipated, and he might say that, in the old Reciprocity Treaty, fifty-two different goods were mentioned, and 670,000,000*l.* of money's worth were involved, and yet no questions of abuse arose from the points mentioned by the deputation.

With regard to a remark made that any such differential dues would lead, possibly, to the rise of a bad feeling between this country and Canada, he could say that he was firmly convinced that no such danger was anticipated, for the advantages given to United States' goods, which it was thought would lead to such feeling, did not exist. There was, however, another side to the question. Bound as the Government was to look to the interests of British trade, it was bound, also, to look at the exceptional position of Canada, and to place no unnecessary obstacle in the way of communication between her and the United States; and if the Government did so in the supposed interests of England, they would disappoint the loyal people of Canada, and would tend to strengthen that party which looked forward to a possible annexation of Canada with the Union.

Then it had been urged by the deputation that England would be placed in a worse position than the United States in regard to the entry of her goods into Canada, and that there was no guarantee against this in the Treaty. His answer to this was that the commercial interests of England could not be dealt with in such a Treaty between one of her Colonies and a foreign Power; but if the question were with respect to the scale of duties which should be charged upon British goods, then, he apprehended, it would fairly be within the province of the Department to reserve such a question for the consideration of Her Majesty's Government; but, indeed, this was a matter which could not find a place in such a Treaty. In fact, the Government did not consider that there was anything in the provisions of the Treaty which, taken in conjunction with our system of Colonial administration and the relations of Canada, would allow Canada to propose differential duties between English and United States' goods.

As to the question raised, that the effect of this Treaty would, perhaps, be to cause taxation on other goods, that was a question which must be left to his noble friend at the head of the Colonial Office; but he might add that it did not necessarily follow that,

because Canadian Taxation, to a great extent, had hitherto been raised from duties, such should always be the case. It was the case at home that a large part of our taxation was raised from duties, but it was not so now, and Canada might change in that respect too. He concluded by expressing his regret that the Chambers had not come to him before, for then he should have been able to remove the misapprehension which had existed in their towns.

*Lord Carnarvon* entirely subscribed to the principles which had been enunciated by *Lord Derby* as to English commerce being placed in no worse position than foreign, and he said he believed that Canada would entirely concur in that view. He was not aware that it was even proposed that there should be such differential duties, and there had never been an attempt on the part of Canada to claim such differential duties. On the contrary, it would be seen from Parliamentary papers that the principle was laid down that such goods as were made free to a foreign country must be made free to England; and this must be accepted as showing that the Canadians had no other intention on the subject. He begged to remind the deputation that the Treaty was not a concluded one, and that it stood in diplomacy just as a Bill on its second reading stood in politics—it was open to be amended on details. The Bill had, moreover, to be submitted to the Senate of both countries, and both these bodies would be disposed to reconsider and revise the details. It would be seen, too, that Imperial legislation was contemplated, and this would bring the whole question before Parliament, and thus would give the opportunity of attention being brought to the subject. As his noble colleague (*Lord Derby*) had said, there were two sides to the question; and it was so seen in the United States, for there various opinions, quite contradictory to those expressed that day, had been stated as to the effect of United States' goods coming into fair competition with British. The draft Treaty, he might say, had been proceeding only at the express wish of the Canadians, and Her Majesty's Government had been cognizant with every stage of it.

*Mr. Lloyd* then addressed *Lord Derby* on the subject of the "Between ports duties" exacted by France.

*Lord Derby* said that this had been brought to the notice of the French Government, and it would again. He concurred with the deputation in the opinion that it would be to the interest of the French if the duties were abolished.

The deputation then thanked their Lordships and retired.

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A question which has been simmering for some months reached the effervescent stage yesterday afternoon at the Foreign Office. A large deputation, representing many Chambers of Commerce, waited upon *Lord Derby*, who had called in *Lord Carnarvon* to lend his counsel upon the matter, for the purpose of remonstrating against the scope and objects of the negotiations which have been some time on foot for the conclusion of a new Reciprocity Treaty between the United States and the Dominion of Canada. The Deputation were a little indignant at the Representatives of Canada having presumed to carry on independent negotiations with the Government of the United States; but their indignation would not have impelled them to the extreme course of appealing to the Foreign Office had not the draft Treaty agreed upon at Washington involved two important consequences. The first is alleged to be that the Treaty, if ratified, would admit certain manufactures from the United States into Canada free duty, upon which, when brought from the United Kingdom, duties would be levied, so that a discriminating tariff would be in force in Canada adverse to the manufactures of the mother-country. The second injurious effect anticipated from the Convention is that the liberation of so many articles from duty must cause such a loss of revenue to Canada that the Parliament of the Dominion would be compelled to raise the rates of duty on manufactures not on the free list, thus inflicting another blow on the import trade from Great Britain. Results such as these were denounced with energy by the Deputation, and it would appear that they did not go away entirely soothed by the declarations of the two Secretaries of States that their apprehensions were based on a misunderstanding of what had been done and what was intended.

As the questions raised yesterday may have the most important results hereafter, it is above all things necessary to have a clear intelligence of their meaning. We say "hereafter," because we must confess we do not look upon the present projected Treaty as likely to pass beyond a project. It has been negotiated with *Mr. Fish*, or, in other words, with the representative of a discredited Administration; and though the majority of the United States' Senate remains Republican, it does not require much worldly wisdom to understand how ready this majority will be to dissociate themselves in the

eyes of their country from all complicity with General Grant and his Cabinet. Lord Derby is unfortunate. Once before he negotiated a Treaty with Mr. Reverdy Johnson, which was instantly negatived by the Senate because Mr. Johnson was the Plenipotentiary who had agreed to it. In much the same way, if the present draft Treaty ever comes before the Senate, it will be rejected—if for no other reason—because Mr. Fish is one of its joint authors. But the questions raised by the Deputation yesterday are of lasting importance, and it well that they should be understood in time. We must say, with great reluctance, that, in our judgment, neither Lord Derby nor Lord Carnarvon perfectly appreciated their gravity. The point taken by the Deputation from the Chambers of Commerce was that the Dominion must not be allowed to admit goods from the United States free of duty when duties are levied by the Dominion on the same classes of goods imported from the United Kingdom; and Lord Derby met it by agreeing that the Imperial Government could not allow it. We shall recur to the question whether the proposed Treaty would have permitted this, and, for the present, confine ourselves to the question of principle. Upon this we may remark that the view taken by the Chambers of Commerce is no other than we might have expected from them; but we are surprised that Lord Derby should have assented to a principle which will not stand examination. It is impossible to concede freedom of action in words and then deny it in practice.

The Dominion does not, so far as the exercise of any authority goes, stand to us in the position of a son to a father or of a daughter to a mother, whatever metaphors we may use on the subject. Its House of Commons and Ministry are to the Canadian people what our House of Commons and Ministry are to us; and if they have resolved upon Free Trade with the United States, we shall only put ourselves in a foolish position by saying that they cannot be allowed to do what they desire. If they want to do it, they will do it, and we are bound to acquiesce in an exercise of the right of self-government we have given. Let us put the case in another way. All of us wish—those who would not unwillingly acquiesce in the absolute independence of Canada as much as those who would prolong the present form of political union—that Canada may be saved from the fate of absorption in the United States. There is a better future in store for the Dominion, if her statesmen and ours are wise, than that she should sink into the position of two or three more States added on to the Federation on her borders. We believe this because we believe there is in Canada now the germ of a higher organization and a more perfect form of a free community than are to be found in the United States. But what must be the effect of resistance in Downing Street to the commercial autonomy of the Dominion? It would put the strongest possible argument at the disposal of the minority, at present utterly insignificant, which desires annexation. The members of this minority would ask their countrymen with irresistible truth and effect to observe that there were customers at their doors ready to enter into a trade capable of indefinite extension, which is restricted to small dimensions because English manufacturers stir up an English Government to keep it closed. Let us show Canadians that their commercial liberty is uncontrolled, and we need have no fear that suggestions will be raised of national separation. Make them feel that because they are associated with us they cannot do what they would, and the question will become a practical one to-morrow whether that association might not be dissevered. These are views which an Imperial Minister should have made plain to the representatives of sectional interests who came before him overlooking them, and the time was when Lord Derby would have done something more than glance at them in a far-off way, as yesterday. We are, indeed, at a loss to understand how he could have listened to a Mr. Firth, of Heckmondwike, instructing the Canadians that the canal works they offer to undertake were a sufficient *quid pro quo* for the benefits they would receive without hinting to him that the Canadians are possessed of average intellectual powers, and are certainly better qualified to know what trade can be developed on their borders than a man living 3,000 miles away.

We turn to the question whether the proposed Treaty would, in fact, have involved the admission of commodities from the United States free of duty, or at lower rates than those levied on the same commodities imported from the United Kingdom. Lord Derby said yesterday there was nothing in the Treaty to lead to such a conclusion. We cannot so read it. A memorandum was submitted to Mr. Fish prior to the negotiation of the Treaty replete with such extraordinary views on international trade that, with every desire to humour the Protectionist fallacies prevalent in the United States, it is impossible not to feel a little shamefaced at the thought that it is subscribed by a British Plenipotentiary. It is quite true that in this memorandum it was said that any articles made free in Canada under agreement with any foreign country must be made free to Great

Britain; but no stipulation to this effect is found in the draft Treaty, and the whole tenor of that provisional agreement is inconsistent with it.

By way of preventing any more misunderstandings about Treaties with the United States—of which we have had more than enough in the past—we must premise that we are bound to interpret this Convention in the sense in which we know it must have been accepted by Mr. Fish, who agreed to it and sent it to the Senate as a preliminary to further action by that body. This is the commonest principle of good faith in the interpretation of agreements. No man can assert against another an agreement in a sense different from that which he knew the other attached to it when the agreement was made. What, then, are the provisions of the draft Treaty? The following are a few of the commodities which are to be interchanged between the United States and Canada at reduced rates of duty up to the 30th of June, 1877, and afterwards free of duty:—Agricultural machines of many kinds and the parts thereof, manufactures of leather, manufactures of cotton, carriages, carts, waggons, and the parts thereof, iron of all kinds, lead, tin tubes and piping, paper, type, and all the machinery of printing, satinets of wool and cotton, wool tweeds, steam engines and their parts, steel, wrought or cast, and steel plates and rails. If free trade in certain commodities between the States and Canada means free trade in the same commodities between Canada and the United Kingdom, the American Tariff is abolished, as far as all the articles we have enumerated are concerned, against Great Britain, for it would be impossible to prevent their being imported into the States from Great Britain through Canada. Can it be seriously said that Mr. Fish had agreed to these conclusions, and was prepared to ask the Senate to concur with him in letting in British iron, rails, machinery, &c., free of duty? It is impossible to put this gravely; but any one who does not shrink from it must be prepared for another difficulty. If Mr. Fish was negotiating for the free introduction of British iron and rails into the States, he must be allowed the liberty of claiming reciprocally the free introduction into Great Britain of the American products which are declared duty free, and unmanufactured tobacco is one of them. Did these negotiators last June pledge themselves to abolish our tobacco duties? Lord Derby's declaration yesterday to the contrary is a staggering fact; but we find it impossible to come to any other conclusion than that the negotiators of the Treaty were dealing simply with Canada and the States, as communities which were to favour one another by entering into a Reciprocity Treaty from which Great Britain was to be excluded like any foreign Power. Mr. Fish could have intended nothing else; and all must know that if the Treaty is to be interpreted in a different sense, it could never have had the remotest chance of being approved by the Senate of the United States.

Lord Carnarvon sought to soothe the Deputation yesterday by reminding them that Imperial legislation was contemplated in the Treaty, and this would bring the whole question before Parliament. It is true that a clause says the Treaty shall take effect as soon as the laws required to carry it into operation have been passed by the Imperial Parliament, the Canadian Parliament, and Congress; but what is the action required from the Imperial Parliament for the purpose? We can discover nothing whatever in the Treaty requiring the legislative interposition of the Home Parliament, unless we are to conclude that it pledges us to abolish the duty on American unmanufactured tobacco. Everything else can be accomplished by the concurrent exercise of the prerogative of the Crown and the legislation of the Canadian Parliament, and the Treaty might be fully ratified without the Home Parliament being necessarily called upon to take any share in the business. This is of no importance, if it is true, as we believe, that the Treaty is as good as dead already.

Mr. Fish, departing from the usual routine, submitted it tentatively to the Senate before it was formally signed by General Grant, and we should not be surprised to learn that the President will now have nothing further to do with it. But the negotiations, though thus doomed to be in all probability laid aside, must be resumed by other agents not long hence, and the present abortive attempt will not be useless if it leads to a clear understanding of the relative rights and duties of the United Kingdom and the Dominion in such a matter.

No. 9.

*The Earl of Derby to Sir E. Thornton.*

(No. 355.)

Sir,

*Foreign Office, November 28, 1874.*

I INCLOSE, for your information, copies of two Memorials, as marked in the margin,\* on the subject of the proposed Reciprocity Treaty between Canada and the United States.

I am, &c.  
(Signed) DERBY.

No. 10.

*Memorandum respecting Reciprocity Treaty.*

(Confidential.)

THE objections of the Chambers of Commerce, as stated in their Memorial, and urged in the discussions at the meeting seem to be the following:—

1. That the negotiations were undertaken by Canada and carried on for a considerable time without the cognizance of Her Majesty's Government, thereby exposing Imperial interests to be injuriously affected.

2. That under the Draft Treaty Canada may impose differential duties in favour of foreign woollen fabrics as against English manufactures.

3. That in addition to this objection to the principle of the Treaty, the designation of certain manufactured articles (*e.g.*, tweeds and satinets enumerated in Schedule C) is so vague as to give rise to serious difficulty of interpretation, and in a sense that might prove injurious to the interests of the English manufacturers of such fabrics.

(1.) The first objection seems to rest on an imperfect understanding of the facts.

In proposing the adoption of the Memorial the mover, Mr. Ripley, M.P., stated:—

“Some time this year negotiations were commenced between Sir E. Thornton and Mr. Fish, with Mr. Brown representing Canada, for the renewal of the Treaty. His own view of the matter was confirmed by the fact that if the United States' Senate had thought proper to adopt the Treaty the whole question would have been settled without the concurrence of parties interested, as our own Government was never consulted until the 19th June, when Sir E. Thornton sent a copy of the Treaty. It was not until the 2nd July that the Government was aware that such a thing was going on. He went to the Foreign Office, but could not get any information. He then went to the Colonial Office, and from there back to the Foreign Office, and ultimately he had put into his hand what purported to be a draft of the Treaty. Very important negotiations had been going on without the cognizance of the Foreign Office, but he had a very strong belief that no such thing would occur again.”

A simple reference to the correspondence will show the misconception as to this point.† Both the Secretaries of State for the Colonies and for Foreign Affairs were apprized of the wish of Canada to open negotiations previous to their being entered upon, and instructions were given to the British Minister to do so in concert with Canada.

From the first date to the final submission of the proposed Treaty in June Her Majesty's Ministers were in continual communication with the Plenipotentiaries at Washington and were made aware of every step in the negotiation.

While Her Majesty's Government would under no circumstances abdicate, in any negotiation, the duty of watching Imperial interests, they had at the same time sufficient confidence in the enlightened views and patriotism of Canada for the belief that nothing would be proposed or assented to by her which would be inconsistent with the supreme interests of the Empire.

It is to be remembered also that the proposed Treaty is practically subject to the approval of Parliament, as section 13 provides that it should only take effect when laws to carry it into operation were passed, as well by the Imperial as by the Canadian Parliament and by the Congress of the United States.

Objection 2.—That differential duties in favour of foreign as against English manufactures may be imposed.

It may be assumed that any proposal which might directly, or in its possible effect, discriminate against English interests in favour of those of the United States, or of any other foreign country, would not have been entertained by Canada or receive the assent of Her Majesty's Ministers.

\* Nos. 6 and 7. † Despatch No. 1, of February 24; No. 2, of March 5; and No. 4, of February 27.

The objections to the IVth Article, however, seem to be—

(1.) That it does not in express words provide that goods admitted free from the United States shall also be admitted free from England, but that these words are only to be found in the preliminary Memorandum submitted by Sir Edward Thornton and Mr. Brown (page 17, lines 4 and 5), and

(2.) That even if such words were found in the Treaty the provision is still imperfect, inasmuch as the IVth Article provides for maintaining certain reduced duties on a sliding scale for three years, and that therefore, while any duties at all exist, the stipulation in reference to free goods would not apply, thus leaving Canada at liberty, if she saw fit, to continue the present high rate of duty on English and foreign imports and to give American goods alone the benefit of the reduced scale.

Now, in reference to both objections under this head, it is obvious that any such provision in a Treaty between England and a foreign Power, as that her Colony should not impose differential duties against her, would be altogether out of place. It is wholly a domestic matter between the Dominion and England. If Canada were, hereafter, to seek by legislation to impose discriminating duties either against England or against any other nation having Treaty relations with England, the Acts of her Parliament imposing them would, like all others, be subject to review, and, if necessary, disallowance by Her Majesty's Government. To stipulate against such an Act in an Agreement with the United States would be to introduce matter entirely foreign to a Treaty, and with reference to which Her Majesty's Government has full power, should the occasion arise for its exercise, as between the Dominion and this Government. Her Majesty's Government, however, need not anticipate that they will be called upon to interpose their authority in any such way, for Canada has always of herself shown a just and intelligent spirit in her legislation, and I am not aware that she has ever attempted to depart from the cardinal rule of giving no advantage to foreign interests over those of England.

The objections, therefore, as to the omission of valid stipulations in reference to discriminating duties, even were they well-founded, could properly only apply in case Her Majesty's Government should sanction legislation by the Canadian Parliament in such a sense, and the objections have no significance in respect of a Treaty between Great Britain and a foreign country.

Objection 3.—That the designation of certain articles is vague and calculated to give rise to difficulty in interpretation.

The Memorial states that, with reference to Schedule (C) attached to the IVth Article, the words “‘satinets of wool and cotton, and tweeds of wool solely,’ convey no positive meaning, and are liable to the most varied applications, and would, like all such conventional terms, create endless differences with the Customs, and become a serious impediment to trade. That, as the abuses and difficulties which are the unavoidable consequence of an arbitrary nomenclature in a Tariff can only be obviated by a classification imposing duties upon woollen fabrics according to the preponderance of materials which enter into their composition, your Memorialists would propose that on the renewal of the negotiations, the above-mentioned words in Schedule (C) be struck out, and that they be replaced by the following: ‘manufactures of wool, or wool combined with other materials.’”

It must not be forgotten that the expressions in the Treaty are to be interpreted in Canada and the United States and not in England, and that, in adopting them, the contracting parties have used words presumed to be best understood by the Customs officials there. All conventional expressions of this kind must, in their application to a particular article, be subject to interpretation from time to time, and no words whatever would prevent some questions from arising. Fabrics change by the introduction of new materials, and the Customs laws of Canada, as well as of the United States, give full powers of interpretation and definition to the Executive or Departmental authorities.\*

Under the old Reciprocity Treaty, questions frequently arose as to whether particular articles came within its general words. It may be stated that, in the twelve years during which that Treaty was in operation, and involving, as it did, an interchange of no less than fifty-two different commodities amounting to an aggregate value of 670,000,000 dollars, none of these questions led to any abuse, difficulty, or impediment to trade.

The two Governments whom the Treaty principally concerns, and who are to interpret it, ought to be the best judges whether the nomenclature adopted conveys a meaning equally clear to them as it would be by a classification based on the materials entering into the composition of any particular kind of goods:

\* See Regulations herewith.



The proposal to include certain manufactured articles for free interchange between Canada and the United States is one of great importance and equal difficulty in its bearing, not only in the interests of English manufacturers, but also to the Canadian revenue and the special interests in Canada which may be affected by its operation.\* Ever since the proposals were made public, their merits have been largely discussed, not only in the press, but by commercial and other bodies in Canada, with remarkable keenness and intelligence. These discussions amply confirm the wisdom of the course adopted by Her Majesty's Government in having given to Canada full permission to negotiate with the United States, and they show not only a full appreciation by the Dominion of its duty as an integral part of the Empire, but an intelligent foresight as well of the possible effects of the measure on its public revenues, as of the benefit or injury it is calculated to produce to the important industrial interests established there.

It is somewhat remarkable that, while some of the English manufacturers evince fears as to the effect of the proposed Treaty on their interests, most of those in the United States are emphatic in denouncing it as calculated to bring ruin on them, and that it will expose them through Canada to the free competition with English goods,—permitting the making up there into many of the articles specified in the Schedule from the nominally raw materials, such as yarn and thread, which form an important element in English industry.

No. 11.

*Mr. Ripley, M.P., to the Earl of Derby.—(Received December 14.)*

My Lord,

*Acacia, Apperley, near Leeds, December 12, 1874.*

I HAVE the honour to inclose document from the Committee of the Yorkshire Chambers of Commerce, which I trust may be of some use to your Lordship in any further negotiations for a Reciprocity Treaty between Canada and the United States.

The Committee will most gladly afford any additional information should it be required.

Believe me, &c.

(Signed) HENRY W. RIPLEY.

Inclosure in No. 11.

*Mr. Stead to the Earl of Derby.*

*The Association of Chambers of Commerce,  
1, Great College Street, Westminster,  
December 9, 1874.*

My Lord,

WHEN the deputation from the Associated and West Riding Chambers of Commerce had the honour of waiting upon you on the 26th ultimo, with reference to the proposed renewal of the Reciprocity Treaty between Canada and the United States, they received with great satisfaction your Lordship's assurance that "for no political reason, diplomatic advantage, or for any other consideration, differential duties in favour of the United States, as against our own country, should be allowed in any Treaty."

Delighted to find themselves so perfectly in accord with Her Majesty's Government as to the general principle and its application in the present instance, they yet considered it their duty to draw your Lordship's attention to those parts of the said Treaty which might and probably would have consequences very different from those intended by its negotiators.

At the same time your Lordship may be assured that they never intended to claim any privilege or special advantage, or to deny the right of the Dominion of Canada to regulate her own finances and commerce, and to impose whatever duties she may deem necessary or expedient for those purposes upon the importation of goods from Great Britain and other countries.

What they feared was that the said Treaty will ultimately oblige the Government

\* Canada collects about 1,700,000 dollars per annum, or nearly  $\frac{1}{4}$ th of her revenue, from customs on woollen manufactures, and if the words suggested by the Memorial were adopted, it would seem to involve a sacrifice to her of her revenue to that extent. It is obvious, therefore, that in a matter so seriously affecting her finances great care must be taken in the use of expressions.



and Parliament of Canada to adopt differential duties in favour of the United States, that Her Majesty's Government and the Imperial Parliament might then be unable to prevent consequences which the deputation apprehend to be inevitable if the Treaty were to be concluded in its present form.

No real importance can be attached to an assurance contained in a preliminary memorandum, that British goods shall not be worse treated than Americans, as such a provision cannot possibly be introduced in a Treaty on behalf of a colony with a foreign power.

The draft Treaty, as it appeared in the official correspondence, obliges the Dominion to expend a large sum upon the public works, and there cannot be a doubt that her yearly expenses will in future be greater than they are at present.

The financial system of the Colony, like that of all thinly-populated countries, is based upon indirect taxation, and it may be assumed that generations must have passed away before Canada can possibly follow, in this instance, the example of the mother-country, as your Lordship expressed the hope she might be induced to do.

Of that revenue more than 60 per cent. is derived from import dues, and of these fully 5 per cent. are collected from cotton, wool, linen, and silk tissues, iron and leather wares, the produce of the United Kingdom and the continent of Europe.

The import duty upon these articles was generally 15 per cent. *ad valorem*, but since the negotiations for the renewed Reciprocity Treaty commenced it has been increased to 17½ per cent.

By the IVth Article of the said Treaty, the United States would obtain the right to claim admission for a specified number of her wares, on their introduction into Canada, with a reduction from the rates as existing at the conclusion of the Treaty, the first year of one-third, of two-thirds the second year, and entire freedom from import duties for twenty-two years afterwards.

The effects upon the Canadian revenue of the loss of duty, on so extensive a range of imported articles, must be very considerable, and that loss would be further enhanced by the circumstance that every advantage or privilege which will be given to the United States must at once be equally conceded to almost every other foreign state.

While Canada has obtained the right of uncontrolled self-Government by the Act of 1867, she has, by the same Act, in section 132, got "all powers for and consequently undertaken the duty of performing the obligations of Canada as part of the British Empire towards foreign countries, arising under Treaties between the Empire and such foreign countries."

Such Treaties exist with Germany, Austria, Russia, Italy, and others, in all which Her Majesty has promised "that any reduction of duty, privilege, or immunity granted to any other country shall be extended to the Contracting Power by all her colonies and dependencies, as well as by the United Kingdom."

The only Treaty in which the right to demand this privilege is confined to the United Kingdom appears to be that with France.

It therefore follows that the only country which does not possess a documentary right to be put upon the footing of the most favoured nation in her colonies is the mother-country and perhaps France.

But even if Canada should not, of her own free will, adopt a measure so contrary to the very nature of her relation to the mother-country, she will be compelled to it by the United States, who would be entitled to demand the fulfilment of the Treaty according to the only interpretation which they can put upon the reciprocity agreed upon by the said IVth Article.

While the United States maintain their present high and protective Tariff, they may, for reasons of their own, desire to form a more or less restricted Customs Union with Canada, such as Prussia established with other independent States of Germany through the Zollverein, but it cannot be their intention to comprise the whole British Empire within that union.

With low duties in Canada and free trade between the Dominion and the United States, the latter would lose their direct trade and injure their revenue, to the benefit of the trade and revenue of Canada. They would therefore fairly urge that the goods which enjoy the privileges of the IVth Article of the Treaty shall be taxed on their importation into Canada, high enough to prevent the importer deriving an illicit profit by re-export to the United States, and that the advance be equal to the difference between the tariffs of the two countries.

That demand would be justified by the fact that in most cases it will be difficult, if not impossible, to distinguish between British and Canadian manufactures, and the difference between the respective duties is sufficiently great to tempt fraud

An example taken from two kinds of wool tissues (Schedule C) may suffice to show the operation of the two tariffs, viz., "satinets of wool and cotton," which probably are worsted stuffs, and "tweeds," which may be either low or fine woollens.

On these the saving as against direct importations from Europe, would be, if the duty of  $17\frac{1}{2}$  per cent. were paid in Canada, and the Treaty reductions taken advantage of in the United States, as follows:—worsted stuffs, 1st year,  $2\frac{1}{2}$  per cent.; 2nd year,  $12\frac{1}{2}$  per cent.; afterwards,  $42\frac{1}{2}$  per cent. *ad valorem*; fine woollens, 1st year,  $12\frac{1}{2}$  per cent.; 2nd year,  $42\frac{1}{2}$  per cent.; afterwards,  $62\frac{1}{2}$  per cent. *ad valorem*; low woollens, 1st year,  $22\frac{1}{2}$  per cent.; 2nd year,  $62\frac{1}{2}$  per cent.; afterwards,  $102\frac{1}{2}$  per cent. *ad valorem*; or 60, 90, and 120 per cent. if England were placed upon the footing of the most favoured country (See Appendix A).

Turning from the IVth Article to the Schedules attached to it, Schedule A requires no particular notice, as it treats only of the natural products of the field, the forest, the river, and the sea, the same as were included in the former Reciprocity Treaty.

Notwithstanding the magnitude of the transactions which were favoured by the freedom of interchange under the protection of that Treaty, it is difficult to see how any question of abuse could ever have arisen from dealings in articles so easily classified and defined.

On the other hand, Schedules B and C are so constructed that almost every item of them would become the fruitful source of difference, dispute, and abuse, which can only be avoided by substituting a simple and easily understood classification for the arbitrary, ever-changing, and, in some cases, already obsolete, nomenclature contained in them.

It would lead too far and would involve a tedious mass of technical details, to point out the wide and the narrow sense in which almost every article mentioned in these two Schedules may be interpreted by persons representing different interests, but acting with perfect good faith.

It is, therefore, easy to foresee that numberless disputes with the United States' Customs must arise if a Tariff constructed after the model of the worst kind of existing Tariff should be imposed upon Canada under the sanction of this Treaty.

The objection to the wording of these Schedules (B and C) have been as strongly urged in Canada as at home, and your Lordship's attention is drawn to the subjoined extract (Appendix B) from a speech delivered by Mr. Robertson, a Canadian manufacturer, at a meeting of the Dominion Board of Trade in July last, in which he clearly showed that "satinets of wool and cotton," and "tweeds of wool solely," might include all the mixed and unmixed wool fabrics produced in Great Britain, or just one special article, arbitrarily so designated by a Custom-house office or its experts.

The same uncertainty characterizes the cotton goods favoured by Schedule C, but the example already given may suffice to show that the deputation were justified in proposing that, in the event of the favoured list being extended beyond Schedule A, a classification be adopted based upon the preponderance of the material entering into the composition of the manufactured article.

The deputation beg once more to thank your Lordship for the kind attention with which you have listened to their representations, and, in conclusion, to assure your Lordship that, while fully recognizing the right of Canada to manage her affairs according to Canadian interests, they trust that the time may never arrive when Canada or any Colony shall endanger the existing intimate connection with the mother-country by drifting into the condition of regarding English interests as those of an alien if not unfriendly country.

I have, &c.

(Signed) CHARLES STEAD, *Chairman*.

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#### APPENDIX (A).

The present import duty in Canada is  $17\frac{1}{2}$  per cent. *ad valorem*, and in the United States on worsted goods 60 to 65 per cent., on fine woollens 90 per cent., and on low woollens 120 per cent. *ad valorem*. To be reduced, 1875-6, to 40, 60, and 80 per cent.; 1876-7, 20, 30, and 40 per cent.; afterwards to be entirely free.

Thus the two duties combined would be, 1875-6,  $57\frac{1}{2}$ ,  $77\frac{1}{2}$ , and  $97\frac{1}{2}$  per cent; 1876-7,  $37\frac{1}{2}$ ,  $47\frac{1}{2}$ , and  $57\frac{1}{2}$  per cent.; and afterwards  $17\frac{1}{2}$  per cent. Or if Canadian duties were to be equally reduced the combined duties would be, 1875-6,  $51\frac{1}{2}$ ,  $71\frac{1}{2}$ , and  $91\frac{1}{2}$  per cent.; 1876-7, 32, 42, and 52 per cent.; and afterwards 20, 30, and 40 per cent. instead of 60, 90, and 120 per cent., which would be the duty to be paid on direct imports in the United States from England.

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## APPENDIX (B).

*Extract from Speech of Mr. Robertson to the Dominion Board of Trade, at St. John, New Brunswick, July 1874.*

For example, the woollen trade, which is perhaps the largest manufacturing interest in Canada, and, in my opinion, there will be no end of trouble arising out of ambiguity in the classification of articles in this Schedule, both in woollens and cottons. Take, for instance, "tweeds manufactured of wool solely." What is a tweed? The distinctive name of this manufacture arose solely from the fact of the goods being originally produced in several of the towns and villages on the banks of the river Tweed in Scotland, and were designated "tweeds" accordingly. These goods are now understood by the trade as "Scotch tweeds" as distinguished from West of England or Yorkshire tweeds. Canadian tweeds, as understood here, embrace all the peculiarities of those named, and, in fact, extend to any description of goods manufactured in Canada of pure wool. But these, again, are subdivided, according to style of weave and finish, into imitations of Scotch, or English tweeds, doeskins, buckskins, deerskins, meltons, etoffes, friezes, &c. Then as to satinettes made of wool and cotton, they are neither more nor less than what is known as a union doeskin in England, and in Canada as a union tweed, a satinette of cotton warp and woollen or mixed welt. Of course it is understood that all the goods which are produced in Canada, whether as tweeds or satinettes, are wholly included, and which, I suppose, must have been the intention of the proposers; but I fear, the Treaty if concluded without some better understanding, difficulties of interpretation would assuredly arise as to what is a "tweed" on the part of the American Customs authorities, and in proof that we must be careful on this point and have everything clearly defined.

## No. 12.

*Lord Tenterden to Mr. Ripley, M.P.*

Sir,

*Foreign Office, December 18, 1874.*

I AM directed by the Earl of Derby to acknowledge the receipt of your letter of the 12th instant, forwarding a paper from the Yorkshire Chambers of Commerce on the subject of the proposed Reciprocity Treaty between Canada and the United States, and I am to express to you his Lordship's thanks for this communication.

I am, &c.  
(Signed) TENTERDEN.

## No. 13.

*Mr. Herbert to Lord Tenterden.—(Received December 22.)*

My Lord,

*Downing Street, December 21, 1874.*

I AM directed by the Earl of Carnarvon to transmit to you, for the information of the Earl of Derby, a printed copy of the proposed Reciprocity Treaty between the United States of America and the Dominion of Canada, which has been received unofficially from the Governor-General of Canada.

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

Inclosure in No. 13.

*Proposed Reciprocity Treaty between the United States of America and the Dominion of Canada.*

HER Majesty the Queen of Great Britain, and the United States of America, being desirous of improving the commerce and navigation between their respective territories and people, and more especially between Her Majesty's possessions in North America and the United States, in such manner as to render the same reciprocally beneficial, have

respectively named Plenipotentiaries to confer and agree thereupon, that is to say: Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, &c., &c., &c.

#### ARTICLE I.

It is agreed by the High Contracting Parties, that in addition to the liberty secured to the United States' fishermen by the Convention between Great Britain and the United States, signed at London, on the 20th day of October, 1818, of taking, curing, and drying fish, on certain coasts of the British North American Colonies therein defined, the inhabitants of the United States shall have, in common with the subjects of Her Britannic Majesty, the liberty, for the term of years mentioned in Article XIII of this Treaty, to take fish of every kind, except shell-fish, on the sea coast and shores, and in the bays, harbours, and creeks of the Provinces of Quebec, Nova Scotia, New Brunswick, and Prince Edward's Island, and of the several islands thereunto adjacent, without being restricted to any distance from the shore, with permission to land upon the said coasts and shores, and islands, for the purpose of drying their nets, and curing their fish; provided that in so doing they do not interfere with the rights of private property, or with the British fisherman in the peaceable use of any part of the said coasts in their occupancy for the same purpose. But it is understood that the above mentioned liberty applies solely to the sea-fishery; and that the salmon and shad fisheries, and all other fisheries in rivers, and mouths of rivers, are hereby reserved exclusively for British fishermen.

#### ARTICLE II.

It is agreed by the High Contracting Parties, that British subjects shall have, in common with the citizens of the United States, the liberty, for the term of years mentioned in Article XIII of this Treaty, to take fish of every kind, except shell-fish, on the eastern sea coasts and shores of the United States, north of the thirty-ninth parallel of north latitude; and on the shores of the several islands thereunto adjacent; and in the bays, harbours, and creeks of the said sea coasts and shores of the United States, and of the said islands, without being restricted to any distance from the shore, with permission to land upon the said coasts of the United States, and of the islands aforesaid, for the purposes of drying their nets, and curing their fish; provided that in so doing, they do not interfere with the rights of private property, or with fishermen of the United States, in the peaceable use of any part of the said coasts in their occupancy for the same purpose. But it is understood, that the above-mentioned liberty applies solely to the sea-fishery, and that salmon and shad fisheries, and all other fisheries in rivers, and mouths of rivers, are hereby reserved exclusively for fishermen of the United States.

#### ARTICLE III.

It is agreed that the places designated by the Commissioners appointed under the 1st Article of the Treaty between Great Britain and the United States, concluded at Washington, on the 5th of June, 1854, upon the coasts of the United States and Her Britannic Majesty's Dominions, as places reserved from the common right of fishing under that Treaty, shall be regarded as in like manner reserved from the common right of fishing under the preceding Articles. In case any question should arise between the Governments of Her Britannic Majesty and of the United States, as to the common right of fishing in places not thus designated as reserved, it is agreed that a Commission shall be appointed to designate such places, and shall be constituted in the same manner, and have the same powers, duties, and authority as the Commission appointed under the said 1st Article of the Treaty of the 5th of June, 1854.

#### ARTICLE IV.

It is agreed that the Articles enumerated in Schedules A, B, and C, hereunto annexed, being the growth, produce, or the manufacture of the Dominion of Canada, or of the United States, shall, on their importation from the one country into the other, from the 1st day of July, 1875, to the 30th day of June, 1876 (both included), pay only two-thirds of the duties payable at the date of this Treaty on the importation into such country, of such articles respectively; and from the 1st day of July, 1876, to the 30th day of June, 1877 (both included), shall pay only one-third of such duties; and on and after the 1st day of July, 1877, for the period of years mentioned in Article XIII of this Treaty, shall be admitted free of duty into each country respectively.

For the term mentioned in Article XIII, no other or higher duty shall be imposed

in the United States upon other articles not enumerated in the said Schedules, the growth, produce, or manufacture of Canada; or in Canada upon such other articles the growth, produce, or manufacture of the United States, than are respectively imposed upon like articles the growth, produce, or manufacture of Great Britain, or of any other country.

Schedule A, consisting of the following natural products :—

Animals of all kinds.	Lard.
Ashes, pot, pearl, and soda.	Lime.
Bark.	Malt.
Bark, extract, for tanning purposes.	Manures.
Bath bricks.	Marble, stone, slate, or granite, wrought or unwrought.
Breadstuffs of all kinds.	Meats, fresh, smoked, or salted.
Bricks for building, and fire bricks.	Ores of all kinds of metals.
Broom-corn.	Peas, whole, or split.
Burr or grindstones, hewn, wrought or unwrought.	Pelts.
Butter.	Petroleum oil, crude, refined, or benzole.
Cheese.	Pitch.
Coal and coke.	Plants.
Cotton-wool.	Poultry, and birds of all kinds.
Cotton-waste.	Rags of all kinds.
Dye stuffs.	Rice.
Earths, clays, ochres, and sand, ground or unground.	Salt.
Eggs.	Seeds.
Fish of all kinds.	Shrubs.
Fish, products of, and of all other creatures living in the water, except fish preserved in oil.	Skins.
Firewood.	Straw.
Flax, unmanufactured.	Tails.
Flour and meals of all kinds.	Tallow.
Fruits, green, or dried.	Tar.
Furs, undressed.	Timber, and lumber of all kinds, round, hewed, and sawed, unmanufactured in whole or in part.
Grain of all kinds.	Tobacco, unmanufactured.
Gypsum, ground, unground, or calcined.	Tow, unmanufactured.
Hay.	Trees.
Hemp, unmanufactured.	Turpentine.
Hides.	Vegetables.
Horns.	Wool.

Schedule B, consisting of the following agricultural implements :—

Axes.	Harrows.
Bag-holders.	Hoes, hand or horse.
Beehives.	Horse rakes.
Bone crushers, and parts thereof.	Horse-power machines, or parts thereof.
Cultivators, or parts thereof.	Hay tedders, or parts thereof.
Chaff-cutters, or parts thereof.	Liquid manure carts, or parts thereof.
Corn-huskers, or parts thereof.	Manure sowers, or parts thereof.
Cheese-rats.	Mowers, or parts thereof.
Cheese factory heaters.	Oil and oil-cake crushers, or parts thereof.
Cheese presses, or parts thereof.	Ploughs, or parts thereof.
Churns, or parts thereof.	Root and seed-planters, or parts thereof.
Cattle feed boilers, and steamers, and parts thereof.	Root-cutters, pulpers, and washers, or parts thereof.
Ditchers, or parts thereof.	Rakes.
Field rollers, or parts thereof.	Reapers, or parts thereof.
Fanning mills, or parts thereof.	Reapers and mowers combined, or parts thereof.
Feed choppers, or parts thereof.	Spades.
Forks for hay and manure, hand or horse.	Shovels.
Grain drills, or parts thereof.	Scythes.
Grain broad-cast sowers, or parts thereof.	Snaiths.
Grain crushers, or parts thereof.	Threshing machines, or parts thereof.

Schedule C, consisting of the following manufactures :—

Axles of all kinds.	Iron, bar, hoop, pig, puddled, rod, sheet, or scrap.
Boots and shoes, of leather.	Iron nails, spikes, bolts, tacks, brads, or sprigs.
Boot and shoe-making machines.	Iron castings.
Buffalo robes, dressed and trimmed.	India-rubber belting and tubing.
Cotton grain bags.	Locomotives for railways, or parts thereof.
Cotton denims.	Lead, sheet or pig.
Cotton jeans, unbleached.	Leather, sole or upper.
Cotton drillings, unbleached.	Leather, harness, and saddlery of.
Cotton plaids.	Mill or factory, or steam-boat fixed engines and machines, or parts thereof.
Cotton tickings.	Manufactures of marble, stone, slate, or granite.
Cottonades, unbleached.	Manufactures of wood solely, or of wood nailed, bound, hinged, or backed with metal materials.
Cabinet-ware and furniture, or parts thereof.	Mangles, washing machines, wringing machines, and drying machines, or parts thereof.
Carriages, carts, wagons, and other wheeled vehicles, and sleighs, or parts thereof.	Printing paper for newspapers.
Fire engines, or parts thereof.	Paper-making machines, or parts thereof.
Felt covering for boilers.	
Gutta-percha belting and tubing.	

Printing type, presses and folders, paper cutters, ruling machines, page-numbering machines, and stereotyping and electrotyping apparatus, or parts thereof.

Refrigerators, or parts thereof.

Railroad cars, carriages, and trucks, or parts thereof.

Sattinets of wool and cotton.

Steam-engines, or parts thereof.

Steel, wrought or cast, and steel plates and rails.

Tin tubes and piping.

Tweeds, of wool solely.

Water-wheel machines and apparatus, or parts thereof.

#### ARTICLE V.

It is agreed that the Canadian canals, on the main route from Lake Erie to Montreal, shall be enlarged forthwith, at the expense of the Dominion of Canada, so as to admit the passage of vessels drawing 12 feet of water; and the locks on the said canals shall be made of not less than 270 feet in length, 45 feet in width, and not less than 12 feet in depth on the mitre sills; and that the channel of the St. Lawrence River shall be deepened in the several reaches between the canals wherever the same may be necessary, so as to allow the free passage of vessels drawing 12 feet of water. And the work engaged to be done in this Article shall be completed by the 1st day of January, 1880.

#### ARTICLE VI.

It is agreed that the Government of Canada shall construct on or before the 1st day of January, 1880, a canal to connect the St. Lawrence River at some convenient point, at or near Caughnawaga, with Lake Champlain.

The dimensions of said canal shall be such as to admit the passage of vessels drawing 12 feet of water; and the locks shall be of not less dimensions than those named in the preceding Article. And the United States engage to urge upon the Government of the State of New York to cause the existing canal from Whitehall on Champlain to Albany, to be enlarged, and if necessary extended; or another canal, or canals to be constructed, of equal capacity with the proposed Caughnawaga Canal, as herein before specified; and the navigation of the Hudson River to be improved, so as to admit of the passage from Lake Champlain to the lower waters of the Hudson River, of vessels drawing 12 feet of water.

#### ARTICLE VII.

Citizens of the United States may, during the term of years mentioned in Article XIII of this Treaty, carry in their vessels cargo and passengers from one Canadian port to another on the great Lakes or River St. Lawrence.

Reciprocally,—Inhabitants of Canada, subjects of Her Britannic Majesty may, during the like period, carry in their vessels cargo and passengers from one port to another of the United States, on the great Lakes or River St. Lawrence. Citizens of the United States in their vessels, and inhabitants of Canada, subjects of Her Britannic Majesty in their vessels may, during the like term, carry cargo and passengers from any port of the United States, or of Canada, on the Red River, or the waters connecting therewith, to any other port on the said river or waters connecting therewith.

#### ARTICLE VIII.

It is agreed that, for the term of years mentioned in Article XIII of this Treaty, the citizens of the United States shall enjoy the use of the Welland, the St. Lawrence, and other canals in the Dominion of Canada, (including the proposed Caughnawaga Canal), on terms of equality with the inhabitants of the Dominion of Canada; and that without interfering with the rights of the Government of Canada to impose such tolls on the aforesaid Canadian canals respectively, as it may think fit. The tolls shall be levied in relation to the number of locks in each canal, without any drawback or discrimination, whether the destination of the vessel, or whether one or more canal or canals, or part of a canal be passed.

And it is also agreed, that for the like term of years, the inhabitants of Canada shall enjoy the use of the St. Clair Flats Canal, on terms of equality with the inhabitants of the United States; and that the navigation of Lake Champlain, and of Lake Michigan, shall be free and open for the purpose of commerce to the inhabitants of Canada, subject to any laws and regulations of the United States, or of the States bordering thereon respectively, not inconsistent with such privileges of free navigation.

And the United States further engage to urge upon the Governments of the States of New York and of Michigan, respectively, to secure to the inhabitants of Canada the use of the Erie, the Whitehall, the Sault Ste. Marie Canals, and of any enlarged or extended, or new canal, or other improvement connecting Lake Champlain with the lower

waters of the Hudson River, which may be made, as contemplated in Article VI, on terms of equality with the inhabitants of the United States.

And it is mutually agreed that full power shall be given and allowed to transship cargo from vessels into canal boats, and from canal boats into vessels, at either terminus of every canal.

And further, that if the use of the Erie, Whitehall, or other canal connecting Lake Champlain with the lower waters of the Hudson River and of the Sault Ste. Marie Canal be not granted to the inhabitants of Canada on terms of equality with citizens of the United States as contemplated in this Article, then the use of the proposed Caughnawaga Canal by citizens of the United States, as above contemplated, shall be suspended and cease, until the use of the said canals in the United States shall be secured to the inhabitants of Canada as above contemplated.

#### ARTICLE IX.

For the term of years mentioned in Article XIII of this Treaty, vessels of all kinds built in the United States may be purchased by inhabitants of Canada, subjects of Great Britain, and registered in Canada as Canadian vessels; and reciprocally, vessels of all kinds built in Canada may be purchased by citizens of the United States, and registered in the United States as United States' vessels.

#### ARTICLE X.

A Joint Commission shall be established and maintained, at joint expense during the operation of this Treaty, for advising the erection and proper regulation of all light-houses on the great lakes common to both countries, necessary to the security of the shipping thereon.

#### ARTICLE XI.

A Joint Commission shall also be established at joint expense, and maintained during the continuance of the Treaty, to promote the propagation of fish in the inland waters common to both countries, and to enforce the laws enacted for the protection of the fish and fishing-grounds.

#### ARTICLE XII.

It is further agreed that the provisions and stipulations of this Treaty shall extend to the Colony of Newfoundland so far as they are applicable.

But if the Imperial Parliament, the Legislature of Newfoundland, or the Congress of the United States, shall not embrace the Colony of Newfoundland in their laws enacted for carrying the foregoing Articles into effect, then this Article shall be of no effect; but the omission to make provision by law to give it effect by either of the Legislative Bodies aforesaid shall not in any way impair any other Articles of this Treaty.

#### ARTICLE XIII.

This Treaty shall take effect as soon as the laws required to carry it into operation shall have been passed by the Imperial Parliament of Great Britain, and by the Parliament of the Dominion of Canada, on the one hand, and the Congress of the United States on the other. If such legislative assent shall not have been given within

months from the date hereof, then this Treaty shall be null and void. But such legislative assent having been given, this Treaty shall remain in force for the period of twenty-one years from the date at which it shall come into operation; and further, until the expiration of three years, after each of the High Contracting Parties shall have given notice to the other of its wish to terminate the same, each of the High Contracting Parties being at liberty to give such notice to the other at the end of the said period of twenty-one years, or at any time afterwards.

#### ARTICLE XIV.

When the ratification of this Treaty shall have been exchanged, and the laws required to carry it into operation shall have been passed by the Imperial Parliament of Great Britain and by the Parliament of Canada on the one hand, and by the Congress of the United States on the other, then Articles XXII, XXIII, XXIV, and XXV of the Treaty of the 8th of May, 1871, between Great Britain and the United States, shall become null and void.

## ARTICLE XV.

This Treaty shall be duly ratified by Her Britannic Majesty and by the President of the United States; and the ratification shall be exchanged either at Washington or London \_\_\_\_\_ months from the date hereof, or earlier, if possible.

No. 14.

*The Earl of Derby to Sir E. Thornton.*

(No. 375.)

Sir,

*Foreign Office, December 23, 1874.*

I TRANSMIT to you, for your information a letter from the Chairman of the West Yorkshire Chambers of Commerce, relative to the proposed Reciprocity Treaty between Canada and the United States, which has been received through Mr. Ripley, M.P.\*

I am, &amp;c.

(Signed) DERBY.

No. 15.

*Sir E. Thornton to the Earl of Derby.—(Received January 3, 1875.)*

(No. 349. Confidential.)

My Lord,

*Washington, December 21, 1874.*

I HAVE the honour to inform your Lordship that, somewhat to my surprise, Mr. George Brown arrived here from Canada on the 12th instant, for I had been led to believe by a letter from Lord Dufferin that he would abstain from visiting Washington at present. Mr. Brown's object, as he told me, was to discover the state of feeling amongst members of Congress as to the project for a Reciprocity Treaty now before the Senate, and to consult with us as to the best mode of treating that project, supposing that it would not obtain a majority in its favour in the Senate.

I saw no advantage to be gained by Mr. Brown and myself officially seeing Mr. Fish upon the subject, but I acquiesced in Mr. Brown's proposal to pay him a visit privately, so that Mr. Fish might repeat to him what he had said to me with regard to the project now before the Senate.

Mr. Brown saw Mr. Fish, who told him that, although he was himself in favour of the Reciprocity Treaty, and would be very glad if it could be concluded and sanctioned by the Senate, so much opposition had been raised against it throughout the country, that he felt certain that it would not receive the requisite majority in the Senate. The question was what could best be done with it, and Mr. Fish suggested that, if Mr. Brown and I would make a request that the project should be withdrawn from the Senate, that step could be taken. Mr. Brown gave no answer to this suggestion, except that he should mention it to me.

Mr. Brown also saw a few of the Senators and Representatives with whom he had spoken upon the Reciprocity Treaty last Spring, and seemed to think that they were now as much in favour as they were then of the measure. But Mr. Brown is of so sanguine a temperament that I fear he sometimes, without sufficient grounds, believes what he wishes. Although I am also of opinion that the feeling throughout the country has improved with regard to reciprocity, I cannot discover that it is now viewed with much favour by the Republican party in the Senate, who really have the question in their hands; they seem now, since their late losses on the elections, to be, still more than formerly, under the influence of the small but powerful body of protectionists.

When Mr. Brown mentioned to me the suggestion made by Mr. Fish that we should ask him to withdraw the project from the Senate, I expressed my opinion that such a step on our part would be unwise and undignified, as it might be interpreted into a feeling that we had made proposals which could not be acceptable to the United States, whereas we are really convinced that they would be very much to their advantage, and I added that, if Mr. Fish gave me an opportunity, I should express myself in that sense to him.

We discussed the point, whether it would be well, by some other means, to endeavour to prevent any vote being taken upon the project, or whether, on the contrary, it would be desirable, if we found that democratic Senators intended to vote

\* No. 11.



in its favour, that the vote should be taken, in order that the Senators of that party might be committed to it. As far as my experience goes in this country, it seems to be wiser to abstain from attempting the exercise of any influence by Her Majesty's Legation with the Legislature, because it is impossible to do so without its becoming public, and because the jealousy of any interference on the part of the Representatives of foreign Powers, generally, does the cause they advocate more harm than good in the minds of Americans. I, therefore, expressed my opinion that apparent indifference was our best course.

On the 17th instant, I saw Mr. Fish at the State Department. As I was leaving him, after talking to him about other matters, he said that he had seen Mr. Brown, and had had some conversation with him about the project; it seemed, however, to him that Mr. Brown was deceived as to the feelings of Senators with regard to it, and he could assure me that there was not the smallest chance of its obtaining a majority, or even more than a few votes. He then said that he had suggested to Mr. Brown that we should ask him to withdraw the project from the Senate. When I replied that Mr. Brown and I could not certainly take such a step, he did not seem at all surprised, and at once acquiesced. In answer to my inquiries, he said that the Senate would do nothing in the matter before the holidays, but would probably take it into consideration immediately after the recess. He confidentially expressed his opinion that, as he was convinced that the Senate was anxious to do nothing which could be disagreeable to Her Majesty's Government, it would probably pass a resolution to the effect that the great financial difficulties which prevailed throughout the country rendered it inexpedient to enter upon the negotiation of a Treaty which might produce such important results, whether advantageous to the country or the contrary.

If, as I believe, the project cannot command a majority in the Senate, this solution would probably be the least objectionable, for it would always leave the door open to the resumption of the consideration of the question, and might well be a ground with the Democratic party for taking it up again.

As soon as adverse action shall have been taken upon the project by the Senate, it will be necessary to consider whether the Halifax Commission is to be proceeded with. I observed some hesitation on Mr. Brown's part in pressing the establishment of the Commission, which appeared to me to arise from a fear, which he did not, however, positively state, that the Commission might award to Canada a very small sum, if any at all, as compensation for the Canadian fisheries having been thrown open for a term of years to citizens of the United States. On the other hand, it would, perhaps, be bad policy on our part not to insist upon the installation of the Commission, lest the United States' Government should imagine that we intended to abandon that part of the Treaty altogether. I told Mr. Brown that he had better discuss this question with the Canadian Government, and that I hoped that Lord Dufferin would communicate the views of his Ministers to Her Majesty's Government without delay.

Mr. Brown left Washington on the evening of the 16th instant to return to Canada.

I have, &c.  
(Signed) EDWD. THORNTON.

No. 16.

*Mr. Bourke to Mr. Herbert.*

(Confidential.)

Sir,

*Foreign Office, January 6, 1875.*

WITH reference to my letter of the 30th ultimo, I am directed by Lord Derby to transmit to you, to be laid before Lord Carnarvon, a copy of a despatch from Sir E. Thornton relative to the prospects of the Reciprocity Treaty and the visit of Mr. Brown to Washington.\*

I am, &c.  
(Signed) ROBERT BOURKE.

## No. 17.

*Sir E. Thornton to the Earl of Derby.—(Received February 5, 7.30 P.M.)*

(Telegraphic.)

*Washington, February 5, 1875.*

THE project of a Reciprocity Treaty with Canada was rejected by the Senate on the 3rd instant in secret Session without a division. I do not know the exact words of the Resolution on the subject.

## No. 18.

*Mr. Bourke to Mr. Herbert.*

Sir,

*Foreign Office, February 6, 1875.*

I AM directed by the Earl of Derby to state to you, for the information of the Earl of Carnarvon, that a telegraphic despatch has been received from Her Majesty's Minister at Washington, stating that the project of a Reciprocity Treaty with Canada was rejected by the United States' Senate on the 3rd instant, in secret Session, without a division.

I am to add that Sir E. Thornton did not know the exact words of the Resolution on the subject at the time that he sent his despatch.

I am, &c.  
(Signed) ROBERT BOURKE.

## No. 19.

*Sir E. Thornton to the Earl of Derby.—(Received February 7.)*

(No. 25.)

My Lord,

*Washington, January 25, 1875.*

ON the 22nd instant Mr. Edmunds, a Senator from Vermont, submitted to the Senate a Resolution which had been passed by the Legislature of his State relative to the proposed Reciprocity Treaty with Canada. Amongst other things it alleged that the subject of trade and commercial intercourse with Canada, as well as with other countries, is not a proper matter of Treaty stipulation, but belongs to Congress. In presenting the Resolution, Mr. Edmunds stated that he did so in obedience to the instructions of the Legislature of his State, but that he thought it was in error with regard to that part of the Resolution which is cited above, and he proceeded to quote authorities and instances in support of his opinion.

His colleague from Vermont, Mr. Morrill, took the opposite view of the question, and stated that it seemed perfectly clear that the Senate and the President could not make a Treaty which would compel the House either to raise or diminish Tariff duties. Mr. Morrill said that he should take an early opportunity of discussing the whole question.

The Resolution was referred to the Committee on Foreign Relations, and I have the honour to inclose three printed copies of it, and of the observations made by the Senators from Vermont.

It is not supposed that the Senate will acquiesce in the view taken by Mr. Morrill.

I have, &c.  
(Signed) EDWD. THORNTON.

Inclosure in No. 19.

*Extract from the "Congressional Record" of January 23, 1875.*

CANADIAN RECIPROCITY TREATY:

*Mr. Edmunds.*—I present joint resolutions of the Legislature of the State of Vermont, relating to reciprocity in trade with the Dominion of Canada, which I ask may be read.

The Chief Clerk read as follows;—

“ Joint Resolution relating to reciprocity in trade with the Dominion of Canada.

“ *Resolved by the Senate and House of Representatives*, That, having an intelligent regard for the best interests of Vermont, as well as the whole country, it is the duty of our Senators and Representatives in Congress to use their influence against the consummation of any Treaty relating to reciprocity in trade with the Dominion of Canada, and to insist that the subject of trade and commercial intercourse with Canada, as well as with all other foreign countries, is not a proper matter of Treaty stipulation, but belongs to Congress, and should be wisely regulated by judicious legislation.

“ *Resolved*, That in common with Canadian people we earnestly desire and hope for the early completion of the ship canal connecting the waters of the St. Lawrence and Hudson Rivers with Lake Champlain, as forming an important line of communication between the great cities on the Atlantic seaboard and the grain and lumber regions of Canada and the north-west, and in this work we invite the co-operation respectively of the Governments of the Dominion of Canada and the United States.

“ *Resolved*, That the Governor of this State be, and is hereby requested to transmit a copy of these Joint Resolutions to each of our Senators and Representatives in Congress; also a copy each to the President of the United States and the Governor-General of the Dominion of Canada.

(Signed) “LYMAN G. HINCKLEY, *President of the Senate*.

“H. HENRY POWERS, *Speaker of the House of Representatives*.

“ *State of Vermont, Office of Secretary of State*.

“ I, George Nichols, Secretary of State of the State of Vermont, hereby certify that the foregoing is a true copy of joint Resolutions adopted by the General Assembly at its biennial Session A.D. 1874.

“ In testimony whereof I hereunto set my hand and affix the seal of the office at Montpelier this 1st day of January, A.D. 1875.

(L.S.) “GEORGE NICHOLS, *Secretary of State*.”

*Mr. Edmunds.*—I move that these Resolutions be printed and referred to the Committee on Foreign Relations; and in making this motion I wish to say that while I shall most cheerfully obey the instructions of the Legislature of the State of Vermont touching resistance to this Treaty or any other Treaty which they may, so far as I can now foresee, be likely to express an opinion upon, I cannot allow the occasion to pass without stating that I think the Legislature of Vermont is in error in that part of its Resolutions in which it states “that the subject of trade and commercial intercourse with Canada, as well as with all other foreign countries, is not a proper matter of Treaty stipulation.” I think that by the Constitution of the United States there may be many Treaties on subjects of trade and commercial intercourse which are the proper constitutional matters of Treaty stipulation, and in that respect I am sorry to feel obliged to differ with that body of gentlemen, for whom, individually and collectively, I have the best possible reasons for having a very high respect.

The first President of the United States, General Washington, on the 30th day of March, 1796, transmitted to the House of Representatives a message upon this very subject, a part of which I ask may be read, which I have marked in the volume I send to the desk.

The Chief Clerk read as follows:—

“The course which the debate has taken on the Resolution of the House leads to some observations on the mode of making Treaties under the Constitution of the United States.

“Having been a member of the General Convention, and knowing the principles on which the Constitution was formed, I have ever entertained but one opinion on this subject, and from the first establishment of the Government to this moment my conduct has exemplified that opinion, that the power of making Treaties is exclusively with the President, by and with the advice and consent of the Senate, provided two-thirds of the Senators present concur; and that every Treaty so made and promulgated thenceforward becomes the law of the land. It is thus that the Treaty-making power has been understood by foreign nations, and in all the Treaties made with them we have declared and they have believed that when ratified by the President, with the advice and consent of the Senate, they become obligatory.

“In this construction of the Constitution every House of Representatives has heretofore acquiesced, and until the present time not a doubt or suspicion has appeared to my knowledge that this construction was not the true one. Nay, they have more than

acquiesced; for until now, without controverting the obligation of such Treaties, they have made all the requisite provisions for carrying them into effect.

“There is also reason to believe that this construction agrees with the opinions entertained by the State Conventions, when they were deliberating on the Constitution, especially by those who objected to it, because there was not required in Commercial Treaties the consent of two-thirds of the whole number of the members of the Senate instead of two-thirds of the Senators present, and because, in Treaties respecting territorial and certain other rights and claims, the concurrence of three-fourths of the whole number of the members of both Houses respectively was not made necessary.

“It is a fact, declared by the General Convention and universally understood, that the Constitution of the United States was the result of a spirit of amity and mutual concession. And it is well known that, under this influence, the smaller States were admitted to an equal representation in the Senate with the larger States; and that this branch of the Government was invested with great powers; for, on the equal participation of those Powers, the sovereignty and political safety of the smaller States were deemed essentially to depend.

“If other proofs than these and the plain letter of the Constitution itself be necessary to ascertain the point under consideration, they may be found in the journals of the General Convention, which I have deposited in the office of the Department of State. In those journals it will appear that a proposition was made ‘that no Treaty should be binding on the United States which was not ratified by a law,’ and that the proposition was explicitly rejected.

“As, therefore, it is perfectly clear to my understanding that the assent of the House of Representatives is not necessary to the validity of a Treaty, as the Treaty with Great Britain exhibits in itself all the objects requiring legislative provision, and on these the papers called for can throw no light; and as it is essential to the due administration of the Government that the boundaries fixed by the Constitution between the different Departments should be preserved, a just regard to the Constitution and to the duty of my office, under all the circumstances of this case, forbid a compliance with your request.

(Signed)

“G. WASHINGTON.

“*United States, March 30, 1796.*”

*Mr. Edmunds.*—In February 1816, this question again arose between the two Houses of Congress on the Treaty of Trade and Commerce with the Government of Great Britain, and it was brought to a conference; and in order to show the Senate precisely what the conferees on the two sides stated the true interpretation of the Constitution to be, I beg leave to read a very short paragraph from each, because I know how precious time is, and I do not intend to enlarge on this topic. The conferees of the Senate reported on this topic in this way:—

“The conferees of the Senate did not contest, but admitted the doctrine, that of Treaties made in pursuance of the Constitution some may not and that others may call for legislative provisions to secure their execution, which provision Congress, in all such cases, is bound to make. But they did contend that the Convention under consideration requires no such legislative provisions, because it does no more than suspend the alien disability of British subjects in commercial affairs in return for the like suspension in favour of American citizens; that such matter of alien disability falls within the peculiar province of the Treaty power to adjust; that it cannot be securely adjusted in any other way, and that a Treaty duly made, and adjusting the same, is conclusive, and by its own authority suspends or removes antecedent laws that are contrary to its provisions.”

The conferees on the part of the House of Representatives stated their case in this way:—

“They are persuaded that the House of Representatives does not assert the pretension that no Treaty can be made without their assent; nor do they contend that in all cases legislative aid is indispensably necessary, either to give validity to a Treaty, or to carry it into execution. On the contrary, they are believed to admit that to some, nay many Treaties, no legislative sanction is required, no legislative aid is necessary.

“On the other hand, the Committee are not less satisfied that it is by no means the intention of the Senate to assert the Treaty-making power to be in all cases independent of the legislative authority. So far from it, that they are believed to acknowledge the necessity of legislative enactment to carry into execution all Treaties which contain stipulations requiring appropriations, or which might bind

the nation to levy taxes, to raise armies, to support navies, to grant subsidies, to create States, or to cede territory; if, indeed, this power exists in the Government at all. In some or all of these cases, and probably in many others, it is conceived to be admitted, that the Legislative Body must act, in order to give effect and operation to a Treaty; and if in any case it be necessary, it may confidently be asserted that there is no difference in principle between the Houses; the difference is only in the application of the principle."

Accordingly on that occasion the House, apparently as a matter of duty, passed a Bill to make the legislative provisions supposed to be necessary by them to carry this Treaty, which had been made and which was binding between the Government of the United States and Great Britain, into effect. I know that in 1844 in this body Mr. Choate on one occasion and Mr. Archer on another, from the Committee on Foreign Relations, reported on the Zollverein Treaty that a Commercial Treaty was not apparently within the competence of the Senate to make, although probably in the history of the country down to that time a dozen at least of such Treaties had been made, beginning with the Treaty of Jay and coming down to that time, which covered the very topic upon which they spoke. I now ask your attention for a single moment to the decisions of the Supreme Court on the subject of the relation of the Treaty-making power to the legislative power. The first is *Foster v. Neilson*, decided by Chief Justice Marshall and his associates in the year 1829. They say:—

"A Treaty is, in its nature, a contract between two nations, not a legislative act. It does not generally effect, of itself, the object to be accomplished, especially so far as its operation is infra-territorial; but is carried into execution by the sovereign power of the respective parties to the instrument.

"In the United States a different principle is established. Our Constitution declares a Treaty to be the law of the land. It is, consequently, to be regarded in Courts of Justice as equivalent to an Act of the Legislature, whenever it operates of itself without the aid of any Legislative provision. But when the terms of the stipulation import a contract, when either of the parties engages to perform a particular act, the Treaty addresses itself to the political, not the judicial Department; and the Legislature must execute the contract before it can become a rule for the Court.

"The Article under consideration does not declare that all the grants made by His Catholic Majesty before the 24th of January, 1818, shall be valid to the same extent as if the ceded territories had remained under his dominion. It does not say that those grants are hereby confirmed. Had such been its language, it would have acted directly on the subject, and would have repealed those Acts of Congress which were repugnant to it; but the language is, that those grants shall be ratified and confirmed to the persons in possession.

Then the Court goes on to say that that particular language is only a promise on the part of the Treaty-making power that the Sovereign will shall be brought into exercise to confirm those grants by proper acts of legislation.

In the year 1870, in the Cherokee tobacco case, the Supreme Court of the United States, by Mr. Justice Swayne, again decided:—

"The effect of Treaties and Acts of Congress, when in conflict, is not settled by the Constitution. But the question is not involved in any doubt as to its proper solution. A Treaty may supersede a prior Act of Congress, and an Act of Congress may supersede a prior Treaty. In the cases referred to these principles were applied to Treaties with foreign nations."

It then appears clear to me that the function of the Treaty-making power granted under the Constitution is just as supreme in respect of the subjects to which it applies as is the legislative grant of power or the judicial grant of power; and therefore that any Treaty which according to the understood course of nations covered a topic which might be, in the ordinary course of Treaty-making powers, the subject of a Treaty, as Treaties of Alliance, and of Commerce, and of War always had been, the Treaty is complete in itself so far as to bind the nation to carry it out. It may still require that there shall be an Act of Congress to raise money or to raise armies if it be a Treaty of Alliance; it may still require, in order to make it effectual and to carry it into execution, if it be a Treaty of Commerce, that the legislative power of the Government must be invoked to regulate the tariff laws. That may be perfectly true; but the simple question is one of constitutional power, whether the Treaty binds the nation to do the thing which the Treaty itself has provided it shall do. If the nation does not choose to do it, of course other remedies must be resorted to.

But to say, as these Resolutions appear to have said, that it is not within the

constitutional competence of the Senate, of the President, and two-thirds of the States represented by the Senate, acting under that clause of the Constitution, to make any Treaty upon the subject of commercial intercourse or of trade, is, in my opinion, to say that which the Constitution does not warrant, and to do that, if it were carried out, which President Washington thought would be injurious to the common interest of the whole country, and would impair the right of the various States, as States interested in protecting the integrity and safety and peace of the whole Union, to exercise as such States their power touching all matters of foreign relations.

But, as I have said, Mr. President, the time does not allow me to pursue this subject. So far as regards the object which the Legislature of my honoured State has in view—that is, to ask me to vote against the ratification of this Treaty—as I said before, I shall most cheerfully do it.

*Mr. Morrill, of Vermont.*—Mr. President, I was not aware that my colleague was about to discuss this subject this morning, but I must say that I shall take the earliest opportunity that the Senate affords me to discuss the whole question which is involved in the proposition mentioned in the Resolutions. It seems to me that the Resolutions of the State of Vermont particularly refer to the Canadian Reciprocity Treaty, which has been proposed and which has been published, and the injunction of secrecy removed therefrom.

That being so, I shall undertake to show, whenever the question shall properly come up, that Reciprocity Treaties were compacts unknown at the time of the adoption of the Constitution; that they are directly in the teeth of the Constitution so far as power to regulate commerce has been committed entirely to Congress, and to Congress alone. If the President and Senate alone may usurp the power of making Treaties interfering with the revenues of the country and compel the House of Representatives to pass laws in accordance with such Treaties, it would certainly be done in defiance of this passage of the Constitution, namely:—

“The Congress shall have power to regulate commerce with foreign nations, and among the several States, and the Indian tribes.”

It seems perfectly clear that the Senate and the President cannot make a Treaty that shall compel the House either to raise or to diminish tariff duties.

But I am not disposed to consume time this morning. This is a question that requires careful thought and some investigation. I do not believe that we are to make a Reciprocity Treaty valid by the consent of the House. Can the House give away its Constitutional rights and privileges? The present House might give away its Constitutional power for the time being, but it could reassert it at any moment, and it could not grant or give away any power of a coming House of Representatives. The power clearly and legitimately belongs to the House of Representatives to originate revenue bills, and the entire Congress alone has control of the subject of regulating commerce as much as Congress has the power to coin money or to pass naturalization laws. If the Senate and the President may take this upon themselves, they may take it upon themselves to coin money, to regulate the naturalization laws, or almost anything else.

I decline, however, to go further into this subject now; but I think so far as the Resolutions of the State of Vermont go, they were intended to apply to Reciprocity Treaties; and so far as that is concerned, I shall hope to satisfy a majority of the Senate that the State of Vermont is entirely right in the ground it has taken. I am very certain that a majority of the House of Representatives will be fully in accord with the State of Vermont.

The Resolutions were referred to the Committee on Foreign Relations, and ordered to be printed.

## No. 20.

*Mr. Bourke to Mr. Herbert.*

Sir,

*Foreign Office, February 10, 1875.*

I AM directed by the Earl of Derby to transmit to you, to be laid before the Earl of Carnarvon, the accompany copy of a despatch from Her Majesty's Minister at Washington,\* inclosing a newspaper extract of a report of certain observations made in the United States' Senate by the Senators of the State of Vermont on the question of

the Treaty-making power vested in the President and Senate in reference to the proposed Reciprocity Treaty with Canada.

I am, &c.  
(Signed) ROBERT BOURKE.

## No. 21.

*Sir E. Thornton to the Earl of Derby.—(Received February 14.)*

(No. 32. Confidential.)

My Lord,

Washington, February 1, 1875.

WITH reference to my despatch No. 349 of the 21st of December last, I have the honour to inform your Lordship that having heard a rumour that the project for a Reciprocity Treaty with Canada had been considered by the Senate Committee on Foreign Relations, who had come to an adverse decision upon it, I called upon Mr. Fish on the 28th instant, and inquired whether the report was well-founded. Mr. Fish replied that, although he was not able to say what had passed in a secret Session of the Senate Committee, he had reason to know, and could tell me confidentially, that the Committee had agreed to report adversely to the project, and that this decision had been come to by eight votes to one.

I asked what were the terms of the decision, to which Mr. Fish answered that he understood it to be merely to the effect that the negotiation of such a Treaty was inexpedient.

I then suggested that, as I knew he was in favour of the general principles contained in the project, it would be well that he should use his influence with the Senators that an adverse vote should not be recorded upon it by the Senate, but that it should rather be allowed to lie on the table. But Mr. Fish expressed his opinion that it would be a want of respect to the President not to give an answer to his Message upon the subject.

I then reminded Mr. Fish that he had in December last expressed to me his hope that the Senate would attribute the inexpediency of the negotiation to the financial difficulties from which the country was now suffering. He replied that he had hoped that such an answer would have been given, but that the Senate Committee had preferred an unconditional adverse decision. He had, however, been to the Senate himself on the previous day, and had expressed his hope to the Committee that at least they would report that they considered the negotiation of such a Treaty would be inexpedient "at the present juncture." The insertion of such a phrase would, he thought, enable the Government to reopen the negotiation at some future time; but he was not at all sure that he had made much impression upon the Senators, or that they would act in accordance with his wish.

Mr. Fish did not express any opinion as to when the subject might be again considered, nor did I think it expedient to question him upon that point. Judging, however, from previous experience, I should say that, considering the antagonism which will exist during the next two years between the Executive and the Senate on the one hand, and the House of Representatives on the other, and the Presidential election in the autumn of 1876, it is not likely that a renewed negotiation would be attended with success before the installation of the new President in 1877.

I have, &c.  
(Signed) EDWD. THORNTON.

## No. 22.

*Mr. Bourke to Mr. Herbert.*

(Confidential.)

Sir,

Foreign Office, February 15, 1875.

WITH reference to my letter of the 6th ultimo, I am directed by the Earl of Derby to transmit to you, for the information of Earl of Carnarvon, the accompanying copy of further despatch from Her Majesty's Minister at Washington,\* reporting a conversation which he had held with Mr. Fish upon the rejection by the United States' Senate of the proposed Reciprocity Treaty with Canada.

I am, &c.  
(Signed) ROBERT BOURKE.

*Sir E. Thornton to the Earl of Derby.—(Received February 21.)*

(No. 38.)

My Lord,

Washington February 8, 1875.

ON the 3rd instant, Mr. Morrill, a Senator from Vermont, took advantage of a Resolution which had been transmitted to the Senate by the Legislature of that State condemning the projected Reciprocity Treaty with Canada to make a speech upon the subject.

I have the honour to inclose three copies of the Vermont Resolution and of Mr. Morrill's speech.

He considers that the project ought not to receive the sanction of the Senate as being disadvantageous to the United States; he enlarges upon the advantages to both countries of the annexation of Canada to the United States; he protests against cutting off so great a proportion of the revenue of the United States for a long term of years; he claims that the negotiation of such Treaties which involve alterations of the Tariff is not within the province of the Executive Government, and he endeavours to prove that Canada received more than an equivalent for her fisheries by the Treaty of 1871, and that if the enlargement of some of the Canadian canals, and the construction of others, would be convenient to the United States, they are indispensable to Canada.

It was evident that this speech, delivered in open Session, was intended to influence the minds of Senators with regard to the project; for at the end of it a motion was made that the Senate should go into Executive Session, the doors were closed, and the projected Reciprocity Treaty was taken into consideration. I understand that a Resolution adverse to the project was adopted without a division. What were the precise terms of this Resolution I have not yet been able to discover.

On the following evening I met Mr. Fish, and inquired of him in what terms the Treaty had been rejected. He replied that he did not know; but that he believed that it was to the effect that the negotiation of such a Treaty was not expedient; he had requested of the Committee on Foreign Relations that the words "at the present time" should be added, but he had not yet been informed whether this addition had been made.

I understand that when a Resolution of this nature is adopted by the Senate in secret Session, the rule is that it should not be transmitted immediately to the President, but that it should remain for a few days in order to give to any Senator who may choose an opportunity of moving that the Resolution be reconsidered—a step which it does not seem probable will be taken in this case.

I presume that as soon as the President shall receive a copy of the Resolution, whatever it may be, Mr. Fish will officially communicate its purport to me, in order that I may transmit it to your Lordship.

I shall then await your Lordship's instructions as to whether I should make any representation to Mr. Fish upon the establishment of the Commission which should meet at Halifax in accordance with the provisions of the XXIIIrd Article of the Treaty of the 8th May, 1871.

I have, &c.  
(Signed) EDWD. THORNTON.

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Inelasure in No. 23.

*Extract from the "Congressional Record" of February 4, 1875.*

RECIPROCITY TREATY WITH CANADA.

*Mr. Morrill, of Vermont.*—Mr. President, I am quite aware that any one who undertakes to discuss this grave matter of the Reciprocity Treaty with the Canadas ought to feel some confidence that he can shed some little light upon the subject; but I am ready to confess that I expect the chief interest in the subject will be in the change made from the topic that has so long been under discussion in the Senate. I ask that the Secretary read the two first Resolutions of the Legislature of the State of Vermont.

The Chief Clerk read as follows:

*Resolved by the Senate and House of Representatives.*—That, having an intelligent regard for the best interests of Vermont, as well as the whole country, it is the duty of



our Senators and Representatives in Congress to use their influence against the consummation of any Treaty relating to reciprocity in trade with the Dominion of Canada, and to insist that the subject of trade and commercial intercourse with Canada, as well as with all other foreign countries, is not a proper matter of Treaty stipulation, but belongs to Congress, and should be wisely regulated by judicious legislation.

*Resolved.*—That in common with the Canadian people we earnestly desire and hope for the early completion of the ship-canal connecting the waters of the St. Lawrence and Hudson Rivers with Lake Champlain, as forming an important line of communication between the great cities on the Atlantic sea board and the grain and lumber regions of Canada and the North-west, and in this work we invite the co-operation respectively of the Governments of the Dominion of Canada and the United States.

*Mr. Morrill, of Vermont.*—These Resolutions being public Resolutions, and the proposal for the Treaty with the Canadian Dominion having been made public, or the injunction of secrecy removed from it, and from all the papers in relation thereto, I feel that I shall not transcend the proprieties of the occasion in discussing the proposal for a Reciprocity Treaty with Canada. I shall in the first part of my remarks refer to the effects that such a Treaty would have upon the question of annexation, then to the fact that we have no revenue to spare, to the effect that it will have upon our national power if we should agree to a Treaty that would bind us in effect to keep the peace for twenty-four years. Then I shall endeavour to discuss the Constitutional question, so far as pertains to the right of Congress, “to regulate commerce with foreign nations and among the several States and with the Indian tribes,” and the power of the President and Senate to interfere with the prerogative of the House of Representatives to originate Revenue Bills. I shall then refer to the effect it will have upon the agricultural interests of this country, the fisheries, manufactures, and smuggling; and from all of these points I hope to be able to show that the Treaty would be a very bad bargain.

The abrogated Reciprocity Treaty with Great Britain, relating to her Canadian dominions having proved profitable to our northern neighbours and unprofitable to us, it is not wonderful that they should seek in some form an early renewal of its advantageous conditions, nor is it wonderful that we should scan fresh proposals from that quarter with distrust.

The Dominion Government maintained during the last Session of the Congress a Confidential Embassy at Washington to manufacture or to create a public opinion at our Capitol, through diligent diplomacy and diligent use of the public press, in favour of a new Reciprocity Treaty; and with so much success that the project, with all the features of its Canadian parentage and British baptism, was at length submitted by the President, as the public have been informed, to the Senate for its advice. It was sent, like the first Treaty of Washington, not for our consent, but only for our advice, whether favourable or unfavourable.

It was a high gratification to observe, while examining the details of the proposed Treaty and its exclusively foreign origin, that the Secretary of State only formally delivered it to the President and left it without a word of official commendation, as though he was glad to be rid of an unprofitable ceremony. The President of the United States, bound as he is by national and diplomatic comity to treat communications from foreign nations with dignified respect, transmitted the proposal to the Senate, manifesting no marked partiality for the measure, but, while earnestly asking for the opinion of the Senate, frankly declared that he was not himself prepared to say anything respecting its merits. For myself, not being able to find merits, I shall say something upon its demerits, and attempt to show that for what we are to grant there is no adequate compensation in any of the provisions tendered, and that their character, though much confused, cannot be hidden by being huddled together in the form of a Treaty.

While considering any new Reciprocity proposals the effect of the old Treaty should be constantly borne in mind. Our exports to Canada in 1855 were 20,828,676 dollars, but in twelve years under the operation of “Reciprocity,” or in 1866, they had fallen to 15,243,834 dollars; showing a positive decrease of over 5,000,000 dollars. Yet the exports of Canada to the United States during the same time, which were in 1855 only 12,182,314 dollars, had increased in 1866 to 46,199,470 dollars. The gross inequality therefore was enormous. We furnished to them in twelve years under the Treaty, a free market for Canadian products to the amount of 239,000,000 dollars, but in return the Canadas only gave a free market to American products to the extent of 124,000,000 dollars. When the Treaty began the balance of trade was 8,000,000 annually in our favour, and at the end the balance to be paid in specie was 30,000,000 in one year against us. That was a reciprocity which cannot be dwelt upon with composure, or that we can afford to have repeated.

## ANNEXATION.

One of the collateral questions that will at the outset obtrude itself in the discussion of this Treaty, is that of the future annexation of the entire country on our northern border. That it would be in many of its aspects—civil, military, and financial—convenient, is not to be doubted. The large sums now mutually expended for defence against future possible border collisions, and for parallel lines of revenue offices would be wholly saved and serve to augment the amount which each and every man of the respective countries could retain from the products of his own labour. Rogues would find no sanctuary by fleeing across a boundary line. There would be little risk in trusting a people, where branches of our own race and language are dominant, to mingle and co-operate in our system of self-government, and we are by no means "so near of kin that we can never be united." Local liberty and local organization would be preserved. But the advantages to them would be infinitely superior to all that would ever accrue to us. The constable would take the place of their standing army. The fear of becoming the American cock-pit in case of a war with Great Britain would be dispelled, and the Canadas would not only enjoy complete reciprocity, but would be our latest and youngest pets, to whom the most liberal national appropriations for all needful improvements would not be refused. Their forests and unoccupied fields, their mines and vacant mill privileges, would attract the captains of industry, and tempt the capital of our whole people. Even the smallest of our States would furnish effective reinforcements. The deposits in the savings-banks of Rhode Island alone are nearly equal to the entire banking capital of the whole Canadian Dominion.

Our own territory, however, is sufficiently large to hold all the population of a first-rate power among nations, including the accretions of future centuries, and we have a soil and climate so broad and various as to furnish all the chief products required by the most advanced civilization. Any future territorial additions would add little to our felicity and nothing to our prosperity or security; and yet no one can be entirely deaf to the voice of political prophets, or deny that manifest destiny persists in pointing out with an unmoving finger that one flag must ultimately cover and protect all Americans who speak the same language, and whose highest development possibly awaits that crowning event.

The remote and varied interests of the different parts of the British possessions, sundered as they are by magnificent distances, by unexplored wildernesses, by mountains, and by oceans, lakes, and rivers, or in winter by seas of ice, will for ever prompt a closer American combination. But American statesmen unlike those of the European continent, should do nothing to force or unduly hasten such a combination, and certainly should do nothing to absolutely bar or retard it by a losing and paltry substitute for it in the form of a Reciprocity Treaty. Patriotism requires that we should study the most exalted interests of our own people, and these interests would be jeopardized, as it seems to me, and certainly the collateral question of annexation indefinitely postponed, by treating the Canadian Dominion with more favour than we treat any other foreign Dominion. Nor does it belong to us to allay the discontents of any outlying Provinces of Great Britain by remitting duties which they now rightfully pay and by throwing both the burden and discontent upon our own people.

It is now said, as it was in 1844, "make the Reciprocity Treaty, and Canadian annexation is only a question of time." That might be proclaimed with equal fluency, and with the added force of some possible grains of truth, in the negative form, by saying, "no Treaty, and annexation is only a question of time;" but our Republic, having the vantage-ground of absolute independence, should stand on its own self-respect, and yield nothing in advance to vague hints of a doubtful future nuptial ceremony. The idea that annexation would be the logical sequence of reciprocity is not only absurd, but has been thoroughly exploded by our past experience as a weak delusion, and as flickering as the *aurora borealis*, which vanishes with the first streak of morning light. Canadians are not yet republicans, and very feebly yearn for their own national independence. Their devotion to royalty—of which we do not complain—is strong, because it is afar off, and is only less than their loyalty to the pursuit of gain. What more do they desire, now having a cheap market from which to buy, than a dear market in which to sell, or than such relations with the United States as will secure greater commercial prosperity without any of the incidents and responsibilities of annexation? It is clearly the greed of trade which now prompts our neighbours, who evidently are not inspired by the ambition which makes men dare to be masters of their own fate.

Good farming lands within the boundaries of the United States sell now for more

than twice as much per acre as land of equal fertility not half a mile distant in the Canadian Dominion. If the chief industries of the Canadas could be made more profitable, real estate there, improved and unimproved, would quickly advance in value, and the Canadas would not only escape the danger of depopulation from the emigration now going on of their own people, but a much larger proportion of the foreign immigrants landing at Quebec would be retained instead of swiftly crossing to the United States.

These results they might secure, and all at our cost, by the proposed Treaty; the loftier their flight the more humble our own. But our experience under the abrogated Treaty, confessedly too favourable to the Canadians, and most onerous to the people of the United States, shows that, so far as they are concerned, such a Treaty does not warm the affections nor increase the respect of the colder regions of the north, where it was only a gainful bargain adroitly interpreted, and had neither power to create nor to perpetuate an era of good-will as the precursor of annexation. It was rather like the feast of Barmecide in the "Arabian Nights," where the visitor was put off with calling for exquisite viands that never appeared, and with the solitary honour of the company of the host. Annexation may have been on the bill of fare and called for, but it did not appear, and we had the cool and hungry honour of treating with a distinguished host.

From 1861 to 1865, notwithstanding the supposed genial influence generated by reciprocity in the hour of its supremest strength and fruition, Canadian amity was truly "a peace which passeth all understanding;" and there was hardly any greater malevolence exhibited towards the United States than that so offensively displayed by the ruling spirits of the Canadian Dominion.

They coldly calculated the profit and loss of planting thorns in our bleeding sides, and saw with exultation both the South and the North each grow weaker by loss of blood. They vainly hoped our growth and greatness would be curbed and our glories dimmed. Not that they most hated the North, but that they hated the Union, and would love us better in smaller and broken parcels.

Let us not be deceived by the present commercial caresses of our Canadian friends. They seek to extinguish the memory of former injuries, not by benefits they are to confer, but possibly by the favours they are to receive. They seem to think we ought to discover that annexation is but a little way off from reciprocity; but this bait is growing stale, and has strongly scented the old trap. The ass, we are told, did not overtake the bundle of hay fastened to the end of the pole in his front, though with longing eyes he tugged and toiled for speedy "annexation." [Reciprocity, formerly a word of deceitful sweetness, has turned out a bitter-sweet, the smart from which leaves no relish for a second taste. The song of the siren may have betrayed us once, but there is no power to charm in its "damnable iteration."

#### THE TREATY TO BIND US TWENTY-FOUR YEARS.

The proposed Treaty, if made, is to endure for twenty-one years, and then can only be terminated after three years' notice. It is, therefore, to endure solidly, happen what may, peace or war, twenty-four years as the very shortest time of irrevocable validity. Sudden and wholly unforeseen events have more than once within the last decade brought us to the very brink of war with nations of formidable power, and who can guarantee twenty-four years of uninterrupted peace? In the dullest and most quiet quarter of the globe such a guarantee would be reckoned a hazardous risk, and cannot be otherwise in our fast-going and many-sided country. Our neighbours, the Governments of Mexico and of South America, seem to be based upon volcanic foundations, and are subject to the explosions and periodical disturbances of war and revolution. China and Japan, as the first step in a higher civilization, seek scientific instruction in the most destructive art of war. Russia, with oriental ambition, is pushing, ever pushing eastward across the Plains of Asia, and also impatiently waiting for a golden opportunity to seize the Golden Horn of the Bosphorus; and the Sultan, that sick man of the East, is watching his alert and suspiciously independent Khedive of Egypt. In France the Empire, the Monarchy, and the Republic by turns throttle each other, and the army, as in the days of the Cæsars, may ultimately fling the sword into the balance. Bismarck is dodging the bulls of the Pope and the balls of assassins, but ready at a moment's notice to snatch any tempting Provinces left out over night in the cold, and equally ready to summon Germany to play the rubber game with France. The new Republic of Spain, after bravely fighting for freedom, readily accepts a Monarchy, if it be Alfonso with an "f," while Cuba wages a cruel war under any flag that covers

slavery. The Pope is trying to extend his spiritual dictatorship as some compensation for the loss of temporal power. Denmark, Belgium, Holland, and Luxembourg, stand trembling as they behold their natural enemies hovering above them and only waiting a fit occasion to swoop them up as hawks clutch their frightened prey.

Surely the outlook is one of disquietude, and it is highly improbable that an era of perpetual peace has yet dawned. All of our experience, early and late, shows that in time of war an increased revenue is a vital measure of success. The embarrassments of 1861, in consequence of the then existing Reciprocity Treaty of 1854, were of an aggravated character. Large sources of revenue were placed beyond our reach, the hands of legislators were partially palsied, and no American statesman should again consent to impose such an evil-engendering Treaty upon Congress and the American people. The recent upheavals and the present unsatisfactory condition of affairs in Europe indicate, as some of their most astute statesmen have announced, further national struggles of a grave character, and if they come, we shall not want to be shackled and bound by any such entangling alliances as are most absurdly called Reciprocity Treaties. Intending nothing but peace, we should yet scorn to give bonds that under no provocations shall there be war. Our position should be strong enough to maintain peace and neutrality, and so strong as to defy aggression. We cannot afford to be accounted as a useless friend or a contemptible enemy.

Hampered by the proposed Treaty, should any great emergency suddenly confront us, we could only escape from impotency by its violent abrogation, even at the hazard of a war with whomsoever it might concern, and thus force at great cost by conquest a possible destiny, which, if it is to come, had better come spontaneously with good-will and without price. Independent, the Canadian Dominion would not be any cause of distrust; it would have no foreign quarrels to espouse; but as a dependency of Great Britain it becomes the seat of a cordon of military outposts, a bristling perpetual menace.

Should we accept of this Reciprocity Treaty, while it might insure the aggrandizement of others, our own power as a nation, whether for peace or war, for defence or offence, would become less effective, less formidable. Our sinews of war would be cut in advance. The Treaty, like the first approach of disease, may not easily be fully comprehended, although the remedy is plainly in our own hands; but at the next stage everybody will practically comprehend the evil, while the remedy will be out of our reach for twenty-four years. I frankly own that I could not willingly consent to see my country embarrassed by such engagements for twenty-four hours, and much less for twenty-four years.

Compacts between nations, like bargains between individuals, are made upon no other principles than that of sharp-sighted and fully-enlightened self-interest. When they are supposed to be advantageous they are made, or, if otherwise, they are avoided. Circumstances place it out of the power of the Canadians to offer equivalents for the privileges they seek. They can offer nothing better and will accept of nothing worse. Reciprocal privileges in the markets of the respective countries would be as unequal as are the capabilities of New York and Quebec, or as unequal as would be a reciprocity of pasturage by which the fields and prairies of the United States should be turned into commons with those of Canada. The authors of such husbandry, or of such a bargain, would most appropriately be fed on thistles—Canada thistles.

#### CONSTITUTIONAL OBJECTIONS.

But if the commercial and political considerations were in our favour instead of being stubbornly otherwise, the paramount and determinate objection to the proposed Reciprocity Treaty is imbedded in the constitution of our country, and if a barrier is found there even to a good Treaty, it certainly should be all sufficient against a bad one.

My colleague (Mr. Edmunds) upon a former occasion referred to the Treaty of 1794 with Great Britain, commonly called the Jay Treaty, as though that was a precedent for Reciprocity Treaties; but I deny that that Treaty bears even the remotest relation to Reciprocity Treaties. It required the legislative action of the House, as have many other Treaties, and the House very properly conceded it, but only after a very serious and prolonged struggle. Does any one believe that the House would have consented to the Treaty if it had gone so far as to trench upon the power of the House to originate revenue Bills and the power of Congress to regulate commerce or to prescribe the articles upon which duties should or should not be levied? Where the Treaty-making

Power has jurisdiction the House must assent, but where it has not, such assent should not be asked.

No, Mr. President, the Senate of the United States has never advised and consented to but one Reciprocity Treaty, and that was the quickly determined Treaty of 1854.

The proposed Treaty assumes the principle of regulating commerce and of radically changing our Tariff system of raising revenue, so far as it respects the imports from a foreign nation, and what may be properly done by Treaty with one nation may be done with all. The first Article of Section 8 of the Constitution provides that Congress shall have power "to regulate commerce with foreign nations, and among the several States, and with the Indian tribes." This certainly takes the subject of regulating commerce away from the Treaty-making Power and lodges it exclusively with Congress, where it is to be controlled without let or hindrance forever. This power of Congress cannot be suspended for one day, and certainly not for twenty-four years. Even if this provision of the Constitution had been omitted, it would be an inexpedient, if not dangerous, exercise of power, under a Republican form of Government, for the President and the Senate alone to undertake to regulate the collection or non-collection of revenue by Treaty. The consent for the time of a placable House of Representatives would be a cunning expedient, but it would neither change nor blot out a single sentence of the Constitution; and such consent, if obtained, so far from having any binding force upon a succeeding House, would have no more value than would the consent of our Chief Justice, or of the man in the moon. To such Treaties as are lawful the advice and consent of the House is unnecessary, and to such as are unlawful its consent lends nothing but impotency. It might be as fairly contended that the State may participate in the power of Congress to regulate commerce as to claim that the Treaty-making power may participate. The power is exclusive. Story, in his great work on the Constitution, declares:—

"Full power to regulate a particular subject implies the whole power, and leaves no residuum; and a grant of the whole to one is incompatible with a grant to another of a part." (Volume 2, page 8.)

And again he says:—

"A power given by the Constitution cannot be construed to authorize a destruction of other powers given in the same instrument. It must be considered, therefore, in subordination to it; and cannot supersede or interfere with any other of its fundamental provisions. Each is equally obligatory and of paramount authority within its scope; and no one embraces a right to annihilate any other." (Volume 2, page 376.)

Another authoritative commentator (Mr. Duer) on the Constitution, in relation to the Treaty-making power says it "must be construed in subordination to the Constitution, and however in its operation it may qualify, it cannot supersede, or interfere, with any of its fundamental provisions, nor can it ever be so interpreted as to destroy other powers granted by that instrument." This is no new doctrine, but it seems as clearly stated as it is decisive of the question.

Treaties made under the authority of the United States are the supreme law of the land, anything in the constitution or laws of any State notwithstanding; but mark, it is not written notwithstanding the constitution or laws of the United States. It was foreseen that conflicts might arise with the State constitutions and laws in force prior to 1789, but it was not intended to make the Treaty-making power supreme over Congress and above the Constitution itself. There was no unlimited or despotic power given to the President—two-thirds of the Senate present concurring. The authority to make Treaties is general, but necessarily limited by exceptions, or by all parts of the Constitution which dispose of power elsewhere. The Treaty-making power cannot exercise legislative power any more than judicial or executive. These powers have been all confided to other and different hands. The power to make Treaties with foreign nations does not include the power to levy taxes or to borrow money, which no more fully and distinctively belong to Congress than the power to regulate commerce. If the Treaty-making power cannot levy taxes or duties, it cannot repeal or modify taxes or duties, nor make a Treaty by which it may ever become unlawful for Congress to levy taxes or duties at any time and in any form sanctioned by the Constitution. Reciprocity Treaties pretending to regulate commerce can no more be the supreme law of the land than were the ship-money Proclamation of Charles I, because there is no authority given to make them. The power of Congress is paramount and exclusive, and cannot be set aside by any claim in behalf of the omnipotence of a Treaty.

Section 7 of the same Article of the Constitution, already referred to, declares that "all Bills for raising revenue shall originate in the House of Representatives."

This is a privilege of the people older than Hampden, and a privilege made prominent in our Constitution, but Reciprocity Treaties would abridge and curtail this fundamental privilege of the Representatives of the people. In all of our history duties on imports have been our chief source of revenue—except in extraordinary exigencies our sole reliance; and if Tariffs by a Treaty can be established, modified, or repealed, or fixed and made unchangeable for a generation, they can be so fixed for ever, and the power of the House to originate Revenue Bills would be practically reduced to a mere shadow. If dutiable articles can be made free, the same power can make free articles dutiable. One of the dearest principles of Republican Government, cherished as a bulwark of liberty, should not thus be fatally undermined. The power belongs not to one House only, but to every House of Representatives in perpetuity—to the present and also to the future; and the Treaty-making power should not attempt to take it away by usurpation nor by absorption. Though the present House should give its consent to such a Treaty, it could not even bind itself, and far less any succeeding House. The power lives in the Constitution, far above the reach of any suicidal assault, and can neither be abdicated by the House nor subverted by any other branch of the Government, but must remain for ever as potential as any other vital part of the Constitution.

True, the Reciprocity Treaty of 1854, pitilessly terminated as it was by Congressional direction at the earliest practicable day, is still preserved, in spite of its repulsive memories, as a precedent; but a bad precedent, solitary and alone, does not expunge a single line of the Constitution, and the precedent stands only as a scarecrow in the field to prevent one of the gravest blunders in our diplomacy from being repeated. An unlawful act cannot be legalized by an old precedent nor by a new repetition. There are much better precedents against such Treaties, and notably that made by the Senate from its own enlightened self-prompted action in 1844 and 1845, against the Zollverein Treaty negotiated by Mr. Wheaton, which, upon the report made Mr. Choate, of Massachusetts, whose high authority no one in this body will be likely to dispute, and reiterated by Mr. Archer, of Virginia (who, after fifteen years of distinguished service in the House, was made chairman of the Committee on Foreign Relations of the Senate upon his first entrance here), was rejected by a very large majority of the Senate, and not by a party vote, but for such cogent reasons as the following, and I quote from this Report:—

“That the Committee, then, are not prepared to sanction so large an innovation on the ancient and uniform practice in respect of the department of Government by which duties on imports shall be imposed; that the Constitution in express terms delegates the power to Congress to regulate commerce and impose duties, and to no others; and that the control of trade and the functions of taxing belong without abridgment or participation to Congress.”

If these were sound doctrines of the ablest of American statesmen thirty years ago in a fertile era of illustrious men, they have not become obsolete, but are equally sound and worthy of all acceptance to-day. There has been no change in any portion of the Constitution affecting this question, and any change of the oldest and best interpretation of the Constitution cannot, as it seems to me, be logically attempted, or if attempted, cannot fail to be fraught with mischief to the spirit as well as to the machinery of our form of government.

The paramount object aimed at in the Zollverein Treaty was to obtain the admission into Germany of American tobacco at a duty of not over 2½ cents per lb.; and it is a significant commentary upon so-called Reciprocity Treaties that the laboriously-obtained stipulations of Mr. Wheaton, at the price of numberless concessions to be made by us, were secured through our Minister, Mr. Mann, in less than two years, or in 1846, without any equivalent whatever on the part of the United States. If reciprocity with a nation of Europe was wholly inadmissible, it must be equally inadmissible with the Canadas.

There is a further inextricable complication involved in a Treaty of Reciprocity. “The most-favoured-nation clause,” so called, has been inserted in nearly all of our Treaties, and this clause is singularly enough repeated in Article IV of the present proposals, as follows:—

“For the term mentioned in Article XIII no other or higher duty shall be imposed in the United States upon other articles not enumerated in said schedules the growth, produce, or manufacture of Canada, or in Canada upon such other articles the growth, produce, or manufacture of the United States, than are respectively imposed upon like articles the growth produce, or manufacture of Great Britain or of any other country.”



This certainly would interdict any more Reciprocity Treaties; but the same provision, in a form to include everything, exists in our Treaties with other nations, and forbids the grant of any favours to one that are not at once freely granted to every other nation. It is not merely what the soundest American policy requires us to do, but our honour is pledged not to treat one nation in time of peace with more favour than any other.

This provision having long existed in our Treaties with Great Britain, Lord Aberdeen, at the first rumour of Wheaton's negotiation of the Zollverein Treaty in 1844, notified our Minister in London, Mr. Everett, that Great Britain would claim an equal relaxation of duties in their favour, and Mr. Everett admitted the propriety of the claim, provided it was accompanied by the same equivalents. To this Lord Aberdeen responded that he conceived that, by the Convention of July 3, 1815, we should be bound to admit British fabrics, on paying the same duties as the German, without any such conditions on their part.

An examination will show that Lord Aberdeen was not wrong in his construction of the terms referred to, which are nothing less than a positive negation of the right to impose higher or other duties upon British fabrics than upon any other, without any reservations as to conditions or equivalents. We have pledged the good faith of the nation in numerous Treaties with foreign nations not to grant any exclusive favours of this character. Great Britain, having herself objected to such a German Treaty, should be the last to propose one, and is it likely that Bismarck would be less exacting than Lord Aberdeen, or that other nations would quietly slumber over what they might fairly regard as an infraction of Treaty stipulations? Surely our State and Treasury Departments, if the proposed Treaty should be consummated, would have a lively time in shielding themselves from the reclamations of Russia for all duties paid on iron and hemp and of Buenos Ayres for any duties paid on wool, as well as similar reclamations of many other Governments.

In the interpretation of the Constitution and of the Treaties I regret that I bring no technical skill, and have only that confidence in my argument which is derived from an honest purpose to give to our language its plain and obvious meaning, and which appears to me most in harmony with free institutions.

But there are other considerations involved, such as the fisheries, canals, and reciprocal free trade, which merely raise the questions of equivalents or of trade, and when it comes to these any one of us may be presumed to be enough of a Yankee to know whether he is offered a good or a bad bargain.

#### THE FISHERIES.

There is an ancient and fish-like smell about the new propositions which play an important part, and, if accepted, they are to supersede those agreed upon in 1871, which are to run ten years, and then only to terminate after two years' notice. The question of the fisheries has long been a useful factor to Great Britain in many of their negotiations with us.

By the 1783 Treaty of Peace we were to have all the fishing privileges we had enjoyed as colonies.

In the Treaty of Peace in 1815 nothing was said to change the old compact; but, as an after-thought, in 1818 it was claimed that the Treaty of 1783 was extinguished by the war of 1812, and we then appeared to have yielded our right to the fisheries within three miles of the provincial shores.

This line has been the fruitful cause of irritation as well as of many petty collisions, sometimes threatening collisions of greater magnitude, and has been the spouting fountain of annoyance and preposterous pretensions.

By the Treaty of 1871 we not only gave a consideration of much greater value for the right to fish within the magical line, but we agreed to pay any additional difference in money which a Board of Fish Commissioners should decide, as referees, to be equitable. It was not enough that we gave them our inshore fishing grounds for theirs, although the quantity of fish caught on our shores might be equal, and the value double; it was not enough they might catch their mackerel with our bait—not elsewhere to be had; it was not enough that we opened our markets free to their fish, and thus surrendered duties upon 2,503,934 dollars (upon which they paid duties in 1871, amounting to 500,000 dollars; but we are to be frightened out of our wits and concede reciprocity lest the Fish Commissioners should make an extravagant award against us. The case has been from time to time adroitly managed and greatly magnified. The menace of the naval squadron was tried prior to the Treaty of 1854—the armed police of the seas

was tried in 1866—and now softer diplomacy is resorted to as more politic; but we should not forget that whenever appealed to in all the issues of the past, the god of battles and the goddess of justice have most often shown favour to the American contestants.

The value of our fish markets alone, including the markets for fresh fish, being worth five times more than all the profit we receive in return, the fact cannot be concealed from the referees, and I would not damage our side of the case by an unwarranted doubt as to its merits or as to the tribunal.

The admission of American fishing vessels to all the privileges accorded to British vessels was beneficial to the people of the provinces, who largely profited by furnishing supplies, and was not injurious to their fisheries, which steadily increased in value. When the former Treaty was terminated, the Canadian Government resorted to a system of licenses, charging 50 c. per ton upon our vessels engaged in the inshore fisheries. The small value of the privilege was soon disclosed, when only 354 of our 1,400 fishing-vessels were found to take out a license on these terms. The next year the license was raised to 1 dollar per ton, and the number licensed fell off to 281. The license was again doubled, when at two dollars, in 1868, only 56 were taken out, and but 25 in 1869. For more than one-fourth of our vessels wanted the privilege at any price, and at 2 dollars per ton it was hardly accepted by any. This shows that the actual value of the inshore fisheries, when estimated by our fishermen in dollars and cents, was the merest trifle, and its great importance appears to be almost wholly in its being ever present as the old sore of former Treaties for which some new plaster is always demanded.

As a nursery for bold and hardy seamen the fisheries were long appreciated by us, and they have lost nothing yet in the estimation of British or French statesmen.

At the time we repealed our bounty system the French were paying, and still pay, 4 dollars per ton bounty for all the tonnage engaged in their fisheries, and the Canadas at once put on the armour we threw off by offering a bounty to all the provincial tonnage so employed. They are ambitious to increase their commercial marine, and they could do much in that direction—so cheap is their labour and ship-timber—if we should only consent to furnish employment or purchasers for their shipping when built.

According to the "Canadian Mercantile Annual," as a maritime nation Canada already holds the fourth rank among the nations of the world, having a tonnage almost equal to France, and only ranking decidedly below Great Britain and the United States. They are not only ready to invade our canals, rivers, and lakes, but they would extend and clinch the compact for reciprocity in the fisheries for the longest possible term, as that will diminish the number of our vessels employed and increase those of Canada.

Under the former Reciprocity Treaty their exports to the United States of fish very largely increased, or nearly doubled, while our tonnage engaged in the cod fisheries in 1854, amounting to 102,194 tons, dwindled at the close of 1866 down to 42,796 tons, or a loss of over one-half, uncompensated for by any considerable improvement in the distant mackerel fisheries. From this low state, in consequence of harassing and perpetual annoyances, equal in olden time to provocations of actual war, our fishermen have not even yet been able to recover. I am very clearly of the opinion that strict equity would require the payment to us of a large balance by the Dominion Government on the question of the fisheries; and so long as they have our markets free, so long will the vocation of our fishermen be imperilled and their numbers year by year be diminished.

It might be expected that some one of the inducements offered by the Dominion Government in their proposals for a Reciprocity Treaty would at least include privileges of equal value with those they demand in return, but it will be difficult to find any of this character; and among the enormously one-sided stipulations which challenge notice is that of the navigation of lakes, rivers, and canals. They offer to us the navigation of the Saint Lawrence River, the Welland and other Saint Lawrence canals, and also to build the Caughnawaga Canal, 29½ miles long, in the course of six years; all of which we are to have the use of—for that portion of the year of course when they are not ice-bound—by paying such tolls as they choose to impose.

But in return, and always as a mere equivalent, they demand the unrestricted use of Lake Champlain and of the much larger Lake Michigan, together with the right to navigate the Red River. That such privileges on the lakes, especially on Lake Michigan, would prove unfortunate concessions and detrimental to our shipping interests is quite apparent. Beyond all this they expect the States of Michigan and New York to accord to them, in like manner, the use of the Sault Sainte Marie, Saint Clair Flats, Whitehall, and the Erie Canals, over 500 miles in length, in exchange for less than 100 miles.



Again, unless the Erie and Whitehall Canals shall be enlarged and deepened, and their use granted to the lower waters of the Hudson—a most important concession of itself—Canada reserves the right to suspend the use of the Caughnawaga Canal. Whether the State of New York would assume this burden, and build up a formidable rival to their own canals and railroads at an expense possibly of more than the whole cost of all the Canadian canals, is at least problematical. To us the Caughnawaga Canal would be convenient, but to the Canadas it is almost indispensable as a means of getting their timber and agricultural products to our markets. The transparent cheapness of the offer appears when it is remembered that the construction of the Caughnawaga was a settled question of their domestic policy at the time of the union of the provinces. Their canals are now kept in repair mainly by tolls received from us. The transportation of American property through the Welland Canal in 1869 was nearly three times greater than of Canadian property, as follows:—

						Tons.
From American to American ports	..	..	..	..	..	688,700
From American to Canadian ports	..	..	..	..	..	215,857
<b>Total</b>	..	..	..	..	..	<u>904,557</u>
From Canadian to Canadian ports	..	..	..	..	..	195,407
From Canadian to American ports	..	..	..	..	..	134,935
<b>Total</b>	..	..	..	..	..	<u>330,352</u>

It would be wonderful indeed were they to reject the income thus derived from us upon their canals, and it is probable they will be open for ever to all who will pay as they go. "The law is open to everyone;" "so," said Horne Tooke, "is the London Tavern." In the absence of any Treaty, why should the Canadas exclude from their canals the through business from America to American ports, touching no interests which it does not promote, and the business from whence has come and always must come the bulk of the tolls required for their support? The London Tavern is not supported in that way.

It is possible at the end of six years that the Dominion may find it inconvenient or impracticable to deepen the Saint Lawrence Canals or to build the Caughnawaga, or that they may require twice six years for their completion. The Treaty meanwhile is operative; and will they not all the time have enjoyed its fruits? True, we may then exclude them from the Erie and Whitehall Canals and the Hudson River, but would not that be a lame conclusion? They now levy an export duty on logs, and there is nothing in the new proposals which prevents its continuance or even an increase on logs or any other articles. Export duties may be resorted to by the Canadas at any time, but to us they are forbidden. They run no risk of export duties, but we do. Are we not likely to be checkmated?

Is it not, however, discreditable to us as a nation of 42,000,000 of people, with railroads nearly equal in extent to those of all the rest of the world, that we should look to dependencies of Great Britain for such improvements in the artificial courses of water transportation as the obvious necessities of our country require? Our safest policy is to build, not to borrow, nor to pay rentals or tolls to foreigners, subject to be turned adrift at any moment. The revenue that we must surrender in a single year by the admission of Canadian products as proposed free of duties, or the profits we should transfer from our own people to the pockets of our neighbours, would enlarge or build adequate canals, and make us, as to inland water communications, independent for ever. Able as we are to stand alone, let us decline to lean upon weaker neighbours, who lean themselves upon somebody else. We willingly allow them to use our railroads and cars for the transit of their foreign exports and imports to and from New York, Boston, Portland, and other places, and the business is not unprofitable to our thoroughfares. We might refuse this, but have no such intention unless the suspicion proves true that it is the great thoroughfare of illicit trade. We envy the prosperity of no other country, and are content with our own.

If we waive the all-controlling constitutional, as well as other manifold, objections, to this embryotic Reciprocity Treaty, it is of some consequence to consider whether or not we have a surplus revenue of 20,000,000 dollars which we can annually forego for the next twenty-four years, or whether we can afford to supply its place by an increase of other taxes, direct or indirect, or by a re-enactment of the income tax, or by a renewal of the duties on tea and coffee. It is unlikely that we hanker after either alternative, and either would be a melancholy equivalent for what seems to be a reciprocity with the tracks all pointing one way. Instead of a surplus to be carelessly

extinguished, we have in 1874 a deficiency in the sinking fund of 26,860,217 dols. 16 c., not to be provided for except by a further sweeping reduction of national expenditures. It is altogether improbable that Congress or the people will forget what is due to a solemn pledge of the public faith which requires the absolute annual payment of 1 per cent. of the public debt.

Of course the amount of imports from the Canadas at present, being largely subject to duties, affords no basis for an estimate of the amount which would come in if wholly free, and the statement scattered last year broadcast over the country by the British negotiators of the trade between the respective countries was based upon very unreliable public documents. By our accounts the exports of lard in 1873 were 4,057,280 pounds, but by the Canadian count only 1,257,230 pounds had been received. By our account our exports of tea were 454,579 pounds, but by the Canadian account they had received 5,183,499 pounds. The value of arguments based upon such data is not great. If the proposed Treaty could be regarded in any of its various aspects as beneficial to our own country, it is too apparent that now we are not in any condition to abandon annually the millions of revenue which would be lost by its adoption; but I shall attempt to show that it deserves to be rejected, not only for the reason that it cannot be beneficial, but because it would be an insufferably bad bargain as a whole or in any of its complicated parts.

The Canadian Dominion, under their reciprocity proposals, will be called upon to surrender very little revenue, or, according to their own estimate, not more than 4,000,000 dollars. Is it possible that this can be considered an equal bargain for the surrender on our part, when the Treaty gets into full working order, of 20,000,000? Curiously enough most of the articles in Schedule A of the new proposition, embracing the great bulk of agricultural productions, are now free under the Canadian Tariff. But if they were not free the Canadas would lose no more revenue by making them free than the maritime provinces lose by making fish free, as they do not buy these productions, but always have a surplus to sell. The Canadas might have some difficulty even in making up their small loss of revenue, but our deficiency can only be supplied in the inconvenient way already indicated, or by the severe imposition of heavier taxation. Canada may well afford to give up 4,000,000 of revenue on imports if her people are to gain many times that amount in the increased price of their exports. For what they gain they could afford to bear additional taxation, but we could not, as our Government would not only lose much revenue, but our people would suffer still greater losses.

The proposed Reciprocity Treaty offers nothing new or no attractions to our Southern States. The staple products of the South which are to be admitted into the Canadian Dominion free of duty, if the Treaty should be ratified, are already free under their present Tariff Laws, and will from their nature so remain. The products referred to are hemp, cotton, tobacco unmanufactured, rosin, tar, turpentine.

The direct interests of the Southern States therefore will remain principally in the same relative condition, Treaty or no Treaty, and these products have been nominally included in the proposition as so much padding costing nothing. This cheap stuffing obtained from the existing free list of the Dominion, and used with the profuseness of French milliners, forms no inconsiderable portion of the offer tendered to us, and might be very well offset by a kindred tender of a selection from our own existing free list with equal generosity and just as little sacrifice.

The manufactures enumerated, however, are chiefly of the same class with those springing up all through the Southern States, and would seriously interfere there with new and profitable branches of industry of the highest merit which ought not to encounter any such discouragements. Moreover, the Southern States have more interest in the general prosperity of the country than any other section. When the nation moves onward with health and vigour, it never fails to embrace all its members in its arms. But the proposed Treaty is not only remarkable for what it includes but for what it excludes. It may not be difficult to discover why some articles were left out. Undoubtedly some Canadian products require protection, and these are, of course, shielded from reciprocity.

The proposed Treaty contains all the articles included in the Treaty of 1854, and also many articles of manufactures. They are described as "of the growth, produce, or manufacture of the respective countries," and among them will be found agricultural implements, boots and shoes of leather, cotton grain bags, denims, jeans, drillings, plaids, and cottonades, cabinet furniture, carriages, coal iron (bar, hoop, pig, puddled, rod, sheet, or scrap) nails, spike, leather, rags of all kind, salt, tweeds of wool, manufactures of wood.

Then we have a long list of the products of the farm, among which are the following :—

Animals of all kinds, breadstuffs of all kinds, broom-corn, butter, cheese, flour, flax (unmanufactured), fruits (green or dried), grain of all kinds, hay, hemp, hides, horns, lard, lime, malt, meats (fresh, smoked, or salted), pelts, pease, plants, petroleum, poultry, rice, shrubs, seeds, straw, tallow, tobacco, vegetables, wool.

The interesting question to farmers is what they would have to meet, and how much.

I have only authentic data as to the products of the Canadian Dominion as late as 1860, and these I derive from Mr. Derby's Report, made in 1867. Of course, in ten or fifteen years their population and products have increased.

I give the following table:—

	United States.	Canada.	Nova Scotia.
Population. .. .. .	31,738,821	2,501,888	230,699
Horses .. .. .	7,257,000	725,744	28,789
Cattle .. .. .	28,751,315	2,375,957	156,357
Sheep .. .. .	23,298,807	2,517,781	282,180
Swine .. .. .	35,960,691	1,278,699	51,533
Corn .. .. . bushels	827,624,528	2,624,100	37,475
Wheat .. .. . "	170,176,027	28,213,760	297,157
Oats .. .. . "	172,089,095	45,634,806	1,384,437
Barley .. .. . "	15,825,898	3,692,021	196,097
Potatoes .. .. . "	157,659,000	39,506,359	1,986,789
Butter .. .. . lbs.	459,672,052	52,705,354	3,613,880

From this table it will be seen that the Canadas, representing 8 per cent. of the population of the United States, produce more than their proportion of horses, cattle, and sheep; twice its proportion of wheat; three times its proportion of oats and barley; an average of butter, but less of swine and corn. It is plain that agriculture has engaged the major part of their activities, and if they cannot be said to be our rivals, their products are so large as to offer considerable and constantly increasing competition.

When the former Treaty of 1854 was made our whole country was comparatively free of debt; we were doing business on a sound currency, and were ready for any race with equals; but now, although the national debt is so adjusted as to be carried with but little inconvenience, the states, counties, cities, and towns are still heavily burdened by indebtedness incurred during the late war, as well as by the continuance of the war made paper legal tender, and therefore, for some years to come the cost of production will be, as it has been, so exceptionally increased as to place us at an obvious disadvantage with neighbours who have yet had no such untoward incidents in their history. We cannot at present afford to produce horses, cattle, and sheep, wheat, peas, oats, butter, and potatoes at the bottom prices of Canadian markets; nor can we at present venture to accept of the unrestricted competition to which we are invited, even in the manufactures of iron, wood, wool, cotton, and leather, with neighbours where all the labour and most of the raw materials are to be had at a far less cost than in the United States, and with neighbours, too, as exempt from taxation as they are from many of the costly improvements and institutions demanded by the people of a large republic and by an enterprising and enlightened age.

Our markets are sustained by 42,000,000 of people, beyond all question the largest consumers *per capita* in the world, and the Canadian markets are sustained by less than 4,000,000 of people, loosely strung across a broad continent in an elongated and disjointed belt scarcely more than fifty miles wide, and like our own frontiersmen of early times, having limited wants and no luxurious habits. Their markets are few and relatively inferior—offering no advantages to us, while our markets are so many, extensive, and accessible, that they may be always reckoned for nearly all commodities at least 25 per cent. better than those across the border. According to the report of J. N. Larned in 1871, made in compliance with a resolution of Congress, the difference is much greater. From numerous details as to the prices of provisions, groceries, &c., he gives the following results:—

	Dol. c.	Dol. c.
Mean ratio of prices in Ontario to prices in New York .. .. .	.. 1 00	to 1 58
.. .. . New Brunswick to prices in Maine .. .. .	.. 1 00	1 42
.. .. . the City of Quebec to prices in New York .. .. .	.. 1 00	1 43

The same authority gives the results as to wages of mechanics and farm-labourers as follows:—

		Dol. c.	Dol. c.
Mean ratio of wages in Ontario to wages in New York..	..	.. 1 00	to 1 65
„ „ New Brunswick to wages in Maine ..	..	.. 1 00	1 42
„ „ the City of Quebec to wages in New York ..	..	.. 1 00	2 38

These indisputable facts disclose the reason why our markets are so eagerly sought after. Few droves or car-loads of American horses, cattle, sheep, hogs, or poultry seek purchasers at Kingston, Toronto, Montreal, or Quebec, or at any other of their military posts; but though subject to moderate duties, they come—not standing upon the order of their coming—from every quarter of the Canadas, by land and by water, to the United States, all clamorous for higher prices. The difference in wages is the widest difference of all.

The magnitude of the stake they are striving for may be understood from the fact that the year after the termination of the former Reciprocity Treaty the assessed value of the property of the province of Ontario alone fell off 28,000,000 dollars. That deficiency they want restored.

The territory of British American possessions, encircling almost one-fourth of the globe, and extending from the latitude of 45° north to the open Polar Sea, is superficially greater than even that of the United States. Much of it, however, must remain *terra incognita*, or only frequented by the hunter and trapper, and here and there by that hardy class known as frontiersmen, but it nevertheless offers immense facilities for expansion in grain-growing and stock-raising, for which it greatly needs an outlet less remote than the markets of the Old World.

Geographical barriers must for ever compel the people of British Columbia, Manitoba, Saskatchewan, New Brunswick, Nova Scotia, Newfoundland, and even Labrador, to seek and to prefer commercial relations with the United States with or without reciprocity, and it is plain that an unrestricted access to our markets by the people of these provinces, as well as by those within the fertile Canadian basin drained by the great Lakes, would rapidly augment their agricultural productions for export, stimulate their labour, and immensely increase the value of their landed estates, which, with all their personal property included, is now less than the aggregate wealth of Massachusetts. They would, however, all grow fat and “lard the lean earth” at our expense. For this result the equivalents offered to us instead of being very large and very solid, are very thin, disputable, and wholly unsatisfactory.

The effect of all this upon our own land and its products would be reversed, as may be readily foreseen, and would be equal in the aggregate, but, being more widely distributed than their gain, the per-centage of individual loss would be less than their individual gain. The price of beef or of wheat might rise in Montreal 10, 15, or 20 per cent., but the fall would be somewhat less in Chicago or Milwaukee or New York. The surplus products of the Canadian Dominion flung upon our markets by shorter and cheaper transportation than from the Western States could not fail to sensibly diminish the values and products of agricultural industries throughout the United States. When no more than 10,000 beeves are wanted, thrust an additional 1,000 upon the market, and the whole will sell for no more than would the 10,000, leaving but nine parts of the sum received to the owners of the 10,000. Of course it could not be supposed that any influx here of Canadian products would bring down prices squarely to the present Canadian level, because equal freedom of markets would tend to raise prices there, to create an equilibrium, and that is what Canadians are for. They know when our markets are united with theirs, and all are open and free, that prices, like liquids, will rise to the same height in the nozzle as in the pot itself; but consumers here would be only benefitted by just the amount of injury inflicted upon our agricultural producers. Agriculturists have been wont to encourage manufactures because that policy adds to the number of consumers of their products, and correspondingly diminishes competitors among themselves. But how long could farmers be expected to sustain a tariff upon manufactures if all their own products are to be exceptionally exposed to a northern blast of free trade? After such an exposure, any harmonious policy as to a tariff even for revenue would be indefinitely foreclosed. Protection that does not protect farmers will not long be likely to protect anybody.

But it would degrade the issue to suppose that only a question of tariffs is involved. Immigrants to the United States number annually over 300,000, but the Canadas receive only a much smaller number, and of these the largest share barely pass through the Canadas, and eventually find their way into the United States. Beyond this there is a constant stream of their native population flowing from all the provinces into our territory. Less profit in wages here, or more profit there, would reverse the current. It would not be wise for us to favour any policy that would diminish the present advantages

of our country in the general estimation of mankind, or that would turn the stream of immigrants away from our shores. We want America for those who mean to be Americans, and not for those who think they are somebody else.

Great Britain could not be expected to make such a Treaty without receiving from her colonies the same privileges granted to us. Whatever is made free of duty to us must also be made duty free to Great Britain. Ostensibly the Canadian Colonists are to be nursed, but the nourishment will most likely add solely to the bulk of paternal Englishmen. A wolf, it is said, suckled Romulus and Remus, but there is no such a fable concerning the British lion. We got no exclusive favours by the Reciprocity Treaty of 1854, and we are promised none now. Colonies were once planted to get gold or to get rid of convicts, but they are now only maintained to secure a monopoly of trade. Russia once claimed a monopoly of all the trade of the Northern Pacific; Portugal that of Asia, and England now expects every man in her colonies to do his duty by increasing British home trade. All colonies are perpetual minors, from whom it is regarded as no robbery for Imperial mothers to intercept their earnings, if only a frugal subsistence remains. The British restrictive navigation laws as to colonies were rigidly enforced down to 1846, and it will be found that this proposed Treaty was fore-ordained to enable Canada to buy more of Great Britain, and to sell more to the United States, or to buy cheap and sell dear.

If, therefore, we accept of such a Treaty, it must be borne in mind that we should enter the race for the markets of Canada as much with Great Britain as with Canada herself. This part of the arrangement does not appear on the face of the Treaty, but crops out in the declaration made by the British Commissioners to our Secretary of State. Mr. Brown makes no secret of the fact that our Secretary was at once formally notified "that any articles made free in Canada under agreement with any foreign country must be made free to Great Britain."

The net result of what we are to get by making Canadian products and manufactures free in our ports is to have an opportunity to compete with Great Britain and dislodge her foot-hold, if we can, in Canadian Markets. The products of agriculture under the Canadian Tariff are already mainly free to all nations and will so remain. All such products Canada has to sell, and really buys of nobody. The question, therefore, as to our exports to Canada would be practically limited to manufactures. Of these our imports from Great Britain, though necessarily charged with heavy duties, are larger than those she sends to any other country, and it is not likely that she much dreads to meet any rival, or that she would be in much danger of being supplanted by us in the markets of her own Colonies. British statesmen, speaking through a late Speech of the Queen, it is very certain feel no apprehension on that point.

Canada has only recently adopted the policy of protection, and her manufactures, though growing rapidly, are in their infancy. It is reasonable to suppose that some of the articles enumerated in the proposed Treaty might be profitably exported from the United States to the Dominion, if it were not for the back-door to be left open for the entrance of the same articles on the same terms from Great Britain. If we can manufacture cheaper than the country with which they claim to be so happily connected, then the Treaty might be of some advantage to us, but not otherwise. It is sufficiently apparent that with a removal of all duties we could not now compete with Great Britain here at home, and, if not, how could we drive her out of the Canadas? The lower priced labour, cheaper raw materials, and lighter taxation might soon even force the removal of the capital and industry of many American establishments to the other side of Canada line, if they should not be deterred by the cheaper capital and still poorer paid labour of Great Britain herself. The chance with Canada alone would not be very inviting, but with Great Britain in reserve it would be the baldest mockery. The manufacturers of Great Britain have the discipline of a regular army, while those of America are but militia, superb in material and only deficient in the drill which must be acquired by long experience.

But while the Canadas would in the end be ground between the upper and nether millstone, or between American and British manufactures, they might easily increase their exports in many directions. Slate they send to us in considerable quantities, though we require 35 per cent. duty to be paid. Remove this duty, as proposed by the new Treaty, and few of our slate quarries could be worked without a heavy reduction of the price of labour. The admission of timber and lumber wrought and unwrought means that by the cheaper labour of Canada, and their system of export duties, no more would come in unwrought; and how broad the definition would be as to what might be included, who shall tell? Granite, marble, and building-stone form another group to come in wrought or unwrought. In building the practice is to send orders to quarries

for dimension blocks hewn and fitted, ready to be placed at once into any structure. Is it not likely that all the different quarries of the Dominion would at once be set at work? Red sandstone, grindstones, marble, and even granite, could not here be cut and wrought, except by convict labour, as cheaply as it is now done by common Canadian and Nova Scotia stone-cutters. Coarse cotton goods and tweeds of wool, and iron and steel, and boots and shoes would soon found a new Lowell, a new Pittsburgh, and a new Lynn far away from the stars and stripes. In Canada what we term fancy cassimeres are quite as often known and described as tweeds. The phrase "tweeds of wool" includes a wide class of goods, hitherto yielding little profit to further and uncertain competition. Boots and shoes are now almost wholly made by machinery which, marvellous in all its parts as it is, can be easily transferred to Canada and soon worked even by unskilled and alien hands. Machinery knows no allegiance, and works as cheerfully in one place as another. Is it not manifest that the proposed Treaty should not receive any favour? Is it not in fact a hook baited with a red rag?

There will be a lurking ambiguity in the practical interpretation of such a Treaty, and our experience teaches us to beware of ambiguities in any Treaties, especially with Great Britain or with the Canadas. The articles proposed in the schedules to be admitted free are to be the growth, produce, or manufacture of the Dominion of Canada. The question will arise, to what and how far does this apply? Raw materials, if sent to us, must be of Canadian growth or produce; but may not manufactures be wholly or in part of foreign materials? If so, boots and shoes may be made of foreign leather, and yet be called manufactures of Canada. English yarns might be woven into cloth, either of cotton or wool, and thus become Canadian manufactures. They might first send all their wool here to market, and then send whatever they choose to call tweeds, wholly made of foreign low-priced wools, and would they not pass for Canadian manufactures? Would ready-made clothing need to be made of any other than British cloth? English, Russia, or Swedes iron and steel could hardly be distinguished from Canadian iron; and if it could be, when made into rails, nails, spikes, axes, scythes, plows, hoes, shovels, or spades, they would all be called Canadian manufactures. Screws made of English wire, and nails of English nail-plate, would claim reciprocity privileges. Marble, in blocks or slabs, from Italy as well as from Canada, when wrought into monuments, mantels, or anything else, could not be denied the claim as Canadian manufactures. Castings made of Scotch pig-iron, or any other, in the form of stoves, ranges, hollow-ware, or machinery, would be held to be thoroughly Canadian. Manufactures advanced a single stage, receiving the last finishing touch, might thereby obtain the guild of Canada. Suppose any of these articles to have the proper Canadian stamp and label upon them, how would any fraud be detected or punished? The frauds will be perpetrated, if perpetrated at all, as they are very likely to be, by Canadians. Can we send there to detect or punish them?

Our revenue laws, sitting too lightly upon the consciences of our own people, have never bound the consciences of Canadians, and their reverence would not be much intensified by a Reciprocity Treaty. Thin partitions would divide free from dutiable merchandise. Custom-house oaths are elastic the world over; and who could tell, except the men who swear, whether agricultural tools, grain-bags, tweeds, and locomotives were manufactured wholly or in part in the Canadian Dominion or elsewhere? The Canadian field of smugglers, always prolific and abounding in skilful artists, would be made to bring forth a hundred-fold of its present ill-gotten profits. The distributing points of illicit trade in the Canadas would no longer be confined to their present legally-established ports of free trade, Gaspé and Sault Sainte Marie, nor to places on the boundary line where such practices have long been winked at; but the smuggler's art would be studied by everybody and everywhere gratefully patronized.

In all the diversified complications of this proposed Treaty, a careful scrutiny will show that not one of the provisions standing stark alone could be accepted on its merits. Some would prove disastrous to our interests, and the best are palpably unequal; but it is certain that the character of the whole is not improved by the multiplicity of its parts, and equally certain that if any one of its parts would prove disastrous, that fact should turn the scale against the Treaty.

Treaties are merely bargains between sovereignties, where the people for the most part are unrepresented, and the only legitimate mode of changing Tariff laws is for the Legislative authority to decide from time to time what articles of commerce shall or shall not be subject to duties, without the restraint of any side bargains with foreign Powers.

After a full examination of the proposed Treaty, the conclusion would seem to be unavoidable that, so long as the Canadas are bound to consult the interests and supre-

macy of the Imperial Government, it is and will be impossible for them to offer any terms of reciprocity which can be to the advantage of the United States to accept. Doing the best that can be done, yet the reciprocity with the Canadas which suits Great Britain would not suit us, or, if it suited us, could not suit Great Britain. It is an unequal commercial triangle which cannot be squared. We can do nothing for the Canadas that we are not ready to do for the world at large.

The proposals now offered, whether relating to our future commercial thrift or to the problems of higher concern to Statesmen, are delusive and wholly inadmissible. We have no revenue to part with, and if we had, could not afford to squander gifts of vastly greater magnitude than all we are to receive in return. Our farmers feel a profound interest in the Government they support, and they expect the Government to reciprocate that interest by more regard than is to be extended to the farmers of any other country, who have nothing at stake but the profits and loss of trade; and our manufacturers do not wish to meet Great Britain when they are nominally invited to meet the Canadas, or to live with Leah for twenty-four years when they only love Rachael. Our national patrimony should not be shared with the Canadas so long as they cling to greater expectations from other foreign relations. The sternest dictates of prudence require us to stand by the ancient usage of the Senate—denying all authority to make Reciprocity Treaties, whether favourable or unfavourable, and especially to decline all diplomatic arrangements by which our own people are to be despoiled for the benefit of British subjects and at the expense of the Constitution.

## No. 24.

*Mr. Herbert to Mr. Bourke.—(Received February 24.)*

(Confidential.)

Sir,

*Downing Street, February 23, 1875.*

I AM directed by the Earl of Carnarvon to acquaint you, for the information of the Earl of Derby, that he has received a telegram in cypher from the Governor-General of Canada, stating that the Canadian Government have passed an Order in Council, expressing their wish for the revival of the Fishery Commission.

Lord Carnarvon conceives that it will be necessary to revert to the Fishery Commission, in consequence of the failure of the Reciprocity Treaty negotiations with the United States; but he is of opinion that a written communication from the Governor-General must be waited for before any steps are taken in the matter.

I am, &c.

(Signed) ROBERT G. W. HERBERT.

## No. 25.

*Mr. Bourke to Mr. Herbert.*

Sir,

*Foreign Office, February 26, 1875.*

I AM directed by the Earl of Derby to transmit to you, to be laid before the Earl of Carnarvon, a copy of a despatch from Her Majesty's Minister at Washington, upon the subject of the projected Reciprocity Treaty with Canada.\*

I am, &c.

(Signed) ROBERT BOURKE.

## No. 26.

*Sir E. Thornton to the Earl of Derby.—(Received March 1.)*

(No. 49.)

My Lord,

*Washington, February 15, 1875.*

I HAVE the honour to inform your Lordship that, during a visit which I paid to Mr. Fish at the State Department on the 11th instant, I inquired whether he had yet received from the Senate the Resolution passed by that body in secret Session, relative to the project for a Reciprocity Treaty with Canada.

Mr. Fish replied in the affirmative, and that it was to the effect that the Senate did not consider it expedient to recommend the negotiation of the Treaty for reciprocal



trade with the Dominion of Canada, which was submitted to that body on the 18th of June last. He added that he had heard confidentially that at his instigation a member of the Committee had endeavoured to insert some words so as to make it appear that it was only for the present that it would be inexpedient, but that the proposal had given rise to an angry discussion, and it was found impossible to carry the amendment.

I suggested to Mr. Fish that he should address me a note informing me of the resolution adopted by the Senate. This he promised to do, and in the evening I received the note, of which I have the honour to inclose a copy, and of which I have already transmitted a copy to the Governor-General of the Dominion of Canada.

I have, &c.  
(Signed) EDWD. THORNTON.

Inclosure in No. 26.

*Mr. Fish to Sir E. Thornton.*

Sir, *Department of State, Washington, February 11, 1875.*

REFERRING to our conversation of to-day, in reference to the proposed Treaty for reciprocal trade between the United States and the Dominion of Canada, which was submitted to the consideration of the Senate of the United States at the last Session of Congress, I have the honour to inform you that the Senate, upon the 3rd instant, resolved that it was not deemed expedient to recommend the negotiation of the Treaty.

I have, &c.  
(Signed) HAMILTON FISH.

No. 27.

*Mr. Bourke to Mr. Herbert.*

(Confidential.)

Sir,

*Foreign Office, March 2, 1875.*

I HAVE laid before Lord Derby your letter of the 23rd ultimo, stating that the Governor-General of Canada has reported by telegraph that the Canadian Government have expressed a wish for the revival of the Fishery Commission, and I am directed by his Lordship to state to you, for the information of Lord Carnarvon, that a copy of your letter will be sent to Sir E. Thornton, and that any further steps are deferred until the despatch on the subject which is expected from Lord Dufferin, has been received and considered.

I am, &c.  
(Signed) ROBERT BOURKE.

No. 28.

*The Earl of Derby to Sir E. Thornton.*

(No. 38.)

Sir,

*Foreign Office, March 5, 1875.*

I TRANSMIT to you herewith, for your information, copies of correspondence, as marked in the margin, in regard to the wish of the Canadian Government for the revival of the Fishery Commission, in consequence of the failure of the Reciprocity Treaty negotiations with the United States.\*

I am, &c.  
(Signed) DERBY.

No. 29.

*Mr. Bourke to Mr. Herbert.*

Sir,

*Foreign Office, March 5, 1875.*

WITH reference to my letter of the 26th ultimo, I am directed by the Earl of Derby to transmit to you, to be laid before the Earl of Carnarvon, a copy of a despatch

\* Nos. 24 and 27.



from Her Majesty's Minister at Washington, upon the subject of the project for a Reciprocity Treaty.\*

I am, &c.  
(Signed) ROBERT BOURKE.

No. 30.

*Sir E. Thornton to the Earl of Derby;—(Received March 9.)*

(No. 58.)

My Lord,

*Washington, February 22, 1875.*

I RECEIVED, on the 19th instant, a telegram in cypher from the Governor-General of Canada to the effect that the Government of the Dominion had passed an Order in Council expressing their desire to have the Fishery Commission revived.

I presume that his Excellency will have transmitted a copy of the Order to Her Majesty's Secretary of State for the Colonies, and I shall therefore await your Lordship's instructions before making any communication to Mr. Fish upon the subject.

I have, &c.  
(Signed) EDWD. THORNTON.

No. 31.

*Mr. Lister to Mr. Herbert.*

Sir,

*Foreign Office, March 11, 1875.*

WITH reference to Mr. Bourke's letter of the 2nd instant, I am directed by the Earl of Derby to transmit to you, to be laid before the Earl Carnarvon, the accompanying copy of a despatch from Her Majesty's Minister at Washington, relative to the Fishery Commission.†

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

No. 32.

*Memorandum by Lord Tenterden respecting Fishery Commission.*

I SAW Herbert to-day about this. He told me that the Colonial Office had received the despatches from Canada with the Minute of the Dominion Council requesting that the Fishery Commission should be proceeded with.

After going over the past history of the affair which had dropped with the unsettled question of the appointment of the Third Commissioner by Austria under the Treaty, he said that the Colonial Office would send over a draft of a despatch which would be proposed to be addressed to Canada plainly setting forth that if the Commission is to be proceeded with the Canadians must understand that it is to be *bonâ fide* gone through with, and negotiations for a Commercial Treaty not mixed up with it, and that if any such negotiations are to be resumed it must be independently of the fisheries.

I said that it seemed to me to be of importance that we should firmly fix upon the Canadians the responsibility of renewing the Commission. As to reciprocity, I never had believed in it, and was sure that nothing could be done for at all events two years, *i. e.*, March 1877, when the present Administration would cease with the Presidency, and probably not then. That the Treaty, by including manufactured articles, had excited hostility both in England and America, and we were well out of the matter so far.

At the same time we could not blink the difficulties of the Commission.

1. As to the appointment of the British Commissioner—was Mr. Mitchell to be appointed? He was a red-hot partisan of the most extreme views of Canadian rights, and we should be well quit of him if he could be dropped.

2. As to the Agent, was Mr. Rothery to be appointed? Would he be acceptable to Canada? Would he be willing to go? If he could not be named, who should be appointed? He was evidently the man who knew most about it. Would it do to have some agent who should merely represent, and let Rothery draw the case and arguments here.

3. As to the award, would there not be a difficulty now in attaining unanimity? Would there not be discontent under any circumstances? This must be faced, and it would therefore be necessary to be able to show that a good fight had been made, and for this purpose to have the evidence carefully prepared and got ready in good time. I believed that at present there was nothing ready but the draft Canadian case with its claim of 60,000,000 dollars.

The Foreign Office was quite ready to carry out the wishes of the Colonial Office, but we ought to be told plainly what was really wanted; and I would suggest that Lord Dufferin should be consulted privately, and that we should know what his views were on some of the difficulties which I had mentioned, and particularly whether the Fishery Commission was really to be gone on with, and if so, how it had best be managed.

Herbert said he would bear what I had said in mind and look into the matter and find out from Lord Dufferin what his views were, and what the Canadians really meant. It was possible that he might be coming to England in May.

T.

March 17, 1875.

No. 33.

*Mr. Herbert to Mr. Bourke.—(Received March 30.)*

Sir,

*Downing Street, March 29, 1875.*

WITH reference to my letter of the 23rd of February, and to your reply of the 2nd instant, marked Confidential, I am directed by the Earl of Carnarvon to transmit to you, to be laid before the Earl of Derby, a copy of a despatch from the Governor-General of Canada, inclosing a Report of a Committee of the Privy Council expressing the desire of the Canadian Government (in consequence of the Government of the United States having decided not to ratify the proposed Reciprocity Treaty) that "no time should be lost in proceeding under the Treaty of Washington to ascertain the compensation due to Canada for the concession of the fishery right to citizens of the United States."

2. Lord Carnarvon requests that Lord Derby will take this matter into his consideration with a view to that early action which the Government of the Dominion desire, and which on all grounds would appear expedient. It is presumed that Lord Derby is clearly of opinion, as Lord Carnarvon is, that the time which has elapsed since the ratification of the Treaty of Washington, and the intervention of negotiations for a Reciprocity Treaty, would not have affected the claim of the Imperial Government now to renew proposals for carrying out Articles XVIII to XXV of the Washington Treaty, even if the Government had not repeatedly placed on record its understanding that in the event of the proposed Reciprocity Treaty not being agreed to, the negotiations for a settlement of the fisheries question were to be resumed.

3. Lord Carnarvon is aware that there is no improved prospect of the United States' Government approving of the manner in which the third Commission is, under the Treaty, to be appointed; nor does he feel at all confident as to the acceptance which may be accorded to the award in the absence of any provision making the decision of the majority of the Commissioners binding. In order to facilitate matters on these points, it might, under ordinary circumstances, have been advisable to consider whether proposals should be made to the United States for a fresh Convention removing the difficulties referred to; but Lord Carnarvon apprehends that, in the present condition of political affairs in the United States, no such course is practically open to Her Majesty's Government. He can only suggest, therefore, that Sir E. Thornton should be desired to propose to the United States' Government the appointment of the Commission prescribed by the Treaty.

4. In replying to Lord Dufferin, Lord Carnarvon proposes, with Lord Derby's concurrence, to say that as his Ministers have decided to urge that proceedings should at once be taken under the Treaty of Washington to ascertain the compensation due to Canada for the concession of fishery rights, Her Majesty's Government readily agree to make the necessary communication to the United States' Government, and presume that the Dominion Government is fully prepared with all the records and information necessary for the support of their claim, and that Her Majesty's Government will, as before, appoint a competent agent.

5. On this point Lord Carnarvon is inclined to think that it would be very desirable again to secure the services as agent of Mr. Rothery, whose great knowledge of the subject would enable him to resume the duties of agent without loss of time, and who possesses qualifications not likely to be found in any other person.

6. It seems to Lord Carnarvon desirable that action should be taken in this matter at a very early date.

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

Inclosure 1 in No. 33.

*The Earl of Dufferin to the Earl of Carnarvon.*

My Lord,

*Government House, Ottawa, February 19, 1875.*

I HAVE the honour of communicating, for your Lordship's information, a copy of an approved order of the Privy Council of the Dominion, which states that, in consequence of the Senate of the United States having decided not "to ratify the Treaty of Reciprocity agreed to by Her Majesty's Plenipotentiaries and the United States Government, it is now deemed desirable that no time should be lost in proceeding, under the Treaty of Washington, to ascertain the compensation due to Canada for the concession of the fishery rights to citizens of the United States."

I have, &c.  
(Signed) DUFFERIN.

Inclosure 2 in No. 33.

*Report of a Committee of the Honourable the Privy Council, approved by his Excellency the Governor-General on the 19th of February, 1875.*

THE Committee of Council have had under consideration a despatch from Sir Edward Thornton, British Minister at Washington, informing your Excellency that the United States' Senate has decided that it is not expedient to ratify the Treaty of Reciprocity, agreed to by Her Majesty's Plenipotentiaries and the United States' Government.

Inasmuch as the arbitration proceedings under the XXII<sup>nd</sup> Article of the Treaty of Washington were delayed, pending the result of the negotiations for such Reciprocal Treaty, it is now deemed desirable that no time should be lost in proceeding, under the Treaty of Washington, to ascertain the compensation due to Canada for the concession of the fishery rights to citizens of the United States.

The Committee therefore respectfully request that your Excellency may be pleased to inform Her Majesty's Imperial Government of the desire of this Government to proceed at the earliest possible day.

Certified :  
(Signed) W. A. HIMSWORTH,  
*Clerk, Privy Council.*

No. 34.

*Lord Tenterden to Mr. Herbert.*

Sir,

*Foreign Office, April 2, 1875.*

I HAVE laid before the Earl of Derby your letter of the 29th ultimo, forwarding a Minute of the Canadian Privy Council, in which they express the desire of the Canadian Government that steps should at once be taken for carrying out the provisions of Articles XXII to XXV of the Treaty of Washington, in regard to ascertaining the compensation due to Canada for the concession of the Fishery rights to citizens of the United States; and I am directed by his Lordship to transmit to you the draft of a despatch which, with the Earl of Carnarvon's concurrence, he proposes to address to Sir E. Thornton, instructing him to propose to the United States' Government that steps should at once be taken for the constitution of the Fisheries Commission.\*

I am to add that Lord Derby concurs in the answer which Lord Carnarvon proposes to return to the Canadian Government.

I am, &c.  
(Signed) TENTERDEN.

## No. 35.

*Mr. Herbert to Lord Tenterden.—(Received April 6.)*

(Confidential.)

Sir,

*Downing Street, April 5, 1875.*

WITH reference to my letter of the 29th of March, I am directed by the Earl of Carnarvon to acquaint you, for the information of the Earl of Derby, that his Lordship having thought it advisable to ascertain by telegraph the views of the Canadian Government on the subject of Mr. Rothery's re-employment as agent under the XXIIIrd Article of the Treaty of Washington, has received the reply of which a decypher is inclosed.

Lord Carnarvon understands that Lord Derby is of opinion that Mr. Rothery should be again employed in this capacity, and that his Lordship will take steps to ascertain whether Mr. Rothery is disposed to act, and will consider what his remuneration should be.

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

Inclosure in No. 35.

*The Earl of Dufferin to the Earl of Carnarvon.*

(Telegraphic.)

*April 3, 1875.*

MY Government have no objection to Rothery as agent, but want the Commissioner to be a Canadian.

## No. 36.

*Mr. Malcolm to Lord Tenterden.—(Received April 8.)*

Sir,

*Downing Street, April 7, 1875.*

I AM directed by the Earl of Carnarvon to transmit to you, for the perusal of the Earl of Derby, a report of a debate in the House of Commons of Canada on the North American Fishery Question.

The debate will be found at pages 13 to 22 of the accompanying number of the Canadian Hansard.

I am desired to request that the paper may be returned to this office as soon as convenient, in order that it may be communicated to the agent to be appointed to attend the approaching Commission at Halifax.

I am, &c.  
(Signed) W. R. MALCOLM.

Inclosure in No. 36.

*Extract from Debates of the Canadian House of Commons, March 3, 1875.*

THE FISHERY QUESTION.—The Order was called for the further consideration of the proposed Motion of Mr. Mills for an Address praying for correspondence in reference to compensation to be paid by the United States to Canada under the Treaty of Washington for the right of fishing in Canadian waters.

*Hon. Mr. Mitchell* said he objected to the two propositions laid down by his Honourable Friend from Bothwell in discussing this question, namely, that the Commission to meet at Halifax had no power to deal with the fishery boundaries, and, therefore, could not ascertain the damages; and, secondly, that before the Commission met, the British Government should be asked to obtain the settlement of the question of

boundaries. While he entirely agreed with the object of the Honourable Gentleman's Motion, he dissented from the reasons the Honourable Gentleman gave for making it. He was free to admit that any decision which the Commission might arrive at would not be binding upon either country beyond the provisions of the Washington Treaty. In his judgment it would be most suicidal for this country to ask Great Britain to approach the United States in order to obtain the settlement of the question of our fishery limits before the Commission should meet at Halifax. Our true position was to claim all those rights which had been recognized as ours for over half a century, and not throw doubts upon our claims by asking England to seek a negotiation with the United States to define what our rights were.

*Mr. Mills.*—Why did you send a Commissioner to England for this very purpose?

*Hon. Mr. Mitchell* said he was prepared to discuss that question at the proper time, but at present he would proceed with the plan he had marked out for himself, namely, to give an historical résumé of this whole question of our rights as regards the fisheries. After the American War of Independence it became necessary to consider what were the rights of England in relation to the fisheries of the shores of what was now the Dominion of Canada. The United States, as the successors of the old British Colonies, claimed that as they as colonists had helped to conquer what were now the British Provinces of Nova Scotia, New Brunswick, and Quebec from France, they possessed a coequal right of fishing on the shores of those provinces with those of the old colonists who remained loyal to the British Crown from whom they voluntarily separated themselves, and in the peace of 1783 they succeeded in getting considerable concessions. He read Article III of the Treaty of 1783, showing that under it the Americans were allowed to fish on the coasts of British North America in the same manner as the subjects of Great Britain, but no right was given to them to do so. It was merely the liberty to fish that was granted to them, but with respect to the deep sea fisheries the right was conceded to them as to all other nations. It was important to observe the two-fold sense of Article III of the Treaty of 1783. In the first portion of the Article there was a clear recognition of a continuing "right" of fishery which "the people of the United States shall continue to enjoy" in those parts of "the sea" which had been commonly used by colonists to the exclusion of the French; then, in the other portion was an equally plain and distinct concession of "liberty" to use certain specified waters and coasts within the jurisdictional limits of the British Possessions in common with British subjects. In this position the matter stood till the War of 1812, and the question was how far that war affected the Treaty of 1783 as regards the fisheries. Some American jurists claimed that as their "right" to independence and to the deep sea fisheries were not abrogated by that war, so also the "liberties" to use the in-shore fisheries, which were granted them in the same Treaty, were not abrogated. At Ghent the American Commissioners went further, and claimed that the Treaty of 1783 must be looked on as of the nature of a contract, and that the right to the fisheries was upon the same footing as the right of independence. After the close of the War of 1812, the Convention between England and the United States contained no reference to the question of the fisheries. The fact was that the Commissioners found it was impossible to come to any understanding on that question, and therefore it was left in abeyance. It was not till 1815, when Lord Bathurst sent out instructions to absolutely enforce the rights of Britain and exclude American fishermen from the in-shore fisheries that the Americans were compelled to look the question fairly in the face, and consider what was the best way to remove the difficulties under which their fishermen laboured. The negotiations culminated in the Convention of 1818. With reference to the effect of the War of 1812 upon the fishery clauses of the Treaty of 1783, he would, with permission of the House, cite a few authorities. He read an extract from Wheaton's "Law of Nations," page 325, on this point. Further on the same author stated: "The entire instrument implied permanence, and hence all the fishing rights secured under it to the United States were placed on the same foundation with their independence itself." Mr. Adams and Mr. Clay maintained the same view, stating in a proposition presented to the British Commissioners that the Americans "held their rights of fishing by the same tenure as they did their independence." To this doctrine there was one dissentient voice among the American Commissioners. Mr. Russell held that "the Treaty of 1783 in relation to the fishing liberty was abrogated by the war." These pretensions of the majority of the American Commissioners that the Fishery Article of 1783 survived the War of 1812 were at once met by the British Commissioners, who were sustained by their Government, by the proposition that the war put an end to all Treaties, and that in relation to the Treaty of 1783 the "concessions" or "liberties" therein conceded as

distinct from "rights" clearly terminated with the declaration of hostilities. In support of this proposition he read extracts from the following authorities: Twiss' "Law of Nations," London, 1861, page 377; President's Message, 1847; Kent's "Commentaries on American Law," vol. I, page 175; Supreme Court of the United States, *Sutton v. Sutton*, Russell and Mylne's "Reports," vol. I, page 663; and Wheaton, page 494.

In accordance with the position thus assumed by the British Government and sustained by the law of nations, on reference to Wheaton, page 463, it appears that,—

"During the negotiations at Ghent, in 1814, the British Plenipotentiaries gave notice that their Government did not intend to grant to the United States gratuitously the privileges, formerly granted by Treaty to them, of fishing within the limits of the British sovereignty, and of using the shores of the British territories for purposes connected with the British fisheries. In answer to this declaration the American Plenipotentiaries stated that they were not authorized to bring into discussion any of the rights or liberties which the United States have heretofore enjoyed in relation thereto; from their nature and from the peculiar character of the Treaty of 1783, by which they were recognized, no further stipulation has been deemed necessary by the Government of the United States to entitle them to the full enjoyment of them all."

Wheaton further adds that,—

"The Treaty of Peace concluded at Ghent in 1814, therefore contained no stipulation on the subject; and the British Government subsequently expressed its intention to exclude the American fishing vessels from the liberty of fishing within one marine league of the shores of the British territories in North America, and from that of drying and curing their fish on the unsettled parts of those territories, and, with the consent of the inhabitants within those parts which had become settled since the peace of 1783."—*Wheaton*, page 463.

By Article VIII of the same Treaty of 1783 it had been agreed:—

"That the navigation of the River Mississippi, from its source to the ocean, should for ever remain free and open to the subjects of Great Britain and the citizens of the United States.' And, although it was described in that instrument as a 'right' secured to British subjects for ever, it was withheld, and has been ever since enjoyed exclusively by the United States, because the participatory right 'had not been renewed by the Treaty of Ghent.' If a definite 'right' of navigation on the waters of a foreign State be annulled by war, how much more should a participant 'liberty' of fishery be subject to the same contingency."

On this point he referred Honourable Members to Wheaton, page 353. During the war the Americans practically abandoned the fisheries, and their common uses with British subjects was incompatible with a state of hostilities. The liberty conceded ceased with war, and was withdrawn by the British, as it was practically abandoned by the Americans; and by their assent to the Convention of 1818 they agreed to an actual abandonment of their rights and to accept a limited enjoyment of conceded privileges, however repugnant it may have been to their views. In support of these points Mr. Mitchell quoted from Mr. Adams' despatch of September 15, 1815, and Mr. Munro's statements, and read the instructions given to Vice-Admiral Keats in the despatch of Earl Bathurst of 17th June, 1815, in which (said Mr. Mitchell) the views of Her Majesty's Government were clearly expressed and the position they assumed in relation to the Treaty was defined. In the course of that communication Lord Bathurst said:—

"I am commanded by His Royal Highness the Prince Regent, to instruct you to abstain most carefully from any interference with the fishery, in which the subjects of the United States may be engaged either on the Grand Bank of Newfoundland, in the Gulf of St. Lawrence, or other places in the sea. At the same time you will prevent them, except under the circumstances hereinafter mentioned, from using the British territory for purposes connected with the fishery, and will exclude their fishing vessels from the bays, harbours, rivers, creeks and inlets of all His Majesty's Possessions. In case, however, it should have happened that the fishermen of the United States, through ignorance of the circumstances which affect this question, should previous to your arrival, have already commenced a fishery similar to that carried on by them previous to the late war, and should have occupied the British harbours, and formed establishments on the British territory, which could not be suddenly abandoned without very considerable loss, His Royal Highness the Prince Regent, willing to give every indulgence to the citizens of the United States which is compatible with His Majesty's rights, has commanded me to instruct you to abstain from molesting such fishermen, or impeding the progress of their fishing during the present year, unless they should, by attempts to carry

on a contraband trade, render themselves unworthy of protection or indulgence; you will, however, not fail to communicate to them the tenor of the instructions which you have received, and the view which His Majesty's Government take of the question of the fishery, and you will, above all, be careful to explain to them that they are not in any future season to expect a continuance of the same indulgence."

The result of these prompt and decided measures on the part of the British Government induced American Statesmen to see the folly of their pretensions in the recent negotiations, and advances were made which resulted in the Convention of 1818. The fishery Article of that Convention provided:—

"And the United States hereby renounce for ever any liberty heretofore enjoyed or claimed by the inhabitants thereof, to take, dry, or cure fish, on or within three marine miles, of any of the coasts, bays, creeks or harbours of His Britannic Majesty's dominions in America, not included within the above-mentioned limits; provided, however, that the American fishermen shall be admitted to enter such bays or harbours for the purpose of shelter and 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 reserved to them."

By this Article the American Government, in place of obtaining the concession made them in the Treaty of 1783, of equal rights of fishing with Her Majesty's subjects, deliberately renounced any liberty they had heretofore enjoyed or claimed, and agreed to their exclusion from the fisheries within three marine miles of the coasts, bays, creeks, or harbours of British Dominions in America. In order to a proper understanding of the question, Mr. Mitchell proceeded to inquire as to what are the rights of nations in relation to the fisheries on the high seas, and which are universally recognized and admitted, and what are those exclusive rights which pertain to nations in certain waters. He quoted the following authorities:—'Twiss' Law of Nations, pp. 252, 253 and 264; Wheaton, p. 326; Angell, on Tide Waters; Vattel, p. 128; Selden, p. 182; Marters, p. 161; Wheaton's Elements of International Law, p. 320; Hautefeuille, Droits des Nations, p. 89; Bynkershoek, p. 323, of Lawrence's Wheaton; Kent's Commentaries, pp. 25, 29 and 30; Grotius, De Jure Belli et Pacis, l. II; Halleck's International Law; Puffendorff's Law of Nature and of Nations, l. IV.; Vattel's Law of Nations. Mr. Mitchell (continuing) said he would next consider the effect and scope of the Convention of 1818. That Convention left the rights of Americans and British to participate in the fisheries of the open sea just as they existed under the Treaty of 1783; but it curtailed the liberty which the Americans formerly enjoyed of taking fish within the three-mile limit, while it gave them enhanced facilities for curing. After signing the Convention of 1818, Great Britain continued to exercise and enforce the exclusion of American fishermen from our shores, and construed the Treaty to mean a limit of three miles from headland to headland, and from three miles outside of the mouths of the bays. From that time until the Reciprocity Treaty of 1854, our exclusive right to the use of the fisheries was rigidly enforced by the British Government. True, our rights were often infringed upon by the Americans, but they were never yielded. In 1841 the Americans began to poach more extensively, and the subject was brought under the notice of the Legislature of Nova Scotia, and on June 8th in that year the following questions were proposed by the House of Assembly for the consideration of Her Majesty's legal advisers:—

"I. 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?"

"II. 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, they prosecute the fishery more than three marine miles from the shores of such bays; or should the prescribed distance of three marine miles be measured from the headlands, at the entrance of such bays, so as to exclude them?"

"III. Is the distance of three 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?"

"IV. 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 limits, or to anchor there, or to fish there; and is casting bait to lure fish in the track of the vessel fishing, within the meaning of the Convention?"

"V. 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?"



“VI. 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 voyages 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?”

“VII. 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?”

To these questions the law officers of the Crown replied as follows:—

“1st Query.—In obedience to your Lordship’s commands, we have taken these papers into consideration, and have the honour to report, that we are of opinion, that the Treaty of 1763 was annulled by the war of 1812; and that 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 terms of the Convention, as explained and elucidated by the observations which will occur in answering the other specific queries.

“2nd and 3rd Queries.—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 Convention, American citizens are excluded from any right of fishing within three miles of the coast of British America, and that the prescribed distance of three miles is to be measured from the headlands, or extreme points of land next the sea, or the coast, or of the entrance of bays, or indents of the coast, and consequently that no right exists, on the part of American citizens, to enter the bays of Nova Scotia, there to take fish, although the fishing, being within the bays, may be at a greater distance than three 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, including the interiors of the bays and indents of the coast.

“4th Query.—By the Convention of 1818 it is agreed that American citizens should have the liberty of fishing in the Gulf of St. Lawrence, and within certain defined limits, in common with British subjects; and such Convention does not contain any words negating the right to navigate the Passage or Strait 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 Possessions 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 fishing to be enjoyed by the American citizens, we are also of opinion that that Convention did not, either expressly or by necessary 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 American vessels navigating the passage would constitute a fishing within the negative terms of the Convention.

“5th Query.—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 Convention 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 negated in any settled bays, &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 are 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 “shores” does not appear to have been 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.

“6th Query.—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 condition expressed or implied, limiting the enjoyment to vessels duly provided with those articles at the commencement of their voyage; and



we are of opinion that no such condition could be attached to the enjoyment of the liberty.

“7th Query.—The rights of fishing 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.

After the Treaty of 1818 was concluded, it became necessary for the British Government to enact a law of the Imperial Parliament to enforce on the coasts of British America, respect to the provisions of that Treaty. Such a law was passed by the Parliament of Great Britain on the 14th of June, 1819, and has been in force ever since that time. Under it the Treaty rights have been enforced, seizures of foreign vessels have been repeatedly made, and the same proceeded with to trial, and, in many cases, to condemnation.

The Parliament of Nova Scotia, in 1836 passed an Act, based upon the Imperial Act of 1819, which received the sanction of the Imperial Government, under which that Province provided the legal machinery for enforcing respect to their territorial jurisdiction of three miles from the coasts, bays, and harbours of that Province; and subsequently, in 1840, adopted an amended law, which is still in force.

Under these laws, the first of which was in active operation for twenty-eight years, numerous seizures of American vessels were made for encroaching and violating Treaty rights, and our rights of exclusion were repeatedly enforced up to the period of the passage of the Reciprocity Treaty.

A similar law was passed both in New Brunswick and Prince Edward Island, and in 1868 after the formation of the Dominion, a law, almost the exact transcript of the Nova Scotia law, was passed by our Parliament for the “Regulating of Fishing by Foreign Vessels.” After the Provinces were united, the Parliament of Canada passed a similar law to the Imperial Act of 1819, which had been in force for fifty years. The American fishermen followed up the policy which they had ever pursued in relation to our fisheries; endeavoured to quietly assume rights, and encroach upon our fisheries where they could do so with impunity. From 1818 to 1841 seizures of American vessels were frequent. Thus matters stood in 1841, up to which period the British construction of the Treaty of 1818, including their views of the headland lines was enforced and acquiesced in, though reluctantly, by Americans. For the first time, in 1852, the Americans set up their peculiar claim in relation to the construction of this Treaty. Daniel Webster, however, on the 6th of July, 1852, recognizing the legal force of the British claims to the only point then in dispute, wrote as follows:—

“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 three marine miles of the shore.”

Notwithstanding this authority, the Americans set up the claim that the Bay of Fundy was open to American fishermen. The question arose on the seizure of the schooner “Washington” while fishing in the Bay of Fundy, ten miles from land. Her Majesty’s Government, while denying the right, consented to leave the question in abeyance, at the same time referring this particular case to arbitration. It was decided that the Bay of Fundy being partially bounded by American territory at its mouth, was not, so far as the limits of that territory formed its bounds, a British bay. In July, 1853, when the question arose in reference to the rights of Americans to fish in the Bay of Fundy, Mr. Rush, the only surviving American Commissioner who took part in making the Treaty, gave his views in reference to it as follows:—

“They meant no more than that our fishermen, whilst fishing in the waters of the Bay of Fundy, should not go nearer than three miles to any of those small inner bays, creeks, or harbours, which are known to indent the coasts of Nova Scotia and New Brunswick.”

It would thus be perceived that while Mr. Rush coincided in the American view with regard to the right to fish in the Bay of Fundy, on the ground that it was an “arm of the sea,” he clearly admitted their exclusion from the smaller bays, creeks, and harbours, and practically disavowed the claim of a line three miles from the sinuosities of the coast put forward by Americans, and thus far sustained the British construction in all but the larger gulfs or bays, which he claimed to be “arms of the sea.” He (Mr. Mitchell) had given a *resumé* of the history of our rights in regard to these fisheries

from 1785 to 1854, and the grounds upon which England claimed and enforced these rights. In 1854 the Reciprocity Treaty gave the Americans concurrent rights to fish on our coasts, and these continued until 1866, when the Treaty terminated. When the United States gave the year's notice that it was to terminate, the then Provinces of Canada, Nova Scotia, and New Brunswick, with the approval of Her Majesty's Government, sent delegates to Washington, in October, 1865, to endeavour, if possible, to secure its continuance, or else to effect some other trade arrangements which would meet the approval of both countries. In this they were unsuccessful. The delegation held several conferences with the Committee of Ways and Means, and the record of their proceedings proves that there was really no desire evinced to renew commercial intercourse with the Provinces on any basis at all resembling the principles of reciprocal free trade. The efforts of our delegates proved fruitless, and they returned about the middle of November following.

On the 20th of February, 1866, a Royal Proclamation was issued by the Governor-General of Canada, notifying American fishermen and United States citizens of the termination, on the 17th day of the ensuing month, of the fishing privileges which they had enjoyed under the said Treaty, and warning them of the legal penalties which they would incur by trespassing upon the in-shore fisheries of British America, belonging exclusively to Her Majesty's subjects. Her Majesty's Government felt disposed to allow the freedom of fishing that had prevailed since 1854 to continue for the season of 1866, on the distinct understanding that, unless some satisfactory arrangement between the two countries should be made in the course of the year, such privileges would cease, and all concessions made in the Treaty just about to expire, be liable to withdrawal. It was important that friendly relations should be maintained with the United States. The Americans had always been sensitive with regard to these fisheries. They claimed that as England through the aid of her American colonists had won them from the French, and as it was only by the Treaty of 1818 that they were lost, they should now be admitted to the use of them. The Canadian Government feared that it would be impossible to keep the 1,500 or 2,000 fishing vessels of the United States outside the limits if they were once allowed to come in and fish without control on our part. They would after a time claim the right by use to our fisheries.

Notwithstanding the strong opinions entertained by the Canadian Government, they reluctantly acquiesced in the views of the Imperial Authorities, and adopted the temporary expedient of issuing season licenses to United States' fishing-vessels, at a nominal tonnage rate, so as formally to preserve the right of sovereignty without occasioning any serious complications. It commenced with a rate of 50 cents per ton, and subsequently was increased to 2 dollars per ton. The refusal of American fishermen to avail themselves of this privilege would be seen by the following statement, showing the number of licenses issued each year, since 1866:—In 1866 there were 354 licenses; in 1867, 281; in 1868, 56; in 1869, 25. For himself, he always felt that, while the licensing system might do very well as a temporary arrangement, which would ensure a recognition of our rights, as a permanent system it was very unsatisfactory. The result was fully as much as he had anticipated. The licensing system having proved a failure, it became necessary, in 1868, to adopt a different policy; but, at the request of the British Government, the system was continued another year, in the hope of a renewal of the Reciprocity Treaty. The year 1869, however, passed without any progress having been made in that direction. He might mention that in 1866 Lord Clarendon, then Foreign Minister, at the request of Mr. Adderley, sent a despatch to the United States, proposing that an arrangement should be made by which the fishery limits should be defined; but to that despatch no answer was ever received. The licensing system having proved a complete failure, the Government of Canada determined, in 1870, to adopt a more decided policy. They abolished the licensing system, and established a marine police force which, aided as it was from the first by the British fleet, excluded the American fishermen from the three-mile limit, following the sinuosities of the coast, for the British Government requested that our right to three miles from a line drawn from headland to headland should be left in abeyance for subsequent settlement.

The point he wished to impress upon the House was that all the rights which we enjoyed from 1818 to 1854, when they were suspended by the operation of the Reciprocity Treaty, were restored to us by the abrogation of that Treaty in 1860. Those rights were recognized by the American Government under the licensing system, and they were maintained by us up to the passage of the Washington Treaty. He held, therefore, that the Halifax Commission would have power to deal with the question of boundaries, and to ascertain damages, and that it would be unwise on our part to throw doubts upon our own rights, by asking England to open negotiations with the United States in order to

have these rights defined. What would be the answer of England? She would say that, under the Washington Treaty, the Americans have the right to use our fisheries for eleven years, and that, in the meantime, the Halifax Commission would have full power to determine what damages should be paid to the United States (if any) for the use of our fisheries for eleven years. He was free to admit that, outside of the question of damages, no decision of those Commissioners would bind the two nations; and after the expiration of eleven years any decision of theirs upon the question of boundary would not be binding. But, at the same time, for the purpose of ascertaining the amount of damages to be paid by the United States, the Commissioners had full authority under the Treaty of Washington, because we enjoy the same rights now which had been enforced by England from 1818 to 1854. This question of the existence of our boundary limits was one which had been the subject of negotiation for many years. In 1866 Lord Clarendon, in a despatch in reply to Mr. Adams, expressed the anxiety of the British Government to arrive at some friendly arrangement on this point, and in a despatch of the 21st April, 1863, Sir Edward Cardwell stated:—

“I recognize in this Minute, with much pleasure, the moderation and forbearance shown by the Canadian Government.

“The suggestion that American fishermen should be allowed to fish during the current year in all Provincial waters, upon payment of a moderate license fee, meets with the full approval of Her Majesty’s Government, and I shall inform the Governors of the Lower Provinces that I trust they will readily concur in it.

“In anticipation of this result, Sir James Hope will be instructed to act upon it as soon as he shall have been informed that the arrangement is concluded.”

In 1870 a Minute of Council was passed, abolishing the license system, and excluding American fishermen from the waters of Canada, and Mr. Campbell was appointed to go to England to call the attention of the Imperial Government to this matter; and, in June of the same year, he was instructed to inform Her Majesty’s Government that the time had arrived when it was necessary to abolish the licensing system, and adopt some other means of more effectually protecting the Canadian fisheries.

In his Report of the 10th September, 1870, Mr. Campbell stated the result of his proceedings as follows:—

“I urged upon Lord Kimberley the great importance to Canada of the fisheries, which employed a large number of seamen, and had many collateral pursuits and industries dependent upon them. We possessed the whole of the herring and mackerel fisheries on the western side of the Atlantic, the Americans having no inshore fisheries of any great value. This possession was of the first importance to us, and we felt exceedingly anxious that it should be maintained in accordance with Treaty rights. Induced by a strong sense of the responsibility involved in the matter, and out of deference to Imperial views, we had proposed, in 1865, the license system; we had given every possible opening in this direction at a sacrifice of our immediate interests, in order that our affairs might not tend to endanger the peace of the Empire. This system had been continued to the present year, and we were satisfied that no advantageous results would be obtained from it.

“Lord Kimberley admitted that the time had come when Canadians might reasonably expect that the state of things anterior to the Reciprocity Treaty should be reverted to, or that some other definite arrangements with the Americans on this subject should be arrived at. He added that he was glad that I had not mixed up the two questions of reciprocity and the fisheries, because he saw no reason to expect a renewal of that Treaty; he agreed, he said that the fisheries question should be treated by itself. I said that we in Canada had arrived at similar conclusions. The policy of conciliation had been fully tried, and we ceased to expect anything from the Americans from it. We thought the only course now open to us was to ask the Imperial Government to fall back upon the rights which we enjoyed and maintained anterior to the Reciprocity Treaty, and I was directed to request this at the hands of the Government.”

Lord Kimberley, in his despatch of the 10th of October, 1870, stated:—

“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.”

*Mr. Mills.*—Has that been done?

*The Hon. Mr. Mitchell* said it had not been done because the Canadian Government would not accept an arrangement which implied by inference that there were any doubts as to the limits of the Canadian fisheries.

*The Hon. Mr. Blake.*—They did accept.

*The Hon. Mr. Mitchell* said they did not accept it, but they asked the British Government to adopt some means whereby our rights could be enforced. The results of Mr. Campbell's mission was the negotiations which led to the Washington Treaty.

*The Hon. Mr. Blake.*—Hear, hear.

*The Hon. Mr. Mitchell* said his honourable friend did not very much approve of the Washington Treaty, but he could tell him that while he (Mr. Mitchell) did not think the Treaty was all that the people of Canada would like it to be, it was not the fault of the Government of Canada. His views upon that subject were pretty well known; and while he did not entirely agree with the conclusions arrived at, he believed that the Canadian Commissioner did the very best he could for Canada. That gentleman found that the interests of the Empire stood in his way, and that, unfortunately, matters of greater importance to the Imperial Government intervened in the negotiations, and the fishery question had to take a secondary place. It was to be regretted that we were placed in that position, but that was a matter which could not be helped. This question of the fisheries was of far more importance than many people imagined. The value of our fisheries was about 15,000,000 dollars a year, and the actual catch of our fishermen was supposed to be between 6,000,000 and 7,000,000 dollars. The fish taken by the Americans within our waters, according to the best estimates, amounted to about 8,000,000 dollars a year. He found in an able article in the St. John "Telegraph" the following statement of the value of the products of the sea fisheries for four years:—

								Dollars.
Nova Scotia—								
1870	..	..	..	..	..	..	..	4,019,424
1871	..	..	..	..	..	..	..	6,550,739
1872	..	..	..	..	..	..	..	6,016,835
1873	..	..	..	..	..	..	..	6,577,086
New Brunswick—								
1870	..	..	..	..	..	..	..	1,131,435
1871	..	..	..	..	..	..	..	1,578,695
1872	..	..	..	..	..	..	..	1,965,459
1873	..	..	..	..	..	..	..	2,285,661
Quebec—								
1870	..	..	..	..	..	..	..	1,161,551
1871	..	..	..	..	..	..	..	1,092,612
1872	..	..	..	..	..	..	..	1,320,189
1873	..	..	..	..	..	..	..	1,391,504
Prince Edward Island—								
1871	..	..	..	..	..	..	..	..
1872	..	..	..	..	..	..	..	137,746
1873	..	..	..	..	..	..	..	207,505
Exports from Newfoundland—								
1871	..	..	..	..	..	..	..	8,154,206
1872	..	..	..	..	..	..	..	6,971,115
Total value in the Dominion, including exports from Newfoundland and the Magdalen Islands—								
1871	..	..	..	..	..	..	..	17,730,451
1872	..	..	..	..	..	..	..	16,635,071

With reference to Ontario, he was glad to notice the great success of Mr. Whitcher and Mr. Wilmot in their efforts in establishing fish-breeding establishments. He was informed that there would be 3,000,000 of young salmon taken out next spring from the fish-breeding establishments of Mr. Wilmot; and Canada might well be proud of her position on this matter, as the United States were following our example. But, coming back to the question he wished to enforce, he would repeat that it would be useless for us to ask England to seek from the United States a definition of our fishery limits.

He assured his honourable friend that the course he intended to take must fail. If the Imperial authorities were asked to appoint another Commission, and to open communication with the United States for the purpose of selling our fishery boundaries, the answer would be that our rights had been already established by use and practice of upwards of fifty years. They would tell us that the Commission already appointed could go on and define what the damages would be, and if they could arrive at no agreement, it would at least be eleven years before this question of boundaries could be reopened. He (Mr. Mitchell) felt very certain that the British authorities would decline to again open up this question until the expiration of the period covered by the Treaty of Washington. There was no reason in the world, in his opinion, why the Commissioners could not define the amount of remuneration due to us for our fisheries under the Treaty of Washington, and, while that arbitration was pending, he could assure his honourable friend that the result of the course proposed would simply be to create national antago-

nisms without bringing any benefits to this country in the end. In conclusion, he apologised to the House for having occupied so much of their time, but as the subject was so very important, he thought it due to the House and the country that he, as one who had had something to do with fisheries; one who had given to them no small amount of attention; one who had done his best to encourage and develop them, that he should put upon record what he believed to be a correct historical statement of the facts which had led up to the present situation.

*Honourable Mr. Blake* said he had intended to make a few remarks on this motion, but the honourable gentleman's speech had been so long, that if it had not exhausted the subject, it had at least exhausted the House. The honourable gentleman had made lengthened references to the Treaty of Washington, which he admitted was not all that he expected or desired, but was nevertheless, in the honourable gentleman's opinion, very good. He (Mr. Blake) desired to point out something which, to him, appeared very material to the question of whether we were likely to arrive at any conclusion in regard to the compensation due to us by means of arbitration. The Treaty provided in several distinct parts for the settlement by arbitration of several distinct questions. In regard to the Alabama question, which was provided for in the II<sup>nd</sup> Article in the Treaty, it was expressly stated that all disputed points considered by the Tribunal should be decided by a majority of the Arbitrators. In like manner it was stipulated that questions to be determined under the 10<sup>th</sup> and 13<sup>th</sup> sections should be settled by a majority of the Arbitrators; but in regard to the 23<sup>rd</sup> section, in which provision was made for the appointment of the Fishery Commissioners, it was not stated that the decision of the majority would be final. The result of that would be that the Americans would insist that a unanimous decision was required to a final settlement, and unless the Government of the United States and the Imperial authorities should previously agree to some arrangement, the American Commissioner would dissent from the opinion of the majority, and we might never have a settlement.

*Mr. Bunster* was surprised to hear the honourable member for Northumberland defend the Treaty of Washington, in which the existence of British Columbia had been entirely ignored. He complained that British Columbia was practically shut out of the San Francisco oil market, and the Hudson's Bay Company and other oil exporters had their profits greatly curtailed by the cost of transportation to the European market.

*Mr. Mills* said it was not his intention, when he introduced the Resolution, to enter into any historical discussion of the various Treaties between Great Britain and the United States. It seemed to him that it would be more proper to enter into such a discussion at a later stage, when the House had all the papers before it. He was surprised when he heard the honourable Member for Northumberland observe that it would be a highly imprudent proceeding on our part to ask that the limit line should be drawn while the question of compensation was under consideration. He was all the more surprised at this when he remembered that the honourable gentleman was a member of the Government which sent a Commissioner to England to invite the Imperial authorities to bring this matter before the Government of the United States with a view to its settlement. It was very extraordinary if to ask this much would compromise our rights. The American Government had shown a disposition to construe the Treaty of 1818 so as to exclude us from the very rights which the honourable gentleman said were established by usage and practice. The Government of which the honourable gentleman was a member issued licenses to American fishermen because of this difficulty, but the system proved a complete failure in one year. He had called the attention of the House to this subject on a former occasion, as on this occasion, with the object, when the papers were brought down, to submit a motion asking that the Imperial Government might take the initiative in a correspondence with the United States to finally dispose of this question. It was all the more necessary that this should be done, because it was quite clear that the parties who negotiated the Treaty of Washington had shown a disposition which he characterized as almost cowardly, to let our rights go by default. Those rights, which were considered of great consequence by the Americans themselves, should not be disposed of in this indirect manner without our having an opportunity of securing a formal decision upon the Convention of 1818. The honourable gentleman had discussed not only everything which was pertinent to the subject, but many things which were not at all connected with it. In fact, his speech reminded him (Mr. Mills) very much of Knickerbocker's History of the World. If we were to receive any value for our fisheries, we must first secure a fair construction of the Convention of 1818, by which an understanding would be arrived at as to what our fishery rights really were. Then the Commission appointed under the Washington Treaty would be in a position to go on with the inquiry with which they were charged, but until the fishery boundaries were

defined, he did not see how they could proceed with their labours in an intelligent way. It could not be held that we had abandoned our just pretensions because we asked to have our rights defined.

*Honourable Mr. Mackenzie* said he did not propose to enter into any discussion on this matter. We were not in a position to discuss the question at present, nor yet were the Government in a position to bring down the papers. The arbitration had to be proceeded with, and was proceeding at present. All necessary steps had been taken by the Government, and although some of the papers might be laid on the table without any harm, they would lead to no result, and he, therefore considered it was not advisable to bring any of them down in the meantime. With respect to the point that before any proper arbitration could be had as to the exclusive right of fishing in bays more than six miles wide at their mouths, he understood the honourable member for Northumberland to maintain that the point should not be even raised until the question of compensation was settled. He thought, on the contrary, it would be very desirable to know what rights we possessed before we were asked to determine upon the value of those rights. That was a proposition as logical as it was self-evident, and he was therefore surprised at the honourable member having raised the question. Whether that proposition would be recognized by both Powers was quite another matter. By the terms of the Treaty of Washington, he believed the settlement of the controversy had been made as difficult as possible, but the Government would endeavour to secure the greatest possible benefit to the country. He hoped his honourable friend, the mover of the motion, would withdraw it.

Motion withdrawn.

No. 37.

*Mr. Malcolm to Lord Tenterden.*—(Received April 10.)

My Lord,

*Downing Street, April 9, 1875.*

WITH reference to your letter of the 2nd instant, I am directed by the Earl of Carnarvon to acquaint you, for the information of the Earl of Derby, that he concurs in the despatch which his Lordship proposes to address to Sir E. Thornton on the subject of the resumption of proceedings for the appointment of the Commission at Halifax, provided for by the XXIIInd Article of the Treaty of Washington.

I am, &c.

(Signed) W. R. MALCOLM.

No. 38.

*The Earl of Derby to Sir E. Thornton.*

(No. 62.)

Sir,

*Foreign Office, April 10, 1875.*

WITH reference to your despatch No. 58 of the 22nd ultimo, I inclose, for your information, a copy, which has been communicated to me by the Secretary of State for the Colonies, of a Minute of the Canadian Privy Council,\* stating that, in consequence of the Senate of the United States having decided not to ratify the Treaty of Reciprocity agreed to by Her Majesty's Plenipotentiaries and the United States' Government, it is now deemed desirable that the Arbitration proceedings under the XXIIInd Article of the Treaty of Washington, which were delayed, pending the result of the negotiations for the Reciprocity Treaty, should be at once resumed, and that no time should be lost in proceeding to ascertain the compensation due to Canada for the concession of the fishery rights to citizens of the United States.

Her Majesty's Government concur in the propriety of the course recommended in this Minute, and I have to instruct you to address a note to Mr. Fish, proposing that steps should at once be taken for the constitution of the Commission, in accordance with Articles XXII to XXV of the Treaty of Washington, and suggesting the expediency of agreement to an identic note to be addressed to the Austrian Government by the Representatives of Great Britain and the United States at Vienna, requesting that the Austrian Ambassador in London may be authorized to proceed with the nomination of the third Commissioner, in the manner laid down in the XXIIIrd Article of the Treaty.

I am, &c.

(Signed) DERBY.

\* Inclosure 2 in No. 33.

## No. 39.

*Sir E. Thornton to the Earl of Derby.—(Received April 19.)*

(No. 120.)

My Lord,

*Washington, April 5, 1875.*

A MR. FRANKLIN SNOW, an American and a wholesale fish dealer at Boston, called on me to-day and informed me that a British subject at Halifax proposed to employ a small steamer under the British flag in fishing in American waters, under the XIXth Article of the Treaty of May 8, 1871, with a view to bringing the fish caught in those waters to Boston and other ports of the United States and selling them there.

Mr. Snow had come to Washington, as he said, to inquire of the Secretary of the Treasury whether fish caught by British vessels in waters of the United States would be allowed admission into the United States free of duty in the same vessels and to be sold there. Mr. Bristow had declined to give an immediate answer, and had requested him to state the question in writing.

Mr. Snow had come to me to ask my opinion whether, under the Treaty above mentioned, British subjects could claim as a right to bring into the United States free of duty, and to sell there fish caught by them in United States' waters, and he begged me to inquire of the Secretary of State whether the United States' Government would make any objection to their so doing.

I replied that it was a point upon which I was not acquainted with the views of Her Majesty's Government, and that I could not, therefore, give a decided opinion; but it seemed to me that the free entry and sale of the fish so caught was almost a natural consequence of the right agreed upon by the Treaty to fish in American waters, although it might not be quite clear from the wording of the XXIst Article of the Treaty that the free entry and sale of the fish caught under such circumstances was expressly stipulated for. But the Treaty certainly allowed British subjects to fish in United States' waters, and, generally, fish caught in those waters was admitted free of duty into the United States. The only question would then be whether such fish could be imported into the United States by British vessels.

It did not seem to me, however, expedient to inquire of Mr. Fish the opinion of his Government upon the subject, because such a question might betray a doubt on my part which I did not feel, whether such a course was in accordance with the terms of the Treaty of 1871.

There seems to have been no precedent, either during the time of the Reciprocity Treaty of 1854, or since the Treaty of 1871 came into operation, of the practice having been followed by British subjects. Indeed, I believe that there is not an instance of a British vessel having fished in United States' waters except for the purpose of obtaining bait which was carried away for use on the coast of Canada; but it seems undoubted that both then and now American fishermen were allowed and have exercised the right of selling in Canada fish caught by them in Canadian waters.

I should be much gratified if your Lordship should think it expedient to favour me with your opinion upon this matter.

I have, &c.  
(Signed) EDWD. THORNTON.

## No. 40.

*Lord Tenterden to Mr. Herbert.*

Sir,

*Foreign Office, April 21, 1875.*

I AM directed by the Earl of Derby to transmit to you to be laid before the Earl of Carnarvon, a copy of a despatch from Her Majesty's Minister at Washington,\* inquiring the view of Her Majesty's Government as to the right of British vessels to import into the United States fish taken in the waters of that country; and I am to request you to move his Lordship to favour Lord Derby with his opinion as to the answer that should be sent to Sir E. Thornton.

I am, &c.  
(Signed) TENTERDEN.



No. 41.

*Mr. Herbert to Lord Tenterden.—(Received April 28.)*

My Lord,

*Downing Street, April 27, 1875.*

I AM directed by the Earl of Carnarvon to acknowledge the receipt of your letter of the 21st instant, inclosing copy of a despatch from Sir E. Thornton inquiring the views of Her Majesty's Government as to the right of British vessels to import into the United States, duty free, fish taken in the waters of that country.

Lord Carnarvon desires me to state that, though there appears to his Lordship to be fair ground for holding that British fishing vessels have the right contended for, yet the matter is not perhaps wholly free from doubt, as it may be contended that the XXIst Article of the Treaty of Washington has in contemplation only the introduction of American fish into Canada and *vice versa*.

It may not, therefore, be advisable, in his Lordship's opinion, for Her Majesty's Government to commit itself by too definite an expression of opinion on the point, which is one which it may perhaps become necessary to refer to the Law Officers of the Crown.

I am, &amp;c.

(Signed) ROBERT G. W. HERBERT.

No. 42.

*Lord Tenterden to Mr. Herbert.*

Sir,

*Foreign Office, April 29, 1875.*

WITH reference to your letter of the 9th instant, I am directed by the Earl of Derby to transmit to you a draft of a despatch which he proposes, with the concurrence of the Earl of Carnarvon, to address to Mr. Rothery, requesting him to hold himself in readiness to proceed to Halifax as British Agent before the Fisheries Commission, as soon as it is constituted.\*

I am at the same time to suggest that in any communication which Lord Carnarvon may make to the Canadian Government on the subject, it should be borne in mind that the expenses incurred on account of the Commission will be shared between Her Majesty's Government and Canada.

I am, &amp;c.

(Signed) TENTERDEN.

No. 43.

*Lord Tenterden to the Law Officers of the Crown and Dr. Deane.*

Gentlemen,

*Foreign Office, May 3, 1875.*

I AM directed by the Earl of Derby to transmit to you a despatch from Sir E. Thornton inquiring the views of Her Majesty's Government as to the right of British vessels to import into the United States, free of duty, fish taken in the waters of that country.

A letter from the Colonial Office on the subject is also inclosed, together with a copy of the Treaty of Washington, and I am to request you to take the matter into your consideration, and to report to Lord Derby your opinion as to the answer which should be sent to Sir E. Thornton's despatch.

I am, &amp;c.

(Signed) TENTERDEN.

No. 44.

*Mr. Herbert to Lord Tenterden.—(Received May 8.)*

My Lord,

*Downing Street, May 7, 1875.*

I AM directed by the Earl of Carnarvon to acknowledge the receipt of your letter of the 29th ultimo, and to request that you will inform the Earl of Derby that his Lord-



ship concurs in the despatch which it is proposed to address to Mr. Rothery requesting him to hold himself in readiness to proceed to Halifax as soon as the fishery Commission is constituted under the XXIIInd Article of the Treaty of Washington.

As Mr. Rothery is one of the principal officers attached to the High Court of Admiralty, Lord Derby will no doubt think it desirable that, as a matter of courteous consideration, some intimation should be made to Sir Robert Phillimore of Mr. Rothery's intended departure.

Lord Carnarvon desires me to state that he has forwarded a copy of your letter and of its inclosures to the Governor-General of Canada, and has called his attention to the arrangement made in 1873 respecting the expenses of the proceedings at Halifax.

I am, &c.

(Signed) ROBERT G. W. HERBERT.

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No. 45.

*The Earl of Derby to Mr. Rothery.*

(No. 1.)

Sir,

*Foreign Office, May 8, 1875.*

THE United States' Senate having decided not to ratify the Reciprocity Treaty negotiated last year at Washington, Her Majesty's Government consider it desirable that the Commission proceedings under the XXIIInd Article of the Treaty of Washington should be resumed, and I have instructed Sir E. Thornton to propose to the United States' Government that steps should at once be taken for the constitution of the Fisheries Commission, and the nomination of a third Commissioner.

Her Majesty's Government are desirous that you should re-enter upon your duties as British Agent under the instructions addressed to you in Lord Granville's despatch No. 1 of the 11th of July, 1873, and I have accordingly to request you to hold yourself in readiness to proceed to Halifax as soon as the Commission is constituted.

Mr. J. H. G. Bergne, of this office, will be appointed to be Secretary to the agency, and to assist you generally in any business connected with the Fishery Commission in which you may think proper to employ his services.

I shall be glad to learn from you, at your earliest convenience, what further assistance you will require, in order that application may be made without loss of time to the Treasury to sanction the necessary expenditure.

It is uncertain at what date the Commission may meet, but it will be as well that you should at once place yourself in communication with the proper department of this Office, with a view to such further arrangements being made as circumstances may require.

I am, &c.

(Signed) DERBY.

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No. 46.

*Sir E. Thornton to the Earl of Derby.—(Received May 10.)*

(No. 134.)

My Lord.

*Washington, April 26, 1875.*

IN compliance with the instructions contained in your Lordship's despatch No. 62 of the 10th instant, I addressed a note on the 21st instant to Mr. Cadwalader, who was then Acting Secretary of State in the absence of Mr. Fish, suggesting that steps should at once be taken for the constitution of a Commission in accordance with Articles XXIII to XXV of the Treaty of Washington, with a view to ascertaining the compensation due to Canada for the concession of the fishery rights to citizens of the United States.

Mr. Fish has now returned to Washington, but I have not yet received an answer to my note above-mentioned, copy of which I have the honour to inclose.

I have, &c.

(Signed) EDWD. THORNTON.

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## Inclosure in No. 46.

*Sir E. Thornton to Mr. Cadwalder.*

Sir,

*Washington, April 21, 1875.*

IN compliance with an instruction which I have received from the Earl of Derby, I have the honour to inform you that, as the Senate of the United States has decided not to sanction the ratification of the Treaty of Reciprocity submitted to it by the President during its recent Session, Her Majesty's Government now deems it desirable that the arbitration proceedings under the XXII<sup>nd</sup> Article of the Treaty of Washington, which were delayed pending the result of the negotiations for the Reciprocity Treaty, should be at once resumed, and that no time should be lost in proceeding to ascertain the compensation due to Canada for the concession of the fishery rights to citizens of the United States.

I have the honour, therefore, to propose that steps should at once be taken for the constitution of the Commission, in accordance with Articles XXII to XXV of the Treaty of Washington, and to suggest the expediency of agreeing to an identic note, to be addressed to the Austrian Government by the Representatives of the United States and of Great Britain at Vienna, requesting that the Austrian Ambassador in London may be authorized to proceed with the nomination of the third Commissioner in the manner laid down in the XXIII<sup>rd</sup> Article of the Treaty.

I have, &c.  
(Signed) EDWD. THORNTON.

## No. 47.

*Mr. Herbert to Lord Tenterden.—(Received May 12.)*

(Confidential.)

My Lord,

*Downing Street, May 11, 1875.*

WITH reference to my letter of the 7th ultimo, inclosing a debate in the House of Commons of Canada on the North American Fishery question, I am directed by the Earl of Carnarvon to request that the attention of the Earl of Derby may be drawn to a passage (Inclosure in No. 36, p. 74) in a speech by Mr. Blake, who is a prominent member of the Canadian Parliament, in which (speaking of the Fishery Commission to be appointed under the Treaty of Washington) he refers to the absence of any provision in the Treaty making the decision of the majority of the Commissioners binding, and states that, "unless the Government of the United States and the Imperial Authorities should previously agree to some arrangement, the American Commissioner would dissent from the opinion of the majority, and we might never arrive at a settlement."

This point was adverted to in the letter from this Department of the 29th of March; and although Lord Carnarvon was then of opinion that it might be inexpedient that any proposals for an arrangement should be made to the United States' Government, yet, as he now learns that the question has been thus prominently brought forward in Canada, he thinks it right again to call attention to the point, in order that it may be fully considered, and that it may be determined whether it would be advisable that any communication should be addressed to the Canadian Government on the subject.

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

## No. 48.

*The Earl of Derby to Sir E. Thornton.*

(No. 91.)

Sir,

*Foreign Office, May 13, 1875.*

I APPROVE the note, of which a copy is inclosed in your despatch No. 134 of the 26th ultimo, which you addressed to the Acting Secretary of State on the 21st ultimo, suggesting that steps should be taken for the constitution of the Fisheries Commission, in accordance with Articles XXIII to XXV of the Treaty of Washington.

I am, &c.  
(Signed) DERBY.

## No. 49.

*Lord Tenterden to Mr. Herbert.*

Sir,

*Foreign Office, May 13, 1875.*

WITH reference to your letter of the 9th ultimo, I am directed by the Earl of Derby to transmit to you, to be laid before the Earl of Carnarvon, a copy of a despatch from Her Majesty's Minister at Washington, upon the subject of the proposed renewal of the Fishery Commission.\*

I am, &c.  
(Signed) TENTERDEN.

## No. 50.

*The Law Officers of the Crown and Dr Deane to the Earl of Derby.—(Received May 15.)*

My Lord,

*Lincoln's Inn, May 14, 1875.*

WE are honoured with your Lordship's commands, signified in Lord Tenterden's letter of the 3rd instant, stating that he was directed by your Lordship to transmit to us a despatch from Sir Edward Thornton, inquiring the views of Her Majesty's Government as to the right of British vessels to import into the United States free of duty fish taken in the waters of that country.

That a letter from the Colonial Office on the subject was also inclosed, together with a copy of the Treaty of Washington; and that he, Lord Tenterden, was to request us to take the matter into our consideration, and to report to your Lordship our opinion as to the answer which should be sent to Sir Edward Thornton's despatch.

In obedience to your Lordship's commands we have the honour to report that, in our opinion, fish taken in the waters of the United States may be imported into that country free of duty in British vessels. But Sir Edward Thornton may properly be instructed, as some doubt may exist upon the true meaning of the XXIst Article, not to raise the question unless it is forced upon him by the United States' Government, and to express no opinion to any individual citizen of the United States.

We have, &c.  
(Signed) RICHARD BAGGALLAY.  
JOHN HOLKER.  
J. PARKER DEANE.

## No. 51.

*Mr. Lister to Mr. Herbert.*

(Confidential.)

Sir,

*Foreign Office, May 21, 1875.*

YOUR letter of the 27th ultimo on the subject of the right of British vessels to import into the United States, free of duty, fish taken in the waters of that country, was referred to the Law Officers of the Crown, together with Sir E. Thornton's despatch No. 120 of the 5th ultimo, a copy of which was inclosed in my letter to you of the 21st ultimo, and I am directed by the Earl of Derby to transmit to you, for the confidential information of Lord Carnarvon, the accompanying copy a Report received from the Law Officers in reply.†

I am to add that Lord Derby proposes, with Lord Carnarvon's concurrence, to instruct Sir E. Thornton in the sense of that Report.

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

## No. 52.

*Mr. Lister to Mr. Herbert.*

(Confidential.)

Sir,

*Foreign Office, May 21, 1875.*

I HAVE laid before the Earl of Derby your letter of the 11th instant, marked Confidential, calling attention to a passage in a speech by Mr. Blake in the Canadian Parliament, in which he refers to the absence of any provision in the Treaty of Washing-

ton making the decision of the majority of the Fishery Commission binding; and I am, in reply, to request that you will state to the Earl of Carnarvon that Lord Derby does not consider it necessary to take any action in a Debate in the Dominion House of Commons.

His Lordship presumes that if the point were looked upon as important, the Dominion Government would have noticed it, and addressed a communication on the subject to Her Majesty's Government.

Lord Derby will, however, forward a copy of the letter from the Colonial Office to Sir E. Thornton, and would suggest that it might be as well if Lord Dufferin, who is, it is believed, shortly expected in London, were to be consulted.

I am to add that Lord Derby observes that Mr. Mitchell, who, he understands, is designated for the appointment of British Commissioner, and who, from his position as Minister of Fisheries and Marine, must have been conversant with all the negotiations at Washington and with the Treaty, said, in the same debate, that "there was no reason in the world, in his opinion, why the Commissioners could not define the amount of remuneration due to us for our fisheries under the Treaty of Washington."

I am, &c.

(Signed) T. V. LISTER.

No. 53.

*The Earl of Derby to Sir E. Thornton.*

(No. 98. Confidential.)

Sir,

*Foreign Office, May 21, 1875.*

I TRANSMIT to you herewith, for your information, copies of a correspondence with the Colonial Office, in regard to a speech lately delivered in the Canadian Parliament calling attention to the omission from the Treaty of Washington of any provision making the decision of the majority of the Fishery Commissioners binding.\*

I am, &c.

(Signed) DERBY.

No. 54.

*Sir E. Thornton to the Earl of Derby.—(Received May 23.)*

(No. 145.)

My Lord,

*Washington, May 10, 1875.*

DURING a visit which I paid to the State Department on the 6th instant, I urged Mr. Fish to let me have an answer to my note of the 21st ultimo, relative to the establishment of the Fisheries Commission, to meet at Halifax in accordance with the stipulations of the Treaty of May 8, 1871, and with regard to the appointment of a third Commissioner for that Commission. I pointed out to him that no time should now be lost, because the season at Halifax was but short, the summer was now rapidly approaching, and it was most desirable that the business of the Commission should be completed as soon as possible, and before the cold weather set in, when it might be difficult to induce the members of the Commission to remain at Halifax.

In reply to my observations, Mr. Fish asked whether the two Governments could not agree upon a third Commissioner. I replied that such a step was now out of the question, that the time had passed when that was possible, and that it would be a violation of the Treaty.

Mr. Fish said that he was not of that opinion, but that he thought we had violated at least the spirit of the Treaty in not having made any effort to agree upon a third Commissioner. This I denied very positively, and said that we had, on the contrary, been anxious to come to an agreement, and had made several proposals with that view.

Mr. Fish replied that the United States' Government had proposed all the eligible foreign Ministers at Washington from whom a third Commissioner might be selected, but these were rejected by Great Britain, who had then proposed the Belgian Minister, when it was notorious that Belgium was so much under the influence of Her Majesty's Government that her Representative could not be considered an impartial Arbitrator between the two countries; indeed, Lord de Grey had on one occasion said, during the negotiation of the Treaty, that he took it for granted that the United States would not accept a proposal that His Belgian Majesty should name one of the Geneva Arbitrators,

because Belgium was considered to be to a certain extent under the control of Great Britain. Her Majesty's Government must, therefore, have felt that it was impossible for the United States to accept the appointment of the Belgian Minister as third Commissioner on the Fisheries Commission.

I replied that I could not look upon the matter in this light; indeed, I felt convinced that my Belgian colleague would have been perfectly impartial with regard to the question at issue.

Mr. Fish said further that he considered it contrary to the spirit of the Treaty that Her Majesty's Government should have left it to the Canadian Government to decide whether a person should be selected from amongst those who were proposed by the United States. He believed that Her Majesty's Government ought alone to have borne the responsibility of agreeing upon the third Commissioner to be appointed.

I replied that, if we chose to consult the Canadian Government upon the subject, that was an internal matter, left to our own consideration and judgment, which did not concern the United States. It was certainly natural that we should do so, seeing that Canada alone on our side was interested in the question at issue. I was more surprised than I could express that he should raise such an objection, for I supposed that there was not a Government in the world which respected so much as did that of the United States the representations, if not the dictates, of its citizens, or of a section of them, in any matter which affected their interests.

Mr. Fish assented that we had a full right to consult the Canadian Government, but that we ought not to have supported our own rejection of the persons proposed by the United States by stating that no one of them was agreeable to Canada. To this observation I answered that our having done so was from a motive of courtesy and friendship, and in order to show the reason why we had been unable to accept any one of the persons suggested by the United States. But, however this might be, there was now nothing to be done but to be guided by the Treaty. I submitted to him that Her Majesty's Government had up to the present time carried out the stipulations of the Treaty with a true spirit of honour and justice, and I earnestly urged that it would ill become the United States, in the only question which now remained pending, not to show a similar spirit. I expressed my earnest hope that he would not delay to answer my note in the only sense in which it ought to be answered, that of compliance with the terms of the Treaty.

Mr. Fish said that he would endeavour to view the subject in that light, but he could not conceal from me that his Government felt sore at our not having accepted as third Commissioner one of the persons whom it had proposed.

I have, &c.  
(Signed) EDWD. THORNTON.

No. 55.

*Mr. Lister to Mr. Herbert.*

Sir, *Foreign Office, May 26, 1875.*  
WITH reference to my letter of the 13th instant, I am directed by the Earl of Derby to transmit to you, to be laid before the Earl of Carnarvon, a copy of a further despatch from Her Majesty's Minister at Washington, in regard to the scheme for the revival of the Fisheries Commission.\*

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

No. 56.

*Mr. Malcolm to Mr. Lister.—(Received May 27.)*

(Confidential.)

Sir, *Downing Street, May 26, 1875.*  
WITH reference to previous correspondence, I am directed by the Earl of Carnarvon to request that you will inform the Earl of Derby that a telegram has been received from the officer administering the Government of Canada, stating that his Government wish to nominate Sir A. T. Galt as Fishery Commissioner on the Commission which is to meet at Halifax under the XXIIIrd Article of the Treaty of Washington.

Lord Carnarvon is of opinion that this is a case in which it would be difficult to interpose any objection to the choice of the Dominion Government.

I am, &c.  
(Signed) W. R. MALCOLM.

No. 57.

*Mr. Lister to Mr. Herbert.*

Sir,

*Foreign Office, May 28, 1875.*

I HAVE laid before the Earl of Derby your letter of the 26th instant, stating that a telegram has been received from the Canadian Government, intimating their wish to appoint Sir A. T. Galt as Fishery Commissioner; and I am directed by his Lordship to state to you in reply, for the information of the Earl of Carnarvon, that he is not aware of any objection to Sir A. Galt's appointment.

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

No. 58.

*The Earl of Derby to Sir E. Thornton.*

(No. 99.)

Sir,

*Foreign Office, May 28, 1875.*

I HAVE received your despatch No. 145 of the 10th of March, reporting a conversation which you had with Mr. Fish respecting the appointment of the Third Fisheries Commissioner under the Treaty of Washington, and I have to state to you that your language on that occasion is approved by Her Majesty's Government.

I am, &c.  
(Signed) DERBY.

No. 59.

*The Earl of Derby to Sir E. Thornton.*

(No. 100.)

Sir,

*Foreign Office, May 28, 1875.*

I TRANSMIT to you herewith, for your information, copies of a correspondence with the Colonial Office upon the subject of the nomination of Sir A. Galt, to act as Fishery Commissioner on the Commission which is to meet at Halifax.\*

I am, &c.  
(Signed) DERBY.

No. 60.

*Mr. Herbert to Mr. Lister.—(Received May 31.)*

(Confidential.)

Sir,

*Downing Street, May 31, 1875.*

I AM directed by the Earl of Carnarvon to acknowledge the receipt of your letter, marked Confidential, of the 21st instant, inclosing a Report from the Law Officers of the Crown in reference to the question as to the right of British vessels to import into the United States, free of duty, fish taken in the waters of that country.†

Lord Carnarvon desires me to request that you will inform the Earl of Derby that he concurs in the proposed instruction to Sir E. Thornton on this matter.

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

## No. 61.

*Mr. Malcolm to Lord Tenterden.—(Received June 4.)*

Sir,

*Downing Street, June 3, 1875.*

WITH reference to your letter of the 28th ultimo, I am directed by the Earl of Carnarvon to request that you will inform the Earl of Derby that his Lordship has informed the officer administering the Government of Canada by telegram to the effect that Her Majesty's Government approve of the appointment of Sir A. T. Galt as one of the Commissioners of the Fishery Commission, which is to meet at Halifax under the XXIIIrd Article of the Treaty of Washington.

I am, &c.

(Signed) W. R. MALCOLM.

## No. 62.

*The Earl of Derby to Sir E. Thornton.*

(No. 106.)

Sir,

*Foreign Office, June 4, 1875.*

I HAVE received your despatch No. 120 of the 5th of April, relative to an inquiry addressed to you by Mr. Franklin Snow, a fish dealer of Boston, as to the right of British subjects, under the Treaty of Washington, to bring into the United States free of duty and sell there fish caught by them in United States' waters, and I approve the language which you held to Mr. Snow on the subject.

I referred your despatch to the Law Officers of the Crown, and they are of opinion that fish taken in the waters of the United States may be imported into that country free of duty in British vessels.

As some doubt, however, may exist as to the true meaning of the XXIst Article of the Treaty, it would not be desirable that you should raise the question unless it is forced upon you by the United States' Government, or express any opinion on the subject to any individual citizen of the United States.

I am, &c.

(Signed) DERBY.

## No. 63.

*The Earl of Derby to Sir E. Thornton.*

(No. 110.)

Sir,

*Foreign Office, June 5, 1875.*

WITH reference to my despatch No. 100 of the 28th ultimo, I transmit to you herewith, for your information, a copy of a letter from the Colonial Office, in regard to Sir A. Galt's nomination as Fishery Commissioner.\*

I am, &c.

(Signed) DERBY.

## No. 64.

*Mr. Malcolm to Lord Tenterden.—(Received June 10.)*

My Lord,

*Downing Street, June 9, 1875.*

I AM directed by the Earl of Carnarvon to transmit to you, to be laid before the Earl of Derby, the under-mentioned documents, received from the Governor-General of Canada, which his Lordship would suggest should be communicated to Mr. Rothery, the Agent to represent Her Majesty's Government before the Fishery Commission at Halifax:—

1. Seventh Annual Report of the Department of Marine and Fisheries for the year

ended 30th June, 1874, with special reference to the Report of the Commissioner of Fisheries, at page 57.

2. Speech delivered in the Canadian Parliament by Mr. Mitchell, giving a history of the Fishery Question from the year 1783.\*

I am, &c.  
(Signed) W. R. MALCOLM.

No. 65.

*The Earl of Derby to Mr. Rothery.*

(No. 2.)

Sir,

*Foreign Office, June 12, 1875.*

I TRANSMIT to you herewith, for your information, at the suggestion of Her Majesty's Secretary of State for the Colonies, the "Seventh Annual Report of the Department of Marine and Fisheries for the year ended 30th June, 1874," with special reference to the Report of the Commissioner of Fisheries, printed at page 57.

I also inclose a printed copy of a speech delivered in the Canadian Parliament by Mr. Mitchell, giving a history of the Fishery question from the year 1783.

I am, &c.  
(Signed) DERBY.

No. 66.

*Mr. Rothery to the Earl of Derby.—(Received June 24.)*

(No. 1.)

My Lord,

*Admiralty Registry, Doctor's Commons, June 23, 1875.*

I AM honoured by your Lordship's letter No. 1 of the 8th ultimo, informing me that, the United States Senate having decided not to ratify the proposed Reciprocity Treaty, Her Majesty's Government consider it desirable that steps should at once be taken for the constitution of the Fisheries Commission; and stating that Her Majesty's Government are desirous that I should re-enter on my duties as British Agent under the instructions addressed to me in Lord Granville's despatch No. 1 of the 11th of July 1873, and you request me to hold myself in readiness to proceed to Halifax as soon as the Commission is constituted.

I am deeply sensible of the honour which your Lordship has done me in selecting me for so important a post, and had it been possible consistently with my other official duties to do so, I should at once have unhesitatingly accepted it. Your Lordship, however, is aware that, besides the offices of Registrar of the High Court of Admiralty and Registrar of Her Majesty in Ecclesiastical and Maritime causes, which brings me into connection with the Judicial Committee of the Privy Council, I hold the position of Legal Adviser to the Treasury on Slave Trade matters. I felt, therefore, that it was my duty before accepting the appointment which your Lordship had done me the honour to offer me, to consult those with whom I was officially connected. I thought, also, looking at the very great changes that it is proposed shortly to make in the Courts, that it would be proper before coming to any decision, to lay my case before the Lord Chancellor as the head of the Law.

The results of these communications has been to show me that my absence, more especially at the present juncture, would be attended with much public inconvenience, and that it is therefore my duty, however reluctantly, to decline the appointment.

Amongst those with whom I am most intimately connected in my official duties is Sir Robert Phillimore, the Judge of the High Court of Admiralty, and I annex a copy of a letter which I have received from him, and which will show clearly what are his Lordship's views on the subject. Your Lordship will, I feel sure, concur with me in opinion that, after receiving such a letter, it would not be possible for me, consistently with my duty, to accept the appointment which has been offered me, looking at the very intimate official relations which subsist between the Judge and myself.

\* See Inclosure in No. 36.



After the many and great kindnesses which I have received from your Lordship from the first day when I was brought into official relations with you, it is with extreme reluctance that I feel myself compelled to decline the appointment which you have offered me; and nothing but the most imperative sense of duty would have made me do so.

I trust that my refusal to accept the office will not put your Lordship to any inconvenience; I can only say that, as I have now become thoroughly acquainted with the details of the case, I shall at all times be most happy to give any assistance in my power to the gentleman who may be appointed in my place.

I have, &c.  
(Signed) H. C. ROTHERY.

Inclosure in No. 66.

*Sir R. Phillimore to Mr. Rothery.*

My dear Mr. Rothery, 5, Arlington Street, London, S.W., June 12, 1875.

IN reply to your letter of the 10th instant I wish to say as follows:—While I do not doubt that your acceptance of the appointment in question would conduce to the public service in Canada, and can therefore readily understand the wish of the Foreign Office to obtain your assistance on this Commission, I must say, with the candour which your letter to me requires, that I am afraid the public service in England would suffer by your absence, both because the peculiar and important work of the Registrar of the High Court of Admiralty is continually increasing, and because the evil of your absence on a former occasion, though much mitigated by the zeal and industry of the Deputy Registrar and other officers of the Court, was very sensibly felt, and caused a strain to be put upon the general working power of the office; but also because at this great legal crisis, when changes of a various and important kind are about to be effected in the administration of justice, your experience, knowledge, and ability would be of great value at home. I say nothing of the personal inconvenience which would result to myself from your absence, as I do not wish on this ground to appear even to place any obstacle in the way of the public service, but I am honestly of opinion that on general grounds this service would be better promoted by the discharge of your onerous duties in England than by your undertaking the discharge of new duties in Canada at this juncture.

I have given a frank answer to your question, but if you resolve upon accepting the office, every exertion shall be made to render your absence as little detrimental as possible to the public service at home.

Yours, &c.  
(Signed) ROBERT PHILLIMORE.

No. 67.

*The Earl of Derby to Mr. Rothery.*

(No. 3.)  
Sir,

*Foreign Office, June 29, 1875.*

I HAVE to acknowledge the receipt of your despatch No. 1 of the 23rd instant, together with its inclosure, declining, upon grounds of public convenience, the appointment of British Agent on the Fisheries Commission, and I have to convey to you the expression of my regret at having failed to secure your valuable services.

I am, &c.  
(Signed) DERBY.

No. 68.

*Lord Tenterden to Mr. Herbert.*

Sir,

*Foreign Office, June 29, 1875.*

WITH reference to your letter of the 7th ultimo, I am directed by the Earl of Derby to transmit to you, for the information of the Earl of Carnarvon, the accompanying copy of a letter from Mr. Rothery, together with its inclosure, declining, on public grounds, the appointment of British Agent on the Fisheries Commission which Lord Derby had offered to him.\*

I am also to inclose a copy of the reply made to Mr. Rothery's letter.†

I am, &amp;c.

(Signed) TENTERDEN.

No. 69.

*Mr. Haliburton to the Earl of Derby.—(Received July 5.)*

My Lord,

*15, Buckingham Street, Strand, July 3, 1875.*

I HAVE the honour of inclosing an extract from a letter received yesterday from an Englishman who has lost all he is worth in Nova Scotian coal mines, in which he urges that the disastrous state of the coal trade of that Province, and the ruinous effect of the American tariff, should be brought to your Lordship's notice.

Hundreds of thousands (probably nearly a million) of English capital have been invested in those mines, and the present state of things is ruinous alike to the investors and to the Province at large.

His reasons for urging me to bring this matter before the Government arises from the fact that as late honorary Secretary of the Nova Scotian Coal Owners' Association the advocacy of their interests has been left almost entirely to myself.

At the time when the Reciprocity Treaty was repealed with the avowed object of starving us into annexation, political discontent against Confederation was so bitter in Nova Scotia that most serious consequences might have resulted from the stagnation of our coal trade. In order to counteract the efforts of American Protectionists, the Nova Scotian Coal Owners' Association was organized in 1866, and the Dominion was agitated from one end to the other for the purpose of resisting "the starvation policy" of American politicians, by imposing a duty on American imports of coal into Canada West, and the united action of all the Boards of Trade of North America was subsequently brought about in favour of a more liberal policy on the part of the United States.

Early in 1868, in a pamphlet written by myself for the Dominion Government and circulated by them, the present condition of affairs was foreseen and pointed out. "The effect of the stoppage of the coal trade can scarcely be imagined. Apart from any political grievance, and in spite of the most cordial and friendly sympathy with the sister provinces, Nova Scotia must, as matters now stand, be forced out of the Confederation, for, as a commercial necessity, she will either be utterly ruined or must have a market secured to her by the new Dominion or by the United States."

In the following Session a duty was imposed on foreign coal, but after a year it was repealed, although its imposition met with the approval of the free traders in the United States, as it tended to strengthen their hands. Although it was a political rather than a commercial measure, like the American duty which it was designed to counteract, some of us were not desirous of having it permanently retained. At the same time it is but right to say that Sir Hugh Allen, and others interested in our coal mines, have expressed to me their conviction that that measure was the only policy by which we could force American Annexationists to deal with us on fair terms.

It is deeply to be deplored that as the coal trade of Nova Scotia is the only branch of Canadian industry that is dependent for its prosperity, if not for its very existence, on the United States, an important colonial interest so vitally at stake was, for Imperial considerations, ignored in the settlement of the Washington Treaty. We are now in a far worse position than we were in 1868. We have been deprived of two powerful levers, the question of the fisheries and that of the navigation of the St. Lawrence, by which we might have forced the Americans to come to terms, and by the action of our diplomatists we have been left in this matter entirely at the mercy of our rivals. The consequences of this neglect have been most disastrous. The heavy expense of holding a large extent of unproductive property for years has been borne in the hope that the American duty

\* No. 66.

† No. 67.

would in time be removed, and that our trade would revive. So far from this being the case, as my correspondent states, matters are getting worse instead of better, until some of us have been driven to think of abandoning our coal properties in despair. As the ruinous state of our coal trade, as well as of many other branches of provincial industry, has been mainly caused by the hostile action of American politicians, it is deserving of the attention of the Government.

The accompanying extract from a letter addressed to myself by the late Secretary of the National Board of Trade of the United States refers to this question.

I should feel much obliged if your Lordship would be so good as to receive a deputation on this subject.

I have, &c.  
(Signed) R. G. HALIBURTON.

Inclosure 1 in No. 69.

*Extract from a Letter addressed to R. G. Haliburton, late Honorary Secretary of the Nova Scotian Coalowners Association, by an English Investor in Nova Scotian Coal Mines.*

THE time has now come when the attention of the British Government should be directed by yourself and those interested in our mines, to the ruinous effect of the American "starvation policy," introduced under the plea of forcing annexation on Canadians.

Years ago I went to Nova Scotia, and since then, until a few months ago, I have been living in that Province. I have spent several thousands of pounds on an excellent coal property; and now, on coming home to England, I find my property practically valueless. I cannot get anything towards developing it, much less can I sell it for anything.

Practically I am ruined by the effect of the American Tariff, which has cut off our only reliable market. Scores of other persons in England have lost everything that they have invested. Nearly a million of English capital has been sunk in these mines, and you yourself having suffered, and done more than any other person, can substantiate what I am describing.

So far from matters getting better, they are rapidly getting worse. There is one company that two years ago bought a property for 150,000*l.* who, I am told, would now sell it for 50,000*l.* In Saturday's "Hour" you will find that a Nova Scotian coal and railway company, which has spent some hundreds of thousands, has come to a standstill, and has been compelled to continue operations by raising a loan on mortgage on its property. I understand that the large portion of the Pictou coal-field in which you yourself own one-half interest, was valued by you and your friends two years ago at 50,000*l.* I doubt if you could now get 10,000*l.* for it in cash, if so much.

It is a serious thing when coal mines so valuable as those of Nova Scotia are shut up, and rendered unproductive and valueless.

A large majority of the people and of the politicians of the Dominion have no connection with Nova Scotia, and feel but little interest in its mines; but as the greater part of the capital invested in them is English capital, I believe that the British Government should, without delay, inquire into this matter, as it is to be feared that, unless some remedy can be devised, serious consequences must ensue if the present prostration of the mining industry of that Province should prove to be of a permanent nature.

Inclosure 2 in No. 69.

*Extract from the "City Observer" of June 4, 1875.*

AMERICAN FREE TRADE.—Mr. Hill, the late Secretary of the National Board of Trade of the United States, who has been lately on a visit to this country, has, on returning to America, addressed a letter to a Canadian advocate of Free Trade, to which we have elsewhere referred. The extracts are well deserving of attention on the part of our free traders:—

"I wish you all success in your endeavours to promote a good and permanent understanding between Great Britain and her great dependency, Canada. Perhaps you feel encouraged in your work; but I confess that from such limited opportunity for observa-

tion as I have had, during a few months in England, I should not feel much satisfaction in occupying the position of a colonist, of one not exactly in the empire, nor, yet, exactly outside its limits. However liberally the Government here may be disposed to deal with colonial questions, I cannot help thinking that by the governing classes, and by the commercial community, these questions are regarded in the light, not of colonial, but of English interest. For example, the proposed new Reciprocity Treaty, between the United States and Canada, was discussed in this country, as it seemed to me, solely in its relations to the supposed interests of English manufacturers, and not at all in its probable effect on the prosperity of the Canadian people. One would have thought that a first and long step towards freedom of commercial intercourse between the two great related communities of North America, would be hailed with delight by the Free Trade Chambers of England; but instead of this, the measure was opposed and denounced most energetically by these Chambers, from a fear, not in my judgment well founded, that it would discriminate in its working against English manufacturers. This opposition had nothing to do with the defeat of the Treaty, which was killed by American protectionists, and not by English free traders; but it illustrated the fallacy entertained by too many business men in Great Britain, not, of course, the Statesmen, as to the objects of an universal free trade policy. Their objects are not to promote English interest, but the interests of all nations alike; not to give to England a monopoly in manufacturing, but to leave enterprise everywhere unfettered, and to remove all unjust discrimination against one class of industries in favour of another. American Free Traders could not stand for a moment on the ground, where I need not tell you they do not stand, that the United States must abandon manufacturing, and purchase all its commodities from Great Britain. Yet this is what a good many in this country seem to be looking forward to. They will find, however, that when freedom of trade ultimately prevails in the United States, as I believe it will, the effects upon the manufacturing interests in our country will be altogether the reverse of what they are—too many of them in England—anticipating.

“I may write to you more at length some day, developing this idea more fully than I can now do. To return to yourself, I cannot help thinking that if you had given half the time and thought to the promotion of the union of the maritime provinces with the great Republic, which you have devoted to a colonial and Imperial policy, you would have much more to show to-day for your pains. Of course, personally, you have everything to gain by annexation; but I honour you for not allowing yourself to be swerved from supposed duty by material considerations. Your mines in Nova Scotia, which, when you invested in them, you had good reason to believe, would find remunerative outlets in the United States, would increase in value vastly, almost indefinitely, if they were brought within the limits of the United States, and within the scope of our protective policy. This, however, you do not appear to have regarded, and you have continued to work with a will for the perpetuity of the tie which now holds the North American Colonies to the mother-country, and which will hold them for a time.”

## No. 70.

*Mr. Malcolm to Lord Tenterden.—(Received July 10.)*

Sir,

*Downing Street, July 10, 1875.*

I AM directed by the Earl of Carnarvon to acknowledge the receipt of your letter of the 29th of June inclosing a copy of a letter from Mr. Rothery, in which he declines, on public grounds, the appointment of British Agent on the Fisheries Commission which is to be held at Halifax.

Lord Carnarvon concurs in the expression of regret which Lord Derby has conveyed to Mr. Rothery at having failed to secure his valuable services.

I am, &c.

(Signed) W. R. MALCOLM.

## No. 71.

*Sir E. Thornton to the Earl of Derby.—(Received July 11.)*

(No. 189.)

My Lord,

*Washington, June 28, 1875.*

ON one of the many occasions since I had the honour to address to your Lordship my despatch No. 145 of the 10th ultimo, on which I have spoken to Mr. Fish with

regard to the appointment of a third Commissioner for the Commission at Halifax, and have urged that we should proceed with the arrangements for carrying out the provisions of the Treaty in this respect, he said that one of the causes of delay was that the gentleman whom the United States Government had selected as the Commissioner on its side, Mr. Clifford, was now in Europe, and Mr. Fish did not well know where a letter would reach him, or when he was likely to return to the United States.

I then replied that it would be still advisable that in the meantime we should take the necessary steps for effecting the appointment of the third Commissioner, in order that the Commission might be installed immediately after Mr. Clifford returned to the United States.

Mr. Fish assumed an air of indifference, and merely said that he would think about it.

On the 24th instant I again inquired of Mr. Fish whether he had heard of Mr. Clifford, or knew when he was likely to return. Mr. Fish replied that he had received no news of him, and I again urged that steps should be taken for the appointment of the third Commissioner, and that at least we should agree upon the terms of the note which should be addressed to the Austrian Government upon the subject.

Mr. Fish answered my question by putting another; he asked whether I knew when and in what manner Her Majesty's Government was going to submit to the principal Maritime Powers the Three Rules contained in the VIth Article of the Treaty of Washington in accordance with the agreement which had been come to in that Treaty?

I reminded Mr. Fish that Lord Granville had made certain suggestions to the United States' Government, both through me and through General Schenck, as to the mode in which those rules should be submitted to the Maritime Powers, and that Her Majesty's Government had been awaiting replies to those suggestions from the Government of the United States. Mr. Fish replied that there was one official note of his of the 30th November, 1871, to Mr. Pakenham, then Her Majesty's Chargé d'Affaires, which had never been answered, and he did not think that Her Majesty's Government was justified in urging that of the United States to carry out the arrangement for the appointment of a third Commissioner to the Halifax Commission until it should accede to the repeated request of the United States' Government with regard to the submission of the three rules. I reminded him that I had given him a copy of Lord Granville's despatch No. 201 of December 22, 1871, relative to the insertion or omission of the word "open" in the note to be addressed to the Maritime Powers. Other communications, both in writing and verbal, had been made by Lord Granville to General Schenck relative to the mode in which the Three Rules should be submitted to the Maritime Powers. It was with a view to answering the note to Mr. Pakenham that these suggestions and communications had been made; but if the United States' Government persisted in refusing to answer such inquiries or in refraining from doing so, negotiation upon the subject was impossible.

Mr. Fish insisted, however, in spite of all my arguments to the contrary, that the note which he had addressed to Mr. Pakenham was the last official communication which had passed between the two Governments upon the subject, and that he had a right to expect an answer to that note. He was of opinion that the two Governments had committed themselves before the world to submit the Three Rules to the Maritime Powers; but if Her Majesty's Government thought otherwise, let it say that it declined to carry out the agreement entered into, and at least his note would have been answered.

I again urged that several official communications had been made by Her Majesty's Government to that of the United States with reference to Mr. Fish's note to Mr. Pakenham, but to this he refused to assent; neither would he agree with my observation that the question of the Three Rules had nothing to do with the Halifax Commission. What his motive may be for delaying the establishment of this Commission I am at a loss to understand.

I have, &c.  
(Signed) EDWD. THORNTON.

No. 72.

*Lord Tenterden to Mr. Herbert.*

Sir,

*Foreign Office, July 12, 1875.*

I AM directed by Lord Derby to transmit to you, to be laid before Lord Carnarvon, a letter from Mr. R. G. Haliburton, calling attention to the injury inflicted on the Nova

Scotian coal trade by the United States' Tariff, and asking Lord Derby to receive a deputation on the subject.\*

I am at the same time to inclose a draft of the reply which, with Lord Carnarvon's concurrence, it is proposed should be sent to Mr. Haliburton.†

I am, &c.  
(Signed) TENTERDEN.

## No. 73.

*Lord Tenterden to Mr. Haliburton.*

Sir,

*Foreign Office, July 12, 1875.*

I AM directed by the Earl of Derby to acknowledge the receipt of your letter of the 3rd instant, relative to the effect of the American Tariff on the Nova Scotian coal trade, and I am to state to you that your letter is receiving consideration, and that an answer will shortly be sent to you.

I am, &c.  
(Signed) TENTERDEN.

## No. 74.

*Lord Tenterden to Mr. Herbert.*

Sir,

*Foreign Office, July 15, 1875.*

I AM directed by the Earl of Derby to request that you will state to the Earl of Carnarvon that it appears to his Lordship advisable, with the view of accelerating the meeting of the Fishery Commission at Halifax, that the United States' Government should be informed, with as little delay as possible, of the appointment of the British Commissioner and Agent.

Sir A. Galt having already been decided upon as British Commissioner, it only remains to appoint the Agent; and Lord Derby directs me to submit, for Lord Carnarvon's concurrence, that Mr. F. C. Ford, Her Majesty's Chargé d'Affaires at Darmstadt, is well qualified for the post; and Lord Derby would propose to attach Mr. Bergne, of this Office, to the Agency, to proceed with him to Halifax, to act as Secretary, and assist Mr. Ford generally in his duties.

If Lord Carnarvon approves of the selection of Mr. Ford and Mr. Bergne, Lord Derby would forthwith intimate to the United States' Government, through Sir E. Thornton, that Sir A. Galt and Mr. Ford are respectively appointed to be Her Majesty's Commissioner and Agent.

I am also to suggest that it might be desirable that Mr. Ford, who is now at Darmstadt, should be instructed to come over at once to England, to confer personally with Lord Dufferin and Mr. Mackenzie on the business of the Commission.

I am, &c.  
(Signed) TENTERDEN.

## No. 75.

*The Earl of Derby to Sir E. Thornton.*

(No. 138.)

Sir,

*Foreign Office, July 15, 1875.*

HER Majesty's Government have had under their consideration your despatch No. 189 of the 28th ultimo, reporting your conversations with Mr. Fish on the subject of the Fishery Commission.

As those conversations were of an informal character, Her Majesty's Government do not feel themselves called upon to take official notice of them; but they authorize you, in case Mr. Fish should again revert to the Three Rules in connection with the Fishery Commission, to state positively, that Her Majesty's Government cannot consent to allow the question of the submission of the Three Rules to the maritime Powers to be raised in relation to the appointment of the Fishery Commission at Halifax. The two matters are entirely distinct, and must be kept separate.

\* No. 69.

† No. 92.

I shall, very shortly, be able to inform you, for communication to the United States' Government, of the appointment of the British Commissioner and Agent.

The responsibility of delaying the meeting of the Commission will then rest with Mr. Fish.

I am, &c.  
(Signed) DERBY.

## No. 76.

*Lord Tenterden to Mr. Herbert.*

(Confidential.)  
Sir,

*Foreign Office, July 16, 1875.*

WITH reference to my letter of the 15th instant, I am directed by the Earl of Derby to transmit to you, to be laid before the Earl of Carnarvon, a copy of a despatch from Her Majesty's Minister at Washington, reporting conversations with Mr. Fish on the subject of the Fishery Commission, together with a copy of the despatch which his Lordship has addressed to Sir Edward Thornton in reply.\*

I am, &c.  
(Signed) TENTERDEN.

## No. 77.

*Mr. Herbert to Lord Tenterden.—(Received July 17.)*

My Lord,

*Downing Street, July 16, 1875.*

I AM directed by the Earl of Carnarvon to acknowledge the receipt of your letter of the 15th instant, suggesting that Mr. F. C. Ford, Her Majesty's Chargé d'Affaires at Darmstadt, should be appointed as agent to attend the Fishery Commission at Halifax on the part of Her Majesty's Government, and that Mr. Bergne, of the Foreign Office, should be attached to the agency to act as Secretary, and to assist Mr. Ford generally in his duties.

Lord Carnarvon desires me to state, for the information of Lord Derby, that he concurs in these appointments and in the communication which Lord Derby proposes to make to the United States' Government through Sir E. Thornton; his Lordship also concurs in the suggestion that Mr. Ford should be instructed to come over at once to England to confer personally with Lord Dufferin and Mr. Mackenzie on the business of the Commission.

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

## No. 78.

*The Earl of Derby to Sir E. Thornton.*

(No. 140.)

Sir,

*Foreign Office, July 17, 1875.*

WITH reference to my despatch No. 138 of the 15th instant, I have now to state to you that Sir A. Galt has been selected for the post of Her Majesty's Commissioner, and Mr. Clare Ford, Her Majesty's Chargé d'Affaires at Darmstadt, for that of Her Majesty's Agent at the Fishery Commission to be constituted at Halifax under the provisions of the Treaty of Washington, and I have to instruct you to inform Mr. Fish of these appointments, and to request that he will be good enough to acquaint Her Majesty's Government with the names of the gentlemen who may be selected by the Government of the United States to fill those offices on the part of that country.

I am, &c.  
(Signed) DERBY.

No. 79.

*The Earl of Derby to Sir E. Thornton.*

(Telegraphic.)

*Foreign Office, July 19, 1875, 5.50 P.M.*

INFORM Mr. Fish that Sir A. Galt has been appointed to be British Commissioner, and Mr. Ford, Her Majesty's Agent at Darmstadt, to be British Agent at the Fishery Commission, and ask to be told who the American Government propose to appoint.

No. 80.

*Lord Tenterden to Mr. Herbert.*

Sir,

*Foreign Office, July 19, 1875.*

WITH reference to my letter of the 16th instant, I am directed by the Earl of Derby to transmit to you, to be laid before the Earl of Carnarvon, a copy of a despatch which his Lordship has addressed to Her Majesty's Minister at Washington on the subject of the Fishery Commission about to meet at Halifax.\*

I am, &c.  
(Signed) TENTERDEN.

No. 81.

*Mr. Malcolm to Lord Tenterden.—(Received July 20.)*

My Lord,

*Downing Street, July 20, 1875.*

I AM directed by the Earl of Carnarvon to acknowledge the receipt of your letter of the 12th instant, inclosing one addressed to the Earl of Derby by Mr. R. G. Haliburton relating to the Nova Scotia coal trade.

In returning Mr. Haliburton's letter herewith, Lord Carnarvon desires me to state that he concurs in the answer which Lord Derby proposes to return to it.

I am, &c.  
(Signed) W. R. MALCOLM.

No. 82.

*Lord Tenterden to Mr. Haliburton.*

Sir,

*Foreign Office, July 21, 1875.*

I AM directed by the Earl of Derby to acknowledge the receipt of your letter of the 3rd instant, requesting his Lordship to receive a deputation from the Nova Scotian Coal-owners Association with reference to the injury inflicted on their interests by the existing United States' Tariff, and in reply I am to express to you his Lordship's regret at the depressed state of the Nova Scotian local trade, and to state that Her Majesty's Government will not fail to bear in mind the importance attached in Nova Scotia to the opening of the United States market, in case any opportunity should offer for reopening negotiations for reciprocal commercial advantages with the United States.

I am to add, however, that Lord Derby does not see that any practical advantage would be gained by his receiving a deputation on the subject at the present time, when the Reciprocity Treaty negotiated at Washington by Sir E. Thornton and Mr. Brown, which contained a provision for the extinction on and after the 1st of July, 1877, of the duty on coal imported from the Dominion of Canada into the United States, and from the United States into the Dominion, has been so recently rejected by the Senate at Washington.

I am, &c.  
(Signed) TENTERDEN.



*Sir E. Thornton to the Earl of Derby.—(Received August 2.)*

(No. 210.)

My Lord,

*Washington, July 19, 1875.*

DURING a visit which I paid to Mr. Fish at the State Department, on the 15th instant, he said to me, of his own accord that he had traced Governor Clifford, the gentleman whom the President wishes to appoint as United States Commissioner to the Halifax Commission, to Berlin, and that he hoped soon to be in communication with him. As soon as he was satisfied that Mr. Clifford was still willing to undertake the office, he would be prepared to consider the steps to be taken for the appointment of a third Commissioner.

He said that his Government was still of opinion that Her Majesty's Government had not done its best towards agreeing with that of the United States upon a person for that position, and that it would have maintained this point, but that, as the public might say that his Government did so because there was a possibility that the United States might be condemned by the Commission to pay a certain amount of money, the United States Government felt a delicacy in resisting the appointment of a third Commissioner by the Austrian Ambassador in London.

I replied that it was useless for me to repeat the facts which I had already so often stated to him, and which proved the sincerity of Her Majesty's Government in its endeavours to agree with the United States Government upon the appointment of a third Commissioner, but that I was gratified at the prospect of the settlement of the last question now at issue with regard to the Treaty of Washington.

I have, &c.

(Signed) EDWD. THORNTON.

No. 84.

*Lord Tenterden to Mr. Herbert.*

Sir,

*Foreign Office, August 4, 1875.*

WITH reference to the letter from this office of the 26th of May, I am directed by the Earl of Derby to transmit to you to be laid before the Earl of Carnarvon, a copy of a despatch from Her Majesty's Minister at Washington, reporting a conversation with Mr. Fish on the subject of the Fishery Commission.\*

I am, &c.

(Signed) TENTERDEN.

No. 85.

*Lord Tenterden to Mr. Herbert.*

Sir,

*Foreign Office, August 6, 1875.*

I AM directed by the Earl of Derby to transmit to you the accompanying drafts† of despatches appointing Sir A. Galt to be Her Majesty's Commissioner and Mr. F. C. Ford to be Her Majesty's Agent at the Commission appointed to meet at Halifax, Nova Scotia, under the XXIInd Article of the Treaty of Washington; and I am to request that in laying these drafts before the Earl of Carnarvon you will move his Lordship to inform Lord Derby whether they meet with his concurrence.

I am also to inclose for concurrence the accompanying further drafts of despatches to Mr. Ford from which Lord Carnarvon will observe that it is proposed to allow a gratuity to him of 500*l.*, and to Mr. Berne, who accompanies him, of 200*l.*, together with their expenses while engaged on this service, this arrangement being similar to that made in the case of Mr. Rothery's mission.

Lord Derby understands that half of the cost will be borne by Canada, and he presumes that Lord Carnarvon will communicate with the Government of the Dominion with regard to the remuneration and expenses of Sir A. Galt. The sanction of the Board of Treasury will also be required for any expenditure which may have to be incurred out of Imperial funds.

I am, &c.

(Signed) TENTERDEN.

*Mr. Herbert to Lord Tenterden.—(Received August 14.)*

My Lord,

*Downing Street, August 13, 1875.*

I AM directed by the Earl of Carnarvon to acknowledge the receipt of your letter of the 6th instant inclosing drafts of despatches to Sir A. Galt and Mr. F. C. Ford, who are to be appointed respectively Her Majesty's Commissioner and Agent on the Commission which is to meet at Halifax, under the XXIIInd Article of the Treaty of Washington.

2. Lord Carnarvon desires me to request that you will inform the Earl of Derby that his Lordship concurs in these drafts.

3. With regard to the remuneration and expenses of Sir A. Galt whilst employed on this service, I am to state that Lord Carnarvon does not find in the records of this office that any sum was agreed upon as the remuneration or allowance proposed for Her Majesty's Commissioner when previously in 1873 arrangements for the Halifax Commission were under consideration.

4. His Lordship would be glad to be informed whether Lord Derby would propose that the Canadian Government should be asked to suggest the amount of the remuneration which Sir A. Galt should receive for this service; or whether it is assumed that he will receive no remuneration and receive his expenses from Canada, as in the recent case of Mr. George Brown's Mission.

5. I am to state that Lord Carnarvon approves the amount which it is proposed should be given to Messrs. Ford and Bergne.

I am, &c.

(Signed) ROBERT G. W. HERBERT.

*Sir E. Thornton to the Earl of Derby.—(Received August 15.)*

(No. 221.)

My Lord,

*New York, August 3, 1875.*

IN compliance with the instruction contained in your Lordship's telegram of the 19th ultimo, I addressed a note to Mr. Fish, informing him that Her Majesty's Government had appointed Sir Alexander T. Galt to be British Commissioner, and Mr. Francis Clare Ford Agent to the Commission, which is to meet at Halifax, in accordance with the provisions of the Treaty of May 8, 1871.

When I saw Mr. Fish at the State Department on the 29th ultimo, I asked him whether he had heard from Governor Clifford. He replied in the negative, but that he expected soon to do so, and that he would let me know as soon as he received a letter from him.

I have the honour to inclose copy of a note which I received from Mr. Fish on the 31st ultimo, informing me that the gentleman whom it was the intention of the President to name as Commissioner on behalf of the United States, is now absent from the country, and that it is deemed advisable that he should be consulted before Her Majesty's Government is actually notified of the appointment.

I have, &c.

(Signed) EDWD. THORNTON.

Inclosure in No. 87.

*Mr. Fish to Sir E. Thornton.*

Sir,

*Department of State, Washington, July 30, 1876.*

I HAVE the honour to acknowledge your note of the 19th instant, in which, by instruction from the Earl of Derby, you inform me that Her Majesty's Government has appointed Sir Alexander T. Galt to be British Commissioner, and Mr. Francis Clare Ford, now Her Majesty's Chargé d'Affaires at Darmstadt, to be British Agent to the Commission which is to meet at Halifax, in accordance with the XXIIIrd Article of the Treaty of Washington, and expresses a desire to learn the names of the persons whom the Government of the United States proposes to appoint on its behalf.

I reply, I have to say that the gentleman whom it was the intention of the President to name as Commissioner on behalf of the United States is now absent from the country, and that it is deemed advisable that he should be consulted before Her Majesty's Government is actually notified of the appointment.

I have, &c.  
(Signed) HAMILTON FISH.

No. 88.

*Lord Tenterden to Mr. Lingen.*

Sir,

*Foreign Office, August 16, 1875.*

I AM directed by the Earl of Derby to request that you will state to the Lords Commissioners of Her Majesty's Treasury that the negotiations for a Reciprocity Treaty between Great Britain, on behalf of Canada, and the United States having been broken off, it has become necessary to reconstitute the Fishery Commission at Halifax under the original provisions of the Treaty of Washington.

Mr. H. C. Rothery, who was nominated to be Her Majesty's Agent when the Commission was first proposed to be instituted, has declined to undertake the duty again, as his official engagements prevent him from absenting himself from England; Lord Derby has accordingly, with the concurrence of the Earl of Carnarvon, appointed Mr. F. C. Ford, Her Majesty's Chargé d'Affaires at Darmstadt, to this post, and has attached to him, as Secretary, Mr. Bergne, of this office.

Lord Derby has consulted the Earl of Carnarvon as to the remuneration which should be assigned to these gentlemen, and it has been agreed that it would be proper to allow to Mr. Ford the sum of 500*l.* as outfit and gratuity, and to Mr. Bergne the sum of 200*l.* as outfit and gratuity, and that their travelling and other expenses while engaged on this service, should be on the footing of a special mission, in the same manner as Mr. Rothery's.

I am now, therefore, to request that you will move the Lords Commissioners of Her Majesty's Treasury to give their sanction to this expenditure, half of which will be borne by the Dominion of Canada.

I am to add that Lord Derby would be glad to receive an early answer, as Mr. Ford and Mr. Bergne will have to proceed to Canada by the steamer of the 2nd proximo.

I am, &c.  
(Signed) TENTERDEN.

No. 89.

*Lord Tenterden to Mr. Herbert.*

Sir,

*Foreign Office, August 16, 1875.*

I AM directed by the Earl of Derby to transmit to you, to be laid before the Earl of Carnarvon, a copy of a despatch from Her Majesty's Minister at Washington, upon the subject of the Fisheries Commission which is to meet at Halifax.\*

I am, &c.  
(Signed) TENTERDEN.

No. 90.

*Lord Tenterden to Mr. Herbert.*

Sir,

*Foreign Office, August 17, 1875.*

I HAVE laid before the Earl of Derby your letter of the 13th instant, expressing the concurrence of the Earl of Carnarvon in the drafts of despatches which it is proposed to address to Sir A. Galt and Mr. F. C. Ford in regard to the duties to be performed by them in connection with the Fisheries Commission which is to meet at Halifax, and stating that Lord Carnarvon is desirous of being informed as to the steps that should be taken with a view to coming to a decision in regard to the amount of remuneration to be assigned to Sir A. Galt for this service; and I am in reply to request that you will

suggest to Lord Carnarvon the desirability of consulting Lord Dufferin on the subject of the remuneration or allowance which Her Majesty's Commissioner should receive for his services on the occasion in question.

I am, &c.  
(Signed) TENTERDEN.

## No. 91.

*Lord Tenterden to the Secretary to the Admiralty.*

Sir,

*Foreign Office, August 19, 1875.*

I AM directed by the Earl of Derby to request that you will state to the Lords Commissioners of the Admiralty that Mr. F. C. Ford, Her Majesty's Chargé d'Affaires at Darmstadt, who has been appointed to be Her Majesty's Agent at the Fishery Commission to be held at Halifax, Nova Scotia, under the provisions of the Treaty of Washington, has been instructed to proceed to Canada and the Maritime Provinces of British North America on the Atlantic for the purpose of collecting information for the preparation of the British case to be presented to the Fishery Commissioners; and I am to request that you will move their Lordships to instruct the Admiral on the station to give him any facilities and assistance in the prosecution of this duty which it may be in his power to afford.

I am to add that Mr. Ford will leave for Canada on the 2nd proximo.

I am, &c.  
(Signed) TENTERDEN.

## No. 92.

*Mr. Law to Lord Tenterden.—(Received August 25.)*

My Lord,

*Treasury Chambers, August 25, 1875.*

I HAVE laid before the Lords Commissioners of Her Majesty's Treasury your letter of the 16th instant, respecting the remuneration which it is proposed to grant to the gentlemen forming the reconstituted Fishery Commission which is about to proceed to Halifax, Nova Scotia, and I am to state, for the information of the Earl of Derby, that my Lords sanction the issue of the following sums, as recommended in your letter,—to Mr. Francis Clare Ford, 500*l.* as outfit and gratuity, and to Mr. Bergne, of the Foreign Office (the Secretary of the Commission), 200*l.*—in addition to their travelling and other expenses while engaged on this service, which will be on the footing of a special Mission.

I am, &c.  
(Signed) WILLIAM LAW.

## No. 93.

*The Earl of Derby to Sir A. Galt.*

Sir,

*Foreign Office, August 27, 1875.*

THE Queen having been graciously pleased to appoint you to be Her Majesty's High Commissioner at the Commission to be appointed to meet at Halifax, Nova Scotia, under the provisions of the XXII<sup>nd</sup> and following Articles of the Treaty of Washington of May 8, 1871, I transmit to you herewith Her Majesty's Commission to that effect, under the Royal Sign-Manual.

I also inclose a copy of the Treaty, from which you will see the nature of the duties entrusted to you.

The XXIII<sup>rd</sup> Article of the Treaty provides that one Commissioner shall be named by Her Britannic Majesty, one by the President of the United States, and a third by Her Britannic Majesty and the President of the United States conjointly; and in case the third Commissioner shall not have been so named within a period of three months from the date when this Article shall take effect, then the third Commissioner shall be named by the Representative at London of His Majesty the Emperor of Austria and King of Hungary.

Her Majesty's Government are not yet informed of the appointment of a Commissioner on the part of the United States, nor have arrangements yet been concluded for the appointment of the third Commissioner; but full information will be afforded to you in regard to these and other matters relating to the proceedings of the Commission as soon as Her Majesty's Government are in a position to render it.

I have to add that Mr. F. C. Ford, Her Majesty's Chargé d'Affaires at Darmstadt, has been named to attend the Commission as Her Majesty's Agent in accordance with the XXIIIrd Article of the Treaty.

I am, &c.  
(Signed) DERBY.

No. 94.

*The Earl of Derby to Mr. Ford.*

(No. 1.)

Sir,

*Foreign Office, August 27, 1875.*

THE Queen having been graciously pleased to appoint you to be Her Majesty's Agent to attend the Commission on the Fisheries, about to be appointed to meet at Halifax, Nova Scotia, under the provisions of the XXIIInd and XXIIIrd Articles of the Treaty between Great Britain and the United States of the 8th of May, 1871, I transmit to you herewith Her Majesty's Commission to that effect.

I also transmit to you a copy of the Treaty, from which you will see the object of the Commission, and the nature of your duties in attendance upon it.

The date at which the Commission will meet is at present uncertain; but, in order that you may possess a full knowledge of the subjects to which you will have to direct your attention, it will be desirable that you should at once place yourself in communication with the proper departments of this Office and of the Colonial Office, who will have directions to afford you access to all the information and correspondence with which it may be useful to you to be made acquainted.

The XXIVth Article of the Treaty states that the proceedings shall be conducted in such order as the Commissioners shall determine; and contemplates that either Government may offer oral or written testimony, and also present a case for the consideration of the Commissioners.

The Case on the part of Her Majesty's Government has been drafted in Canada, and, when finally settled and approved by Her Majesty's Government, it will be given to you for presentation.

Her Majesty's Government, relying upon the judgment and ability which you have shown in the discharge of your diplomatic duties, and on all other occasions when your services have been called for, do not consider it necessary to give you more specific instructions at present; and have only to add that it is their desire, as they feel confident it will be your wish, that you should co-operate, in all matters connected with the Commission, in the most cordial manner with the Canadian Government, and with all the Colonial Authorities with whom you may be brought in contact.

I am, &c.  
(Signed) DERBY.

No. 95.

*The Earl of Derby to Mr. Ford.*

(No. 2.)

Sir,

*Foreign Office, August 27, 1875.*

I HAVE to acquaint you that I have appointed Mr. J. H. G. Bergne, of this Office, to be Secretary to Her Majesty's Agency at Halifax, and to assist you generally in any business connected with the Fishery Commission in which you may think proper to employ his services.

I am, &c.  
(Signed) DERBY.

## No. 96.

*The Earl of Derby to Mr. Ford.*

(No. 3.)

Sir,

*Foreign Office, August 27, 1875.*

WITH reference to my despatch No. 1 of this day's date, I have to state to you that it appears advisable that, before entering on your duties at Halifax, you should visit Canada, so as to confer preliminarily with the Government of the Dominion; and I have accordingly to instruct you to make your arrangements for proceeding thither at your convenience.

Mr. Jerningham will be left as Chargé d'Affaires *ad interim* during your absence from your post on the service of the Commission.

Your salary and house-rent as Her Majesty's Chargé d'Affaires will be continued to you, nevertheless.

I am, &c.  
(Signed) DERBY.

## No. 97.

*The Earl of Derby to Mr. Ford.*

(No. 4.)

Sir,

*Foreign Office, August 27, 1875.*

I HAVE to state to you that a sum of 500*l.* will be allowed to you as outfit and gratuity for your services as Her Majesty's Agent at the Halifax Fishery Commission.

A sum of 200*l.* will also be allowed as outfit and gratuity to Mr. Bergne.

Your expenses, as well as those of Mr. Bergne, while engaged on this service, will be borne by the public, and you will render accounts for the same, supported by vouchers, in the usual manner.

I am, &c.  
(Signed) DERBY.

## No. 98.

*Mr. Lister to Mr. Herbert.*

Sir,

*Foreign Office, August 27, 1875.*

WITH reference to Lord Tenterden's letter of the 6th instant, I am directed by the Earl of Derby to transmit to you, to be laid before the Earl of Carnarvon, for his Lordship's information, the accompanying copy of a letter from the Treasury, concurring in the proposed remuneration to Messrs. Ford and Bergne for their services in connection with the reconstituted Fishery Commission.\*

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

## No. 99.

*Mr. Ford to the Earl of Derby.—(Received August 30.)*

(No. 1.)

My Lord,

*Worthing, August 28, 1875.*

I HAVE the honour to acknowledge the receipt of your Lordship's despatch No. 1 of the 27th instant, informing me that the Queen has been graciously pleased to appoint me to be Her Majesty's Agent to attend the Commission on the Fisheries about to be appointed to meet at Halifax, Nova Scotia, under the provisions of the XXII<sup>nd</sup> and XXIII<sup>rd</sup> Articles of the Treaty between Great Britain and the United States of the 8th of May, 1871.

I have likewise the honour to acknowledge the receipt of Her Majesty's Commission to that effect inclosed in your Lordship's despatch.

I have, &c.  
(Signed) FRANCIS CLARE FORD.

No. 100.

*Mr. Ford to the Earl of Derby.—(Received August 30.)*

(No. 2.)

My Lord,

*Worthing, August 28, 1875.*

I HAVE the honour to acknowledge the receipt of your Lordship's despatch No. 2 of the 27th instant, informing me that your Lordship had appointed Mr. J. H. G. Bergne to be Secretary to Her Majesty's Agency at Halifax, and to assist me generally in any business connected with the Fishery Commission in which I may think it proper to employ his services.

I have, &c.  
(Signed) FRANCIS CLARE FORD.

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No. 101.

*Mr. Ford to the Earl of Derby.—(Received August 30.)*

(No. 3.)

My Lord,

*Worthing, August 28, 1875.*

IN reply to your Lordship's despatch No. 3 of the 27th instant, in which your Lordship states that it appears advisable that, before entering on my duties at Halifax, I should visit Canada, so as to confer preliminarily with the Government of the Dominion, and instructing me to make arrangements for proceeding thither, I have the honour to inform your Lordship that I am prepared to sail for Canada on Thursday next, the 2nd of September.

I have, &c.  
(Signed) FRANCIS CLARE FORD.

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No. 102.

*Mr. Ford to the Earl of Derby.—(Received August 30.)*

(No. 4.)

My Lord,

*Worthing, August 28, 1875.*

I HAVE the honour to acknowledge the receipt of your Lordship's despatch No. 4 of the 27th instant, informing me that a sum of 500*l.* sterling will be allowed me as outfit and gratuity for my services as Her Majesty's Agent at the Halifax Fishery Commission, and that my expenses, as well as those of Mr. Bergne, while engaged on this service will be borne by the public, on accounts for the same being rendered and supported by vouchers in the usual manner.

I have, &c.  
(Signed) FRANCIS CLARE FORD.

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No. 103.

*The Earl of Derby to Mr. Ford.*

(No. 5.)

Sir,

*Foreign Office, August 31, 1875.*

I TRANSMIT to you herewith, for delivery to Sir A. Galt, the despatch appointing him Her Majesty's Commissioner at the Commission to be appointed to meet at Halifax, Nova Scotia, under the provisions of the XXII<sup>nd</sup> and following Articles of the Treaty of Washington of May 8, 1871;\* and I have to instruct you to place it in his hands on the first opportunity.

I have, &c.  
(Signed) DERBY.

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No. 104.

*Mr. Lister to Mr. Herbert.*

Sir,

*Foreign Office, August 31, 1875.*

WITH reference to your letter of the 13th instant, I am directed by the Earl of Derby to state to you, for the information of the Earl of Carnarvon, that the despatch appointing Sir A. Galt Her Majesty's Commissioner at the Commission to be appointed to meet at Halifax, Nova Scotia, under the provisions of the XXII<sup>nd</sup> and following Articles of the Treaty of Washington of May 8, 1871, has been confided to the care of Mr. Francis Clare Ford, Her Majesty's Agent at the Commission in question, who proceeds to America on the 2<sup>nd</sup> proximo, and who has been instructed to deliver it to Sir A. Galt.

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

No. 105.

*Mr. Ford to the Earl of Derby.—(Received September 28.)*

(No. 5.)

My Lord,

*Ottawa, September 17, 1875.*

I HAVE the honour to inform your Lordship that, having sailed from Liverpool on the 2<sup>nd</sup> instant with Mr. Bergne, we reached Quebec on the evening of the 12th instant. After spending a couple of days in that city, and one in Montreal, we reached Ottawa last evening, and as a mail is leaving this morning for England, I seize the opportunity of addressing a few words to your Lordship.

I derived great advantage during the voyage in meeting a fellow-passenger, Mr. Smith, Deputy Minister of Marine and Fisheries, from whom I gained a general insight into the merits of the Canadian Fishery question.

I am to be presented this morning to Mr. Albert Smith, who is the Chief Minister of Marine and Fisheries, and I hope that that gentleman will put me into immediate communication with Mr. Whitcher, who, I understand, is the person who drew up the "Statement of Claim," which estimates the sum of 60,000,000 dollars as the amount to be demanded for compensation. I understand from various sources that Mr. Whitcher is looked upon as the one man in the Dominion from whom it is possible to obtain the statistical details which will be absolutely essential to establish the British claim before the Halifax Commission.

I trust to being able to proceed at once to business with Mr. Whitcher, and go through with him the various points set forth in the statement he drew up; and I shall hope ere long to be in a position to give your Lordship further information.

I have, &c.  
(Signed) FRANCIS CLARE FORD.

No. 106.

*Mr. Lister to Mr. Herbert.*

Sir,

*Foreign Office, October 2, 1875.*

I AM directed by the Earl of Derby to transmit to you, to be laid before the Earl of Carnarvon, a copy of a despatch from Mr. Ford, reporting his arrival at Ottawa on business connected with the approaching Fishery Commission at Halifax.\*

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

No. 107.

*Mr. Ford to the Earl of Derby.—(Received October 3.)*

(No. 6.)

My Lord,

*Ottawa, September 17, 1875.*

I called this morning on Mr. A. J. Smith, Minister of Marine and Fisheries, and had a conversation with him on the general question of the Canadian Fisheries, and the Commission about to be held at Halifax.



Mr. Smith remarked that one of the great difficulties presented in the wording of the Washington Treaty of 1871 occurred in Article XXII, in which no provision is made as to whether the final award is to be made binding by the unanimous decision of the three Commissioners, or by a majority of them.

Mr. Smith having communicated confidentially to me a letter which he had addressed to Sir Alexander Galt on the subject, I have the honour to inclose herewith extracts of it to your Lordship.

Your Lordship will observe that Mr. Smith is of opinion that it might be inexpedient to raise this question as a preliminary point before laying the case of Her Majesty's Government before the Commission, and I should be obliged if your Lordship would favour me with instructions as to the views of Her Majesty's Government on this matter.

I should add that Mr. Smith suggests it might perhaps be advisable to leave the question as to the proper moment at which this point should be considered, if indeed it be necessary to bring it forward at all, to the discretion of Her Majesty's Agent and the Canadian Government.

I have, &c.  
(Signed) FRANCIS CLARE FORD.

Inclosure in No. 107.

*Mr. A. J. Smith to Sir A. T. Galt.*

(Extract.)

July 16, 1875.

ANOTHER point of great importance is as to whether the concurrence of all the Commissioners is necessary to the making of a valid award. The principle with regard to arbitrations between private individuals is very clear, unanimity is indispensable unless the board of submission otherwise provides; but there are some authorities to show that a different rule prevails in arbitrations involving the settlement of subjects of public concern.

A peculiar feature in the Treaty of Washington is this: in the Articles providing for the settlement of the Alabama claims, it is distinctly declared that all questions considered by the Tribunal, including the final award, shall be decided by a majority of all the Arbitrators.

So in Articles XII and XIII, for the appointment of a mixed Commission, it is also expressly stated that a majority of the Commissioners shall be sufficient for an award in each case. In the Articles relating to the Fishery Commission this stipulation is conspicuously absent.

This seems remarkable. Has this been omitted by design, or is it a *casus omissus*?

In the 36th Protocol of Conference it is proposed that "a Commission for the consideration of these claims shall be appointed, and that the Convention of 1853 should be followed as a precedent. This was agreed to, except that it was settled that there should be a third Commissioner instead of an Umpire."

By the Convention of 1853, which was between Great Britain and the United States for the settlement of outstanding claims by a Mixed Commission, it was provided that there should be two Commissioners, one to be named by her Britannic Majesty and one by the President of the United States.

The Convention proceeds to state that these Commissioners shall, before proceeding to any other business, name some third person to act as an Arbitrator or Umpire in any case or cases on which they may differ in opinion, &c., and such Arbitrator or Umpire, after having examined the evidence, shall decide thereon finally and without appeal. This Convention contains all the necessary machinery for finally settling and determining all questions in dispute. When the Commissioners disagree, the Umpire has power to decide finally and without appeal.

Article XXIV, Washington Treaty, says:—"The case shall be closed in six months, &c., and the Commissioners shall be requested to give their award as soon as possible." This implies that the three must give "their" award.

I fear, in the light of all the facts and considerations, the conclusion must be that the omission of the authority of the majority of Commissioners to decide renders the agreement of all necessary.

If this is the fact, Brother Jonathan, as it occurs to me, is master of the situation, and will, no doubt, take the advantage of it. The next point, then, is, when would it be wise and judicious to raise the question? Would it be better to do it preliminarily, and before going into the case, or would it be expedient to wait?

## No. 108.

*Mr. Ford to the Earl of Derby.—(Received October 3.)*

(No. 7.)

My Lord,

Ottawa, September 17, 1875.

IN course of my conversation with Mr. A. J. Smith this morning we touched upon the question of the Headlands, which forms an important point in estimating the area of the fishing grounds to which United States' fishermen are admitted under the Washington Treaty of 1871.

I expressed my opinion that we were bound by the terms of Article XVIII of that Treaty to adopt (for the purpose of estimating the value of the privileges conceded to the United States) the view of the Headland question expressed in Dr. Deane's Memorandum (printed September 1873) viz., that the limit for bays, creeks, and harbours must be determined by a limit of three miles drawn seaward from a line extending from Headland to Headland.

This view is strongly adhered to by the Canadian Government, and they desire to have it insisted upon at least *quo ad* the purposes of this Commission.

I further stated that it appeared to me that in adopting this basis for the purposes of the Commission, Her Majesty's Government would not be bound, in so doing, to the expression of any opinion on the abstract question of maritime jurisdiction, as affecting other questions between Her Majesty's Government and foreign Powers, and that it did not in any way fall within the province of the Halifax Commission to formulate any direct expression of opinion on the contested point.

The terms of Article XVIII of the Washington Treaty are precise in stipulating that the *status quo* of the Convention of 1818 is, for the purposes of the Commission, to be maintained. Since the conclusion of that Convention Her Majesty's Government have never formally relinquished, *vis-à-vis* the United States' Government, their original interpretation of Article I (except in so far as regards the Bay of Fundy), although the Government of the United States have persisted in maintaining a different view.

I should be glad if your Lordship would favour me with your opinion whether, in preparing the case, it would be expedient to adopt this basis, on the understanding that by doing so Her Majesty's Agent would not be considered as involving Her Majesty's Government in any expression of opinion on the abstract question of maritime jurisdiction.

I have, &c.

(Signed) FRANCIS CLARE FORD.

## No. 109.

*Sir E. Thornton to the Earl of Derby.—(Received October 10.)*

(No. 272.)

My Lord,

Washington, September 27, 1875.

ON the 23rd instant I reminded Mr. Fish of his promise to let me know when he should hear from Mr. Clifford as to his acceptance of the appointment of United States' Commissioner on the Commission to meet at Halifax with regard to the fisheries, so that we might come to an agreement as to the steps to be taken for the appointment of the third Commissioner.

Mr. Fish said that he was extremely sorry to say that he had not yet received a positive answer from Mr. Clifford, but that he had again written to him, this time peremptorily, and that he hoped within a very few days to received his final decision.

I said that I trusted that there would be as little delay as possible, for that the Commissioner on our side had been appointed, and was ready some time ago, and that Her Majesty's Agent had also arrived in Canada, and was prepared to act, so that on our side we were only awaiting the action of the United States' Government.

Mr. Fish repeated his regret, and said that he was in truth "greatly disturbed" by the delay on the part of Mr. Clifford, because he feared that it might be misconstrued in a way unfavourable to the United States' Government.

On my taking leave, he renewed his assurance that he would let me know as soon as he received Mr. Clifford's final answer.

I have, &c.

(Signed) EDWD. THORNTON.

## No. 110.

*Mr. Ford to the Earl of Derby.—(Received October 13.)*

(No. 8.)

My Lord,

Ottawa, October 1, 1875.

I HAVE the honour to inform your Lordship that Sir A. Galt reached Ottawa on the 27th ultimo, and that in compliance with your Lordship's instructions conveyed in your despatch No. 5 of the 31st of August, I placed in his hands the despatch appointing him Her Majesty's Commissioner at the Commission to be held at Halifax, Nova Scotia, under the provisions of XXII and following Articles of the Treaty of Washington of the 8th May, 1871.

During Sir A. Galt's stay in this city we had several interviews with the Minister of Marine, who has placed me in communication with Mr. Witcher, the Commissioner of Fisheries; and this gentleman will at once proceed, in consultation with me, to draft a case, which I trust before long to be enabled to bring home for your Lordship's consideration.

I have the honour to inclose herewith a letter from Sir A. Galt, acknowledging the receipt of Her Majesty's Commission.\*

I have, &amp;c.

(Signed) FRANCIS CLARE FORD.

## No. 111.

*Sir A. Galt to the Earl of Derby.—(Received October 13.)*

My Lord,

Ottawa, September 29, 1875.

I HAVE the honour to acknowledge the receipt of your Lordship's despatch dated the 27th ultimo, informing me that the Queen has been graciously pleased to appoint me to be Her Majesty's Commissioner at the Commission to meet at Halifax, Nova Scotia, under the provisions of the XXII<sup>nd</sup> and following Articles of the Treaty of Washington, of May 8th, 1871; and transmitting to me Her Majesty's Commission to that effect, under the Royal Sign Manual.

In expressing to your Lordship my thanks for this mark of Her Majesty's favour, I beg leave to say that, in obedience to Her Majesty's command, I shall hold myself in readiness to undertake the duties entrusted to me at whatever time may be fixed for the meeting of the Commission.

I have, &amp;c.

(Signed) A. T. GALT.

## No. 112.

*Mr. Lister to Mr. Herbert.*

Sir,

Foreign Office, October 14, 1875.

I AM directed by the Earl of Derby to transmit to you, to be laid before the Earl of Carnarvon, a copy of a despatch from Her Majesty's Minister at Washington, in regard to the delay which has occurred in the appointment of the United States' Fishery Commissioner.†

I am, &amp;c.

(Signed) T. V. LISTER.

## No. 113.

*The Earl of Derby to Mr. Ford.*

(No. 6.)

Sir,

Foreign Office, October 14, 1875.

I INCLOSE, for your information, copy of a despatch, as marked in the margin, on the subject of the delay which has occurred in the appointment of the United States' Fishery Commissioner.

I am, &amp;c.

(Signed) DERBY.

## No. 114.

*Mr. Lister to Mr. Herbert.*

Sir,

*Foreign Office, October 18, 1875.*

I AM directed by the Earl of Derby to transmit to you, to be laid before the Earl of Carnarvon, copies of despatches, as marked in the margin, in regard to the fisheries question.\*

I am, &amp;c.

(Signed) T. V. LISTER.

## No. 115.

*Mr. Ford to the Earl of Derby.—(Received October 21.)*

(No. 9.)

My Lord,

*Ottawa, October 2, 1875.*

I HAVE the honour to inform your Lordship that at an interview I had this morning with the Minister of Marine at which Mr. Witcher, the Commissioner of Fisheries, was present, we came to a thorough understanding as to the basis upon which the Case of Her Majesty's Government on the Fishery question was to be drawn up.

I am happy to be able to say that, after fully discussing the statistical data upon which the Canadian claim is to be based, Mr. Smith expressed himself satisfied that if a gross sum of 15,000,000 dollars (about 3,000,000*l.* sterling) was claimed, this amount would in his opinion be acceptable to the Dominion Government, and one which could fairly be substantiated by the evidence at our disposal.

Your Lordship will observe that the sum thus agreed upon as the estimate upon which the Canadian Case is now being drawn up, amounts to no more than one-fourth of that which was claimed previously, and which upon my arrival at the seat of Government it appeared probable that the Dominion Government would contend to be a fair compensation to demand for the inshore Fisheries for twelve years.

The difficulty which apparently presented itself to the present Government of the Dominion in abandoning the claim of 60,000,000 dollars advanced by their predecessors in office was that, by naming a smaller sum, they would lay themselves open to attack, for political purposes, as having undervalued the claims of Canadian fishermen, and of having thus sacrificed the interests of the Dominion.

Mr. Smith, however, on my discussing with him the insufficiency of the data upon which the larger claim was based, fairly admitted that in his opinion it would be well to relinquish it for a smaller sum, which could be substantiated by figures, and he authorized Mr. Witcher to take the sum which I have mentioned above, viz., 15,000,000 dollars (or about 3,000,000*l.* sterling), as the claim to be preferred on the part of Canada before the Commission.

Mr. Witcher having now upon this basis actually commenced drafting the Canadian Case in consultation with me, I hope in the course of a few weeks to be enabled to submit it for the approval of Her Majesty's Government.

I should add that this sum does not include any amount which may be claimed by the Colony of Newfoundland, respecting which the authorities here are at present in possession of no details; but the Marine Department is already in communication with the Governor of Newfoundland, with the object of obtaining precise information and particulars respecting the claim which they may submit in addition to that already settled as being preferred on the part of the Dominion.

I have, &amp;c.

(Signed) FRANCIS CLARE FORD.

## No. 116.

*Mr. Ford to the Earl of Derby.—(Received October 21.)*

(No. 10. Confidential.)

My Lord,

*Ottawa, October 8, 1875.*

IT appears that, by Legislative Acts of the Colony of Newfoundland and of the United States passed last year, Newfoundland is now in a position to claim to participate in the Halifax Commission.

I have accordingly telegraphed to the Governor of Newfoundland to ask whether it will be possible to send to Ottawa a gentleman thoroughly acquainted with matters connected with the Newfoundland fisheries, in order that he may consult with me as to the basis upon which this portion of the Case of Her Majesty's Government should be drawn up.

It appears to me that the Canadian Government anticipate that some future difficulties may arise in considering the question of the proportions in which the award, if any be given by the Commissioners, should be allotted to Canada and Newfoundland respectively; and it has occurred to me that it would probably be acceptable to both parties if Her Majesty's Government should propose to the Governments of the two Colonies that the Commissioners should be requested by the British and United States' Governments to state after their award, if any, was pronounced, what proportion they considered to be due to each Colony respectively, and that a decision of the majority of the Commissioners should be taken as binding for this purpose.

I would venture to suggest to your Lordship that, if this course commends itself to the adoption of Her Majesty's Government, it might save much future misunderstanding between the two Colonies, or even the possible necessity of an arbitration to decide what proportion of the award might fairly be claimed by each.

I have, &c.  
(Signed) FRANCIS CLARE FORD.

No. 117.

*Mr. Lister to Mr. Herbert.*

(Confidential.)

Sir,

*Foreign Office, October 26, 1875.*

I AM directed by the Earl of Derby to transmit to you, to be laid before the Earl of Carnarvon, copies of two despatches from Mr. Ford, in regard to the Fisheries' question.\*

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

No. 118.

*Lord Tenterden to Mr. Herbert.*

(Confidential.)

Sir,

*Foreign Office, November 2, 1875.*

I AM directed by the Earl of Derby to transmit to you the accompanying copies of despatches from Mr. Ford, requesting instructions for the preparation of the Fishery Commission case, upon the two points of the unanimity of the Commissioners and the Headlands question;† and I am to request that in laying the same before the Earl of Carnarvon, you will state to his Lordship that it appears to Lord Derby that Her Majesty's Government should be cautious in pledging themselves in either of these matters at this stage of the Commission.

His Lordship has accordingly prepared instructions in this sense, of which I am to submit the inclosed drafts for Lord Carnarvon's concurrence.‡

I am, &c.  
(Signed) TENTERDEN.

No. 119.

*Mr. Ford to the Earl of Derby.—(Received November 4.)*

(No. 11.)

My Lord,

*Ottawa, October 15, 1875.*

WITH reference to my despatch No. 9 of the 2nd instant, I have the honour to state that I have been engaged for the past fortnight in the preparation of the Canadian Case for the Halifax Commission, and that I hope, in the course of a short time, to see it completed, and to bring it back with me to England.

Mr. A. J. Smith, the Minister of Marine, laid great stress on the importance of securing, for the purposes of this Commission, the services of legal gentlemen who

\* Nos. 115 and 116.

† Nos. 107 and 108.

‡ Nos. 126 and 127.

would represent directly the local interests of the four Maritime Provinces of the Dominion, viz., Nova Scotia, New Brunswick, Quebec, and Prince Edward Island, and I have accordingly arranged with him to meet at St. John, New Brunswick, the gentlemen who may be selected for this purpose, and to discuss thoroughly with them the Case which is to be presented on the part of Canada.

This meeting, as at present arranged, will take place on the 2nd of November; and as it appears to me that I shall have then accomplished all that is possible to do at present, I propose to return to England, viâ New York, by the Cunard steamer sailing on the 10th of that month.

I have, &c.  
(Signed) FRANCIS CLARE FORD.

No. 120.

*Mr. Ford to the Earl of Derby.—(Received November 4.)*

(No. 12.)  
My Lord,

*Ottawa, October 15, 1875.*

I HAVE the honour to inform your Lordship that Mr. Rogerson, Receiver-General of the Colony of Newfoundland, arrived this morning at Ottawa, having been deputed to confer with me as to the drafting of the Case to be presented to the Halifax Commission on the part of that Colony. I ascertained that no steps have, as yet, been taken for drawing up this portion of the Case of Her Majesty's Government; and on discussing with him the amount of money compensation he considered that Colony would be fairly entitled to claim for the privileges conceded to American fishermen under the Treaty of Washington, he informed me that he was not in a position at present to state positively what that amount would be.

I was apprehensive, from the correspondence which I had read relative to this part of the case, especially from Mr. Bennett's statements inclosed in the Colonial Office letter of the 8th of August, 1873 (page 188 of Printed Correspondence, 1871-73), that Newfoundland might be disposed to value their concessions at an exaggerated figure; and was agreeably surprised to find, on talking the matter over with Mr. Rogerson, that their claim was not likely to exceed a sum of 2,500,000 dollars, or about 500,000l. sterling for the twelve years. I impressed on him the necessity of confining their claim to reasonable limits, and such as could be substantiated by reliable evidence; and I consider it possible that the sum I have mentioned above may be even in excess of what may eventually be decided upon.

Mr. Rogerson will leave this city to-morrow, and I have furnished him with notes which will, I trust, enable him to assist in drafting a Case on the part of Newfoundland on the same plan as that which I have already thought it advisable to adopt in the case of Canada.

I have, &c.  
(Signed) FRANCIS CLARE FORD.

No. 121.

*Lord Tenterden to Mr. Herbert.*

Sir,

*Foreign Office, November 8, 1875.*

I AM directed by the Earl of Derby to transmit to you, to be laid before the Earl of Carnarvon, copies of two despatches from Mr. Ford, in regard to the Fisheries question.\*

I am, &c.  
(Signed) TENTERDEN.

No. 122.

*Mr. Malcolm to Lord Tenterden.—(Received November 9.)*

Sir,

*Downing Street, November 8, 1875.*

WITH reference to your letter of the 26th of October, I am directed by the Earl of Carnarvon to transmit to you, for the information of the Earl of Derby, a copy of a

\* Nos. 119 and 120.

despatch which Lord Carnarvon has addressed to the Governor-General of Canada, on the question of the proportions in which the award of the Halifax Fishery Commission (if any should be given) should be allotted to Canada and Newfoundland respectively.

I am, &c.  
(Signed) W. R. MALCOLM.

Inclosure in No. 122.

*The Earl of Carnarvon to the Earl of Dufferin.*

My Lord,

*Downing Street, November 4, 1875.*

IT has been represented to Her Majesty's Government by Mr. F. C. Ford, appointed British agent to attend the Fisheries Commission at Halifax, that some future difficulties may arise in considering the question of the proportions in which the award, if any be given by the Commissioners, should be allotted to Canada and Newfoundland respectively, and that it might be desirable that the Commissioners should be requested by the British and United States' Governments to state after their award, if any should be pronounced, what proportion they would consider to be due to Canada and Newfoundland respectively, and that a decision of the majority of the Commissioners on this point should be binding.

Before, however, communicating on the subject with the Government of Newfoundland, I should be glad to learn whether the suggestion made by Mr. Ford is acceptable to your Government.

I have, &c.  
(Signed) CARNARVON.

No. 123.

*Mr. Herbert to Lord Tenterden.—(Received November 9.)*

(Confidential.)

My Lord,

*Downing Street, November 8, 1875.*

I AM directed by the Earl of Carnarvon to acknowledge the receipt of your letter of the 2nd of November, inclosing copies of two despatches from Mr. Ford, requesting instructions in regard to the preparation of the Fishery Commission case, upon the two points of the unanimity of the Commissioners and the Headlands question, together with drafts of the instructions which the Earl of Derby proposes, with Lord Carnarvon's concurrence, to send to Mr. Ford.

Lord Carnarvon desires me to state that he concurs in the proposed drafts, but would suggest, for Lord Derby's consideration, that it might be advisable, in the concluding paragraph of the draft as to the unanimity of the Fishery Commissioners, to say "reserve any expression of their judgment" instead of "reserve their judgment."

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

No. 124.

*Lord Tenterden to Mr. Herbert.*

(Confidential.)

Sir,

*Foreign Office, November 11, 1875.*

I AM directed by the Earl of Derby to acknowledge the receipt of your letter marked Confidential, of the 8th instant, and I am to state to you in reply, for the information of Lord Carnarvon, that Lord Derby concurs in the proposal to substitute in the concluding paragraph of the draft as to the unanimity of the Fishery Commission, the words "reserve any expression of their judgment," for "reserve their judgment," and the alteration will be adopted accordingly.

I am, &c.  
(Signed) TENTERDEN.

No. 125.

*Lord Tenterden to Mr. Herbert.*

Sir,

*Foreign Office, November 12, 1875.*

I AM directed by the Earl of Derby to acknowledge the receipt of your letter of the 8th instant, transmitting copy of a despatch which the Earl of Carnarvon has addressed to the Governor-General of Canada on the question of the proportions in which the award of the Halifax Fishery Commission (if any should be given) should be allotted to Canada and Newfoundland respectively, and I am to state to you, with reference to this matter, that Lord Derby considers that it will be necessary for Her Majesty's Government to be careful not to pledge themselves to make any communication on the subject to the United States' Government at the present stage of the proceedings.

I am, &c.  
(Signed) TENTERDEN.

No. 126.

*The Earl of Derby to Mr. Ford.*

(No. 7. Confidential.)

Sir,

*Foreign Office, November 15, 1875.*

HER Majesty's Government have had under their consideration your despatch No. 6 of the 17th of September, reporting that Mr. Smith, Minister of Marine and Fisheries, had expressed the opinion that it might be inexpedient to raise the question of the unanimity of the Fishery Commissioners as a preliminary point before laying the case of Her Majesty's Government before the Commission; and I have to state to you, in reply, that Her Majesty's Government agree in the opinion thus expressed by Mr. Smith, and reserve any expression of their judgment as to the interpretation to be given to the Treaty of Washington in this respect.

I am, &c.  
(Signed) DERBY.

No. 127.

*The Earl of Derby to Mr. Ford.*

(No. 8. Confidential.)

Sir,

*Foreign Office, November 15, 1875.*

HER Majesty's Government have had under their consideration your despatch No. 7 of the 17th of September, inquiring whether Dr. Deane's Memorandum of September 1873, on the Headland question, should be adopted as a basis in preparing the case to lay before the Fishery Commission; and I have, in reply, to refer you to Lord Granville's despatch to Mr. Rothery, No. 8, Confidential, of the 11th of July, 1873, from which you will see that Dr. Deane's Memorandum was prepared to be used should the boundary rights of the British fisheries be called in question in the course of the proceedings of the Commission, and was not necessarily to be submitted to the Commissioners, but only should occasion require it, and then only on direct authority from Her Majesty's Government.

It would obviously be very detrimental to the interests of the Dominion to challenge a decision of the Commissioners upon this difficult and long-disputed question, as, if a hostile interpretation were placed on the Treaty, the claims of the Dominion would be irretrievably damaged and the Canadian position proportionately weakened in any future negotiations.

Her Majesty's Government, accordingly, consider that the Headland question should not be introduced into the case.

The manner in which the question may have to be argued, should an argument be hereafter demanded, must depend upon the circumstances under which it may be presented.

I am, &c.  
(Signed) DERBY.



## No. 128.

*Mr. Ford to the Earl of Derby.—(Received November 22.)*

(No. 13.)

My Lord,

*Foreign Office, London, November 22, 1875.*

I HAVE the honour to inform your Lordship that I returned to England, accompanied by Mr. Bergne, on Saturday the 20th instant.

I beg to avail myself of this opportunity to record the great assistance I derived from Mr. Bergne during my recent mission to Canada.

Mr. Bergne's official connection with, and well known character in the Foreign Office may render it superfluous on my part to speak of his zeal and ability, but associated as he has been with me during the last three months in negotiations of a delicate and and difficult character, I feel I cannot testify too highly to the rare intelligence he has brought to bear on the subjects that have occupied our attention.

I could not have been better seconded in the work that took me to Canada, and I am fulfilling a most welcome duty in bringing to your Lordship's notice the extreme advantage I have obtained through his valuable services.

I have, &c.

(Signed) FRANCIS CLARE FORD.

## No. 129.

*Mr. Ford to the Earl of Derby.—(Received November 27.)*

(No. 14.)

My Lord,

*Foreign Office, November 22, 1875.*

I SAILED from New York on the 10th instant, and having now arrived in London I take this opportunity of reporting to your Lordship the results of my special mission to Canada in connection with the Halifax Commission.

In obedience to your Lordship's instructions I left Liverpool on the 2nd September last, accompanied by Mr. Bergne, and on arriving at Quebec, proceeded without delay to the seat of Government at Ottawa, and placed myself in communication with the Minister of Marine and Fisheries, and other Members of the Government, with whom I fully discussed the whole question.

During a stay of more than six weeks at Ottawa I made myself thoroughly acquainted not only with the materials at our disposal for substantiating the claim of Her Majesty's Government, but also with the opinion of the Canadian Government on the salient points arising out of the question, and I may mention here that the impression produced on my mind is that the Dominion Government are strongly disposed to consider the matter in a fair and reasonable spirit, and would be unwilling to advance an exaggerated claim, which could not be supported by the evidence at our command.

Having discussed with the Minister of Marine and Fisheries the various points which suggested themselves in considering the amount, composition, and arrangement of the claim to be presented to the Commissioners on behalf of Canada, I proceeded at once, in consultation with Mr. Whitcher, the Commissioner of Fisheries, to draft an outline of a Case which should embrace the various points in question, and this was completed on the 31st of October.

The Canadian Government had expressed their desire that counsel should be retained on behalf of the Dominion, to represent the interests of the various maritime provinces which are especially concerned in the question of the fisheries, and as I could see no objection to such an arrangement, to which the Ministers appeared to attach the greatest importance, it was agreed that when the Case was fairly drafted, a meeting should be held at St. John, New Brunswick, early in November.

This Conference took place on the 3rd, 4th, and 5th of that month, the following gentlemen being present:—Hon. A. J. Smith, Minister of Marine and Fisheries; Mr. Joseph Doutre, Q.C., of Montreal, representing the Province of Quebec; Mr. Robert L. Weatherbe, of Halifax, representing the Province of Nova Scotia; Mr. Louis H. Davies, of Charlotte Town, representing the Province of Prince Edward Island; Mr. Whitcher, Commissioner of Fisheries; Mr. Bergne, and myself. Mr. S. R. Thompson, of St. John, who had been appointed to represent the Province of New Brunswick, was unavoidably absent from the meeting, owing to pressing professional engagements.

The whole question was very fully discussed, both in its legal and diplomatic aspects, and though, as your Lordship will perceive, some points were reserved for

further consideration, I may state that the draft Case, of which I have now the honour to inclose a copy,\* meets with the general approval of the Minister and Counsel.

On concluding the sittings of this Conference, I addressed a letter, copy of which I have the honour to inclose, to the Honourable A. Mackenzie, the Premier of Canada, requesting him to inform me whether the Case, as now prepared, meets in its main features with the approval of the Government of the Dominion; and I shall not fail to communicate his reply to your Lordship as soon as it reaches my hands.

I may add that I have also forwarded a copy of the draft Case to his Excellency the Governor-General for his information.

The Draft, as it now stands, with corrections in red ink, embraces generally the views of all the gentlemen whom I have mentioned as being present at the Conference at St. John. The printed matter is the outline drafted at Ottawa; the insertions in red ink were made in consultation with the Minister of Marine and Fisheries, and the provincial Counsel engaged on the case; and though some points, as I have stated, are reserved for further consideration, I have no reason to anticipate that the Dominion Government will wish to make any great alteration in it, so far as the main points are concerned. The Counsel engaged will, during the winter, consider the matter carefully, and furnish the Minister of Marine and Fisheries with any observations which may occur to them, in addition to those suggested at the meeting at St. John. These reports will be forwarded to me, and I shall lose no time in submitting them to your Lordship.

The arrangement of the Draft Case will speak for itself, the marginal notes in red ink showing those portions as to which the Provincial Counsel expressed themselves doubtful whether they should not be reserved for the Counter Case.

The object held in view throughout has been, whilst bringing to the attention of the Commissioners such facts as may enable them to take a just view of the value of the Canadian Fisheries, to avoid committing Her Majesty's Government to any actual statement which might be called in question or invalidated.

With regard, however, to the amount claimed, your Lordship will observe that it is slightly in excess of that stated in my despatch No. 9 of the 2nd of October last, and it was arrived at after consultation with the Minister of Marine and Fisheries, and Counsel at St. John. I may, however, state for your Lordship's information that, though it is given in a round sum to include, besides the actual value of the fisheries, the collateral advantages explained in the Draft Case, the actual computation was arrived at in the following manner:—

An average of 1,000 United States' vessels has been taken as annually frequenting British Canadian waters, catching on an average 5,600 dollars' worth of fish per vessel at each trip, making a gross catch of 5,600,000 dollars' worth of fish for one trip.

Half the vessels have been computed to make a second fare of the same value, which raises the total to 8,400,000 dollars as the gross annual catch of United States' vessels in British Canadian waters. One-fifth of this sum, or 1,680,000 dollars, has been estimated as the proportion, after deducting interest on capital, and expenses of production, which may fairly be claimed by Her Majesty's Government; and this, for a term of twelve years, amounts to a sum of 20,160,000 dollars, or, in round numbers, about 4,000,000*l.* sterling.

The above calculation has been based upon an estimate of the fish caught within British Canadian waters alone, without reckoning such as may be caught outside the three-mile limit. Much, of course, will depend on the opinion which the Commissioners may entertain as to how that limit is to be defined; but, after a careful consideration of the matter, it has been thought best to avoid any direct specification on this point, with a view of avoiding, if possible, any discussion on the Headland question.

Having thus reported to your Lordship the steps which I have taken for drafting the Canadian Case, I may briefly state how the matter stands at present in regard to the Colony of Newfoundland.

Your Lordship is aware that the Act necessary to enable the Fishery Articles of the Treaty of Washington to come into operation, so far as Newfoundland is concerned, was not finally passed until the year 1874; and that, therefore, whilst the provisions of these Articles in the case of Canada came into formal operation on 1st of July, 1873, it was not until the 1st of June, 1874, that they came into such formal operation in respect to Newfoundland.

The claim which it will devolve upon Her Majesty's Government to make against the Government of the United States before the Halifax Commission will, therefore, apparently be for the use of the fisheries of the two colonies for twelve years, but dating from different periods in the case of Canada and of Newfoundland respectively; the

\* The Case in its amended shape will be found as Inclosure 1 in No. 193.

former for twelve years from the 1st July 1873, and the latter for twelve years from the 1st of June 1874.

This fact coupled with other considerations, such as the absence at present of accurate data respecting the Newfoundland portion of the question, and the impossibility of visiting that colony during the winter, for the purpose of assisting on the spot in collecting materials, induced me to consider that in the arrangement of a draft Case it would be probably best to commence by a general statement, including a history of the question, a recapitulation of the Fishery Articles of the Treaty of Washington, and the general views of Her Majesty's Government as to their construction; and that the Case should be divided into two distinct parts, dealing with the claim of each colony separately, to be afterwards summed up in a gross collective claim to be preferred against the United States' Government.

Such is the plan adopted in the draft Case which I have inclosed herewith for your Lordship's consideration, relating to the Canadian claim; and as I had already sketched the outlines of the draft when Mr. Rogerson, the gentleman deputed to confer with me on the part of Newfoundland, arrived at Ottawa, I was able to furnish him with a scheme in accordance with which a Case will be prepared in Newfoundland during the ensuing winter, and will be forwarded to me in England. After I have had an opportunity of putting this into such a shape as may appear to harmonise with the general arrangement of the whole, I shall at once submit it for your Lordship's consideration. In the meanwhile my despatch No. 12 of the 15th ultimo will have enabled your Lordship to form an opinion as to the probable extent of the claim which will be advanced by Newfoundland.

Trusting that my proceedings will meet with your Lordship's approval,

I have, &c.

(Signed) FRANCIS CLARE FORD.

Inclosure in No. 129.

*Mr. Ford to Mr. Mackenzie.*

Sir,

*St. John, November 6, 1875.*

I HAVE the honour to inclose for your information a draft of the Case which has been prepared since my stay in Ottawa for presentation to the Halifax Commission on behalf of Canada. This draft Case has been carefully considered in consultation with Mr. A. J. Smith and the Counsel selected to represent the maritime provinces of the Dominion, and with the corrections in red ink, I believe that it embraces in its main features the views of these gentlemen; I should, however, be glad if you would, after perusing it and consulting with your colleagues, inform me whether it meets with your approbation both in substance and arrangement.

I ought to mention that steps are being taken for the preparation of a similar claim on the part of the Colony of Newfoundland, which will form a second part of the entire Case to be eventually presented to the Commission on behalf of Her Majesty's Government.

This, however, will take some time to prepare, and if the Canadian portion of the Case now completed meets with the approval of the Cabinet of the Dominion, I shall lose no time on my arrival in England in placing it in the hands of Her Majesty's Secretaries of State for the Foreign and Colonial Departments.

I cannot close this letter without expressing to you my high sense of the assistance which I have received from all the gentlemen with whom I have been in official communication in the city of Ottawa, and especially of the zeal and ability which Mr. Witcher has displayed in drafting this Case. Without his great knowledge of the subject and cordial co-operation it would have been difficult, if not impossible, for me to have obtained or arranged the materials on which to form a satisfactory statement of the Canadian claim; and I cannot speak too highly of the invaluable service which he has thus rendered, not only to myself, but to the Dominion of Canada.

I have, &c.

(Signed) FRANCIS CLARE FORD.

P.S.—I beg leave to add that I purpose leaving New York for England on the 10th instant, and that any communication with which you may honour me in reply to this letter would find me at the Foreign Office, London.

F. C. F.

No. 130.

*Mr. Ford to the Earl of Derby.—(Received November 27.)*

(No. 15. Confidential.)

My Lord,

*Foreign Office, November 24, 1875.*

IN considering the form in which the Case of Her Majesty's Government as regards Canada should be drawn up, three difficulties presented themselves at the outset, viz. :—

1. The question as to whether the decision of the Commissioners must be unanimous.

2. The Headland question.

3. The construction of Article XXII of the Treaty.

With regard to the first point, my despatch No. 6 of the 17th of September last will have put your Lordship in possession of the views of the Minister of Marine and Fisheries on the subject; and, in the absence of instructions from your Lordship, and on a careful consideration of the matter, I have deemed it advisable to omit any reference to it in the draft Case.

I may also mention that the Dominion Government think that it would be inexpedient that this point should be raised in the first instance by Her Majesty's Government, for the following reason, viz., that if the case on the part of Canada should be substantially made out before the Commission, such a proof of its justice would be extremely valuable to Canada, even though a difficulty might subsequently arise on this point in respect to the award, having in view that the concessions now granted to the United States are terminable in 1885. If this question is raised as a preliminary on the part of the United States' Government, it cannot be avoided, and Her Majesty's Agent and the counsel engaged must be ready with the best arguments at their command; if not, and the two Commissioners are in favour of an award to Great Britain, the United States' Government would be placed in a very invidious position, if their Commissioner should refuse to assent to an award which had been fairly and substantially made out.

With regard to the second point, viz., the question of defining the limit of British territorial waters, I may state that the Dominion Government are firm in their contention that the exclusive limit should be defined by a line drawn three miles seaward from point to point of the headlands of bays, harbours, &c. The effect of this position is shown in the accompanying Map, which, however, does not include the Bay of Fundy, with regard to which Her Majesty's Government have, for various reasons, with which your Lordship will be acquainted, abandoned the extreme construction of the Convention of 1818.

So strong is public opinion on this question in Canada, that I was informed by a prominent member of the late Government of the Dominion that he believed that sooner than consent to compromise the position which they have always maintained, as above described, the people of Canada would prefer that the Commission should fall through, and would rather make a present to the United States of the use of their fisheries for the term of years specified in the Treaty. This view has been confirmed by the expressions of opinions of many influential Canadians. I have also observed, in conversation with many persons of position, that the opinion is almost universally entertained throughout the Dominion that, in reducing the worth of their fisheries to a money valuation, they are relinquishing a great advantage they possessed for obtaining trade concessions from the United States.

Furthermore, it appears to me that the wording of the first portion of Article XVIII of the Treaty of Washington is absolute in stating that for the purposes of this Commission the *status quo* of the Convention of 1818 is to be maintained; and my views on this point are contained in my despatch No. 7 of the 17th of September last.

In view of the above circumstances, I have thought it best, in drawing up the Case, not to invite discussion on this question, and have confined Her Majesty's Government, as will be seen on page 12 of the Draft, to a statement that the *status quo* of the Convention of 1818 must be maintained before the Halifax Commission. The view which Her Majesty's Government have consistently adhered to as to the construction of that Convention, as regards the territorial limit, is embodied in the Reports on the subject by Sir Travers Twiss (April 28, 1854) and Dr. Deane (September 1873), with which your Lordship is familiar. With the exception of laying down the basis above mentioned (page 12 of Draft), I have studiously avoided any statement which might seem to invite discussion on the headland question. No doubt, in estimating the value of the Canadian fisheries, it may be difficult to avoid reference to this contested point; but it is possible that the Commissioners may amongst themselves decide upon some basis of

assessment, without bringing the question before the Court, and thus relieve the Governments of Great Britain and of the United States of the embarrassment of discussing it.

The third point arises from a difficulty in the construction of Article XXII of the Treaty; which will be explained by the accompanying Memorandum.

It will no doubt be claimed by the United States' Government that their remissions of duty on Canadian fish and fish oil must be taken into consideration as an offset to the value of the fisheries opened to United States' citizens; and it might at first sight appear that the reciprocal remissions by Canada of duty on United States' fish and fish oil might be estimated in reduction of this offset. It seems, however, that a strict interpretation of Article XXII would bar Great Britain from such a reduction. Whilst, therefore, in enumerating on pages 13 and 14 of the Draft Case\* the advantages derived respectively by the United States and Great Britain, these remissions have been stated, it has been thought best in asserting the position of Great Britain before the Commissioners on page 14 of the Draft Case† to confine Her Majesty's Government to the actual wording of the Article, leaving the United States' Counsel to place on it any interpretation they may think proper.

If, therefore, the Draft Case which I had the honour of submitting in my preceding despatch meets in the first instance with your Lordship's approval and that of the Earl of Carnarvon, I would respectfully suggest that it should be referred for the consideration of the Law Officers of the Crown, and that their opinion should be especially requested on the following points:—

1. The construction of Article XXIV of the Treaty, as regards the unanimity of the three Commissioners in giving their award.

2. The Headland question; and as to the propriety of laying down the basis specified in the second paragraph of page 12 of the Draft Case.\*

3. The construction of Article XXII of the Treaty.

4. What descriptions of evidence, both written and oral, they consider would be admissible before the Commissioners under the terms of Article XXIV of the Treaty.

5. What portions of the arguments and evidence at our disposal it would be prudent to include in the Case; and what portions it would be better to keep in reserve for the counter-case or for argument.

With regard to this latter point, it seems especially desirable to have a carefully-considered opinion as to whether Section 2 of Chapter 3 should be reserved entirely for the counter-case (an opinion which was entertained by the Provincial Counsel), or whether any and what portions of it should be incorporated in the preliminary case. Your Lordship will perceive the difficulty arising on this point. The argument of Her Majesty's Government is, that customs remissions are not a sacrifice, but a direct gain to the country remitting them; but in case the Commissioners should take a contrary view of this position, it is desired to fall back upon the value (amounting to nearly 22,000,000 of dollars for twelve years) of customs remissions offered by the American Commissioners during the negotiations at Washington in 1871. It would be well also to ascertain the opinion of the Law Officers of the Crown whether the fact of such an offer having been made, and subsequently withdrawn, could be deemed to be evidence before the Commission, having in view the other distinct offers made by the United States' Commissioners during the progress of the negotiations at Washington, one of which was a proposal to give 1,000,000 dollars for the use of the Canadian fisheries in perpetuity.

I have, &c.

(Signed) FRANCIS CLARE FORD.

Inclosure in No. 130.

*Memorandum on the Construction of Article XX of the Treaty of Washington.*

A DIFFICULTY presents itself in the wording of Article XXII as to what, for the purposes of the Halifax Commission, may be considered to be the privileges granted to the United States by Canada, the difference in value between which and the privileges conceded to Canada by the United States has to be assessed by the Commission.

Article XXII is as follows:—

“Inasmuch as it is asserted by the Government of Her Britannic Majesty that the privileges accorded to the citizens of the United States under Article XVIII of this Treaty, are of greater value than those accorded by Articles XIX and XXI of this Treaty to

\* See Amended Draft, Inclosure 1 in No. 193, page 174.

† Ibid. page 175.

the subjects of Her Britannic Majesty, and this assertion is not admitted by the Government of the United States; it is further agreed that Commissioners shall be appointed to determine, having regard to the privileges accorded by the United States to the subjects of Her Britannic Majesty as stated in Articles XIX and XXI of this Treaty, the amount of any compensation which in their opinion ought to be paid by the Government of the United States to the Government of Her Britannic Majesty in return for the privileges accorded to the citizens of the United States under Article XVIII of this Treaty; and that any sum of money which the said Commissioners may award, shall be paid by the United States' Government in a gross sum within twelve months after such award shall have been given."

The privileges granted to United States' citizens by Great Britain by Article XVIII are, the right of fishing in Canadian waters, and liberty to land for the purpose of drying their nets and curing their fish.

The privileges granted to British subjects by the United States under Article XIX are, similar privileges in United States' waters north of the 39th parallel of north latitude.

Article XXI grants the admission of fish oil and fish of all kinds (with certain reservations) into each country respectively free of duty.

One of the first arguments which will be used on the United States' side of the question, will undoubtedly be that the value of the Customs duties thus remitted by them under Article XXI must be considered as an offset against the value of the fisheries opened to United States' subjects; and it is important for us to know whether we can claim that the Customs duties remitted by us to the United States under Article XXI are to be valued as reducing the offset thus advanced on the American side of the question.

A strict interpretation of Article XXII would apparently bar us from taking into consideration the Customs duties remitted by us, the wording being precise in stating that, on our side, the privileges granted in Article XVIII are alone to be considered; whilst on the American side the privileges enumerated under Articles XIX (which is reciprocal to Article XVIII) and XXI, both, are to be taken into account, and the money value of the difference to be assessed.

The strongest line of argument under these circumstances on this part of the question is, therefore, apparently to take the broad free trade view, and to assert that such duties were (when they were levied) paid in reality by the consumer and not by the producer, and that such remissions of duty are, therefore, of greater value to the country remitting them, than to the country in whose favour they are remitted.

It may, however, be interesting to trace in the records of the proceedings of the Joint High Commission, which negotiated the Treaty of Washington, the history of the Articles in question.

It would appear from the despatches from the British Commissioners to Lord Granville of April 17 and 18, 1871, that the draft Articles on the fisheries were, in the first instance, read at the Conference of April 18, 1871. These draft Articles were nine in number, and Article V (corresponding to Article XXII of the Treaty of 1871) was originally framed in these words:—

"Article V. It is further agreed that Commissioners shall be appointed to determine whether, having regard to the privileges accorded by the United States to the subjects of Her Britannic Majesty, as stated in the preceding Articles II and IV (corresponding to Articles XIX and XXI of the Treaty), any compensation in money should be paid by the Government of the United States to the Government of Her Britannic Majesty, in return for the privileges accorded to the citizens of the United States under the 1st Article (Article XVIII of the Treaty), and should they be of opinion that any such compensation in money be paid, to award a gross sum to be paid by the Government of the United States within twelve months after such award shall have been given."

It does not, however, appear from whom came originally the wording that the rights granted to the United States by Article XVIII alone (instead of by Articles XVIII and XXI, as might seem to have been intended), were to be assessed as against those granted to Great Britain by Articles XIX and XXI.

A proposal to amend this Vth Article (corresponding to Article XXII of the Treaty), was subsequently, on the 22nd of April, made by the British Commissioners, in which the same wording on this particular point was maintained; but the Article in its final and adopted shape was proposed by the United States' Commissioners, as is shown by the following despatch from the British Commissioners to Lord Granville:—

"We believe that the United States' Commissioners will agree to the insertion of the paragraph in the Alabama preamble respecting non-admission of liability" (a point which was desired by Her Majesty's Government), if we will assent to the introduction to the following into the Vth Fishery Article (Article XXII of the Treaty):—

“Inasmuch as it is asserted by the Government of Her Britannic Majesty that the privileges accorded to the citizens of the United States, under Article I (Article XVIII of Treaty), are of greater value than those accorded by Articles II and IV (Articles XIX and XXI of the Treaty) to the subjects of Her Britannic Majesty, and this assertion is not admitted by the Government of the United States.”

The wording of the Article XXII as it now stands on this point was therefore proposed by the United States' Commissioners, but it does not appear whether this was done purposely to bar us from valuing our Customs remissions to the United States, or whether this might have been simply an omission in, if, indeed, not the original intention, of the Article as at first proposed.

J. H. G. B.

Ottawa, October 2, 1875.

No. 131.

*The Earl of Derby to Mr. Ford.*

(No. 9.)

Sir,

*Foreign Office, December 4, 1875.*

I HAVE received your despatch No. 13 of the 22nd ultimo, reporting your return to England accompanied by Mr. Bergne; and I have to express to you the satisfaction with which I have read your favourable report of the assistance rendered to you by Mr. Bergne during your recent mission to Canada.

I am, &c.  
(Signed) DERBY.

No. 132.

*The Earl of Derby to Mr. Ford.*

(No. 10.)

Sir,

*Foreign Office December 4, 1875.*

I HAVE received your despatch No. 14 of the 22nd ultimo, reporting your proceedings during your recent mission to Canada, and forwarding the draft of Case for presentation to the Fisheries' Commission, which you have prepared in communication with the Canadian authorities; and I have great pleasure in expressing to you the satisfaction of Her Majesty's Government at the energy and ability which you have shown in the conduct of the business with which you were entrusted, and their approval of all your proceedings as reported in this despatch.

Copies of the papers will be communicated to Her Majesty's Secretary of State for the Colonies, with the suggestion that thanks should be given to the Colonial authorities for their co-operation with you, and especially to the Marine Department and to Mr. Whitcher.

I am, &c.  
(Signed) DERBY.

No. 133.

*Lord Tenterden to Mr. Herbert.*

Sir,

*Foreign Office, December 11, 1875.*

I AM directed by the Earl of Derby to transmit to you a copy of a despatch from Mr. Ford, reporting his proceedings during his recent mission to Canada, and forwarding a draft of Case for presentation to the Fisheries Commission which he has prepared in communication with the Canadian authorities;\* and I am to request that, in laying these papers before the Earl of Carnarvon, you will suggest to his Lordship that thanks should be given to the Colonial authorities for their co-operation with Mr. Ford, and especially to the Marine Department and to Mr. Whitcher.

I am to add that Lord Derby has approved Mr. Ford's conduct.

I am, &c.  
(Signed) TENTERDEN.



No. 134.

*Lord Tenterden to Mr. Herbert.*

(Confidential.)

Sir,

*Foreign Office, December 11, 1875.*

WITH reference to my letter of this day's date, I am directed by the Earl of Derby to transmit to you herewith, to be laid before the Earl of Carnarvon, a copy of a further despatch, marked Confidential, from Mr. Ford, pointing out certain difficulties that arose in drawing up the Case of Her Majesty's Government for the Halifax Commission, and suggesting that it would be as well to refer the draft Case to the Law Officers of the Crown.\*

I am, &amp;c.

(Signed) TENTERDEN.

No. 135.

*Lord Tenterden to the Secretary to the Admiralty.*

(Confidential.)

Sir,

*Foreign Office, December 29, 1875.*

THE Lords Commissioners of the Admiralty are, doubtless, aware that by the XVIIIth and following Articles of the Treaty of Washington, of May 8, 1871, provision was made for a Mixed Commission to meet at Halifax, Nova Scotia, in order to determine the amount of any compensation which ought to be paid by the United States to Great Britain for the value of the privileges granted to United States' citizens of fishing in British North American waters, in excess of the value of similar privileges of fishing in United States' waters north of the 39th degree of north latitude, granted to British subjects; and of Customs remissions, as specified in the Treaty, made by the United States in favour of the British North American Provinces.

The Commission thus provided for has not as yet been thoroughly constituted, and the date of its meeting is at present uncertain. In the meanwhile, however, it is desirable that Her Majesty's Government should be provided with the fullest information on the subject which it may be possible to procure; and I am directed by the Earl of Derby to inquire whether their Lordships would be disposed to instruct the Senior Officer commanding the North American squadron to give orders for the collection of any information which can be procured by the Commanders of Her Majesty's cruisers in British North American waters during the ensuing year.

The points on which it is considered especially important to obtain accurate details are specified in the accompanying Memorandum, but any general information which might be thought to be of use for the proceedings of the Commission would also be valuable, and should be included in any Report made on the subject.

It need hardly be pointed out that the greatest discretion must be exercised in the manner in which such inquiries should be conducted, as it would be inexpedient to attract public attention more than necessary to the fact of their being made.

I am to add, that it will be needful for Her Majesty's Agent to read any Reports made since the year 1852, by the Commanders of British cruisers, which may seem to bear on this question. Inclosed is a list of such Reports, which have been from time to time communicated to this office, and Lord Derby would be glad to be informed whether it embraces all those which appear to contain any useful information on the points specified above.

In view of the fact that the Commission may possibly meet at Halifax during the course of next year, it may be desirable, if their Lordships see no objection thereto, that any Reports by the Commanders of Her Majesty's cruisers on this subject, or copies of them, should be sent direct to Her Majesty's Agent at Halifax, in order that they may, in case of need, be made available without delay for use during the sittings of the Commission. Should this be so, timely notice would be given to the Board of Admiralty.

I am, &amp;c.

(Signed) TENTERDEN.



## Inclosure in No. 135.

*Memorandum as to information required for the use of the Halifax Commission.*

1. THE number of United States' vessels resorting for purposes of fishing to British North American waters.

In order to arrive at a correct estimate on this head, it is especially desirable that the names, or register numbers of the vessels seen fishing at any particular part of the coast should be ascertained, as it is otherwise difficult to be certain that such vessels may not be counted more than once at different places during one season.

2. Anything tending to show whether the operations of these vessels are carried on chiefly within or without the three-mile limit; and in the case of the Bay des Chaleurs, and Miramichi Bay in particular, whether the United States' vessels resorting to that part of the coast fish chiefly inside or outside of those Bays.

3. Anything tending to show whether any United States' fishing vessels transship their cargoes within British jurisdiction, and thus secure a second or third full fare during one fishing season.

4. Any general information as to the quantity, kinds and values of fish taken by United States' vessels in British North American waters, or as to the net profits made by Americans engaged in these operations.

It would be especially valuable to have any accurate information as to whether the mackerel, herring, haddock, and cod respectively caught at any particular part of the coast are taken chiefly within or without the three-mile limit; and in the case of bays exceeding six miles in width, such as Bay des Chaleurs, Miramichi, Gaspé and St. George's Bay, whether the descriptions of fish above specified are caught inside or outside.

## No. 136.

*Sir E. Thornton to the Earl of Derby.—(Received January 2, 1876.)*

(No. 345.)

My Lord,

*Washington, December 20, 1875.*

I HAVE the honour to inform your Lordship that on the 15th instant Mr. Elijah Ward, a member of Congress from New York, submitted to the House of Representatives a joint Resolution, proposing to authorize the President to appoint three Commissioners, by and with the advice of the Senate, to confer with other Commissioners duly authorized by Her Majesty's Government, or whenever it shall appear to be the wish of that Government to appoint such Commissioners, to investigate and ascertain on what basis a Treaty of reciprocal trade for the mutual benefit of the people of the United States and of the Dominion of Canada can be negotiated.

The Resolution was referred to the Committee of Commerce.

As Mr. Ward is of the Democratic party, in which he has some influence, it is probable that the Resolution may be carried in the House of Representatives. The opinion of the Senate upon the subject is much more doubtful. But if the joint Resolution should be adopted by both Houses, and a communication to that effect should be made by the United States' Government to that of Her Majesty, it will then be time enough to consider whether the proposal should be accepted, upon which subject Her Majesty's Government would perhaps think it expedient to invite that of Canada to express an opinion. It must be remembered that such a Resolution would only require a mere majority of the Senate, whilst a Treaty would need two-thirds of its votes. From late experience I doubt whether such a majority could be obtained for a Treaty which would be acceptable to Canada.

Mr. Ward was a member of Congress some years ago, and at that time favoured reciprocal free trade between the United States and Canada, but he then wished, and still wishes, that the two countries shall be united with regard to duties in accordance with the Zollverein system, which would, I presume, be acceptable neither to Great Britain nor Canada.

I have informed the Governor-General of Canada of Mr. Ward's proposal to the House of Representatives.

Two days after the Resolution was submitted to the House there appeared in the Washington "Morning Chronicle" the article of which I have the honour to inclose three

copies, opposing the provisions of the Resolution, and arguing that the measure was useless, although the arguments are weak enough.

I have, &c.  
(Signed) EDWD. THORNTON.

Inclosure in No. 136.

*Extract from the "Washington Morning Chronicle" of December 17, 1875.*

TRADE WITH CANADA.—ON Wednesday, Mr. Ward introduced a joint resolution in the House, "authorising the President to appoint a Commission of three members; to advise and consult with a Commission to be appointed by the Queen of Great Britain, to ascertain on what terms a mutually beneficial trade, between the United States and Canada, can be negotiated." The resolution was referred to the Committee on Commerce.

If this resolution is intended, as expressed in the above quotation, simply to ascertain on what terms "a mutually beneficial trade can be negotiated," it evidently proposes a very unnecessary piece of legislation. The trade now carried on between the United States and Canada is not only large, but it is "mutually beneficial" to a most remarkable degree. The main element in a mutually-beneficial trade is equality, or an evenly-balanced exhibit of imports and exports between the two countries. This is now established in the interchange of commodities under review. The returns for fifty years past show that no great difference between the value of the annual exports and imports ever occurs. Again, the returns show that what little difference there may be between the quantities bought and sold, is about as often on one side as the other.

Canada buys more than twice as much from England as she sells to that country, and it is in that branch of the Canadian trade, if any, that requires to be made "mutually beneficial." We pay about 80,000,000 dollars in gold, or its equivalent, for goods purchased annually in Cuba; but Cuba buys from us to the value of only about 13,000,000 dollars. If anywhere, it is in this one-sided trade that measures should be adopted to make the commerce between the two countries "mutually beneficial."

Our trade with Canada requires no legislation for the object specified in the joint resolution of Mr. Ward; and it seems strange that this subject should be brought regularly up, in one form or another, in each Session of Congress, only to delay other and more important measures, and then to be dropped just where it was taken up.

It may be, however, that the resolution has in view a new Treaty of Reciprocity. If this should prove to be the object, it is the duty of the public press to say at once that the popular sentiment of the country is adverse to the measure, and has been, ever since the former Reciprocity Treaty was brought to a close. The old Treaty was well enough in its way. The Government was not, at that time, carrying a heavy national debt, as it is at present. It could then dispense with the small amount of duty collected from Canadian goods. It is different now, and the 9,000,000 dollars annually collected from Canadian importations, is just so much treasure added to the revenues, which, if taken from Canadian goods, must be collected from other and less convenient sources.

There can be nothing gained, either politically or commercially, by sacrificing the revenues collected from Canadian goods imported into the United States; but any measure of that kind would act injuriously upon our farmers. If we open up a system of free-trade reciprocity with our neighbours, they will then have the privilege of selling in our markets without paying any portion of our revenues, while our own farmers continue to pay their *pro rata* of the Federal and State taxes. Take the twenty cents a bushel duty off of wheat, fifteen cents a bushel from potatoes, &c., and foreigners will have free access to our markets, while our own farmers continue to be taxed. The scheme would be unjust and discouraging; and though reciprocity might increase the aggregate quantities of goods passing between the two countries, it could afford no compensation for the loss of the revenues.

The attempt to remove the revenues from imported Canadian products is not warranted by the public sentiment. It is not asked for by any portion of our citizens excepting those who are engaged in, or indirectly benefitted by our commerce with Canada. The measure is a free-trade scheme, for which the country is not prepared, and cannot be until the national debt is liquidated, and the Government can dispense

with a portion of the revenues now collected, and necessary to meet the appropriations and sustain the public credit at home and abroad.

No. 137.

*Lord Tenterden to Mr. Herbert.*

Sir,

*Foreign Office, January 6, 1876.*

I AM directed by the Earl of Derby to transmit to you herewith, to be laid before the Earl of Carnarvon, a copy of a despatch from Her Majesty's Minister at Washington,\* reporting that on the 15th ultimo a Resolution was submitted to the United States' House of Representatives, proposing that Commissioners should be appointed to investigate and ascertain on what basis a Treaty of Reciprocal Trade between the United States and Canada could be negotiated.

I am, &c.  
(Signed) TENTERDEN.

No. 138.

*Mr. Herbert to Lord Tenterden.—(Received January 8.)*

My Lord,

*Downing Street, January 7, 1876.*

WITH reference to your letter of the 12th of November, I am directed by the Earl of Carnarvon to transmit to you, to be laid before the Earl of Derby, a copy of a despatch from the Governor-General of Canada, inclosing a Minute of the Dominion Privy Council in regard to Mr. Ford's proposal that the Fishery Commissioners at Halifax should be asked to decide in what proportions their award, if any should be given, should be divided between Canada and Newfoundland.

Lord Carnarvon would be glad to be informed if Lord Derby sees any objection to the opinion of the Government of Newfoundland being now asked on the subject.

I am to add that a copy of your letter of the 12th of November was sent to Lord Dufferin, with reference to the previous despatch addressed to him on the receipt of your letter of the 26th of October.

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

Inclosure 1 in No. 138.

*The Earl of Dufferin to the Earl of Carnarvon.*

My Lord,

*Ottawa, December 7, 1875.*

IN reply to your Lordship's despatch of the 4th ultimo, requesting me to take the opinion of my Ministers upon the proposal submitted by Mr. Ford, the British Agent appointed to attend the Halifax Fishery Commission, that the Commission should be entrusted with the power of apportioning the award between Canada and Newfoundland, and that the majority of the Commission should determine the assignment of the proportions, I have the honour to inclose herewith a Minute of my Privy Council, expressing concurrence with Mr. Ford's suggestion.

I have, &c.  
(Signed) DUFFERIN.

Inclosure 2 in No. 138.

*Report of a Committee of the Honourable Privy Council, approved by his Excellency the Governor-General in Council, on the 30th November, 1875.*

THE Committee have had under consideration the despatch from the Right Honourable the Earl of Carnarvon, of the 4th instant, requesting to be informed whether the suggestion made by Mr. Ford, appointed British Agent to attend the Fisheries Commis-

sion at Halifax, was acceptable to the Government of Canada, to the effect that the Commission be requested to state what proportion of the award they consider would be due to Canada and Newfoundland respectively, and that a decision of a majority of the Commission on this point should be binding.

The Honourable Mr. Mackenzie, acting in the absence of the Honourable the Minister of Marine and Fisheries, to whom this despatch has been referred, reports that he sees no objection to the adoption of the suggestion made by Mr. Ford, and recommends that Her Majesty's Government be informed accordingly through the usual channel.

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

Certified,  
(Signed) W. A. HIMSWORTH,  
Clerk Privy Council.

No. 139.

*Sir E. Thornton to the Earl of Derby.—(Received January 10, 1876.)*

(No. 355.)

My Lord,

*Washington, December 27, 1875.*

I HAVE the honour to inclose two copies of an extract from the "New York Tribune," purporting to be a letter from its correspondent at Washington, in which the writer endeavours to show that there is no reason why the Fishery Commission shortly to meet at Halifax should make any award in favour of Canada.

As it is possible that the letter may have been written after conversation with employés in the State Department, it may be an indication of some of the arguments which will be used in opposition to our claim, and may therefore be interesting to Her Majesty's Agent to the Commission.

I have, &c.  
(Signed) EDWD. THORNTON.

Inclosure in No. 139.

*Extract from the "New York Tribune" of December 25, 1875.*

**THE CANADIAN FISHERIES.**—What people profit most by them? The Fisheries Commission—Increase of the exportation of fish from Canada—Product of the fisheries of the United States—Small amount of the exports.

[From the Regular Correspondent of the "Tribune."]

*Washington, December 22.*—The Commission created by the XXIInd Article of the Treaty of Washington to determine what compensation, if any, ought to be paid by the United States to the Government of Great Britain for the fishing privileges confirmed to our citizens by that Treaty, will probably meet in Halifax early next summer. The President has not yet announced the name of the American Commissioner, but it is understood he has already selected a suitable person, who has accepted the position and is now preparing himself for the proper discharge of his duties. The long delay in making this appointment has been caused by the desire of the Canadian Government for the ratification of a general Reciprocity Treaty and not by any fear on the part of the President that the Commission's award against us would be a large one. All reports that any misunderstanding between the Governments of the United States and Great Britain has arisen from this delay are, therefore, without foundation. Had the Senate ratified the Reciprocity Treaty which the President submitted to it during the last Congress, the Canadian Government would never have cared whether the Fishery Commission met at all or not.

It is no new thing for the press and the people of Canada to estimate at most preposterous figures, as they recently have done, the value of fishery privileges in Canadian waters enjoyed or claimed by citizens of the United States, or to exaggerate the loss which competition with American fishermen is said to entail upon this industry in the Dominion. The latest claim which I have seen put forth by the Dominion press is that the United States ought to pay 10,000,000 dollars a year for the privileges

granted our citizens by the Treaty of 1871. How absurd such a claim is will be apparent when I show that the product of all our fisheries, exclusive of whale, both at home and in Canadian waters, in the Gulf of Mexico and on the Pacific Coast, did not sell for 10,000,000 dollars in any single year since the Treaty of Washington was signed until last year, and that then it exceeded that amount by only a few hundred thousand dollars. And yet this claim is no more unreasonable than another repeatedly set up by Canada within the last 100 years—that American fishermen have no rights at all in Canadian waters except such as are granted to them by the British Government. Our original right to these fisheries was not the result of an act of grace on the part of Great Britain; it rested on the same solid basis as our independence itself, and was fully recognized in the Treaty of 1783; if it had not been, Mr. Adams never would have put his name to that instrument. If, at any time since 1783, the rights of our fishermen in Canadian waters have been limited, it has been because, for the sake of peace, we have submitted to such limitations, or because they have been unjustly and illegally imposed by the Canadian Government, our own at the same time protesting.

I see no ground on which the Fishery Commission can award any compensation to be paid by the United States for the privileges accorded to its citizens by the Treaty of 1871. The only possible basis of such an award can be the proof that American fisheries have been stimulated at the expense of those of the Dominion, and, in order to ascertain if this has occurred, I shall quote some figures compiled by Professor Elliott, of the Bureau of Statistics from Official Sources, and kindly furnished me for use in this letter. The first table shows the product of all American fisheries (exclusive of whale) received in the customs districts of the United States during the six years, 1870 and 1875 inclusive:—

							Dollars.
1870	..	..	..	..	..	..	5,313,967
1871	..	..	..	..	..	..	11,482,410
1872	..	..	..	..	..	..	9,526,647
1873	..	..	..	..	..	..	8,348,185
1874	..	..	..	..	..	..	9,522,553
1875	..	..	..	..	..	..	10,475,252

As these were fiscal years ending June 30, the first two had expired before the Treaty of Washington went into operation, and during one of these years the products of our fisheries was greater than it has been any year since. During the last two years there has been a small increase, but as this was preceded by two years in which, under the Treaty, the product of our fisheries decreased, the table gives us no ground for concluding what the effect of the Treaty has been; it certainly does not show that the business of fishing in the United States has increased since 1871, or even that the tendency has been in that direction.

The following table shows the value of Canadian fisheries during the years named, as reported by the Dominion Department of Marine and Fisheries:—

							Dollars.
1870	..	..	..	..	..	..	6,577,392
1871	..	..	..	..	..	..	9,455,523
1872	..	..	..	..	..	..	9,707,862
1873	..	..	..	..	..	..	10,754,998
1874	..	..	..	..	..	..	11,681,886

Two of these years, it will be observed, were prior to the ratification of the Treaty, and three since; and the table shows a marked and steady increase in the latter case as well as in the former. Surely the Canadian fishermen have not been ruined by allowing Americans to fish in the Provinces within three miles of shore.

The next table shows the value of fish of all kinds imported into the United States from the British Provinces, during the years 1870 and 1875 inclusive:—

							Dollars.
1870	..	..	..	..	..	..	1,169,407
1871	..	..	..	..	..	..	1,201,175
1872	..	..	..	..	..	..	1,262,510
1873	..	..	..	..	..	..	1,619,421
1874	..	..	..	..	..	..	1,934,303
1875	..	..	..	..	..	..	2,167,613

From this it appears that the Treaty has not injured the American market of Canadian fishermen; on the other hand their sales of fish to our citizens have steadily increased ever since its ratification. Again, while the American market for Canadian fish has been steadily improving under the operation of the Treaty, our fishermen have not entered into competition with those of the Dominion in their home market, as the

following table exhibiting the value of fish of all kinds exported from the United States into the British Provinces, shows:—

							Dollars.
1870	..	..	..	..	..	..	39,764
1871	..	..	..	..	..	..	86,006
1872	..	..	..	..	..	..	37,050
1873	..	..	..	..	..	..	66,053
1874	..	..	..	..	..	..	59,402
1875	..	..	..	..	..	..	25,128

The following tables lead to the same conclusions as those already given, which are that, while our purchases of fish from foreign countries have constantly increased since the negotiation of the Treaty of Washington, our sales of fish to foreign countries have not been stimulated, and are now very insignificant in amount. The first table shows the total value of fish imported into the United States during the past six years, and the second the total value of fish exported from the United States during the same period:—

#### IMPORTS of Fish.

							Dollars.
1870	..	..	..	..	..	..	2,316,453
1871	..	..	..	..	..	..	2,503,924
1872	..	..	..	..	..	..	2,150,117
1873	..	..	..	..	..	..	3,085,257
1874	..	..	..	..	..	..	3,208,607
1875	..	..	..	..	..	..	3,008,615

#### EXPORTS of Fish.

							Dollars.
1870	..	..	..	..	..	..	212,711
1871	..	..	..	..	..	..	337,747
1872	..	..	..	..	..	..	334,879
1873	..	..	..	..	..	..	519,089
1874	..	..	..	..	..	..	172,605
1875	..	..	..	..	..	..	206,202

The total gold value of fish and other products of the fisheries exported from the Dominion to all foreign countries during the five years ending 1874, shows a constant increase, and, taken in connection with the last table given above, it proves that American fishermen are not competing with those of Canada in any of the foreign markets of the world:—

							Dollars.
1870	..	..	..	..	..	..	3,608,549
1871	..	..	..	..	..	..	3,994,275
1872	..	..	..	..	..	..	4,348,508
1873	..	..	..	..	..	..	4,779,277
1874	..	..	..	..	..	..	5,292,368

The conclusions reached from a study of the fishery statistics for the years just preceding and those which have followed the ratification of the Treaty of Washington are sustained by similar statistics for the years preceding and following the ratification of the Reciprocity Treaty, which terminated in 1865. In other words, reciprocity gives to Canada a better market in the United States for her fish than she has without it, and this is worth more to her than the inshore fisheries are to us. The first of the two following tables shows the value of the fish imported into the United States from the British Provinces during the ten years prior to the Reciprocity Treaty, and the second the value of our imports of fish from Canada during the ten years in which the Reciprocity Treaty was in operation:—

#### FISH imported from Canada before Reciprocity.

			Dollars.				Dollars.
1845	..	..	283,173	1850	..	..	532,663
1846	..	..	284,584	1851	..	..	764,314
1847	..	..	72,316	1852	..	..	602,507
1848	..	..	802,331	1853	..	..	845,448
1849	..	..	623,531	1854	..	..	794,081

#### FISH imported from Canada during Reciprocity.

			Dollars.				Dollars.
1856	..	..	1,885,656	1861	..	..	1,366,804
1857	..	..	1,633,134	1862	..	..	1,821,695
1858	..	..	1,514,771	1863	..	..	627,936
1859	..	..	1,751,474	1864	..	..	1,071,737
1860	..	..	1,763,342	1865	..	..	1,798,758

The following tables show the total imports and exports of fish into the United States during twelve years, from 1853 to 1864 inclusive, covering the period that the Reciprocity Treaty was in operation:—

## IMPORTS of Fish.

Dollars.				Dollars.			
1853	..	..	886,860	1859	..	..	2,025,062
1854	..	..	1,061,107	1860	..	..	2,193,633
1855	..	..	1,012,123	1861	..	..	1,744,152
1856	..	..	2,071,999	1862	..	..	1,058,619
1857	..	..	1,787,864	1863	..	..	1,411,922
1858	..	..	1,927,546	1864	..	..	1,656,603

## EXPORTS of Fish.

Dollars.				Dollars.			
1853	..	..	333,019	1859	..	..	192,105
1854	..	..	358,913	1860	..	..	213,306
1855	..	..	250,368	1861	..	..	168,283
1856	..	..	271,877	1862	..	..	48,497
1857	..	..	262,585	1863	..	..	128,771
1858	..	..	229,241	1864	..	..	95,922

From a study of these figures we have a right to conclude that the Fishery Commission will probably award no damages to Great Britain for the fishery privileges accorded American citizens by the Treaty of 1871. The reasons of this are:—

1. Because the effect of the Treaty has neither been to increase the value of American fisheries nor to impair the value of those of Canada. The Canadians have, every year since 1871, increased the product of their fisheries, while during no one of the same years has the product of the American fisheries been as valuable as it was the year before the Treaty was made.

2. Because the provisions of the Treaty allowing Canadian fish to be entered in our ports free of duty have made a better market for Canadian fish than previously existed, the sale of Canadian fish in the United States having increased every year since 1871.

3. Because it has opened no market for American fish in Canada, our exports of fish to the British Provinces being still insignificant. In brief, Canadian fishermen have been brought more into competition with American fishermen in the United States since the Treaty was made than before, while we have in no way interfered with their home market in the British Provinces.

4. Because Canada's exports of fish to other countries, exclusive of the United States, have constantly increased under the Treaty, while those from the United States to foreign countries, exclusive of Canada, have remained stationary and are still insignificant. The privileges accorded our fishermen by the Treaty has not enabled them to compete any better than before with the Canadians in any foreign market where they have been accustomed to dispose of the product of their fisheries.

5. Because reciprocity has always been of more benefit to Canadian fishermen than any special privileges granted by Canada have been to American fishermen. The only substantial advantage our fishermen have derived from those sections of the Treaty relating to the fisheries has been freedom from the annoyances to which they were before unjustly subjected, and that we amply pay for this is, I believe, proven.

No. 140.

*The Earl of Derby to Mr. Ford.*

(No. 1.)

Sir,

*Foreign Office, January 13, 1876.*

I REFERRED to Her Majesty's Secretary of State for the Colonies your despatch No. 10, Confidential, of the 8th of October last, containing suggestions for dealing with the question as to the proportions in which the award of the Fishery Commissioners at Halifax, if any, should be given, should be divided between Canada and Newfoundland, and I now transmit to you the accompanying letter which has been received from the Colonial Office in reply, together with its inclosure;\* and I have to instruct you to furnish me with your opinion as to the adoption of the course which it is proposed to pursue with reference to this question.

I am, &c.

(Signed) DERBY.

Mr. Herbert to Lord Tenterden.—(Received January 14.)

My Lord,

Downing Street, January 13, 1876.

I AM directed by the Earl of Carnarvon to acknowledge the receipt of your letter dated the 11th of December last, transmitting a copy of a despatch from Mr. Ford, and forwarding the draft of a Case for presentation to the Fisheries Commission prepared by him in communication with the Canadian authorities.

2. The Case appears to Lord Carnarvon to be skilfully drawn, and to reflect great credit on Mr. Ford and on those associated with him in its preparation, and his Lordship will have much pleasure in tendering the thanks of Her Majesty's Government to the Colonial Authorities, especially to the Marine Department and Mr. Whitcher for their co-operation in the task.

3. His Lordship is of opinion that it would be advisable to submit the Draft Case to the Law Officers of the Crown, and he accordingly does not propose to offer any observations upon such points as would be referred to them. He would, however, wish to draw the attention of Lord Derby to the mode in which the point which arises under Article XXII of the Treaty of Washington is argued in the Draft Case.

4. That Article says that the Commissioners, "having regard to the privileges accorded by the United States to the subjects of Her Britannic Majesty, as stated in Articles XIX and XXI of the Treaty, are to determine the compensation to be paid by the United States for the privileges accorded to citizens of the United States under Article XVIII of the Treaty.

Article XIX of the Treaty concedes the right of fishing in the United States' waters to British subjects, and Article XXI provides that fish, the product of the one country, shall be admitted into the other free of cost; while Article XVIII accords to American fishermen the right of taking fish in Canadian waters.

5. Under these circumstances, the framers of the Case fear that they can only look to the XVIIIth Article for the privileges accorded to the United States, while they are bound to look both to the XIXth and XXIst Articles for the privileges accorded to British subjects. In other words, they fear that they are bound to take as against England the value of the American fisheries, and also the value of the remission of duty on British fish, while, on the other hand, as against America, they are bound only to take the value of the British fishery, and may not take account of the remission of duty on American fish. They, therefore, propose to take what they call the broad Free Trade view, and to assert that the duties levied on the fish were paid, in reality, by the consumer, and not by the producer; and that, therefore, the remissions of duty are of greater value to the country remitting them than to the country in whose favour they are remitted.

6. It appears to Lord Carnarvon that this line of argument is open to objection, for it seeks to establish the proposition that remissions of duty upon Canadian fish are no privilege to Canada. It seems difficult, however, to maintain this in the face of Articles XXII and XXI of the Treaty. Article XXII says that the Commissioners are to have regard to the privileges granted to British subjects (*inter alia*) by Article XXI. It must, therefore, be conceded that there are such privileges. If it be asked, then, what privileges are granted to British subjects by Article XXI, the answer would be, the remission of duty and nothing else. It would, accordingly, appear difficult to argue with success that these remissions are no privilege at all.

7. The argument, too, as stated (pp. 35-37), seems to be in some degree fallacious. It does not follow (as the argument assumes) that, because the remission is a good thing for America, therefore, it is not also good for Canada. The benefit, it will be objected, is mutual, and is none the less a benefit to Canada for that. It will, moreover, be especially difficult for a Free Trade advocate to argue, as is done on pp. 36-37, that the remissions of duty are of no consequence to the Canadian fishers, and that their imposition is no injury to the industry. Since one of the results anticipated from remissions of duty is, in ordinary cases, to stimulate trade, increase demand, and by taking off burdens and restrictions, to put more money in the producer's pocket.\*

8. It appears to Lord Carnarvon that it may be worth while to consider whether a more tenable position to take up would be to admit that the remission of duty on the part of America is a privilege to British subjects, but to show that it is burdened with the reciprocal obligation upon Canada to admit American fish free of duty, and that, therefore, in setting a money value upon the privilege conceded to the British, a deduction must be made on account of the counter-obligation with which it is coupled.

\* The arguments here alluded to have been omitted in the Amended Case, see Inclosure 1 in No. 193.



9. As a minor point, Lord Carnarvon would draw attention to the form of the argument on p. 31, and the summary of points at the bottom of p. 34 of the case. The argument that the concession of the privilege of fishing in American waters is valueless, "because British subjects have never availed themselves of it," seems to invite the retort that it is their own fault for not going there; and, for the same reason, it might be better to reverse the order of the argument on p. 34, and to say that the American fisheries are unproductive, and, therefore, British fishermen do not resort to them.

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

No. 142.

*The Secretary to the Admiralty to Lord Tenterden.—(Received January 17.)*

My Lord,

*Admiralty, January 14, 1876.*

IN reply to your letter of the 29th December last, relative to the information required by the Mixed Commission, which is to meet at Halifax, Nova Scotia, for the purpose of considering the subject of compensation to be paid by the United States to Great Britain for the value of fishing privileges in British North American waters conceded to United States citizens in excess of similar privileges and Customs remissions conceded by the United States to Great Britain, I am commanded by my Lords Commissioners of the Admiralty to acquaint you, for the information of the Secretary of State for Foreign Affairs, that the naval Commander-in-chief on the North American Station has been directed to give instructions to Commanding Officers of Her Majesty's ships and vessels under his orders to obtain any information which may be of use to the Commission, forwarding their reports (in duplicate) to the Admiralty, and to the Commander-in-chief, or, should the Commission be sitting, to the Senior Officer at Halifax.

2. With reference to the List which accompanied your letter of 29th December, showing the Reports from Her Majesty's Naval Officers on the subject of North American Fisheries which have been furnished to Foreign Office since 1852, I am directed by their Lordships to observe that there is a great number of Reports on this subject in the Admiralty Record Office, and that some of them are not included in the above List, while others which appear in the List cannot be traced in the Record Office.

3. My Lords would therefore suggest that an officer from your Department should be deputed to inspect the Admiralty Records on the subject of Fisheries, with a view of making a selection of such as may be of interest to the Commission.

I am, &c.  
(Signed) ROBERT HALL.

No. 143.

*The Earl of Derby to Mr. Ford.*

(No. 2.)

Sir,

*Foreign Office, January 17, 1876.*

I TRANSMIT to you, for perusal, the accompanying despatch from Her Majesty's Minister at Washington, inclosing an extract from the "New York Tribune," discussing the question of the obligation of the Fishery Commissioners to make an award in favour of Canada.\*

I am, &c.  
(Signed) DERBY.

No. 144.

*Lord Tenterden to Mr. Herbert.*

Sir,

*Foreign Office, January 17, 1876.*

WITH reference to previous correspondence, I am directed by the Earl of Derby to transmit to you herewith, to be laid before the Earl of Carnarvon, a copy of a despatch

from Her Majesty's Minister at Washington, inclosing an extract from the "New York Tribune," on the subject of the Fishery Commission.\*

I am to add, that a copy of the despatch has been forwarded to Mr. Ford.

I am, &c.  
(Signed) TENTERDEN.

No. 145.

*Mr. Ford to the Earl of Derby.—(Received January 20.)*

(No. 1.)

My Lord,

*Foreign Office, January 19, 1876.*

I HAVE the honour to acknowledge the receipt of your Lordship's despatch No. 1 of the 13th instant, informing me that the Canadian Government consent to the suggestion that the Commissioners at Halifax should be invited to decide upon the proportions in which their award, if any be given, should be divided between the Colonies of Canada and Newfoundland; and requesting my opinion whether the views of the Government of Newfoundland should now be ascertained on this point.

It appears to me certainly desirable that the consent of the Government of Newfoundland should be obtained before this course is finally decided upon; and in the event of their not being disposed to adopt it, it would not probably be difficult to both Colonies to agree to some impartial assessor, such for instance as the third Commissioner, by whose award both parties would consent to be bound, and the possibility of misunderstanding be thus avoided.

I would, however, venture to suggest, that it might be advisable to defer communicating with the Government of Newfoundland on this matter, until the case, which is now being prepared by them, reaches the hands of Her Majesty's Government, who would then be in a position to know the exact amount claimed by Canada and Newfoundland respectively.

I have, &c.  
(Signed) FRANCIS CLARE FORD.

No. 146.

*Mr. Ford to the Earl of Derby.—(Received January 20.)*

(No. 2.)

My Lord,

*Foreign Office, January 20, 1876.*

I HAVE read the letter from the Colonial Office, dated the 13th instant, respecting the form in which some portions of the Case of Her Majesty's Government on behalf of Canada have been drafted for presentation to the Halifax Commission, and I have the honour to make the following observations thereon:—

The method in which the concessions granted by the United States to Canada, under the Fishery Articles of the Treaty of Washington, should be treated, formed one of the chief difficulties in drawing up the draft Case. It was necessary, in the first instance, to procure accurate statistics of the duties levied on fish exported from the United States to Canada, and *vice versa*, before the Treaty came into operation; and a consideration of the following figures will show that it is not of so much importance as might be supposed to determine whether the duties remitted by Canada under Article XXI might or might not be taken into account before the Commission.

The value of fish exported annually from Canada to the United States, taking an average of twelve years, from 1864 to 1875, was 1,368,612 dollars; and the duty which would have been collected on this amount under the Tariff existing before the conclusion of the Treaty of Washington amounts to a yearly average of 157,841 dollars, or for a period of twelve years, a gross amount of 1,894,092 dollars; which sum may be calculated as that which would be remitted during the twelve years of the operation of the Fishery Articles of the Treaty of Washington.

The average value of fish exported yearly from the United States to Canada, calculated for the same period in a similar manner, amounts to 296,362 dollars; the duty on which would be 5,724 dollars, or for twelve years, 68,688 dollars. The balance of remission, therefore, in favour of Canada, even if the Canadian remissions were deducted (which under a strict interpretation of Article XXII they cannot be), stands thus:—

							Dollars.
Remissions by United States .. .. .	..	..	..	..	..	..	1,894,092
Remissions by Canada .. .. .	..	..	..	..	..	..	68,688
Balance in favour of Canada .. .. .	..	..	..	..	..	..	1,825,404

It being by no means certain that the Commissioners would accept the value at which the use by United States' fishermen of the Canadian fisheries is estimated in the draft Case, it became necessary, in view of the probability of a lower value being fixed, to consider whether so large a sum as 1,825,404 dollars must necessarily be deducted from the amount, and there appeared to me to be several circumstances tending to show that these remissions could not be estimated as a pecuniary sacrifice by the United States to Canada, or as a direct gain by the latter, to the actual amount of the duties remitted, as shown by statistics.

In the case of the Reciprocity Treaty the value of the duties remitted by the United States were enormously greater than those remitted by Canada.

At the Joint High Commission at Washington, in 1871, an offer was made for the reciprocal remission of duties by the United States and Canada on the articles of coal, salt, fish, timber, and lumber. These duties for a period of twelve years, calculated in a similar manner to those above-mentioned, would stand thus:—

							Dollars.
Remissions by United States .. .. .	..	..	..	..	..	..	17,742,216
Remissions by Canada .. .. .	..	..	..	..	..	..	256,044
Balance in favour of Canada .. .. .	..	..	..	..	..	..	17,486,172

Now, if these remissions were to be considered as a sacrifice by the United States at the actual money value of the balance in favour of Canada, it followed that this was the value apparently placed by the United States' Commissioners themselves on the privilege of access to British North American waters, which was the only equivalent to be granted by Canada. No doubt, if this were admitted on the United States' side, it would form a most valuable argument for the British view of the question; but it seemed difficult to suppose that such could really have been the opinion of the American negotiators, and it appeared to me easier to adopt the theory that such remissions were not regarded by them as an actual pecuniary sacrifice. It may no doubt be contended that some gain accrues to Canada by the remission of duties on fish, but in face of the above-mentioned facts it can hardly be argued that such remissions should be assessed at their actual value in money.

It was not, however, proposed, after consultation with the Counsel retained in the Case by the Dominion, to entirely expose these arguments in the preliminary Case, but to keep them, at all events partially, in reserve, to be used as might seem most expedient. The Free Trade view was therefore adopted, under the impression that it was difficult to avoid all mention of these remissions, and that, even if it were not accepted in its broadest aspect by the Commissioners, it might still induce them to minimize their estimate of the value of the concession granted by the United States under Article XXI.

I should, however, state that the Canadian Counsel expressed their opinion that it would be better to reserve all mention of this portion of the Case until the position taken by the United States had been ascertained, when, if they contended that the full money value of the remissions were to be accepted, the offer made at the Joint High Commission would be brought forward as evidence of the high value placed on the use of the British North American waters by the Americans themselves.

This point, more than any other in the case, must, in my opinion, receive careful consideration, in consultation with the Law Officers of the Crown; and until I have learnt their views, I hesitate to pronounce a decided opinion as to the best mode of dealing with it.

The line of argument adopted in the Case is no doubt open to some objections, and your Lordship will perceive, from the foregoing remarks, that to take up the position suggested in the letter from the Colonial Office would involve the necessity of consenting to a deduction of 1,825,404 dollars on account of Customs remissions by the United States, from any sum which might be agreed upon by the Commissioners as representing the value of the Canadian fisheries to the United States for a period of twelve years. It might, however, be possible to take a middle course, and to say that, although the remission of these duties is no doubt in some sense a gain to Canada, yet it cannot be contended that they are to be taken at their actual money value as a set-off to the value of the fisheries; thus leaving it to the Commissioners to decide whether any, and if so

to what extent, deduction should be made on this account from their estimate of the compensation due for the free use of British Canadian waters.

I may also remark that it is an admitted fact that high duties levied on articles of food, such as fish, are actually paid by the consumer, and not by the producer; but the probable success with which any arguments of this description might be used before the Commission would depend considerably on whether the gentleman selected to act as third Commissioner were or were not an advocate of Free Trade principles.

With regard to the other points suggested in Mr. Herbert's letter, I venture to suggest that a few alterations in the arrangement of the text of the draft Case, which I should be happy to point out personally, would remove the objections to which those passages appear to be open, in the manner suggested by the Earl of Carnarvon.

I have, &c.  
(Signed) FRANCIS CLARE FORD.

## No. 147.

*Lord Tenterden to Mr. Herbert.*

Sir, *Foreign Office, January 22, 1876.*  
YOUR letter of the 7th instant, together with its inclosure, relative to the question as to the proportions in which the award of the Fishery Commissioners at Halifax, if any be given, should be divided between Canada and Newfoundland, was referred to Mr. Ford, for his opinion; and I am now directed by the Earl of Derby to transmit to you, to be laid before the Earl of Carnarvon, for his Lordship's information, the accompanying copy of a despatch which has been received from that gentleman in reply.\*

I am, &c.  
(Signed) TENTERDEN.

## No. 148.

*Lord Tenterden to Mr. Herbert.*

Sir, *Foreign Office, January 24, 1876.*  
YOUR letter of the 13th instant commenting on the draft case prepared by Mr. Ford, in communication with the Canadian authorities, for presentation to the Fishery Commissioners at Halifax, was referred by the Earl of Derby to that gentleman, for his observations; and I am now directed by his Lordship to transmit to you, to be laid before the Earl of Carnarvon, the accompanying copy of a despatch received from Mr. Ford in reply,† and I am to suggest, for Lord Carnarvon's consideration, whether it might not be desirable that Mr. Ford should be placed in personal communication with some officer of your Department with whom he might confer, before referring the case to the Law Officers of the Crown.

I am, &c.  
(Signed) TENTERDEN.

## No. 149.

*Mr. Herbert to Lord Tenterden.—(Received February 7.)*

My Lord, *Downing Street, February 5, 1876.*  
I AM directed by the Earl of Carnarvon to acknowledge the receipt of your letter of the 24th of January, suggesting that Mr. Ford should be placed in personal communication with some officers of this Department with whom he might confer before the draft Case which he has prepared in communication with the Canadian authorities for presentation to the Fishery Commissioners at Halifax, is submitted for the opinion of the Law Officers.

Lord Carnarvon entirely concurs in this suggestion, and would request that Mr. Ford may be desired to communicate personally with Mr. Malcolm of this Department, whom Lord Carnarvon has appointed to represent this office.

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

No. 150.

*Lord Tenterden to Mr. Herbert.*

Sir, *Foreign Office, February 9, 1876.*  
 WITH reference to Mr. Lister's letter of the 14th of October, I am directed by the Earl of Derby to transmit to you, to be laid before the Earl of Carnarvon, for his information, the accompanying extract of a despatch from Her Majesty's Minister at Washington, reporting a conversation which he had had with the United States' Minister for Foreign Affairs, relative to the constitution of the Fisheries Commission at Halifax.\*

I am, &amp;c.

(Signed) TENTERDEN.

No. 151.

*Lord Tenterden to Mr. Ford.*

Sir, *Foreign Office, February 11, 1876.*  
 I AM directed by the Earl of Derby to transmit to you, for your information, a copy of a despatch from Her Majesty's Minister at Washington, reporting a conversation which he had had with the United States' Minister for Foreign Affairs relative to the constitution of the Fisheries' Commission at Halifax.\*

I am, &amp;c.

(Signed) TENTERDEN.

No. 152.

*Lord Tenterden to Mr. Ford.*

Sir, *Foreign Office, February 11, 1876.*  
 YOUR despatch No. 2 of the 20th ultimo on the subject of the draft Case prepared by you, in communication with the Canadian authorities, for presentation to the Fishery Commissioners at Halifax, was, by direction of the Earl of Derby referred to Her Majesty's Secretary of State for the Colonies; and I am now directed by his Lordship to inform you that a letter has been received in reply, requesting that you should place yourself in communication with Mr. Malcolm of the Colonial Office, who has been instructed to confer with you on the matter.

I am, &amp;c.

(Signed) TENTERDEN.

No. 153.

*Sir E. Thornton to the Earl of Derby.—(Received February 14.)*(No. 27.)  
My Lord,*Washington, January 31, 1876.*

WITH reference to my despatch No. 345 of the 20th ultimo, I have the honour to inclose three printed copies of a report submitted to the House of Representatives on the 18th instant by Mr. Elijah Ward, a member from New York, relative to reciprocal trade with Canada. The report was ordered to be printed, and recommitted to the Committee on Commerce. I have forwarded a copy of it to the Governor-General of Canada.

Your Lordship will perceive that Mr. Ward, after drawing attention to the advantages which would accrue, both to the United States and to Canada, from a free exchange of goods, the produce and manufacture of the two countries, suggests three modes for carrying it out.

His favourite plan is evidently the establishment of a Zollverein system of Customs for the two countries, simultaneously with the free exchange of all articles of commerce between them; but I presume that this would be inadmissible by both Great Britain and Canada.

The first alternative suggested by Mr. Ward, in case the Zollverein system could not be arranged, is to agree upon a common Tariff for many articles, and to decide upon a

\* See No. 15 in "Correspondence respecting Three Rules" (F.O. No. 2794).

list of commodities which might advantageously be exchanged free of duty between the two countries.

Amongst the latter it is evidently Mr. Ward's intention that manufactures should be included, which could hardly be acquiesced in by Her Majesty's Government, unless the same manufactures were admitted into Canada free of duty from England.

Amongst the articles with regard to which a common Tariff might be agreed upon, Mr. Ward suggests such articles as silks, laces, brandies, wines, jewellery, &c.

Mr. Ward's last alternative is, that it should be considered what articles of raw produce and of manufacture might be exchanged between the two countries with advantage to both of them; and he concludes his report by proposing that three Commissioners should be appointed to examine the subject with three others, to be named by Great Britain, if Her Majesty's Government should wish to appoint such Commissioners.

As yet it appears that Mr. Ward has not entirely convinced the Committee on Commerce of the expediency of carrying out his views, and he may find still greater difficulty in doing so with regard to the House of Representatives.

I have, &c.  
(Signed) EDWD. THORNTON.

Inclosure in No. 153.

*House of Representatives.—44th Congress, 1st Session.*

Report No. 9.

COMMERCIAL RELATIONS WITH CANADA.

Mr. Ward, from the Committee on Commerce, submitted the following

*Report :*

(To accompany Bill H. R. 14.)

The Sub-Committee on Commerce, to whom was referred the joint resolution requesting the President of the United States to appoint three Commissioners, by and with the advice of the Senate, to confer with other Commissioners duly authorized by the Government of Great Britain, or whenever it shall appear to be the wish of that Government to appoint such Commissioners, to investigate and ascertain on what basis a Treaty of reciprocal trade for the mutual benefit of the people of the United States and the Dominion of Canada can be negotiated, respectfully report :—

WHETHER the proper object of a Tariff is the collection of necessary revenue, or, in addition to this, special regard should be had to what is termed "protection" to home industry. The commercial relations of the citizens of the United States with their American neighbours on the north are of an exceptional and peculiar character. The productions of Canada are chiefly the prime necessities of life, not articles of luxury, on which high duties are most appropriately levied, and, alike in both countries, are collected on articles imported from the Old World. The Dominion is in many places literally close to our own doors, its frontier extends across the continent from the Atlantic to the Pacific, and our territories are so closely indented with each other that a line drawn from the northern limit of Maine eastward to the ocean and westward to the northern limit of the United States, on Lake Superior, would separate nearly all the well-settled portion of Canada from the rest of her possessions. Including both sides, there is, under the present condition of the Tariffs, a frontier of lake and river having some 6,000 miles of shore, affording great facilities for smuggling, to be guarded, and for many thousands of miles more on the east and west the boundary is marked by imaginary lines so easily passed that stores might be built on them, as they are said to have been, in such a manner that goods imported under the Tariff of the United States or produced there might be sold on one side, and those imported into Canada or produced there might be sold on the other, for the benefit of customers who know little patriotism or friendship in trade. No wonder that the Secretary of the Treasury in his recent Report, referring to a small part only of the distances, found it his duty to point out

that "the difficulties attending a proper surveillance of our northern frontier are under existing circumstances, very great, if not in some respects insurmountable."

*Importance of our Trade with Canada.*

Next to the magnitude of our own natural and unparalleled resources, the free exchange of the products of industry, with untrammelled transit, between the States, contributes more than any other single cause to our prosperity. Without it our markets would be petty and our resources would to this day have remained comparatively undeveloped. The extension of the same commercial liberty between our people and those of Canada is no less necessary to the due welfare of each than free intercourse between the people of our several States is to them. The Canadians are more numerous than the inhabitants of all the six New England States, and nearly equal in number to the people of the State of New York. In the area of her territories and the magnitude of her various resources, the Dominion has all that is needful for the basis of one of the strongest empires on the face of the world. The resolute enterprise and steady progress of her people are already shown, not less in the success of their war upon the wilderness than by the fact that, with a population small in comparison with that of France, Austria, Italy, or Spain, they rank as the fourth Power on the globe in the extent of their mercantile navy, taking precedence of all countries except Great Britain, the United States, and Germany.

The obstacles to such free commercial intercourse with us as exists between our various States has deprived Canada of her natural prosperity, while it has also injured the business of many of our States, and most seriously impeded the progress of those portions of our country which are near the Canadian frontier. Notwithstanding the adverse laws in both countries, preventing the free exchange of the products of the industries of their people, the exports of our productions to Canada, according to the report of the Treasury Department, amounted in 1873-74 to no less than 42,505,914 dollars, being more than twenty times as large as those to China, whence we draw so large a proportion of our imports, and larger than our exports of a similar character to any country in the world, excepting only Great Britain, Germany, and France. Our exports to Canada of goods of foreign origin, in the same year, amounted to 4,589,343 dollars, and the total trade with her to at least the vast sum of 85,253,168 dollars.

*Effects of the former Treaty.*

Until 1873-74 the trade between the United States and the Dominion never equalled that during the last year of the former Treaty, and if further negotiations, conducted with due regard to the interests of both countries, had then taken place, there is no room for doubt that the mutually beneficial exchange of the products of labour in the two countries would have doubled. During the last three years of the Treaty the exchanges were four times as large as in the three years preceding it—the amount in the former period having been 56,018,710 dollars, and, in the latter, 223,354,933 dollars.

*Why the Treaty was terminated.*

It is obvious that the people on both sides found the results of the Treaty profitable, or they would never have continued, year after year, to exchange the products of their industries. But Canada is in many respects, like our new north-western countries, producing a large surplus of products from her forests and farming-lands; and these, under a fair system of reciprocity, would have been exchanged for a vast variety of necessary manufactured articles produced in our older States. No provisions for this had been made in this Treaty, and the Canadians, needing increased revenue, not only levied heavier duties on manufactured goods, with a most injurious effect upon our manufactures, but made certain other discriminations intended to divert from New York, Boston, and the other American ports on the Atlantic, the benefits naturally resulting from the relative geographical positions of them and Western Canada, and send trade to Quebec and Montreal. Thus, much discontent with the old Treaty was justly produced on this side of the frontier; it caused efforts for a more perfect reciprocity, to which a majority of the House of Representatives was favourable, but the sentiments engendered by it led to the termination of the Treaty without providing remedies for its defects.

*The Balance of Trade and its Change.*

Estimating the commercial transactions between the two countries solely by the test of what is called "the balance of trade," it is found, on reference to the reports

of the Secretary of the Treasury, that during the first ten years of the Treaty there was a cash balance in our favour of 62,013,545 dollars. During the remaining three years the demand created by the war for horses, cattle, and other Canadian products, increased the importations with manifest benefit to this country. Yet, on the basis of the thirteen years of the Treaty, the "balance in our favour" was 21,453,744 dollars. Ever since the termination of the Treaty in 1866 until 1874, when the pressure in our affairs tended to force sales at low prices, there has been a large balance against the United States in the trade with the Dominion.

The "balance of trade" is by no means the true test of the advantages of intercourse with any single country, but it has been so often, though erroneously, considered as the criterion, that the condition of affairs shown by the Reports of the Secretary of the Treasury is well worthy of notice. Since the termination of the Treaty the proportion of the foreign commerce of Canada which was transacted with this country has been reduced from 52 to 35 per cent. Thus we are driving her trade away from us.

The test of our trade with any country is mainly whether it is conducted on just and equal principles, not what the respective amounts of our purchases may be. The same rule as between individuals is the true test, and that is whether the purchaser supplies his wants and the seller makes a fair profit, not whether the labourer or other consumer buys more flour from the miller, or more sugar from the grocer, than those who sell these articles buy from him.

#### *Manifestations of Public Opinion.*

Since the termination of the Treaty, the press and chief commercial bodies of the United States have frequently given proofs of their appreciation of the benefits which would accrue to the people from a fair arrangement of reciprocal trade with Canada. The New York Chamber of Commerce, for instance, regards it as "specially desirable on political as well as economical grounds, that all unnecessary hindrances should be removed from the commercial intercourse between the United States and the great Dominion which borders our northern frontier for so many thousands of miles," and "strongly recommend the proper authorities at Washington to enter into such Treaty stipulations whenever the Canadian authorities may be found ready to meet them on a basis of perfect fairness and equity." The Boards of Trade in Boston and Chicago, and many other similar associations, have earnestly expressed the same views. Various State Legislatures, notably that of New York, have passed resolutions to the same effect. Proof that the importance of the interests involved are fully appreciated, and of a willingness to negotiate, abounds in Canada.

#### *Readiness of Canada to negotiate.*

The Dominion Board of Trade presented a memorial to Earl Dufferin, the Governor-General of the Dominion, expressing a "sincere and cordial desire" that he would "be pleased to make such representations to the Imperial Government as will procure the appointment of a Commission to meet and confer with a similar Commission on the part of the Government of the United States (if such Commission has been or shall be appointed), for the purpose of framing and negotiating such a Treaty of reciprocal trade as will be for the mutual advantage and benefit of the trade and commerce of the Dominion of Canada and the United States." Similar views were repeatedly expressed by the National Board of Trade of the United States. The Canadian Minister of Customs, the Privy Council, and the Governor-General fully concurred in these views, and the Governor, in Council, formally promised that "should the Government of the United States comply with the wishes expressed by the National Board of Trade, the subject will receive the fullest consideration of the Government of Canada." Thus there is ample proof that Commissioners would be promptly appointed to meet and confer with our own.

#### *Fair Trade and the Obstacles to it.*

The main cause of the dissatisfaction in the United States with the Treaty of 1854 was, as has already been stated, that it did not give them a fair share of commercial freedom, because it extended to little more than the raw articles which are common to both countries, and of which, Canada especially, in proportion to her population, has a large surplus to sell, but did not include those products of industry of which, under a free system, she would buy large quantities in the United States. It was believed that an arrangement of reciprocal trade between the two countries, if justly beneficial to



both, must include, more or less, the manufactured as well as the raw productions of each, thus giving mutual encouragement to various and differing industries on both sides of the line and permitting labour in each country to adjust itself to the most advantageous employment. No adequate test has yet been made of the extent to which the markets for the manufactures and labour of our people can thus be extended.

To place the two countries on a fair basis of reciprocal trade, by the free admission of all manufactures as well as raw products into each from the other, it is necessary that no higher duty shall be levied in one than in the other on the materials used in manufactures, such as iron, copper, lead, wool, &c. The problem is: How can this be done in such a condition of our financial affairs as must prevail for many years to come?

#### *An Instructive Precedent.*

The relations of the Dominion and the United States toward each other resemble those not long ago existing between the German States.

It had been the misfortune of Germany to be divided into a large number of independent States, most of them of petty dimensions and small population, all having distinct Custom-houses, tariff and revenue laws, often differing very widely from those of the neighbours surrounding them. Sometimes one part of a State was separated from its other parts, and was as a commercial island encompassed by States having different laws. The condition was such as would have existed in New York, or any other of our States, if each of the different counties had been commercially divided from the rest, and the inhabitants of one county could not, without paying heavy imposts, pass into another with a horse, ox, or load of grain, the product of their own farms, or take imported goods into any of the counties adjoining their own; and the difficulty continually increased on passing through additional counties. Thus the inland trade of Germany was subjected to all the restrictions that are usually laid on the intercourse between distant and independent States.

It is universally admitted that no one cause has contributed so much to the welfare and prosperity of all parts of our own country, as the perfectly untrammelled intercourse which the States enjoy with each other; and it is easy to see how different the present condition of the United States would be if each were commercially independent, jealous of those around it, and perpetually striving how to exalt itself at the expense of the rest, rather than by developing its own natural advantages to the utmost, and freely availing itself of the special resources of the others.

#### *Explanation of the Zollverein.*

The principle of this union is, that there shall be entire and unrestricted freedom of imports, exports, and transit among the States which are its members. Perfect freedom of the exchange of all the products of human industry exists between the States thus allied.

A Treaty between the United States and Canada, simply admitting all articles reciprocally free of duty from each country into the other, might practically abolish all duties on importations from any part of the world. Either country might throw open its ports to all comers, and thus compel the other to follow its example. But, under the Zollverein, the same duties are collected on the outside frontier of the union thus established. Within that line all trade is as untrammelled as within our present Union. An equitable distribution of the revenue thus obtained is made among the States of the Confederation.

#### *Applicability to the United States and Canada.*

The Zollverein is comprehensively defined to be the association of a number of States for the establishment of a common Customs'-law and Customs'-line with regard to foreign countries, and for the suppression of both in the intercourse of the States within the border-line. If a Zollverein existed between the United States and Canada there would be no impediment by discriminating duties on the importations for Toronto if made via New York or Boston. If the merchants of Chicago found it to their interest to purchase at Montreal, they could do so; and buyers from the new province of Manitoba might buy and sell at St. Paul, Du Luth, St. Louis or New Orleans as freely as at Halifax or any city in the Dominion. The merchants of British Columbia would buy and sell in the markets of San Francisco as freely and with as little hindrance as those of California or Oregon. Railroads, canals and rivers, all means of transit, would be used in each country by the citizens of the other as freely as by its own. Internal-revenue laws

could, so far as necessary, be made in conformity with the principles of the Union. There would be fair and complete competition everywhere within the Confederation, and full scope would be given to the development of natural advantages wherever they would bring profit to the merchants, save needless labour of the people, or yield remunerative employment to them.

#### *Progress of the German Commercial Union.*

In Germany the Zollverein began in 1818, a little more than half a century ago. Its progress to the present time is a sufficient proof of the excellence of the principles it embodies, and of the mode by which they are carried into effect. The enlightened State of Prussia was the originator and leader in the movement, by forming a commercial union with a few minor States, the whole population thus included being at first only 19,000,000. The experience of the benefits thus created was so satisfactory that the best publicists of Europe believe that Prussia thus conferred upon the German people advantages scarcely inferior to those she initiated by the diffusion of education and intelligence.

In 1865 the benefits of the German Zollverein had become so well proved and appreciated, that, instead of the three original States or Duchies, it included fourteen, with a population of nearly 36,000,000. After the war of 1866 the German States to the south of the River Main, having preserved their independence, were not under any obligation to renew the Zollverein, but preferred to continue members of it. In 1867 a new Zollverein Treaty was concluded between the States of the North German Confederation and the North German States, and the scope of which extends to the whole of Germany except Austria. Even with Austria a liberal and comprehensive Treaty was effected in 1868, mutually reducing Customs' duties, and abolishing all transit duties and nearly all those on exports. "A traveller who has crossed the outer lines is freed from the vexations of the "Douanier" in every part of Germany, and may proceed without interruption from Belgium to the frontier of Russia, and from Tyrol to the Baltic, a distance of 700 or 800 miles, including a population of 70,000,000." The Customs' League or Union now embraces the whole of the States of Germany, with the exception of the two cities of Hamburg and Bremen.

#### *Tendencies of the proposed Policy.*

It is evident that a mutually-beneficial policy must tend to lessen the ill-will or promote the friendship of Governments differently constituted, while it does not interfere with the political institutions of any, and that a strong bias toward the most friendly relations on other points naturally arises upon the basis of mutual pecuniary interests and intimate social intercourse.

#### *Economy of the Plan.*

A very considerable saving is made on both sides by the abolition of Custom-houses between States which become members of the union. The laws adopted include means for mutual investigation, so as to insure accurate returns of the revenue from each place of collection, and to provide for the extension of the system to other States.

#### *Prevention of Smuggling.*

As the United States occupy a large portion of a continent far remote from those nations where costly manufactures for export are chiefly produced, we have in our position great facilities for the prevention of illicit importations along the shores of the ocean. The same is true as to Canada. But the facilities for smuggling between the United States and the countries adjacent to them are incomparably greater. Between the United States and the Dominion is a land, lake, and river frontier, so indented as to measure more by many thousands of miles than a straight line drawn across the continent in its widest part. Opportunities for smuggling, and the temptations to it, will be greater as the population of our respective countries becomes more dense. "The difficulties attending a proper surveillance of our northern frontier," which the Secretary of the Treasury finds of sufficient importance to direct special attention to in his last report, as being even "under existing circumstances very great, if not in some respects insurmountable," will be incalculably increased, and it will be absolutely impossible to prevent immense quantities of valuable goods from being brought into the territories of either country without payments of any duty. A customs-union is the only remedy for these difficulties.

*Proposed British Zollverein.*

To these suggestive facts it should be added that some of the most liberal and advanced statesmen in Great Britain, not content with the present anomalous relations of the mother-country and the colonies, entertain the project of a Zollverein or Customs Union between them.

The people of these countries have as undoubted rights to as free trade with each other as the citizens of our different States now enjoy among themselves. But, if the difficulties attending our present Tariff are now "in some respects insurmountable," what would they become if the same freedom of trade as exists between the States of the Union were also a matter of fact between the different parts of the British empire?

*Suggestions for a Limited Customs-Union.*

Should it be found impracticable to form a complete Customs Union between the United States and the Dominion, it may not be difficult to effect an agreement partaking of that character, by establishing a common Tariff on many articles, as to the taxation of which arrangements mutually satisfactory can be made. Sagacious and careful investigators and negotiators could surely, by conferring together, fix upon a large and important list of commodities in which the trade of the two countries might thus become common and free between them, with advantage to both. Experience would rapidly enlarge the list. Even in such a step, and aside from the industrial and commercial benefits which would be gained by the people, the savings and profits which would accrue to the revenue are worthy of serious thought. On all articles, such as silks, laces, brandies, wines, jewellery, &c., the importation of which is taxed only for revenue, and in regard to which no irreconcilable differences of politico-economical theory arise, it ought not to be difficult to agree upon the basis of a common Tariff or to fix the terms of a division of the revenue collected from them in common. If this were done, the most extensive smuggling from which the revenue of the United States suffers would be stopped, and our own public Treasury would be the gainer by many millions.

*The remaining Alternative.*

We have outlined the commercial policy which it seems to us would be the most beneficial to our people and those of the Dominion. Our present Tariff, special interests, and the condition of public opinion in one or both of the two countries may prevent the early consummation of a system so much to be desired. In that event it is desirable to ascertain what reciprocal arrangements for the extension of trade can be made by Treaty. There are doubtless many manufactures which might be admitted from each country into the other free of duty with manifest benefit to the people of both. Many of the raw products which are alike in the two countries, and are exported by both, can be profitably exchanged with great convenience to the people in various localities, and to those who are interested in the railroads and canals of this country, and the business of its sea-ports, from which for many years a large proportion even of our own products has now been diverted and enjoyed by Canada, her Tariff admitting all our grain and flour free of duty, while we levy heavy duties on her's.

*How we drive away the Grain Trade.*

Under the old Treaty the quantities of grain exchanged between the two countries were almost exactly equal throughout a long series of years. At present, taking the last year of which we now have official statistics, furnished by the Secretary of the Treasury, as the test, our exports of grain and breadstuffs to the Dominion, exclusive of barley, amounted to 16,477,674 dollars, while the imports of the corresponding articles were 3,473,352 dollars, showing what is called "a balance in our favour" of 13,004,332 dollars, our exports of grain and breadstuffs to Canada, as thus shown, being, in consequence of our duties on her products, and her exemption of ours, more than four times as large as our imports from her. This "balance in our favour" chiefly shows the extent to which we expel the trade in certain classes of products from our shipping, railroads, elevators, and warehouses, with incalculable injury to all classes of our people, and force it into Canadian channels. This is more fully shown by the official report of Canada, where it appears that in the same year nearly 21,000,000 bushels of grain were certainly exported from that country, being between 6,000,000 and 7,000,000 of bushels more than her imports.

*A Continental System of Trade.*

Although a continental or truly American system of trade cannot be duly discussed in the present report, it should not be entirely omitted. Trade with the Dominion, of which, exclusive of Alaska, the territory extends along our own from ocean to ocean, is an essential part of the greater commercial plan it is our duty and interest to develop. Regarding the subject in this light, we see how great and distinct are the special advantages of the different parts of our continent for producing commodities with which each can purchase those of other sections. The Northern States, for instance, need fear no competition with Mexico or Cuba in manufactures or agriculture. These countries would purchase, in increased quantities, our manufactures, cereals, meats, and fish, while we in return should consume more of their sugar, coffee, fruits, and other tropical productions. The agricultural productions of Canada are almost identical with those of the Northern States, but would be exchanged for our own manufactures, and for the products of warmer climates, in part those of our Southern States, and in part of regions yet farther south, whose products would thus be brought through our territory, and afford employment and profit to our people, with advantages to all the countries which would be parties to the arrangement. Our agriculture, manufactures, and carrying trade would alike be benefitted, and the natural operation of the laws of trade would necessarily confer corresponding benefits on those for whom our work would be done and with whom our exchanges would be made.

*Political Considerations.*

In a political point of view the benefits to be derived from extended commercial relations with the countries of this continent are many and obvious. By means of them each party would be brought face to face with the actual interests arising from its condition, and the intercourse of the people would destroy the erroneous ideas regarding each other which are among the chief causes of war and the corruption which too often follow in its train. Whatever political relations would really be mutually advantageous, would follow as the natural results of friendly and beneficial association.

*Appointment of Commissioners.*

Among the countries adjacent to the United States, Canada, from her geographical position and the similarity of her people to our own, is the first with which we should seek an extension of our commerce. Judiciously arranged, it cannot fail to be beneficial to all. The magnitude of the interests involved, the impossibility of determining solely by mere statistics, without conference with leading men daily occupied in those special departments of trade, transit, and manufactures which would be most affected by exchanges, either wholly free or more so than they now are, with the people of the Dominion, and the necessity of careful and studious consultation with Canadian authorities on every point, render necessary the appointment of Commissioners who would give their best and undivided attention to the subject. The interests involved in an extension of our commercial relations with Canada are so vast and various that it is important to give different portions of the Union due representation in the Commission. Hence the Sub-Committee on Commerce recommend the Committee on Commerce to report for adoption the joint Resolution referred to them by the House of Representatives, recommending that the President of the United States be requested to appoint three Commissioners, by and with the advice of the Senate, to confer with other Commissioners duly authorized by the Government of Great Britain, or whenever it shall appear to be the wish of that Government to appoint such Commissioners, to investigate and ascertain on what basis a Treaty of reciprocal trade for the mutual benefit of the people of the United States and the Dominion of Canada can be negotiated, and to report the results of their investigation to the President of the United States.

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No. 154.

*Lord Tenterden to Mr. Herbert.*

Sir,

*Foreign Office, February 24, 1876.*

I AM directed by the Earl of Derby to transmit to you, to be laid before the Earl of Carnarvon, a copy of a despatch from Her Majesty's Minister at Washington, inclosing Mr. E. Ward's report relative to reciprocal trade between the United States and Canada.\*

I am, &c,  
(Signed) TENTERDEN.

*Lord Tenterden to Mr. Herbert.*

Sir,

*Foreign Office, March 14, 1876.*

I AM directed by the Earl of Derby to transmit to you a certificate which has been obtained from the Comptroller and Auditor-General, showing that the expenses incurred on account of the Fisheries Commission, and included in the appropriation accounts presented to Parliament for the years 1873-4 and 1874-5, amounted to 4,646*l.* 15*s.* 5*d.*; and I am to request that you will lay the same before the Earl of Carnarvon, and move his Lordship to take the requisite measures for recovering the moiety thereof, amounting to 2,323*l.* 7*s.* 8*d.*, from the Government of Canada, in accordance with the arrangement accepted by that Government, and communicated in your letter of the 12th of August, 1873.

I am to add that the sum of 4,646*l.* 15*s.* 5*d.* is made up as follows:—

	£	s.	d.
Mr. Rothery's remuneration.. .. .	1,000	0	0
Ditto, expenses while absent from England .. .. .	3,496	15	5
Gratuity to Sir G. Dallas, as Secretary to Mr. Rothery while absent from England .. .. .	150	0	0
Total .. .. .	4,646	15	5

I am, &amp;c.

(Signed) TENTERDEN.

## No. 155.

*Mr. Ford to Lord Tenterden.—(Received April 1.)*

(Private.)

Dear Lord Tenterden,

*Foreign Office, April 1, 1876.*

Mr. FISH'S last move is monstrous,\* but I do not see how we can checkmate him just yet, nor can we relinquish the game. We might, it is true, throw the board over and refuse to play with such an adversary, but then should we improve our position?

In the present dilemma two courses appear open:

The first, a declaration on our part that if the installation of the Halifax Commission is not immediately proceeded with, steps will be taken to exclude American citizens from participation in the Canadian inshore fisheries;

The second, a renewal of our demands at Washington for a fulfilment of the Fishery Articles; in short, working in the same groove until we gain our point.

With regard to the adoption of the first course, grave considerations present themselves to my mind.

It would excite great, perhaps exaggerated, ferment in the United States; which I cannot believe would be to the advantage either of Imperial or Colonial interests.

It would furnish a weapon to the Republican party during this presidential election year with which to create political capital, and embarrass rather than further, our cause.

It would endanger a settlement of the Fishery question in the manner stipulated by the Treaty of Washington.

It would necessitate the resumption on the part of Canada of those police regulations for the protection of her fisheries, which were found an onerous burden on her finances.

It would probably involve the reimposition by the United States of the duties on fish and fish oil remitted by them under Article XXI of the Treaty.

Finally, it would seriously compromise the harmony of the relations at present existing between the two countries, and, in my opinion, would do more harm than good unless we are prepared to face so extreme a contingency as that of a rupture with America on the fishery question.

For these reasons I incline to the second course above indicated.

I think after so curt a declaration on the part of Mr. Fish as that contained in Sir Edward Thornton's last despatch—a declaration made without one word of comment or attempt at explanation—we should begin by insisting on an explanation of the reasons which the United States' Government consider to justify their present policy of mixing up the question of the fisheries with that of the Three Rules.

I also think in bringing to Mr. Fish's notice the dissatisfaction felt by Her Majesty's

\* See No. 24 in "Correspondence respecting the Three Rules" (F.O. No. 2794).

Government at that determination, his attention might be called to the fact that the use of the Canadian fishing grounds were accorded to the citizens of the United States as soon as possible after the Treaty of Washington was signed, which act elicited at the time the expression of satisfaction on the part of the American Government as being one of a liberal and friendly nature.

In drawing up the accompanying Memorandum, you will observe that I have paid particular attention to show clearly how the Treaty of Washington is divided into four separate and distinct parts, the Articles respecting which have been carried out by separate and independent methods. I have made it as concise as possible, and if any repetitions occur they have been introduced for the sake of clearness.

I can well conceive the indignation that will be felt at Ottawa when the Dominion Government are made acquainted with the contents of Sir Edward's last despatch.

But the Canadians cannot accuse us of sacrificing their interests or of apathy in looking after them.

We have not been idle, indeed, we have done and are doing the best we can for them, nor can they be unmindful of the fact that a couple of years were lost by my predecessor in the agency who was induced by Mr. George Brown, one of their leading statesman, to follow the *ignis fatuus* of a renewal of reciprocity Treaty and go to Washington. The idea was a Canadian one, and a very favourite one too, particularly amongst that section of the community living in Ontario, the most important province of Canada, where the prevailing wish is to acquire a market "across the border" for their lumber, wheat, and cattle. These Western Canadians supply themselves with fish from their own lakes and rivers, and do not take as lively an interest as one would suppose in matters concerning the maritime provinces which, from their great distance, are little known to them.

Believe me, &c.

(Signed) FRANCIS C. FORD.

Inclosure in No. 155.

*Memorandum.*

*Foreign Office, April 1, 1876.*

THE Joint High Commission which met at Washington on the 27th of February, 1871, was appointed to consider the settlement of all questions then at issue between Great Britain and the United States. These questions were four in number, and were always deliberated upon, as far as possible, separately during the meetings of the Commission; and in the Treaty of Washington of the 8th of May, 1871, negotiated by that Commission, are provided for by separate and distinct Articles, as follows:—

Articles I to XI inclusive provide for the settlement of the claims known as the Alabama Claims.

Articles XII to XVII inclusive provide for the settlement of all claims on the part of corporations, companies, or private individuals arising out of acts committed during the period between the 13th of April, 1861, and the 9th of April, 1865, not being claims growing out of the acts of the vessels referred to in Article I.

Articles XVIII to XXXIII inclusive relate to the Fisheries, Customs, and Navigation questions between the United States and the British North American Provinces.

Articles XXXIII to XLII inclusive provide for the settlement of the San Juan boundary.

The Treaty is markedly divided into four sections, shown above, which deal with separate and distinct questions, and provide for their settlement in different methods, expressly calculated to meet the circumstances of each case separately, without reference to or connection with the settlement of any of the others.

The manner in which these questions were taken separately in the deliberations of the Joint High Commission, the provisions for their settlement by separate and distinct Articles, the independent manner in which these Articles (with the exception of those relating to fisheries, &c.), have since at different periods been carried out, as well as the whole tenor of any correspondence relating to the mode of giving them effect, all point irresistibly to the conclusion that they have always been held by the Governments of both countries, both before and since the signature of the Treaty, to be entirely unconnected with each other.

The following précis of correspondence relating to each of these four questions will demonstrate the truth of this assertion:—

I.—The “Alabama” Claims, and the History of the Three Rules Question.

In conformity with the stipulations of Articles I to XI inclusive, a Commission met at Geneva on the 15th December, 1871, and terminated its labours on the 14th September, 1872. The result was an award against Great Britain of a sum of 3,000,000*l.*, which was duly paid on the 9th of September, 1873.

The substance of the correspondence which has taken place on the question of the Three Rules may be here briefly stated, as it forms an integral part of the history of this portion of the Washington Treaty:—

At the Conferences held on the 9th, 10th, 13th, and 14th of March, 1871, the Joint High Commission considered the form of the declaration of principles or rules which the American Commissioners desired to see adopted for the instruction of the Arbitrator, and laid down for observance by the two Governments in future. At the Conference held on the 5th of April, the British Commissioners stated that they were instructed to declare that Her Majesty’s Government could not assent to the proposed Rules as a statement of principles of international law which were in force at the time when the Alabama Claims arose, but that Her Majesty’s Government, in order to evince its desire of strengthening the friendly relations between the two countries, and of making satisfactory provision for the future, agreed that, in deciding the questions between the two countries arising out of those claims, the Arbitrators should assume that Her Majesty’s Government had undertaken to act upon the principles set forth in the rules which the American Commissioners had proposed, namely:

That a neutral Government is bound first to use due diligence to prevent the fitting out, arming, or equipping within its jurisdiction of any vessel which it has reasonable ground to believe is intended to cruize or carry on war against a Power with which it is at peace; and also to use like diligence to prevent the departure from its jurisdiction of any vessel intended to cruize or carry on war as above, such vessel having been specially adapted, in whole or in part, within such jurisdiction, to warlike use.

Secondly, not to permit or suffer either belligerent to make use of its ports or waters as the base of naval operations against the other, or for the purpose of the renewal or augmentation of military supplies or arms, or the recruitment of men.

Thirdly, to exercise due diligence in its own ports or waters, and, as to all persons within its jurisdiction, to prevent any violation of the foregoing obligations and duties.

These Three Rules were subsequently embodied in the Treaty signed at Washington, May 8, 1871, and constituted the VIth Article of that Treaty, and it was agreed at the same time to observe them, as between the two Governments in future, and to bring them to the knowledge of other Maritime Powers, and to invite them to accede to them.

Shortly after the insertion of these Rules in the Washington Treaty, a discussion arose between Her Majesty’s Government and that of the United States, respecting the true import of the Second Rule, and the exact terms in which a draft note to the Maritime Powers should be couched.

Her Majesty’s Government understood the Second Rule as not prohibiting the sale *or exportation* of military supplies or arms from neutral ports or waters in the ordinary course of commerce for the use of a belligerent Power; whereas—

General Schenck, who had recently arrived in London as American Minister, informed Lord Granville, on the 12th of June, 1871, that the President understood it as not preventing the *open* sale of arms and military supplies in the ordinary course of commerce.

The above words “*or exportation*” and “*open*” have been italicised, as they formed the subject of a long correspondence.

The United States’ Government objected to the words “*or exportation*,” and Her Majesty’s Government declined to accept the word “*open*.” There were other alterations that occurred from time to time whilst the draft notes to be submitted to the Maritime Powers were being drawn up, but they were unimportant, and referred more to style than matter.

Lord Granville, on the 5th of October, 1871, forwarded to Sir E. Thornton an amended draft note for communication to the Maritime Powers, and signified his intention of no longer insisting on the insertion of the disputed words, “*or exportation*.” This amended draft note became the subject of fresh correspondence, for Mr. Fish, on the 9th November, 1871, insisted on retaining the word “*open*,” which he considered desirable on the ground that it would be difficult for the respective Governments to be always and in every case held responsible for the clandestine acts of unscrupulous traders.



On the 23rd of December, 1871, Lord Granville, in a despatch to Sir E. Thornton, says that the effect of the insertion of the word "open," would be to leave the two Governments responsible to the third Power for the clandestine dealings of their subjects and citizens. This despatch Sir E. Thornton was instructed to read to Mr. Fish and leave a copy of it with him, and its date should be kept in mind, as it will be frequently alluded to.

Fifteen months now elapsed before the question of the Three Rules was again brought forward, when, on the 23rd of April, 1873, Mr. Fish inquired of Sir E. Thornton what Her Majesty's Government intended doing with regard to bringing them to the notice of the Maritime Powers. Sir E. Thornton reminded Mr. Fish that the last communication on the subject had been made by the British Government, and had remained unanswered. Mr. Fish then notified his desire to reopen the question, which was duly reported to Lord Granville.

On the 22nd of May, 1873, his Lordship informed Sir E. Thornton that the question had become more complicated since the interruption that had taken place in its discussion with the Government of the United States, and his Lordship added that the debates in Parliament had shown how impossible it was for Her Majesty's Government to lay the Rules without comment before other nations for their acceptance, and that even if the British Government were ready to do so, the United States and ourselves would be met at once by the question "are you yourselves agreed upon the meaning of the Rules to which you ask our assent?" His Lordship believed that the Three Rules would be rejected by the Great Powers.

On the 10th of June, 1873, Mr. Fish expressed to Sir E. Thornton his disappointment that Lord Granville would not consent to submit the Three Rules even at the risk of their being rejected. He denied the existence of any important difference of opinion between the two Governments as to their meaning, whatever different interpretation had been given them during the Geneva Arbitration by the respective Counsel of the two countries.

On the 14th of June, 1873, Mr. Fish suddenly inquired of Sir E. Thornton when he was going to answer his last note relating to the communication of the Three Rules to the Maritime Powers, which had remained without a reply. Sir E. Thornton asked him what note he alluded to, saying, at the same time, that he did not remember any that had remained unanswered, but was, on the contrary, under the impression that Mr. Fish had not communicated to him the decision at which his Government had arrived in reply to Lord Granville's despatch of the 23rd of December, 1871, which he had been instructed to read to him and also to deliver him a copy of.

Mr. Fish thereupon asserted that the reading to him a despatch, and leaving him a copy of that despatch, did not constitute an official communication of the contents of that despatch. The note he alluded to as having remained unanswered was one he had addressed on the 3rd of November, 1871, to Her Majesty's Chargé d'Affaires at Washington, in which he transmitted to him a counter-draft of a note for presentation to the Maritime Powers.

Four months after this occurrence, on the 14th of October, 1873, General Schenk called at the Foreign Office, and intimated Mr. Fish's desire to recall attention to the question of communicating the Three Rules to the Maritime Powers. This, he said, had come to a standstill on a point of etiquette, and he added, "Let us do something; either submit the Rules with or without comment."

Lord Granville, in a despatch addressed to the General on the 25th of October, 1873, states that he agrees with Mr. Fish in that it is expedient the two Governments should decide on the course they will pursue with regard to the submission of the Three Rules to the Maritime Powers. Her Majesty's Government would think it necessary to accompany such a submission with a comment, and they could not in such comment adopt all the principles laid down by the Tribunal of Geneva. This determination they had already made known in public, and it was probably known to the Government of the United States. Both Governments agree that it is probable that all the Maritime Powers would not accept the Three Rules. Such a refusal would lose much of its importance if the two Governments could agree on the mode in which the two Governments could, with most dignity as regarded themselves, and with the greatest advantage for the future, make the submission. Her Majesty's Government would give careful consideration to anything suggested on this head by the Government of the United States, in the hope of coming to a satisfactory conclusion.

On the 1st November, 1873, his Lordship supplemented the above declaration in a Memorandum to the following effect:—"I did not mean that Her Majesty's Government would in any way propose to fix (without the full concurrence of the Government of



the United States) any particular interpretation of the Rules or any part of them, but they would think it necessary to guard themselves against any inference which might possibly be drawn from some parts of the Geneva Award; that consequences are involved in the Rules which they have never intended."

Almost immediately after this Memorandum was written, the Liberal Government went out of office, and the question of the Three Rules remained in abeyance until fourteen months afterwards, when, on the 22nd of March, 1875, Sir E. Thornton wrote to Lord Derby that Mr. Fish had, on the 17th of that month, inquired of him what steps Her Majesty's Government intended to take with regard to the submission of the Three Rules to the Maritime Powers, and that as a matter of dignity it was incumbent on them to carry out that Treaty stipulation.

Lord Derby writing to Sir E. Thornton on the 10th of April, 1875, stated that Her Majesty's Government had not felt it necessary to raise any question on the matter, which had not been adverted to by the Government of the United States since Lord Granville expressed his opinion as to the course which might be pursued upon it at an interview which he had with General Schenck on the 18th February, 1874. Her Majesty's Government did not doubt that Lord Granville's observations were duly communicated by General Schenck to the Government of the United States, and the despatch to Sir E. Thornton recording them had been published in the correspondence presented to Parliament. It was, therefore, open to the United States' Government to have replied or to have made fresh overtures had they deemed it desirable with regard to the communication of the Three Rules to the Maritime Powers. In the absence of any such overtures on the part of the United States' Government, Her Majesty's Government had been content to abstain from any action in the matter.

Her Majesty's Government accordingly awaited a formal official communication from Mr. Fish before giving Sir E. Thornton any instructions on the subject.

We now enter on a new phase of the question of the Three Rules, namely, the forced imposition into it on the part of Mr. Fish of a connection between it and that of the installation of the Halifax Commission.

On the 28th of June, 1875, Sir E. Thornton reported that whilst engaged in conversation with Mr. Fish as to the appointment of the American Commissioner, Mr. Fish turned the subject, and abruptly inquired when and in what manner Her Majesty's Government were going to submit the Three Rules to the Maritime Powers. He did not think, he said, that Her Majesty's Government was justified in urging that of the United States to carry out the arrangement for the appointment of a Third Commissioner to the Halifax Commission until it should accede to the repeated request of the United States' Government with regard to the submission of the Three Rules, nor could he agree with an observation made by Sir E. Thornton that the question of the Three Rules had nothing to do with the Halifax Commission.

On Sir E. Thornton reminding him that on the subject of the Three Rules Her Majesty's Government were still in expectation of receiving an answer from the United States' Government to the suggestion contained in Lord Granville's despatch of the 23rd December, 1871, Mr. Fish repeated his former statement to the effect that the last official communication that had passed on the matter was the note he had addressed to Her Majesty's Chargé d'Affaires on the 3rd November, 1871, which he asserted had remained unanswered, and to which he had a right to expect a reply. It was his opinion that the two Governments had committed themselves before the world to submit the Three Rules to the Maritime Powers; but if Her Majesty's Government thought otherwise, let it say that it declined to carry out the agreement entered into, and at least his note would have been answered.

With reference to the foregoing incident of the unexpected connection sought to be established by Mr. Fish of the question of the Three Rules with that of the Halifax Commission, Lord Derby wrote on the 15th of July, 1875, to Sir E. Thornton, stating that Mr. Fish's remarks being of an informal character, Her Majesty's Government would take no notice of them, but authorized Sir E. Thornton, in case Mr. Fish should revert to the Three Rules in connection with the Fishery Commission, to "state positively that Her Majesty's Government cannot consent to allow the question of the submission of the Three Rules to the Maritime Powers to be raised in relation to the appointment of the Fishery Commission at Halifax. The two matters are entirely distinct, and must be kept separate."

An interval of six months elapsed before Mr. Fish made further reference to the subject.

On the 20th of January, 1876, Sir E. Thornton inquired of Mr. Fish whether the

President had decided upon the American Commissioner for the Halifax Commission, and received the reply that he, Mr. Fish, had been instructed to communicate with a gentleman on the subject. He then expressed the hope that Her Majesty's Government would come to an agreement with that of the United States as to the note which was to be addressed to the principal Maritime Powers submitting the Three Rules. "This was as much a stipulation of the Treaty," he said, "as was the establishment of the Fishery Commission, and if we did not mean to carry it out, we had better come to an agreement that it should be annulled."

A month later, on the 21st of February, 1876, on Sir E. Thornton again inquiring as to the appointment of the American Commissioner, he was met by the counterquery as to when Her Majesty's Government were going to submit the Three Rules; and Mr. Fish insinuated, without positively saying so, that the United States' Government might make its proceeding with the Halifax Commission conditional upon the submission of the Three Rules to the Maritime Powers.

On Sir E. Thornton remarking that the Three Rules had nothing to do with the nomination of a Commissioner, Mr. Fish rejoined that his Government might perhaps waive such a condition as he had mentioned, yet it desired that all the stipulations of the Treaty should be carried out without delay, including the question of the Three Rules.

On the 9th of March, 1876, Sir E. Thornton, in a telegraphic despatch to Lord Derby, informed his Lordship that Mr. Fish had that day told him officially that the United States' Government could not proceed with the arrangements for the Fisheries Commission unless Her Majesty's Government would assent to arrange for the submission of the Three Rules to the Maritime Powers.

This telegraphic despatch has been subsequently confirmed by Sir E. Thornton's despatch No. 66 of the 13th of March, which is the one at present under consideration.

## II.—*Claims of Companies, Corporations, or Private Individuals.*

In conformity with the stipulations of Articles XII to XVII, inclusive, a Commission was constituted which met at Washington September 26, 1871, and concluded its labours on the 25th of September, 1873. By it all claims referred to in these Articles were finally adjudicated upon and settled.

## III.—*Fishery, Customs, and Navigation Articles. Articles XVIII to XXXIII inclusive.*

The Acts necessary to enable these Articles to be carried into effect were passed by the British and Colonial Legislatures in 1872, and by the United States' Congress on the 25th of February, 1873, and a Proclamation dated Washington, June 1, 1873, fixes the 1st of July of that year as the day on which they should come formally into operation.

Some difficulties having arisen in the case of Newfoundland, it was not until the 28th of March, 1874, that the necessary Act was passed by that Colony; and a Proclamation issued on the 29th of May, 1874, fixes the 1st of June of that year as the day on which the Articles respecting Newfoundland should come into effect.

In the case of Canada it was deemed advisable to admit American fishermen to the practical use of the privilege specified in the Treaty in advance of the formal legislative Acts necessary for that purpose. An official communication to that effect was made early in 1873, and by a Circular from the United States' Treasury, dated 1st of April, 1873, American fishermen at once availed themselves of the freedom of Canadian in-shore waters. This was fitly acknowledged by the United States' Government as a "liberal and friendly" act on the part of the Dominion Government. A similar concession had been previously made by the Government of Prince Edward Island, which admitted American fishermen to the practical freedom of their waters on the 24th of July, 1871.

The Treaty of Washington having been ratified it became necessary to take steps for the constitution of the Commission appointed to meet at Halifax in the manner prescribed by the Treaty, and the following is a history, in consecutive order, of the negotiations which have taken place on the subject:—

Mr. Fish had expressed on the 12th of May, 1873, to Sir E. Thornton "his earnest hope that the two Governments might agree as soon as possible upon the Third Commissioner to be appointed in accordance with the provisions of the XXIIIrd Article of the Treaty of May 8, 1871, in order that the Commission might meet at Halifax on or as soon as might be after the 1st of July, 1873."

This language Mr. Fish repeated on several occasions, as reported in Sir E. Thornton's despatches No. 112, of March 10, 1873; No. 250, of 9th June, 1873; and No. 382, of September 12, 1873, which last incloses copy of a note from Mr. Fish dated the 6th September, in which it is stated that "the President is extremely anxious for the organization of the Commission as contemplated by the Treaty."

Attention is strongly directed to the following point, that this language was held without any reference to the question of the 'Three Rules, and at a time when all correspondence between the two Governments respecting them had ceased since the 16th of January, 1872, when (as stated in another portion of this Memorandum) Sir E. Thornton had read to Mr. Fish Lord Granville's despatch of 23rd December, 1871, and had left a copy of it with him. It is evident, therefore, that at this time the United States' Government did not consider that these two subjects had any connection with each other.

Efforts were now made by both Governments to select some gentleman to act as Third Commissioner, who would be agreeable to both parties, within the three months specified by Article XXIII. Her Majesty's Government proposed, in a telegraphic despatch addressed to Sir E. Thornton, 25th June, 1873, that the British and American Ministers at the Hague should conjointly select some Dutch gentleman to act, or else, and this was suggested at the instance of the Dominion Government (9th August, 1873), that Mr. Delfosse, the Belgian Minister at Washington, should be appointed. The United States' Government suggested choosing from the Mexican, Russian, Brazilian, Spanish, French, or Netherlands Ministers at Washington.

None of the above-named gentlemen, however, proved acceptable to both parties. The Government of the Dominion strongly objected to any of those proposed by the United States' Government, and the United States' Government declined to accept those suggested by Her Majesty's Government.

Endeavours were, however, still made by Her Majesty's Government to meet the anxious wish of the United States' Government, and to select a Third Commissioner without having recourse to the Austrian Ambassador in London (see Draft to Colonial Office of 15th September, 1873). It being found difficult to suggest anyone likely to meet the views of both Governments, Sir E. Thornton was instructed, on the 24th of September, 1873, to renew the proposal that the British and American Minister at the Hague should endeavour to select some Dutch gentleman; but this method of nomination was again declined, October 1, 1873.

The three months mentioned in Article XXIII of the Treaty of Washington having expired on the 30th of September, 1873, it became evident that according to the letter of the Treaty the selection could now only be made by the Austrian Ambassador in London, and instructions to that effect were sent to Sir E. Thornton on the 11th of October, 1873, who was also to suggest that an identic note should be agreed upon by both Governments requesting the Austrian Government to authorize their Ambassador to proceed with the nomination.

These instructions were confirmed by the opinion of the Law Officers on the 30th of October, 1873, and were repeated on the 10th November, 1873.

During the course of these negotiations Her Majesty's Government had appointed, on the 11th July, 1873, Mr. Rothery, to be their agent at the Commission to be held at Halifax, and in September, 1873, he proceeded to Canada for the purpose of preparing the case of Her Majesty's Government. He also visited the United States, and eventually, with the concurrence of the Dominion Government, suggested that a proposal should be made to the United States' Government to substitute an arrangement with respect to reciprocal free trade between Canada and the United States for the award of the Commission as provided under Article XXII of the Treaty, it being always distinctly understood that in the case of the failure of such negotiations the right of Her Majesty's Government with respect to the appointment of the Commissioner should in no way be prejudiced (Lord Derby to Sir E. Thornton, 3rd July, 1874).

This proposal was accepted by the United States' Government, and a draft Treaty was agreed upon for submission to the Senate. This Draft Treaty was, however, rejected by the Senate on the 3rd of February, 1875, and shortly after its rejection, the Government of the Dominion having passed an Order in Council expressing their desire to have the Fishery Commission revived, instructions were sent to Sir E. Thornton on the 10th of April, 1875, to request Mr. Fish to take the necessary steps for its constitution in the manner prescribed by the Treaty, and suggesting that an identic note should be addressed to the Austrian Government for that purpose. These instructions were embodied in a note from Sir E. Thornton to Mr. Cadwalader, then acting Secretary of State in the absence of Mr. Fish, and dated 21st of April, 1875.

In conversation with Mr. Fish on the 6th of May, 1875, Sir E. Thornton having pressed for an answer to this note, Mr. Fish asked whether the two Governments could not agree upon a third Commissioner, to which Sir Edward replied that that was now impossible, and that it would be a violation of the Treaty. Mr. Fish answered that that was not his view, and proceeded at some length to say that he thought Her Majesty's Government had not done their best to agree upon a third Commissioner before the three months allowed by the Treaty had elapsed.

Mr. Rothery having resigned his appointment as agent to the Commission, Mr. F. C. Ford was appointed to that post, and Sir Alexander Galt was appointed British Commissioner. Both these gentlemen were gazetted on the 26th of July, 1875, and their appointments were notified to Mr. Fish, 3rd August, 1875, who in various conversations attributed the delay on the part of his Government to a difficulty in finding Mr. Clifford, whom they wished to nominate as their Commissioner. Mr. Clifford, however, died, and Mr. Fish stated that he had written to a gentleman to accept the office, and was daily expecting an answer. The first hint of any connection being made between the question of submitting the Three Rules, and that of constituting the Halifax Commission occurred in a conversation between Sir E. Thornton and Mr. Fish on the 24th of June, 1875, and what has since passed on the subject is stated in Part I of this Memorandum.

IV.—*The San Juan Boundary. Articles XXXIV to XLIV inclusive.*

In conformity with the stipulations of these Articles the case of Her Majesty's Government respecting the San Juan Boundary was submitted to His Majesty the Emperor of Germany, through Her Majesty's Ambassador at Berlin, on the 13th of December, 1871, and the other documents necessary to complete the case on both sides having been also submitted, His Imperial Majesty made an award, dated October 11, 1872, by which the case was finally decided and settled.

(Signed) F. C. FORD.

No. 156.

*Lord Tenterden to the Secretary to the Admiralty.*

Sir,

*Foreign Office, April 27, 1876.*

WITH reference to my letter of this day's date, respecting the instructions to be given to the commanders of Her Majesty's cruisers on the coast of Newfoundland, I am directed by the Earl of Derby to request you to state to the Lords Commissioners of the Admiralty that his Lordship presumes that these instructions will include directions to obtain if possible the information specified in my letter of the 29th of December last, which will be equally valuable for the purposes of the Halifax Commission, with respect to Newfoundland, as to other parts of the British North American provinces.

I am, &c.

(Signed) TENTERDEN.

No. 157.

*Lord Tenterden to Mr. Herbert.*

Sir,

*Foreign Office, April 27, 1876.*

WITH reference to my letter of this day's date, concurring in the reply which the Earl of Carnarvon proposes to make to the Board of Admiralty, respecting the instructions to be given to the commanders of Her Majesty's cruisers on the coast of Newfoundland, I am directed by the Earl of Derby to inform you that his Lordship has stated to the Lords Commissioners of the Admiralty that it is presumed these instructions will include directions to the commanders of Her Majesty's cruisers to collect, if possible, any information which may be of use to the Halifax Commission.

I am to inclose a copy of a letter which, by Lord Derby's direction, was addressed to the Admiralty in December last, specifying the points on which information is especially desired, and which will be equally valuable for the purposes of the Halifax

Commission, with regard to Newfoundland, as to other parts of the British North American provinces.

I am, &c.  
(Signed) TENTERDEN.

No. 158.

*Sir E. Thornton to the Earl of Derby.—(Received May 9.)*

(Telegraphic.)

*Philadelphia, May 9, 1876.*

I RECEIVED a note from Mr. Fish, in which he says that he is ready to confer with me as to an identic note to be addressed to the Austrian Government, relative to appointment of third Commissioner to the Halifax Commission. He then proceeds to express the wish of the United States' Government, that the Three Rules should be submitted to the Maritime Powers, so that all the remaining stipulations of the Treaty may be carried out. But he does not make the latter a condition of the former. Copy of note goes by to-night's bag.

No. 159.

*Lord Tenterden to Mr. Herbert.*

(Confidential.)

Sir,

*Foreign Office, May 10, 1876.*

WITH reference to my letter of the 9th instant, I am directed by the Earl of Derby to transmit to you, to be laid before the Earl of Carnarvon, a copy of a telegraphic despatch from Her Majesty's Minister at Washington, on the subject of the Fisheries Commission and the Three Rules.\*

I am, &c.  
(Signed) TENTERDEN.

No. 160.

*The Earl of Derby to Sir E. Thornton.*

(No. 132.)

Sir,

*Foreign Office, May 13, 1876.*

WITH reference to your telegram of the 9th instant, reporting that Mr. Fish has expressed his willingness to confer with you as to an identic note to be addressed to the Austrian Government, relative to the appointment of a third Commissioner to the Halifax Commission, I transmit to you herewith a draft which has been prepared at this office for your guidance, and I have to instruct you to express the hope of Her Majesty's Government that the United States' Representative at Vienna may at once receive instructions to act conjointly with his British colleague in addressing a note to Count Andrassy with as little delay as possible, so as to ensure the meeting of the Commission during the ensuing summer.

You will observe that the inclosed draft states that Her Majesty's Government consider that an accurate knowledge of the English language is a necessary qualification which the Austrian Government should be requested to bear in mind in the selection of a Commissioner.

I am, &c.  
(Signed) DERBY.

Inclosure in No. 160.

*Draft of Note proposed to be addressed to Count Andrassy by the British and United States' Representatives at Vienna.*

M. le Ministre,

ARTICLES XVIII, XIX, and XXI of the Treaty of Washington of the 8th of May, 1871, of which I have the honour herewith to inclose a copy, provide for certain privileges

in respect to fisheries, and remissions of Customs duties to be granted by Great Britain and the United States respectively ; and in the XXIInd and XXIIIrd Articles of the Treaty it is further provided that—

“Inasmuch as it is asserted by the Government of Her Britannic Majesty that the privileges accorded to the citizens of the United States under Article XVIII of this Treaty are of greater value than those accorded by Articles XIX and XXI of this Treaty to the subjects of Her Britannic Majesty, and this assertion is not admitted by the Government of the United States ; it is further agreed that Commissioners shall be appointed to determine, having regard to the privileges accorded by the United States to the subjects of Her Britannic Majesty, as stated in Articles XIX and XXI of this Treaty, the amount of any compensation which, in their opinion, ought to be paid by the Government of the United States to the Government of Her Britannic Majesty in return for the privileges accorded to the citizens of the United States under Article XVIII of this Treaty ; and that any sum of money which the said Commissioners may so award shall be paid by the United States’ Government, in a gross sum, within twelve months after such award shall have been given.

“XXIII. The Commissioners referred to in the preceding Article shall be appointed in the following manner, that is to say : One Commissioner shall be named by Her Britannic Majesty, one by the President of the United States, and a third by Her Britannic Majesty and the President of the United States conjointly ; and in case the third Commissioner shall not have been so named within a period of three months from the date when this Article shall take effect, then the third Commissioner shall be named by the Representative at London of His Majesty the Emperor of Austria and King of Hungary.”

The period of three months specified in the Article above quoted having elapsed, it has become necessary to take steps for the appointment of the third Commissioner, in accordance with its provisions ; and with this view, I have received the instructions of Her Majesty’s Government to request you to invite His Imperial and Royal Majesty to be graciously pleased to instruct his Ambassador at London to undertake the duty of selecting some gentleman properly qualified to act in the capacity of third Commissioner.

In consideration of the fact that the proceedings at the Halifax Commission will be conducted in the English language, and that any evidence, documents, or oral testimony will be also in English, it appears to Her Majesty’s Government to be a necessary qualification that the third Commissioner should possess an accurate knowledge of that language.

The Commissioner appointed by Her Britannic Majesty is Sir Alexander T. Galt, K.C.B., &c., &c. ; and the Commissioner appointed by the President of the United States is

The arrangements for the constitution of the Commission being otherwise complete, I have the honour to suggest that it would be desirable that the third Commissioner should be named by the Representative at London of His Imperial and Royal Majesty as soon as may be convenient.

I have further the honour to inform you that my United States colleague has received instructions to act conjointly with me in making this request ; and he will address to you a note in similar terms to that which I have now the honour to present.

I have, &c.

No. 161.

*The Earl of Derby to Sir E. Thornton.*

(Telegraphic.)

*Foreign Office, May 13, 1876, 6:20 P.M.*

WITH reference to your telegram of the 9th instant, draft of identic note to Austrian Government is sent by to-night’s mail for your guidance. It contains a request that the third Commissioner should have an accurate knowledge of the English language.

No. 162.

*Lord Tenterden to Mr. Herbert.*

Sir,

*Foreign Office, May 15, 1876.*

WITH reference to your letter of the 12th instant, I am directed by the Earl of Derby to transmit to you, to be laid before the Earl of Carnarvon, a copy of a despatch which his Lordship addressed on the 13th instant to Her Majesty's Minister at Washington, in regard to an identic note to be addressed to the Austrian Government, relative to the appointment of a third Commissioner to the Halifax Commission.\*

I am, &c.  
(Signed) TENTERDEN.

No. 163.

*Mr. Lister to Mr. Herbert.*

Sir,

*Foreign Office, May 19, 1876.*

WITH reference to my letter of the 15th instant, I am directed by the Earl of Derby to request that you will state to the Earl of Carnarvon that Mr. Ford has suggested that it might be as well that Lord Dufferin should be informed by telegraph that Mr. Fish has expressed a willingness to proceed with the request to the Austrian Government, for the appointment of a third Commissioner, and that as the Commission may very probably be called upon to meet before long, it is very desirable that the Canadian case should be completed.

Mr. Ford suggests also that the Governor of Newfoundland should be desired by telegraph to report whether the Newfoundland case is likely soon to be ready, as no time should be lost in its transmission.

I am to add that Lord Derby concurs in these suggestions, and will be prepared, if Lord Carnarvon considers it desirable, to instruct Mr. Ford to proceed to Newfoundland, to assist in the preparation of the Newfoundland case.

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

No. 164.

*Sir E. Thornton to the Earl of Derby.—(Received May 20.)*

(No. 133.)

My Lord,

*Washington, May 8, 1876.*

I HAVE the honour to inclose copy of a note which I have received this evening from Mr. Fish, with regard to the Commission which should meet at Halifax on the question of the fisheries.

Without having time to refer to my despatches upon the subject, it appears to me that some of Mr. Fish's statements with respect to the choice of a third Commissioner are not strictly correct. It is, perhaps, not worth while to enter into a discussion with him upon that part of the matter; the fact now is that in his note he now says that he is ready at any time to confer with me as to a form of an identic note to be addressed to the Austrian Government, in order to obtain the requisite permission that the Representative of Austria-Hungary at London may proceed to make an appointment pursuant to Article XXIII of the Treaty of Washington.

Mr. Fish then proceeds to express the desire of the United States' Government that the Three Rules laid down in Article VI of that Treaty may be brought to the knowledge of the other Maritime powers, and that they might be invited to accede to them.

In this note the submission of the Three Rules is not put as a condition for proceeding with the establishment of the Commission at Halifax, although Mr. Fish says that the two questions may thus be disposed of at the same time.

I intend to go to Philadelphia to-morrow morning, but on my return to Washington I shall endeavour to induce Mr. Fish to proceed at once with the steps which may be necessary to establish the Commission at Halifax.

I have, &c.  
(Signed) EDWD. THORNTON.

## Inclosure in No. 164.

*Mr. Fish to Sir E. Thornton.*

Sir,

*Department of State, Washington, May 8, 1876.*

UPON the receipt of your letter of the 19th of July, ultimo, informing me that Her Majesty's Government had appointed Sir Alexander T. Galt to be British Commissioner, and Mr. Francis Clare Ford to be British Agent, to the Commission to meet at Halifax, in accordance with the XXIIIrd Article of the Treaty of Washington, and requesting to be furnished with the names of the persons whom the Government of the United States proposed to appoint in similar capacities on its part, I had the honour to inform you, by my note of the 30th of July ultimo, that the person designated for Commissioner on the part of the United States was absent from the country, and that it was desired to consult him before a formal notice was given of his appointment.

You will remember that, at a previous interview, I had informally and confidentially mentioned to you that the Honourable John H. Clifford, of Massachusetts, had accepted the position of Commissioner on the part of the United States. In the interval occupied by the negotiations relating to the project for a Reciprocity Convention, it had become doubtful whether Mr. Clifford would finally be able to assume his duties. He afterwards returned to the United States, and has lately died.

I have the honour now to inform you that the Honourable Ensign H. Kellogg, of Massachusetts, has been appointed the Commissioner, and the Honourable Dwight Foster, also of Massachusetts, the Agent, on the part of the United States, to the Commission to meet at Halifax, pursuant to the XXIIIrd Article of the Treaty of Washington.

In your note of April 21, 1875, it was suggested that, as the Senate had failed to approve the project for a Reciprocity Treaty submitted by your Government, the Commission should be organized in accordance with Articles XXII to XXV of the Treaty of Washington, and that steps be taken to agree upon an identic note to be addressed to the Austrian Government by the representatives of the United States and Great Britain at Vienna, that the Austrian Ambassador at London might be authorized to proceed with the nomination of a third Commissioner, in the manner provided for in the XXIIIrd Article of the Treaty. In reply to these suggestions, and as reference has also been made to the delay which has occurred in the assembling of the Commission, I have the honour to remind you that by Article XXXIII of the Treaty of Washington, Articles XVIII to XXV did not go into effect until the necessary legislation was obtained, which date, pursuant to the protocol of June, 7, 1873, was fixed on the 1st day of July, 1873.

For some weeks, indeed, some months, prior to that date, being impressed with the advisability of a nomination by the agreement of the two Governments, I had communicated to you the wish of this Government and the readiness of the President to make the effort to unite with Her Majesty's Government in the conjoint nomination of the third Commissioner, and stated that if Her Majesty's Government would name some persons, the United States would consider the names with a desire to reach an agreement, and had it been intimated that it would be agreeable that the United States should suggest names, such would readily have been done.

During this time and prior to the 1st of July, although frequent reference was made to the matter and its importance, and while your Government was possessed of the views of the United States, you informed me that you were without instructions.

Upon the 7th of July, immediately after these articles had become effective, the Acting Secretary of State addressed you a note as to the importance of an agreement, and suggested the names of a number of persons, either of whom, it was stated, would be acceptable to the United States. The substance of this note, as you informed me, was telegraphed to your Government on the 11th of July.

I had already expressed to you regret that Her Majesty's Government had not taken steps to reach an agreement, and requested that some names might be proposed on its part, but received no response until the 26th of August, when you informed me that the Government of Canada strongly objected to the appointment of the persons who had been named by the United States without assigning any reason therefor, and preferred "to resort to the alternative provided by the Treaty, namely, to leave the nomination to the Austrian Ambassador at London."

After a delay, therefore, in replying to the note of July 7, of some fifty days out of the three months provided for by the Treaty, Her Majesty's Government seemed to have remitted the matter to Canada, and practically to have abandoned an effort to reach a



conjoint nomination as contemplated by the Treaty, because Canada preferred to resort to what is termed the alternative provided by the Treaty.

With the exception of the proposal of a single name which you had previously informed your Government, after inquiry, would be unacceptable to the United States, and a proposal that a nomination might be reached in a way foreign to the Treaty (through the Ambassadors of the respective countries at the Hague), no steps were taken on the part of Great Britain to propose names or to meet the efforts of the United States in the direction provided by the Treaty; and after the expiration of the three months, although the United States was still willing to endeavour to reach an agreement, your Government declined to consider any further steps to that end.

Soon afterwards the question of a Reciprocity Treaty arose, and in the month of July, 1874, a project of such Treaty having been presented, I was informed that Her Majesty's Government desired to await the final result in reference to that instrument: and the matter so rested until the receipt of your suggestion of an identic note, to which I have referred.

I make reference to this subject, not to prolong a discussion, but because it seems proper to show how and why much delay has occurred, as well as to recall the opinion which the Government of the United States has always entertained that the XXIIIrd Article of the Treaty of Washington provided for the nomination of a third Commissioner by the two Governments, and demanded at least an actual and *bonâ fide* effort by them to reach an agreement, and contemplated a nomination by the Austrian Ambassador at London not as an alternative to be chosen at will, but only to be resorted to when a real effort to reach an agreement had been made by both parties, and had proved entirely unavailing.

While of this opinion, and while believing not only that it would have been more satisfactory had a nomination been agreed on by the two Governments, but that such was demanded by the spirit of the Treaty, the United States does not propose to interpose obstacles in carrying out these Articles of the Treaty on this ground, and I shall be ready at any time to confer with you as to a form of an identic note to be addressed to the Austrian Government, in order to obtain the requisite permission that the Representative of Austria-Hungary at London may proceed to make an appointment pursuant to Article XXIII of the Treaty of Washington.

There remains, however, another provision of the Treaty, as yet entirely unperformed. By the VIth Article, Three Rules were agreed upon as binding on a neutral Government, and applicable to the questions submitted to the arbitrators at Geneva; and in addition the two Governments agreed to observe these Rules as between themselves in future, as well as to bring them to the knowledge of other Maritime Powers, and to invite them to accede to them.

Although the agreement of the High Contracting Parties to observe these Rules as between themselves, and to bring them to the knowledge of the other Maritime Powers, and to invite them to accede to them, is contained in one paragraph—these obligations unitedly forming parts of a single engagement, absolute in its character and coming into operation immediately—no effective steps have been taken in that direction. Whatever delay has necessarily occurred as to other Articles, there appears to be no reason for delay in reference to that portion of Article VI to which I have referred.

In informing you, therefore, of the readiness of the Government of the United States to proceed with the nomination of a Third Commissioner, I have to request that you will inform your Government that the United States desires that the requisite steps be taken at the same time, that the Three Rules laid down in Article VI of the Treaty of Washington may be brought to the knowledge of the other Maritime Powers, and that the invitation provided for may be extended to them to accede thereto.

In so doing the two Governments will be enabled at the same time to dispose of the two questions under the Treaty of Washington, which are still outstanding.

I have, &c.

(Signed) HAMILTON FISH.

No. 165.

*Lord Tenterden to Mr. Herbert.*

Sir, *Foreign Office, May 20, 1876.*  
 WITH reference to my letter of the 15th instant, I am directed by the Earl of Derby to transmit to you, to be laid before the Earl of Carnarvon, a copy of a despatch

from Her Majesty's Minister at Washington, in regard to the identic note to be addressed to the Austrian Government, with a view to the appointment of a third Commissioner to the Halifax Commission.\*

I am, &c.  
(Signed) TENTERDEN.

No. 166.

*Mr. Herbert to Lord Tenterden.—(Received May 26.)*

My Lord,

*Downing Street, May 25, 1876.*

I AM directed by the Earl of Carnarvon to acknowledge the receipt of your letter of the 20th instant, inclosing a despatch from Her Majesty's Minister at Washington, with a note which he has received from Mr. Fish respecting the identic note proposed to be addressed to the Austrian Government, with a view to the appointment of a third Commissioner to the Halifax Commission.

Lord Carnarvon would be glad to be informed of any action which Lord Derby may purpose to take in consequence of the wish expressed by Mr. Fish, to the effect that the requisite steps should be taken "at the same time" that the Three Rules should be brought to the knowledge of the other Maritime Powers.

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

No. 167.

*Mr. Herbert to Lord Tenterden.—(Received May 26.)*

My Lord,

*Downing Street, May 26, 1876.*

I AM directed by the Earl of Carnarvon to acknowledge the receipt of your letter of the 19th instant, respecting certain suggestions made by Mr. Ford as to the preparation of the Canadian and Newfoundland Cases, in view of the probability of an early meeting of the Fishery Commission at Halifax, under the Washington Treaty.

In reply, Lord Carnarvon desires me to inclose the paraphrase of two telegrams which have been sent to the Governor-General of Canada and to the Governor of Newfoundland respectively.

Lord Derby will observe that the Governor of Newfoundland has been requested to state whether it is desired that Mr. Ford should proceed to that Colony to assist in the preparation of the Newfoundland Case.

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

Inclosure 1 in No. 167.

*Paraphrase of a Telegram addressed to the Governor-General of Canada, May 24, 1876.*

**HALIFAX FISHERY COMMISSION.**

THE Canadian observations on the draft Case should be completed, as the United States' Government now appear to be prepared to settle the identic note, asking the Austro-Hungarian Government to appoint a third Commissioner, and the Commission may therefore soon meet.

Inclosure 2 in No. 167.

*Paraphrase of a Telegram addressed to the Governor of Newfoundland, May 24, 1876.*

THERE appears to be some prospect of an early meeting of the Halifax Fishery Commission. Can the Case of Newfoundland be sent home early, or shall Mr. Ford visit the Colony to assist your Government in its preparation?

No. 168.

*The Earl of Derby to Sir E. Thornton.*

(No. 152.)

Sir,

*Foreign Office, May 29, 1876,*

I TRANSMIT to you, for your information, the accompanying copy of a letter from the Colonial Office, inclosing the paraphrase of telegrams addressed to the Governor-General of Canada and to the Governor of Newfoundland, embodying certain suggestions made by Mr. Ford with reference to the preparation of the Canadian and Newfoundland cases in view of the probability of an early meeting of the Fishery Commission at Halifax.\*

I am, &c.  
(Signed) DERBY.

No. 169.

*Mr. Herbert to Lord Tenterden.—(Received May 30.)*

My Lord,

*Downing Street, May 29, 1876.*

WITH reference to my letter of the 26th instant, I am directed by the Earl of Carnarvon to transmit to you, for the information of the Earl of Derby, a paraphrase of a telegram received from the Governor of Newfoundland, relating to the preparation of the Case for that Government for the Fishery Commission at Halifax, and to the proposal that Mr. Ford should visit Newfoundland.

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

Inclosure in No. 169.

*Paraphrase of a Telegram from the Governor of Newfoundland to the Earl of Carnarvon.*

HALIFAX FISHERY COMMISSION.

OUR Case will be sent, but Ministry consider Mr. Ford's assistance desirable and important, and hope he will visit Newfoundland.

No. 170.

*Lord Tenterden to Mr. Herbert.*

Sir,

*Foreign Office, May 30, 1876.*

I HAVE laid before the Earl of Derby your letter of the 25th instant, inquiring what action his Lordship proposes to take in consequence of the wish expressed by Mr. Fish in his note of the 8th instant, as to the communication of the Three Rules to the maritime Powers, and I am to state to you, for the information of the Earl of Carnarvon, that the draft of identic note respecting the appointment of the third Fisheries Commissioner has, as his Lordship is aware, been sent to Sir E. Thornton, but that the course to be pursued with regard to the Three Rules, must be considered separately, and that no answer has yet been received as to the identic note.

I am, &c.  
(Signed) TENTERDEN.

No. 171.

*Lord Tenterden to Mr. Herbert.*

Sir,

*Foreign Office, June 1, 1876.*

I HAVE laid before the Earl of Derby your letter of the 29th ultimo, forwarding a paraphrase of a telegram from the Governor of Newfoundland stating that his Ministers

\* No. 167.

wish to have Mr. Ford's assistance in preparing their case for the Fisheries Commission, and I am directed by his Lordship to request you to inform the Earl of Carnarvon that he proposes to instruct Mr. Ford to go out to Newfoundland by the steamer leaving Liverpool on the 13th instant.

I am to suggest that Lord Dufferin and Sir John Glover should be informed of the date of Mr. Ford's intended departure.

I am, &c.  
(Signed) TENTERDEN.

No. 172.

*The Earl of Derby to Sir E. Thornton.*

(No. 158.)

Sir,

*Foreign Office, June 1, 1876.*

THE Newfoundland Government having expressed a wish for Mr. Ford's assistance in preferring their case for the Fisheries Commission, I have instructed him to proceed to that Colony by the steamer leaving Liverpool on the 13th instant.

I am, &c.  
(Signed) DERBY.

No. 173.

*Mr. Malcolm to Lord Tenterden.—(Received June 8.)*

My Lord,

*Downing Street, June 7, 1876.*

I AM directed by the Earl of Carnarvon to acknowledge the receipt of your letter of the 1st instant, stating that Lord Derby proposes to instruct Mr. Ford to proceed to Newfoundland by the mail of the 13th instant, to assist the Government of that Colony in the preparation of their case for the Halifax Fishery Commission.

Lord Carnarvon desires me to state that he concurs in the proposed instruction to Mr. Ford, and he has informed the Governor of Newfoundland by telegram, and the Governor-General of Canada by despatch, of Mr. Ford's approaching visit.

I am, &c.  
(Signed) W. R. MALCOLM.

No. 174.

*Sir E. Thornton to the Earl of Derby.—(Received June 8, at night.)*

(Telegraphic.)

*Washington, June 8, 1876.*

MR. FISH has informed me to-day that, before he can agree upon the joint note to the Austrian Government relative to the Third Commissioner, he hopes to receive from me an answer to his note of the 8th ultimo, particularly with regard to the Three Rules, copy of which was inclosed in my despatch No. 133 of the 8th ultimo.

No. 175.

*Lord Tenterden to Mr. Herbert.*

(Confidential.)

Sir,

*Foreign Office, June 9, 1876.*

I AM directed by the Earl of Derby to transmit to you, to be laid before the Earl of Carnarvon, a copy of a telegraphic despatch from Her Majesty's Minister at Washington, in regard to the identic note to be addressed to the Austrian Government respecting the Halifax Fishery Commission.\*

I am, &c.  
(Signed) TENTERDEN.

No. 176.

*Mr. Lister to Mr. Ford.*

Sir,

*Foreign Office, June 10, 1876.*

THE Earl of Derby has decided, after consideration, in communication with Her Majesty's Secretary of State for the Colonies, that it is advisable that you should proceed to Newfoundland to assist the Government of that Colony in the preparation of their Case for the Halifax Fishery Commission, and I am accordingly to instruct you to leave by the mail of 13th instant for that purpose.

Mr. Bergne will accompany you on this visit.

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

No. 177.

*Mr. Ford to Mr. Lister.—(Received June 10.)*

Sir,

*Foreign Office, June 10, 1876.*

IN reply to your letter of this day's date, instructing me to leave England by the mail of the 13th instant, for St. John's, Newfoundland, I have the honour to state that I shall proceed, accompanied by Mr. Bergne, to Newfoundland on the above-mentioned day.

I have, &c.  
(Signed) FRANCIS CLARE FORD.

No. 178.

*Mr. Herbert to Lord Tenterden.—(Received June 14.)*

(Confidential.)

My Lord,

*Downing Street, June 13, 1876.*

I AM directed by the Earl of Carnarvon to acknowledge the receipt of your letter of the 9th instant, inclosing the decypher of a telegram from Her Majesty's Minister at Washington in regard to the identic note to be addressed to the Austrian Government respecting the Halifax Fishery Commission.

Lord Carnarvon is very anxious to know what course the Earl of Derby would now propose to take with respect to the Three Rules, and will be glad, if it is found possible, to come to some arrangement which may prevent Her Majesty's Government from being subjected to the imputation of having consented to the postponement of a settlement which the Canadian Government continues urgently to press for.

Mr. Blake, the Minister of Justice of the Dominion, is expected to arrive in England in a few days in order to urge this matter, among others, upon the consideration of Her Majesty's Government.

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

No. 179.

*Lord Tenterden to Mr. Herbert.*

(Confidential.)

Sir,

*Foreign Office, June 21, 1876.*

I AM directed by the Earl of Derby to acknowledge the receipt of your letter, marked Confidential, of the 13th instant, stating, with reference to the Halifax Fishery Commission, that the Earl of Carnarvon is very anxious to know what course Lord Derby would now propose to take with respect to the Three Rules, and will be glad if it is found possible to come to some arrangement which may prevent Her Majesty's Government from being subjected to the imputation of having consented to the postponement of a settlement which the Canadian Government continues urgently to press for, and I am to inform you in reply that his Lordship is of opinion that Her Majesty's Government should adhere to the position that the Fisheries and Three Rules are not dependent upon each

other, but that no opinion can be formed until Sir Edward Thornton's despatches upon subject are received.

I am, &c.  
(Signed) TENTERDEN.

## No. 180.

*Sir E. Thornton to the Earl of Derby.—(Received June 25.)*

(No. 170.)  
My Lord,

*Washington, June 12, 1876.*

IT was on the 25th ultimo that I delivered to Mr. Fish a copy of the draft of an identic note which was inclosed in your Lordship's despatch No. 132 of the 13th ultimo, relative to the appointment by the Austrian Ambassador at London of a third Commissioner for the Fisheries Commission at Halifax.

Mr. Fish expressed his wish to keep the copy I gave him and examine it, but as he was going to New York the following week, he said that he would leave word about the note with Mr. Cadwalader.

On the next Thursday, the 1st instant, I inquired of Mr. Cadwalader whether Mr. Fish would agree to the terms of the note in question; he replied that he did not know, but that he was aware that Mr. Fish was expecting an answer to his note of the 8th ultimo, copy of which I had the honour to transmit in my despatch No. 133 of the 8th ultimo.

Mr. Cadwalader then made inquiries as to the submission of the Three Rules to the Maritime Powers with which I have so often been obliged to trouble your Lordship, and repeated the language constantly used by Mr. Fish upon the subject.

On Mr. Fish's return, I asked him on the 8th instant whether he acquiesced in the terms of the draft note, of which I had given him a copy, relative to the appointment of a third Commissioner.

He replied by asking me when I intended to send him an answer to his note of the 8th ultimo upon that part of it which related to the Three Rules. I inquired whether he expected an answer to that note before he could proceed with the arrangement for the Fisheries Commission.

Mr. Fish replied that he certainly did so, for he thought that in common courtesy Her Majesty's Government was bound to let the United States' Government know what it intended to do with regard to the stipulation contained in the Treaty of 1871 respecting the Three Rules.

I replied that I was not prepared to give him an answer to that note without instructions from your Lordship, but that I must remind him once more, as I had already done on many occasions, that Her Majesty's Government had not been favoured with an answer to various communications made to the United States' Government on the matter, and amongst others to Earl Granville's despatch to me, No. 201, of December 22, 1871, copy of which I had delivered to him at the time, nor to the note addressed by his Lordship to General Schenck on the 25th of October, 1873.

I have, &c.  
(Signed) EDWD. THORNTON.

## No. 181.

*Lord Tenterden to Mr. Herbert.*

Sir,

*Foreign Office, June 28, 1876.*

WITH reference to my letter of the 15th ultimo, I am directed by the Earl of Derby to transmit to you, to be laid before the Earl of Carnarvon, a copy of a despatch from Her Majesty's Minister at Washington, in regard to the proposed identic note to the Austrian Government relative to the appointment of a Fishery Commissioner.\*

I am, &c.  
(Signed) TENTERDEN.

No. 182.

*The Earl of Derby to Sir E. Thornton.*

(No. 186. Confidential.)

Sir,

*Foreign Office, June 26, 1876.*

I TRANSMIT to you herewith, for your information, copies of correspondence with the Colonial Office, in regard to the course which it may be advisable for Her Majesty's Government to pursue in regard to the Three Rules.\*

I am, &c.  
(Signed) DERBY.

No. 183.

*Mr. Malcolm to Lord Tenterden.—(Received June 27.)*

My Lord,

*Downing Street, June 26, 1876.*

WITH reference to your letter of the 14th of March, I am directed by the Earl of Carnarvon to transmit to you, to be laid before the Earl of Derby, a copy of a despatch which his Lordship addressed to the Governor-General of Canada, with regard to the payment by the Dominion and by Newfoundland of a moiety of the expenses incurred by Her Majesty's Government in the years 1873-4 and 1874-5, on account of the Fishery Commission which is to meet at Halifax.

I am also to inclose a copy of the reply which has been received from Lord Dufferin, accompanied by a bill of exchange for 2,323*l.* 7*s.* 8*d.* in repayment for the Colonial share of this expenditure.

I am, &c.  
(Signed) W. R. MALCOLM.

Inclosure 1 in No. 183.

*The Earl of Carnarvon to the Earl of Dufferin.*

My Lord,

*Downing Street, April 5, 1876.*

I HAVE the honour to transmit to you, for communication to your Government, a copy of a letter from the Foreign Office, stating that the expenses incurred by Her Majesty's Government on account of the Fishery Commission which is to meet at Halifax, and which are included in the Appropriation Accounts presented to Parliament for the years 1873-4 and 1874-5, amount to the sum of 4,646*l.* 15*s.* 5*d.*, and applying for the payment of a moiety thereof, in accordance with the terms proposed by Her Majesty's Government, and accepted by your Government and by the Government of Newfoundland in June 1873.

2. Your Lordship will remember that these terms were arranged by telegraph, and were that the agent appointed to represent Her Majesty's Government and the Government of Canada and Newfoundland was to receive the sum of 1,000*l.* for his services, in addition to the usual travelling and living expenses, one-half to be paid by the Colonies and the other half to be paid by the Imperial Treasury. That Canada and Newfoundland were to bear the expense of preparing their respective cases, and that the Imperial Treasury would bear the expense of preparing a Memorandum on the Headland Question, and that the expenses of the proceedings at Halifax should be shared between the Imperial Government and the Colonies respectively.

3. Your Government will observe that the claim for repayment now made is on account of Mr. Rothery's remuneration as Agent, and for his expenses while absent from England during the winter and spring of 1873-4, and as no material progress was made with the business connected with the fisheries while Mr. Rothery was in America, in consequence of the proceedings connected with the proposed Reciprocity Treaty between Canada and the United States, I anticipate that your Government will agree with me in thinking that Newfoundland will not be properly chargeable with any part of the present expenditure, except with a proportion of the moiety of 1,000*l.* given to Mr. Rothery as remuneration for his services.

4. I should also be glad if your Government would propose to the Government of

Newfoundland such an arrangement as they may deem reasonable with respect to the proportion payable by Newfoundland of the moiety of the expenses connected with the Fishery Commission chargeable jointly to Canada and Newfoundland.

5. I have to add that copies of the Appropriation Accounts for 1873-4 and 1874-5, in which the present expenditure is included, were transmitted to you in my despatches of the 15th of April, 1875; and of the 20th of March of the present year.

I have, &c.  
(Signed) CARNARVON.

Inclosure 2 in No. 183.

*The Earl of Dufferin to the Earl of Carnarvon.*

My Lord,

Ottawa, June 9, 1876.

WITH reference to your Lordship's despatch of the 5th April last, on the subject of the payment of the expenses incurred by Mr. Rothery as British Agent to the Halifax Commission, I have the honour to enclose herewith, a copy of an order in Council, a duplicate of which I have transmitted to the Government of Newfoundland, suggesting that the share payable by Newfoundland of those expenses should be 100l.

I have also the honour to enclose a further Order in Council authorising the payment of the moiety chargeable to Canada, together with a remittance for the sum thus due.

I have, &c.  
(Signed) DUFFERIN.

Inclosure 3 in No. 183.

*Report of a Committee of the Honourable the Privy Council, approved by His Excellency the Governor-General on the 26th April, 1876.*

THE Committee of Council have had under consideration the despatch dated 5th April, 1876, from the Right Honourable the Secretary of State for the Colonies on the subject of apportioning between Canada and Newfoundland their respective shares of the moiety payable by these Colonies towards remunerating Mr. Rothery as former Agent of Her Britannic Majesty in connection with the proposed Fishery Commission under the Treaty of Washington.

The Honourable the Minister of Marine and Fisheries, to whom this despatch has been referred, suggests that the Colony of Newfoundland be requested to pay the sum of 100l. sterling.

The Committee submit the foregoing suggestion for your Excellency's approval.

Certified,  
(Signed) W. A. HIMSWORTH,  
Clerk, Privy Council.

Inclosure 4 in No. 183.

*Report of a Committee of the Honourable the Privy Council, approved by His Excellency the Governor-General on the 26th May, 1876.*

THE Committee of Council have had under further consideration the despatch dated 5th April, 1876, from the Right Honourable the Earl of Carnarvon relating to the payment by Canada of a moiety (2,323l. 7s. 8d.) of expenses in connection with Mr. Rothery's agency under the Treaty of Washington.

The Committee observe with some surprise the scale of expenditure adopted by Mr. Rothery, whose remuneration had been fixed at 1,000l. sterling, but under the circumstances they feel it proper to advise that the moiety requested, being the sum of 2,323l. 7s. 8d. sterling (11,247 dol. 13 c. currency) be paid to Her Majesty's Government out of the appropriation for "unforeseen expenses."

Certified,  
(Signed) W. A. HIMSWORTH,  
Clerk, Privy Council.



No. 184.

*Mr. Ford to the Earl of Derby.—(Received July 8.)*

(No. 3.)

My Lord,

*Government House, St. John's, Newfoundland, June 22, 1876.*

I HAVE the honour to report that I arrived in this city by the steamer "Nova Scotian" this evening, and I shall lose no time in placing myself in communication with the proper authorities of the Colony, with a view to preparing the case of Newfoundland for the Halifax Commission.

I have, &amp;c.

(Signed) FRANCIS CLARE FORD.

No. 185.

*Mr. Ford to the Earl of Derby.—(Received July 8.)*

(No. 4)

My Lord,

*Government House, Newfoundland, June 28, 1876.*

WITH reference to your Lordship's despatch No. 1 of the 13th January last, and to my reply No. 1 of the 19th of the same month, respecting the division between the Colonies of Canada and of Newfoundland of any award which may eventually be given in their favour by the Commissioners at Halifax, I have the honour to inclose herewith a copy of a despatch which I addressed to Sir J. Glover on this subject.

Your Lordship will perceive from the reply which I have received from his Excellency, copy of which is also herewith inclosed, that the Government of Newfoundland agree to the arrangement that the Commissioners should be requested to state after their award, if any be given, what proportion of such award they consider due to Canada and Newfoundland respectively.

I venture to suggest that a copy of this despatch should be communicated to the Earl of Carnarvon, for the information of the Governor-General of Canada.

I have, &amp;c.

(Signed) FRANCIS CLARE FORD.

Inclosure 1 in No. 185.

*Mr. Ford to Governor Sir J. Glover.*

Sir,

*Government House, Newfoundland, June 26, 1876.*

DURING my visit to Canada last year, in connection with the Halifax Commission, it occurred to me that, in the event of an award in favour of Canada and Newfoundland being given by the Commissioners, some difficulty might possibly arise as to the proportion of such award which might fairly be claimed by each Colony respectively.

I appeared to me that the possibility of any question arising on this head would be obviated by an arrangement that the Commissioners at Halifax should be requested to state, after giving their award, what proportion they considered due to each Colony; and on my suggesting this plan to the Government of the Dominion, they at once intimated that it would be acceptable to them.

Her Majesty's Government having assented to this arrangement, it only now remains to obtain the consent of the Government of Newfoundland; and I have therefore the honour to request your Excellency to be good enough to ascertain their views on this point, and to inform me whether they are disposed to consent to such a method of apportioning any award which may eventually be given.

I have, &amp;c.

(Signed) F. C. FORD.

Inclosure 2 in No. 185.

*Governor Sir J. Glover to Mr. Ford.*

Sir,

*Government House, Newfoundland, June 28, 1876.*

I HAVE the honour to acknowledge the receipt of your letter of the 26th instant, regarding the amount of compensation which may be awarded to Canada and Newfoundland under the Washington Treaty.

I have also the honour to inform you that my Government concur in your proposition that the Commission to meet at Halifax should state the proportion of such compensation they deem to be due to each of these Colonies respectively.

I have, &c.  
(Signed) J. H. GLOVER.

No. 186.

*Mr. Herbert to Lord Tenterden.—(Received July 10.)*

My Lord,

*Downing Street, July 8, 1876.*

I AM directed by the Earl of Carnarvon to acknowledge the receipt of your letter of the 28th ultimo, inclosing a despatch from Her Majesty's Minister at Washington in regard to the proposed identic note to the Austrian Government relative to the appointment of a third Commissioner to the Halifax Fisheries Commission.

His Lordship considers it very desirable that a decision should be come to as soon as possible, which will in some way dispose of the question as to the Three Rules now raised by Mr. Fish, as he cannot but apprehend that if there should be prolonged delay in this matter, the Canadian Government will consider that they have cause of complaint against Her Majesty's Government on account of a postponement in the settlement of a question which so nearly affects their interests, and which has been urgently pressed for by the Dominion.

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

No. 187.

*Lord Tenterden to Mr. Herbert.*

Sir,

*Foreign Office, July 10, 1876.*

I AM directed by the Earl of Derby to acknowledge the receipt of your letter of the 26th ultimo, transmitting a bill of exchange for 2,323*l.* 7*s.* 8*d.*, in repayment of the share of the Dominion of Canada, and of Newfoundland, of the expenses incurred by Her Majesty's Government in the years 1873-74, and 1874-75, on account of the Fishery Commission.

I am, &c.  
(Signed) TENTERDEN.

No. 188.

*The Earl of Derby to Sir E. Thornton.*

(No. 196.)

Sir,

*Foreign Office, July 10, 1876.*

I HAVE received your despatch No. 170 of the 12th ultimo, reporting that you had communicated to Mr. Fish on the 25th of May the draft note to the Austrian Government on the subject of the appointment of a third Commissioner to the Halifax Commission, which was inclosed in my despatch No. 132 of the 13th May, but that, in consequence of Mr. Fish's absence from Washington, you had had no opportunity of speaking with him on the subject until the 8th ultimo, and that when you inquired whether he acquiesced in the terms of the note, he replied by asking when you intended to send him an answer to that part of his note of the 8th of May which related to the Three Rules.

On your inquiring whether he expected an answer before he could proceed with the arrangement for the Fisheries Commission, he said that he certainly did so, and thought that, in common courtesy, Her Majesty's Government were bound to let the United Government know what it intended to do with regard to the stipulations contained in the Treaty of 1871 respecting the Three Rules.

I have learnt with much regret that Mr. Fish should again have sought to connect this question with that of the Fisheries Commission, and should put forward, as a reason for not carrying out the provisions of the Treaty on the latter point, the delay which has occurred in submitting the Three Rules to the Maritime Powers.

I propose in this despatch to show, by a recapitulation of the negotiations on the subject which have taken place between the two Governments, that this delay cannot with justice be laid to the account of Her Majesty's Government.

The state of the case is briefly as follows :—

At the Conferences held on the 9th, 10th, 13th, and 14th of March, 1871, the Joint High Commission considered the form of the declaration of principles or rules which the American Commissioners desired to see adopted for the instruction of the Arbitrator, and laid down for observance by the two Governments in future. At the Conference held on the 5th of April the British Commissioners stated that they were instructed to declare that Her Majesty's Government could not assent to the proposed Rules as a statement of principles of International Law which were in force at the time when the Alabama claims arose, but that Her Majesty's Government, in order to evince its desire of strengthening the friendly relations between the two countries, and of making satisfactory provision for the future, agreed that in deciding the questions between the two countries arising out of those claims, the Arbitrators should assume that Her Majesty's Government had undertaken to act upon the principles set forth in the Rules which the American Commissioners had proposed, namely :—

That a neutral Government is bound first to use due diligence to prevent the fitting out, arming, or equipping within its jurisdiction of any vessel which it has reasonable ground to believe is intended to cruize or carry on war against a Power with which it is at peace ; and also to use like diligence to prevent the departure from its jurisdiction of any vessel intended to cruize or carry on war as above, such vessel having been specially adapted, in whole, or in part, within such jurisdiction, to warlike use.

Secondly, not to permit or suffer either belligerent to make use of its ports or waters as the base of naval operations against the other, or for the purpose of the renewal or augmentation of military supplies or arms, or the recruitment of men.

Thirdly, to exercise due diligence in its own ports and waters, and, as to all persons within its jurisdiction, to prevent any violation of the foregoing obligations and duties.

These Three Rules were subsequently embodied in the Treaty signed at Washington, May 8, 1871, and constituted the VIth Article of that Treaty, and it was agreed at the same time to observe them as between the two Governments in future, and to bring them to the knowledge of other Maritime Powers and to invite them to accede to them.

Shortly after the insertion of these Rules in the Washington Treaty a discussion arose between Her Majesty's Government and that of the United States, respecting the true import of the Second Rule, and the exact terms in which a draft note to the Maritime Powers should be couched.

Her Majesty's Government understood the Second Rule as not prohibiting the sale or exportation of military supplies or arms from neutral ports or waters in the ordinary course of commerce for the use of a belligerent Power : whereas, General Schenck, who had recently arrived in London as American Minister, informed Lord Granville, on the 12th of June, 1871, that the President understood it as not preventing the open sale of arms and military supplies in the ordinary course of commerce.

The above words "or exportation" and "open" formed the subject of a long correspondence.

The United States' Government objected to the words "or exportation," and Her Majesty's Government declined to accept the word "open." There were other alterations that occurred from time to time whilst the draft notes to be submitted to the Maritime Powers were being drawn up, but they were unimportant, and referred more to style than matter.

Lord Granville on the 5th of October, 1871, forwarded to you an amended draft note for communication to the Maritime Powers, and signified his intention of no longer insisting on the insertion of the disputed words "or exportation." This amended draft note became the subject of fresh correspondence, for Mr. Fish, on the 9th November, 1871, insisted on retaining the word "open," which he considered desirable on the ground that it would be difficult for the respective Governments to be always and in every case held responsible for the clandestine acts of unscrupulous traders.

On the 23rd of December, 1871, Lord Granville in a despatch to you stated that the effect of the insertion of the word "open" would be to leave the two Governments responsible to the third Power for the clandestine dealings of their subjects and citizens. This despatch you were instructed to read to Mr. Fish and leave a copy of it with him, and its date is important as bearing on Mr. Fish's remarks, reported in your despatch No. 260 of the 14th June, 1873, that the last official communication that had passed

between the two Governments on the subject was his note on the 3rd of November, 1871.

Fifteen months elapsed before the question of the Three Rules was again brought forward, when, on the 23rd of April, 1873, Mr. Fish inquired of you what Her Majesty's Government intended doing with regard to bringing them to the notice of the Maritime Powers. You reminded Mr. Fish that the last communication on the subject had been made by the British Government, and had remained unanswered. Mr. Fish then notified his desire to reopen the question, which was duly reported to Lord Granville.

On the 22nd of May, 1873, his Lordship informed you that the question had become more complicated since the interruption that had taken place in its discussion with the Government of the United States, and his Lordship added that the debates in Parliament had shown how impossible it was for Her Majesty's Government to lay the Rules without comment before other nations for their acceptance, and that even if the British Government were ready to do so, the United States and ourselves would be met at once by the question, "Are you yourselves agreed upon the meaning of the Rules to which you ask our assent?" His Lordship believed that the Three Rules would be rejected by the Great Powers.

On the 5th of June, 1873, as reported in your despatch marked Private and Confidential of the 10th of that month, Mr. Fish expressed to you his disappointment that Lord Granville would not consent to submit the Three Rules even at the risk of their being rejected. He denied the existence of any important difference of opinion between the two Governments as to their meaning, whatever different interpretation had been given to them during the Geneva Arbitration by the respective Counsel of the two countries.

On the 14th of June, 1873, Mr. Fish inquired of you when you were going to answer his last note relating to the communication of the Three Rules to the Maritime Powers, which had remained without a reply: to which remark you replied by asking him what note he alluded to, saying, at the same time, that you did not remember any that had remained unanswered, but that you were, on the contrary, under the impression that Mr. Fish had not communicated to you the decision at which his Government had arrived in reply to Lord Granville's despatch of the 23rd of December, 1871, which you had been instructed to read to him and also to deliver him a copy of. Mr. Fish asserted that the reading to him a despatch, and leaving him a copy of that despatch, did not constitute an official communication of its contents. The note he alluded to as having remained unanswered was, he said, the one he had addressed on the 3rd of November, 1871, to Her Majesty's Chargé d'Affaires at Washington, in which he transmitted to him a counter-draft of a note for presentation to the Maritime Powers.

General Schenck also spoke to Lord Granville on the subject, and admitted that the communication of his Lordship's despatch was an answer, and a mode of answering which the General himself had often adopted, and undertook to telegraph to Mr. Fish and ask him to explain. General Schenck did not, however, furnish any such explanation, or revert to the matter until the 14th of October, 1873, when he called at the Foreign Office, and intimated Mr. Fish's desire to recall attention to the question of communicating the Three Rules to the Maritime Powers. This, he said had come to a standstill on a point of etiquette, and he added, "Let us do something; either submit the Rules with or without comment."

Lord Granville, in a note addressed to the General on the 25th of October, 1873, recording what had passed, stated that he agreed with Mr. Fish in that it was expedient the two Governments should decide on the course they would pursue with regard to the submission of the Three Rules to the Maritime Powers. Her Majesty's Government would think it necessary to accompany such a submission with a comment, and they could not in such comment adopt all the principles laid down by the Tribunal of Geneva. This determination they had already made known in public, and it was probably known to the Government of the United States. Both Governments agree that it was probable that all the Maritime Powers would not accept the Three Rules. Such a refusal would lose much of its importance if the two Governments could agree on the mode in which the two Governments could, with most dignity as regarded themselves, and with the greatest advantage for the future, make the submission. Her Majesty's Government would give careful consideration to anything suggested on this head by the Government of the United States, in the hope of coming to a satisfactory conclusion. Mr. Moran acknowledged receipt of this note on the 27th October, 1873, and stated that he would forward a copy of it to Mr. Fish by the following Thursday's

mail: but no answer has ever been received to it by Her Majesty's Government, nor has Mr. Fish taken any notice of it,

On the 1st of November, 1873, his Lordship supplemented the above note in a Memorandum to the following effect:—"I did not mean that Her Majesty's Government would in any way propose to fix (without the full concurrence of the Government of the United States) any particular interpretation of the Rules or any part of them, but they would think it necessary to guard themselves against any inference which might possibly be drawn from some parts of the Geneva Award; that consequences are involved in the Rules which they have never intended." This Memorandum also remained unnoticed.

On the 18th of February, 1874, Lord Granville, before leaving office, took an opportunity of speaking to General Schenck on the subject of the Three Rules; but the General said he was not instructed or authorized to discuss or determine the form of any identic note; and the question remained in abeyance for upwards of a year, until the 22nd of March, 1875, when you addressed a despatch to me notifying that Mr. Fish had, on the 17th of that month, inquired of you what steps Her Majesty's Government intended to take with regard to the submission of the Three Rules to the Maritime Powers, and that as a matter of dignity it was incumbent on them to carry out that Treaty stipulation.

In my despatch of the 10th of April, 1875, I stated that Her Majesty's Government had not felt it necessary to raise any question on the matter, which had not been adverted to by the Government of the United States since Lord Granville expressed his opinion as to the course which might be pursued upon it at the interview which he had with General Schenck on the 18th February, 1874. Her Majesty's Government did not doubt that Lord Granville's observations were duly communicated by General Schenck to the Government of the United States, and the despatch to you recording them had been published in the correspondence presented to Parliament. It was, therefore, open to the United States' Government to have replied or to have made fresh overtures, had they deemed it desirable, with regard to the communication of the Three Rules to the Maritime Powers. In the absence of any such overtures on the part of the United States' Government, Her Majesty's Government had been content to abstain from any action in the matter.

Her Majesty's Government accordingly awaited a formal official communication from Mr. Fish before giving any instructions to you on the subject.

It will be seen from the above recapitulation that the delay in dealing with this matter cannot be laid to the account of Her Majesty's Government; on the contrary, they have been left without an answer to the several written communications which they have addressed to the United States' Government.

Her Majesty's Government will be prepared to receive and consider any communication or proposal which the United States' Government may think fit to address to them; but they cannot consent to admit that the submission of the Three Rules has any connection with the Halifax Fisheries Commission, or to treat the subjects as in any way dependent on each other.

I have to instruct you to address a note in the sense of this despatch to Mr. Fish.

I am, &c.  
(Signed) DERBY.

No. 189.

*Lord Tenterden to Mr. Herbert.*

Sir,

*Foreign Office, July 12, 1876.*

I AM directed by the Earl of Derby to acknowledge the receipt of your letter of the 8th instant, stating, with reference to the appointment of a third Commissioner to the Halifax Fisheries Commission, that the Earl of Carnarvon considers it very desirable that a decision should be come to as soon as possible, which will dispose of the question as to the Three Rules now raised by Mr. Fish; and I am to transmit to you, to be laid before his Lordship, for his information, the accompanying copy of a despatch which has been addressed to Her Majesty's Minister at Washington upon the subject,\* and I am to state that Sir E. Thornton has been continually instructed to urge the matter. I am at the same time to request that you will recall to Lord Carnarvon's attention the fact that the Newfoundland case is still unprepared.

I am, &c.  
(Signed) TENTERDEN.

No. 190.

*The Earl of Derby to Sir E. Thornton.*

(No. 198.)

Sir,

*Foreign Office, July 12, 1876.*

I TRANSMIT to you herewith, for your information, copies of correspondence with the Colonial Office, in regard to the question of the appointment of a third Commissioner to the Halifax Fisheries Commission, as connected with the question as to the Three Rules lately raised by Mr. Fish.\*

I am, &c.  
(Signed) DERBY.

No. 191.

*Lord Tenterden to Mr. Herbert.*

Sir,

*Foreign Office, July 13, 1876.*

I AM directed by the Earl of Derby to transmit to you, to be laid before the Earl of Carnarvon, for his Lordship's information, the accompanying copy of a despatch from Mr. Ford, announcing his arrival at St. John, Newfoundland, in order to prepare the case of Newfoundland for the Halifax Fisheries Commission.†

I am, &c.  
(Signed) TENTERDEN.

No. 192.

*Lord Tenterden to Mr. Herbert.*

Sir,

*Foreign Office, July 13, 1876.*

WITH reference to previous correspondence relative to the division between the Dominion of Canada and the Colony of Newfoundland of the amount of any award which may eventually be given in their favour by the Halifax Fisheries Commission, I am directed by the Earl of Derby to transmit to you, to be laid before the Earl of Carnarvon, for his Lordship's information, and for communication to the Governor-General of Canada, the accompanying copy of a despatch from Mr. Ford, together with its inclosures, reporting the steps which have been taken in the matter.‡

I am, &c.  
(Signed) TENTERDEN.

No. 193.

*Mr. Ford to the Earl of Derby.—(Received August 7.)*

(No. 5.)

My Lord,

*London, August 7, 1876.*

IN obedience to the instructions contained in your Lordship's despatch of the 10th of June last, I sailed from Liverpool on the 13th of that month in the steamer "Nova Scotian," accompanied by Mr. Bergne, and arrived at St. John's, Newfoundland, on the 22nd.

On arrival there, his Excellency Sir John Glover courteously extended to us his hospitality during our stay in Newfoundland; and as he had invited several members of the Executive Council to meet me at dinner on the evening of my arrival, I was introduced at once to the Honourable Mr. Whiteway, the Solicitor-General, and the Honourable Mr. Donnelly, the Financial Secretary, the two gentlemen to whom the arrangement of the case, in consultation with myself, had been confided.

No time was therefore lost in arranging a preliminary meeting to discuss the materials which had been prepared in anticipation of my visit to the Colony; and in about ten days a Case was drafted which met with the approval of the Executive Council. This will be found as Part II of the Complete Case, which I have the honour to inclose herewith, and which now comprises the Claim of Her Majesty's Government on behalf of the Dominion of Canada, and that on the part of Newfoundland.

\* Nos. 186 and 189.

† No. 184.

‡ No. 185.

The general form and arrangement of the collective claim to be preferred, having been already matured during my stay at Ottawa last year, but little difficulty presented itself in drafting the Newfoundland portion of it; the principal point for discussion being the amount, and means of arriving at, the actual sum to be claimed, which, as your Lordship will perceive was eventually fixed at 2,880,000 dollars, or about 570,000*l.* sterling; and the reasons for claiming that amount are given in detail in the Case itself.

Two distinct features were apparent in stating the claim on the part of Newfoundland; the first, being the opening to United States' enterprize of the inshore fisheries of that portion of the seaboard to which access was denied under the Convention of 1818; the second, the privilege of making use of the same coast as a source of bait supply, and as a basis of operations for the successful prosecution of the Bank fisheries.

With regard to the first point no evidence was forthcoming that United States' fishermen either had during the twelve years of the existence of the Reciprocity Treaty, or do now under the Treaty of Washington, avail themselves to any great extent of the inshore waters of Newfoundland for fishing purposes, as distinct from obtaining a supply of bait.

As, however, it is very possible that as they become better acquainted with the resources of these fisheries they may at any moment enter upon profitable operations in this direction, it appeared but reasonable that compensation should be demanded in this respect. The data upon which this portion of the case is founded are necessarily somewhat hypothetical; but the general principle adopted is, that a sum based on a percentage of the profits made by native fishermen should be claimed from the United States, who have, and may at any moment avail themselves of, the freedom of these waters. The arguments used in support of this position are given in detail in the Case itself, and it is unnecessary for me to recapitulate them in this despatch.

The second portion of the Case, viz., the claim for the use of the Newfoundland Coast as a source of bait supply, and as a basis of operations for the Bank Fisheries, rests, however, on more substantial grounds. As a matter of fact, United States' fishermen do avail themselves of this privilege to an extensive degree, and it must have a material effect in securing to them profitable results from this branch of the fishing business. The bait supply is the best to be obtained, and is practically inexhaustible; whilst the proximity of the coast of Newfoundland to the Banks renders it by far the most commodious in all respects for these fisheries.

I regret to say that owing to the climate, and the as yet undeveloped state of communication in the Island, the necessary proof to substantiate the Newfoundland claim is not at present in as forward a state of preparation as I could desire, and I took the opportunity, whilst inclosing to his Excellency Sir J. Glover a copy of the Case, in the despatch herewith inclosed, to call his attention to this fact, and his Excellency assured me in his reply, copy of which is also inclosed, that he would not fail to direct the attention of his Government to this point.

I also received a communication from the Executive Council, copy of which I have the honour to inclose, stating that no diligence would be wanting on their part in the collection of all available information.

The Memorandum, copy of which is inclosed in my despatch to Sir John Glover, contains a list of queries which I left with Mr. Whiteway, embracing those points on which it appeared to me most important to obtain reliable testimony; and I suggested that this might be printed and circulated amongst collectors of Customs and master fishermen at the various fishing stations, in order to obtain their evidence either in the shape of affidavit or declaration; and I do not doubt that by this and other means, some reliable data may be arrived at for substantiating the claim of Newfoundland before the Commission.

When the Case had been drawn up I found that I had still some days at my disposal before the arrival of the next mail steamer for Halifax, and as I was anxious to see for myself the mode of operations of the native fishermen employed in catching bait, Sir J. Glover was kind enough to drive me to Topsail, a fishing village in Conception Bay, distant about 20 miles from St. John. The caplin being then on the coast, I had an excellent opportunity of seeing the enormous quantities in which this fish, one of the most valuable for bait, can be taken with little or no expense.

The caplin is a fish somewhat resembling the English smelt, and is taken entirely inshore. It is no exaggeration to say that the beach was alive with them; I saw thousands taken by a single throw of an ordinary cast net, and it is possible from the shore to catch three or four in one grasp of the hand out of the dense masses crowded together, for I did so myself. So large and over-abundant is the supply that the greater portion of the caplin taken is carted away to be used as manure for the fields.

The price ranges from 1s. to 6d. a barrel, according to the season, and it is evident that the privilege of obtaining this cheap and abundant supply of bait for the Bank Fishery is a great boon to the United States' fishermen.

Before leaving Newfoundland I also visited Petty Harbour, another fishing village, for the purpose of seeing the process of curing and drying cod fish; and both here and at Topsail I was informed by several of the local fishermen that they often supplied caplin bait to United States' vessels engaged in the Bank Fisheries.

A fact which probably is not generally understood in England is that the Bank Fisheries have, during late years, attracted scarcely any native Newfoundland enterprize, which is confined exclusively to the inshore business, and is directed to the production of dried cod fish for exportation, an article to the manufacture of which almost the entire produce of the cod fishery is devoted.

Another thing which struck me as having a bearing on the question was that on all parts of the coast which I visited, the hook-and-line fishing for cod, as far as I saw, is pursued by native fishing vessels and boats entirely within the three mile limit; indeed, they mostly fish from a quarter of a mile to one mile from the shore, and are to be seen in large numbers actively pursuing their operations. Profitable, however, as is the inshore branch of cod fishing, the authorities at Newfoundland are anxious to stimulate native enterprize in the direction of the Bank Fisheries which, as above stated, have been of late years entirely neglected by them. They have, therefore, established a bounty of 6 dollars (about 24s.) a ton for all vessels engaging in this line of business, and already this season some vessels have made profitable voyages. The details of the expenses and results of one such trip are contained in the inclosed paper procured at my request by Mr. Bowring, one of the leading merchants of St. John's, and it will afford a good indication of the profits which may be secured in this business by United States' vessels having the use of the Newfoundland coast, bearing in mind that their schooners, ranging from 80 to 120 tons, are much larger than the local ones.

Having completed all necessary arrangements in connection with the Newfoundland portion of the Case, I left St. John's on the 6th July in the steamer "Hibernian," for Halifax, Nova Scotia, where I had arranged a meeting with the Honourable A. J. Smith, the Minister of Marine and Fisheries of Canada, and Mr. Witcher, the Commissioner of Fisheries, in order to consult with them on certain points left unsettled in the Dominion Case. I arrived at Halifax on the 8th, and a full report of my proceedings in that City will be found in my despatch No. 6 of the 7th instant, which, as it treats of a distinct point, I thought better to keep separate from my general report.

Five days at Halifax sufficed to complete the business in hand, and on the 13th I started for New York in order to have an interview with Sir Edward Thornton before leaving for England in the Cunard steamer "Algeria" of the 26th of July, by which I had taken my passage whilst in Newfoundland, in anticipation of being able to complete my business by that time, it being necessary to secure accommodation some time in advance, owing to the number of travellers attracted by the Centennial Exhibition at Philadelphia.

I arrived at New York on the 15th, and Sir E. Thornton having appointed to meet me at Washington, I proceeded to the Capital on the 17th; and after spending a few days there in discussing various matters connected with the Commission, I returned to New York on the 24th ultimo, and sailed for England on the 26th, arriving in London on the 6th instant.

I have, &c.

(Signed) FRANCIS CLARE FORD.



## Inclosure 1 in No. 193.

*Fishery Commission under the Treaty of Washington of 8th May, 1871.*

## CASE OF HER MAJESTY'S GOVERNMENT.

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## CASE OF HER MAJESTY'S GOVERNMENT.

*Introduction.*

IN laying the case of Her Majesty's Government before the Commissioners, it will be desirable to commence by a brief history of the Fisheries Question since the outbreak of the War of Independence in 1775.

Before the commencement of this war all British colonists enjoyed equal privileges in matters connected with fishing, but at its close, and on the conclusion of peace, it became a question how far such privileges should be restored to those who had separated from the British Crown. The matter was very fully discussed in the negotiations which preceded the Treaty of the 3rd September, 1783, and though Great Britain did not deny the right of the American citizens to fish on the Great Banks of Newfoundland, or in the Gulf of St. Lawrence, or elsewhere in the open sea, she denied their right to fish in British waters, or to land in British territory for the purpose of drying or curing their fish. A compromise was at length arrived at, and it was agreed that United States' fishermen should be at liberty to fish on such part of the Coast of Newfoundland as British fishermen could use, but not to dry or cure their fish on that Island; and they were also to be allowed to fish on the coasts, bays, and creeks of other British Possessions in North America, and to dry and cure their fish in any of the unsettled bays, harbours, and creeks of Nova Scotia, the Magdalen Islands, and Labrador, so long as they should remain unsettled; but so soon as any of them became settled, the United States' fishermen were not to be allowed to use them without the previous permission of the inhabitants and proprietors of the ground.

Negotiations in  
1783.

The IIIrd Article of the Treaty of Paris of the 3rd of September, 1783, is as follows:—

Treaty of Paris,  
September 3, 1783.

"It is agreed that the people of the United States shall continue to enjoy unmolested the right to take fish of every kind on the Grand Bank and on all the other banks of Newfoundland; also in the Gulf of St. Lawrence, and at all other places in the sea, where the inhabitants of both countries used at any time heretofore to fish; and also that the inhabitants of the United States shall have liberty to take fish of every kind on such part of the coast of Newfoundland as British fishermen shall use (but not to dry or cure the same on that Island), and also on the coasts, bays and creeks of all other of His Britannic Majesty's Dominions in America; and that the American fishermen shall have liberty to dry and cure fish in any of the unsettled bays, harbours and creeks of Nova Scotia, Magdalen Islands, and Labrador, so long as the same shall remain unsettled; but so soon as the same, or either of them, shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such Settlement without a previous agreement for that purpose with the inhabitants, proprietors, or possessors of the ground."

It should, however, be observed that the rights conceded to the United States' fishermen under this Treaty were by no means so great as those which, as British subjects, they had enjoyed previous to the War of Independence, for they were not to be allowed to land to dry and cure their fish on any part of Newfoundland, and only in those parts of Nova Scotia, the Magdalen Islands, and Labrador where no British Settlement had been or might be formed, expressly excluding Cape Breton, Prince Edward Island, and other places.

Rights secured to  
United States'  
subjects by Treaty  
of 1783.

So matters stood until the war of 1812 broke out, when, of necessity, the right of American citizens to fish in British waters, and to dry and cure their fish on British territory, terminated. In the course of the negotiations which preceded the Peace of 1814, this question was revived, and the alleged right of American citizens to fish and cure fish within British jurisdiction was fully gone into by the British and American Commissioners, who were assembled at Ghent for the purpose of drawing up the Articles of Peace. At that time, however, the circumstances had very considerably changed since the Treaty of 1783 had been concluded. The British North American possessions had become more thickly populated, and there were fewer unsettled bays, harbours, and creeks in Nova Scotia than formerly. There was consequently greater risk of collision between British and American interests; and the colonists and English merchants engaged in the fisheries petitioned strongly against a renewal of the privileges granted by the Treaty of 1783 to the American fishermen.

Outbreak of war  
of 1812.

It was under these circumstances that the negotiations for peace were entered into. At the first meeting, which took place on the 8th of August, 1814, the British Commissioners stated "that the British Government did not intend to grant to the

Negotiations at  
Ghent, 1814.

United States gratuitously the privileges formerly granted to them by Treaty, of fishing within the limits of British territory, or of using the shores of the British territories for purposes connected with the fisheries." They contended that the claim advanced by the United States of immemorial and prescriptive right was quite untenable, inasmuch as the inhabitants of the United States had until quite recently been British subjects, and that the rights which they possessed formerly as such could not be continued to them after they had become citizens of an independent State.

Signature of  
Treaty of Ghent,  
1814.

After much discussion it was finally agreed to omit all mention of this question from the Treaty, which was signed at Ghent on the 24th December, 1814, and which contains no reference to the Fisheries Question.

Orders were now sent out to the Governors of the British North American Colonies not to interfere with citizens of the United States engaged in fishing on the Newfoundland Banks, in the Gulf of St. Lawrence, or on the high seas, but to prevent them from using the British territory for purposes connected with the fishery, and to exclude their fishing-vessels from the harbours, bays, rivers and creeks of all Her Majesty's Possessions. Orders were also given to the British naval officers on the Halifax Station to resist any encroachment on the part of American fishermen on the rights of Great Britain. The result was the capture of several American fishing-vessels for trespassing within British waters; and the President of the United States in 1818 proposed to the Prince Regent that negotiations should be opened for the purpose of settling in an amicable manner disputed points which had arisen connected with the Fisheries. Commissioners were accordingly appointed by both parties to meet in London, and the Convention of 20th October, 1818, was eventually signed.

Signature of  
Convention of  
1818.

Article I of this Convention is in these words:—

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

Subsequent to the conclusion of this Convention, in consequence of numerous complaints on the part of Her Majesty's Government of encroachments on their waters by American fishermen, the United States' Government issued a notice warning their subjects that they were "to observe strictly the limits assigned for taking, drying, and curing fish by the fishermen of the United States, under the 1st Article of the Convention of the 20th of October, 1818," a copy of which was annexed to the Circular Notice.

Negotiations for  
Reciprocity, 1847.

This was the state of affairs until the year 1847, when, in consequence of a Petition addressed to the Queen by the Canadian Parliament, negotiations were opened between the two Governments for the establishment of reciprocal Free Trade between Canada and the United States; and on the 1st of November, 1849, Sir H. Bulwer, who was then about to proceed to Washington as British Minister, was authorized to enter into a negotiation by which access to the fisheries of all the Colonies (except Newfoundland, which refused to consent on any terms) should be given to the citizens of the United States, in return for reciprocity of trade with the United States, in all natural productions, such as fish, wheat, timber, &c.

The proposal was favourably received by the United States' Government, but some

delay occurred owing to the death of General Taylor in 1850. The new President, however, doubted whether it was a proper subject for a Treaty, and thought that it should be done by legislation, and accordingly a Bill was brought in for the purpose. The Bill was, however, thrown out, and from one cause or another nothing was done from that time until 1852, when a desire was evinced on the part of the United States' Government to come to an arrangement on the subject, and a draft Convention having been prepared, a copy thereof was sent home by the British Minister on the 19th December, 1852, together with remarks made by the President thereon.

A good deal of correspondence passed between the two Governments on the subject, but, owing to difficulties connected with the question of Tariff, the United States' Government appeared anxious to have the Fisheries Question dealt with separately, but to this the British Government would not assent. The fishing season of 1853 accordingly opened without any agreement having been come to with the United States, and fortunately, owing to the measures taken by both Governments for the preservation of British rights, came to a close without the occurrence of further causes of dissatisfaction.

In the meantime, negotiations for a Treaty had been continued by the two Governments; and in the month of May, 1854, Lord Elgin, who was on his way to resume his duties as Governor-General of Her Majesty's North American Provinces, received instructions to visit Washington, and to ascertain the views of the United States' Government, and if any favourable opportunity presented itself, to conclude a Treaty on the subject. So successfully were Lord Elgin's negotiations conducted, that in a letter dated 12th June, 1854, he was able to announce that he had executed a Treaty with Mr. Secretary Marcy relative to Fisheries and Reciprocity of Trade between the United States and the British Provinces in North America. This was the Reciprocity Treaty signed on the 5th June, 1854, and confirmed by the United States' Senate on the 3rd August of the same year. Its main provisions were as follows:—

Signature of  
Reciprocity Treaty,  
1854.

British waters on the East Coast of North America were thrown open to United States' citizens, and United States' waters north of the 36th degree of north latitude were thrown open to British fishermen; excepting always the salmon and shad fisheries (which were exclusively reserved to the subjects of each country), and certain rivers and mouths of rivers to be determined by a Commission to be appointed for that purpose. Certain articles of produce of the British Colonies and of the United States were admitted to each country, respectively, free of duty. The Treaty was to remain in force for ten years, and further for twelve months after either party should have given notice to the other of its wish to terminate the same.

Some difficulty was experienced in regard to Newfoundland, but at length a clause was agreed to, providing that if the Imperial Parliament of Great Britain, the Provincial Parliament of Newfoundland, and the Congress of the United States should agree that Newfoundland should be included, all the provisions and stipulations of the Treaty should apply to that Colony.

The Commission for the designation of the places reserved to each country from the common right of fishing met subsequently, and was engaged for some years in determining the places to which the exclusive right of fishing applied. It is, however, unnecessary here to do more than notice this fact, as the reservations in question are expressly mentioned under Article XX of the Treaty of Washington of 1871.

From the year 1854 until 1865 the Reciprocity Treaty continued in force, and no further difficulties appear to have arisen on questions connected with the fisheries; but on the 17th of March of that year, Mr. Adams, the United States' Minister in England, informed the British Government that he was instructed to give notice that at the expiration of twelve months from that day the Reciprocity Treaty was to terminate. This notice was given in pursuance of a Resolution of Congress approved by the President of the United States.

Efforts were made on the part of Her Majesty's Government towards a renewal of the Treaty, but these from various reasons proving unsuccessful, the Treaty came to an end on the 17th of March, 1866; and, as a consequence, the provisions of the Convention of 1818 revived on the same day, and remain in effect at the present moment, except in so far as they are affected by the stipulations of the Treaty of Washington of 1871.

Termination of  
Reciprocity Treaty,  
and revival of Con-  
vention of 1818.

In the meantime a notice had been issued by Lord Monck, warning the citizens of the United States that their right to fish in British waters would cease on the 17th of March, 1866; and it became necessary to consider what measures should be adopted for the protection of British rights. Her Majesty's Government were

very desirous to prevent, as far as possible, the injury and loss which must be inflicted upon citizens of the United States by a sudden withdrawal of the privileges enjoyed by them for twelve years; but with every desire in this direction, they found themselves bound by Acts both of the Imperial and Colonial Legislatures to enforce severe penalties upon all persons, not being British subjects, who might be found fishing within British jurisdiction.

Licensing system adopted in 1866, and abandoned in 1870.

Eventually, however, on the suggestion of Lord Monck, it was decided that American fishermen should be allowed during the year 1866 to fish in all Provincial waters upon the payment of a nominal licence fee, to be exacted as a formal recognition of right. This system, after being maintained for four years, was discontinued, owing to the neglect of American fishermen to provide themselves with licences; and in 1870 it again became necessary to take strict measures for the enforcement of British rights. Orders were given to Admiral Wellesley to dispatch a sufficient force to Canadian waters to ensure the protection of Canadian fishermen and the maintenance of order, and to instruct the senior officer of such force to co-operate cordially with any United States' force sent on the same service. It was also found necessary to employ a local Marine Police Force for the same purpose.

The result of these measures was the capture and forfeiture of several American vessels for infringing the provisions of the Convention of 1818, both by fishing within British waters, and by frequenting Canadian ports for objects not permitted by the Convention; and notwithstanding the steps taken by the British Government to mitigate as far as possible the stringency of the orders given for the exclusion of American fishermen from British waters, it was found at the close of the season of 1870 that many seizures of American vessels had been made by cruizers both of the Imperial and Dominion Governments.

The difficulties caused by these untoward events subsequently led to the reopening of negotiations for the settlement of questions connected with the Fisheries.

Joint High Commission in 1871.

It is unnecessary here to relate the circumstances which led to the appointment of the Joint High Commission in 1871; suffice it to say that, towards the end of 1870, Sir John Rose, having been commissioned to proceed in an unofficial character to Washington for the purpose of ascertaining the views of the United States on the subject, was able in the month of February, 1871, to announce that the United States' Government were prepared to refer all questions between the two countries to a Joint High Commission.

The Commissioners held their first meeting at Washington on the 27th February, 1871, and the Treaty was signed on the 8th of May of the same year.

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#### *Fishery Articles of the Treaty of Washington.*

THE Articles in this Treaty relating to the Fisheries, and in virtue of which this Commission is constituted, are Articles XVIII, XIX, XX, XXI, XXII, XXIII, XXIV, XXV, XXXII and XXXIII. They are as follows:—

##### “ARTICLE XVIII.

“It is agreed by the High Contracting Parties that in addition to the liberty secured to the United States fishermen by the Convention between Great Britain and the United States, signed at London on the 20th day of October, 1818, of taking, curing, and drying fish on certain coasts of the British North American Colonies therein defined, the inhabitants of the United States shall have, in common with the subjects of Her Britannic Majesty, the liberty, for the term of years mentioned in Article XXXIII of this Treaty, to take fish of every kind, except shell-fish, on the sea-coasts and shores, and in the bays, harbours, and creeks of the Provinces of Quebec, Nova Scotia, and New Brunswick, and the Colony of Prince Edward Island, and of the several islands thereunto adjacent, without being restricted to any distance from the shore, with permission to land upon the said coasts and shores and islands, and also upon the Magdalen Islands, for the purpose of drying their nets and curing their fish; provided that, in so doing, they do not interfere with the rights of private property, or with British fishermen, in the peaceable use of any part of the said coasts in their occupancy for the same purpose.

“It is understood that the above-mentioned liberty applies solely to the sea fishery, and that the salmon and shad fisheries, and all other fisheries in rivers and the mouth of rivers, are hereby reserved exclusively for British fishermen.

##### “ARTICLE XIX.

“It is agreed by the High Contracting Parties that British subjects shall have, in common with the citizens of the United States, the liberty, for the term of years mentioned in Article XXXIII

of this Treaty, to take fish of every kind, except shell-fish, on the eastern sea-coasts and shores of the United States north of the thirty-ninth parallel of north latitude, and on the shores of the several islands thereunto adjacent, and in the bays, harbours, and creeks of the said sea-coasts and shores of the United States and of the said islands, without being restricted to any distance from the shore, with permission to land upon the said coasts of the United States and of the islands aforesaid for the purpose of drying their nets and curing their fish; provided that, in so doing, they do not interfere with the rights of private property, or with the fishermen of the United States, in the peaceable use of any part of the said coasts in their occupancy for the same purpose.

"It is understood that the above-mentioned liberty applies solely to the sea fishery, and that salmon and shad fisheries, and all other fisheries in rivers and mouths of rivers, are hereby reserved exclusively for fishermen of the United States.

#### "ARTICLE XX.

"It is agreed that the places designated by the Commissioners appointed under the 1st Article of the Treaty between Great Britain and the United States, concluded at Washington on the 5th of June, 1854, upon the coasts of Her Britannic Majesty's Dominions and the United States, as places reserved from the common right of fishing under that Treaty, shall be regarded as in like manner reserved from the common right of fishing under the preceding Articles. In case any question should arise between the Governments of the United States and of Her Britannic Majesty as to the common right of fishing in places not thus designated as reserved, it is agreed that a Commission shall be appointed to designate such places and shall be constituted in the same manner, and have the same powers, duties, and authority as the Commission appointed under the said 1st Article of the Treaty of the 5th of June, 1854.

#### "ARTICLE XXI.

"It is agreed that, for the term of years mentioned in Article XXXIII of this Treaty, fish oil and fish of all kinds (except fish of the inland lakes and of the rivers falling into them, and except fish preserved in oil), being the produce of the fisheries of the United States, or of the Dominion of Canada, or of Prince Edward's Island, shall be admitted into each country respectively, free of duty.

#### "ARTICLE XXII.

"Inasmuch as it is asserted by the Government of Her Britannic Majesty that the privileges accorded to the citizens of the United States under Article XVIII of this Treaty are of greater value than those accorded by Articles XIX and XXI of this Treaty to the subjects of Her Britannic Majesty, and this assertion is not admitted by the Government of the United States, it is further agreed that Commissioners shall be appointed to determine, having regard to the privileges accorded by the United States to the subjects of Her Britannic Majesty, as stated in Articles XIX and XXI of this Treaty, the amount of any compensation which, in their opinion, ought to be paid by the Government of the United States to the Government of Her Britannic Majesty in return for the privileges accorded to the citizens of the United States under Article XVIII of this Treaty; and that any sum of money which the said Commissioners may so award shall be paid by the United States' Government, in a gross sum, within twelve months after such award shall have been given.

#### "ARTICLE XXIII.

"The Commissioners referred to in the preceding Article shall be appointed in the following manner, that is to say: One Commissioner shall be named by Her Britannic Majesty, one by the President of the United States, and a third by Her Britannic Majesty and the President of the United States conjointly; and in case the third Commissioner shall not have been so named within a period of three months from the date when this Article shall take effect, then the third Commissioner shall be named by the Representative at London of His Majesty the Emperor of Austria and King of Hungary. In case of the death, absence, or incapacity of any Commissioner, or in the event of any Commissioner omitting or ceasing to act, the vacancy shall be filled in the manner hereinbefore provided for making the original appointment, the period of three months in case of such substitution being calculated from the date of the happening of the vacancy.

"The Commissioners so named shall meet in the City of Halifax, in the Province of Nova Scotia, at the earliest convenient period after they have been respectively named, and shall, before proceeding to any business, make and subscribe a solemn declaration that they will impartially and carefully examine and decide the matters referred to them to the best of their judgment, and according to justice and equity; and such declaration shall be entered on the record of their proceedings.

"Each of the High Contracting Parties shall also name one person to attend the Commission as its agent, to represent it generally in all matters connected with the Commission.

#### "ARTICLE XXIV.

"The proceedings shall be conducted in such order as the Commissioners appointed under Articles XXII and XXIII of this Treaty shall determine. They shall be bound to receive such oral or written testimony as either Government may present. If either Party shall offer oral testimony, the other party shall have the right of cross-examination, under such rules as the Commissioners shall prescribe.

"If in the case submitted to the Commissioners either Party shall have specified or alluded to any report or document in its own exclusive possession, without annexing a copy, such party shall

be bound, if the other party thinks proper to apply for it, to furnish that party with a copy thereof; and either party may call upon the other, through the Commissioners, to produce the originals or certified copies of any papers adduced as evidence, giving in each instance such reasonable notice as the Commissioners may require.

“The case on either side shall be closed within a period of six months from the date of the organization of the Commission, and the Commissioners shall be requested to give their award as soon as possible thereafter. The aforesaid period of six months may be extended for three months in case of a vacancy occurring among the Commissioners under the circumstances contemplated in Article XXIII of this Treaty.

“ARTICLE XXV.

“The Commissioners shall keep an accurate record and correct minutes or notes of all their proceedings, with the dates thereof, and may appoint and employ a Secretary and any other necessary officer or officers to assist them in the transaction of the business which may come before them.

“Each of the High Contracting Parties shall pay its own Commissioner and Agent or Counsel: all other expenses shall be defrayed by the two Governments in equal moieties.

“ARTICLE XXXII.

“It is further agreed that the provisions and stipulations of Articles XVIII to XXV of this Treaty, inclusive, shall extend to the Colony of Newfoundland, so far as they are applicable. But if the Imperial Parliament, the Legislature of Newfoundland, or the Congress of the United States, shall not embrace the Colony of Newfoundland in their laws enacted for carrying the foregoing Articles into effect then this Article shall be of no effect; but the omission to make provision by law to give it effect, by either of the Legislative bodies aforesaid, shall not in any way impair any other Articles of this Treaty.

“ARTICLE XXXIII.

“The foregoing Articles XVIII to XXV, inclusive, and Article XXX, of this Treaty, shall take effect as soon as the laws required to carry them into operation shall have been passed by the Imperial Parliament of Great Britain, by the Parliament of Canada, and by the Legislature of Prince Edward’s Island on the one hand, and by the Congress of the United States on the other. Such assent having been given, the said Articles shall remain in force for the period of ten years from the date at which they may come into operation; and further until the expiration of two years after either of the High Contracting Parties shall have given notice to the other of its wish to terminate the same; each of the High Contracting Parties being at liberty to give such notice to the other at the end of the said period of ten years, or at any time afterward.”

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The Acts necessary to enable these Articles to be carried into effect were passed by the Imperial Parliament of Great Britain on the 6th August, 1872; by the Parliament of Canada on the 14th June, 1872; by the Legislature of Prince Edward Island (which did not at that time form part of the Dominion) on the 29th June, 1872; and by the United States Congress on the 25th of February, 1873. A Proclamation, dated Washington, 7th June, 1873, fixes the 1st of July of that year as the day on which these Articles should come formally into operation.

Some difficulties have arisen in the case of Newfoundland, it was not until the 28th of March, 1874, that the necessary Act was passed by that Colony; and a Proclamation issued on the 29th of May of the same year fixed the 1st day of June, 1874, as the day on which the Fishery Articles of the Treaty of Washington, so far as they relate to Newfoundland, should come into effect.

In the case of Canada, it was deemed advisable to admit American fishermen to the practical use of the privileges specified in the Treaty in advance of the formal Legislative Acts necessary for that purpose. An official communication to that effect was made early in 1873, and by a Circular from the United States’ Treasury Department, dated 1st April, 1873, American fishermen at once availed themselves of the freedom of Canadian inshore waters. This was fitly acknowledged by the United States’ Government, as “a liberal and friendly” act on the part of the Dominion Government. A similar concession had been previously made by the Government of Prince Edward Island, who admitted American fishermen to the practical freedom of their waters on the 24th of July, 1871.

The Treaty of Washington having been ratified, it became necessary to take steps for the constitution of the Commission appointed to meet at Halifax, in the manner prescribed by the Treaty, and in the meanwhile, Her Majesty’s Government having appointed their Agent to the Commission, he proceeded to Washington, and some negotiations were entered into with a view to substitute an arrangement with respect to reciprocal free trade between Canada and the United States, for the award of the Commissioners as provided under Article XXII of the Treaty—it being always distinctly understood that in case of the failure of such negotiations, the rights of



Her Majesty's Government with respect to the appointment of the Commission, should in no way be prejudiced. These negotiations having led to no result, it became necessary to revert to the terms of the Treaty and to take steps for the constitution of the Commission in the manner prescribed by it.

Having thus stated the circumstances which led to the conclusion of the Fishery Articles of the Treaty of Washington, having recited those Articles, and enumerated the legislative enactments which have been passed for the purpose of rendering them effective; it is submitted that in order to estimate the advantages thereby derived respectively by subjects of the United States and of Great Britain, the following basis is the only one which it is possible to adopt under the terms of the first portion of Article XVIII of the Treaty of Washington, of 1871, viz:—That the value of the privileges granted to each country respectively by Articles XVIII, XIX, and XXI of that Treaty, *which were not enjoyed under the 1st Article of the Convention of the 20th October, 1818*, is that which this Commission is constituted to determine.

Article I of the Convention of the 20th October, 1818, provides that—

“The inhabitants of the 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 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 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 three marine miles of any of the coasts, bays, creeks, or harbours of His Britannic Majesty's dominions in America not included within the above mentioned limits: provided, however, that the American fishermen shall be admitted to enter such bays or harbours for the purpose of shelter, and 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.”

Such was the respective position of each country under the Convention of 1818 on matters connected with the Fisheries; and it now remains to state precisely what additional liberties are acquired by each under the Treaty of Washington.

Articles XVIII and XXI of the Treaty of Washington superadd to the privileges conferred upon United States' citizens by the Convention of 1818:—

(1.) “The liberty to take fish of every kind except shell fish, on the sea-coasts and shores, and in the bays, harbours, and creeks of the Provinces of Quebec, Nova Scotia, and New Brunswick, and the Colony of Prince Edward Island, and of the several Islands thereunto adjacent, without being restricted to any distance from the shore, with permission to land upon the said coasts and shores, and Islands, and also upon the Magdalen Islands, for the purpose of drying their nets or curing their fish; provided that in so doing, they do not interfere with the rights of private property, or with British fishermen in the peaceable use of any part of the said coasts in their occupancy for the same purpose.

• “It is understood that the above-mentioned liberty applies solely to the sea fishery, and that the salmon and shad fisheries, and all other fisheries in rivers and the mouths of rivers, are hereby reserved exclusively for British fishermen.

(2.) “The admission into Canada of “fish oil and fish of all kinds, (except fish of the inland lakes and of the rivers falling into them, and except fish preserved in oil) being the produce of the Fisheries of the “United States,” free of duty.

(3.) The enjoyment of these privileges to continue during a period of 12 years certain.

Similar privileges are granted by Article XXXII in regard to the Colony of Newfoundland.

Articles XIX and XXI confer the following privileges upon British subjects:—

(1.) “The liberty to take fish of every kind except shell fish, on the eastern sea-coasts and shores of the United States north of the 39th parallel of north latitude, and on the shores of the several islands thereunto adjacent, and in the bays, harbours, and creeks of the said sea coast and shores of the United States and of the said islands without being restricted to any distance from the shore, with permission to land upon the said coasts of the United States and of the islands aforesaid for the purpose of drying their nets and curing their fish; provided that in so doing, they do not interfere with the rights of private property or with the fishermen of the United States in the peaceable use of any part of the said coasts in their occupancy for the same purpose.

“It is understood that the above-mentioned liberty applies solely to the sea fishery, and that salmon and shad fisheries, and all other fisheries in rivers and mouths of rivers are hereby reserved exclusively for fishermen of the United States.”



(2.) The admission into the United States of "fish-oil and fish of all kinds (except fish of the inland lakes and of the rivers falling into them, and except fish preserved in oil) being the produce of the fisheries of the Dominion of Canada, or of Prince Edward Island" free of duty.

(3.) The enjoyment of these privileges to continue during a period of 12 years certain.

Article XXXII extends the above-mentioned privileges, so far as they are applicable, to the Colony of Newfoundland.

Upon this basis Great Britain asserts that the privileges specified in Article XVIII of the Treaty of Washington, of 8th May, 1871, exceed in value the privileges specified in Articles XIX and XXI. This assertion is made upon the following grounds, which, for convenience of argument, have been divided into two parts. Part I deals exclusively with the case of the Dominion of Canada. Part II deals exclusively with the case of the Colony of Newfoundland.

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## PART I.

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### CANADA.

#### CHAPTER I.—*Extent and Value of Canadian Fisheries.*

It will probably assist the Commission in arriving at a just estimation of the intrinsic worth of the concurrent fishing privileges accorded to United States' citizens by the Treaty of Washington, to refer briefly to the extent and value of the sea-coast fisheries of the Maritime Provinces of Canada, as evidenced in part by the profitable operations of British fishermen.

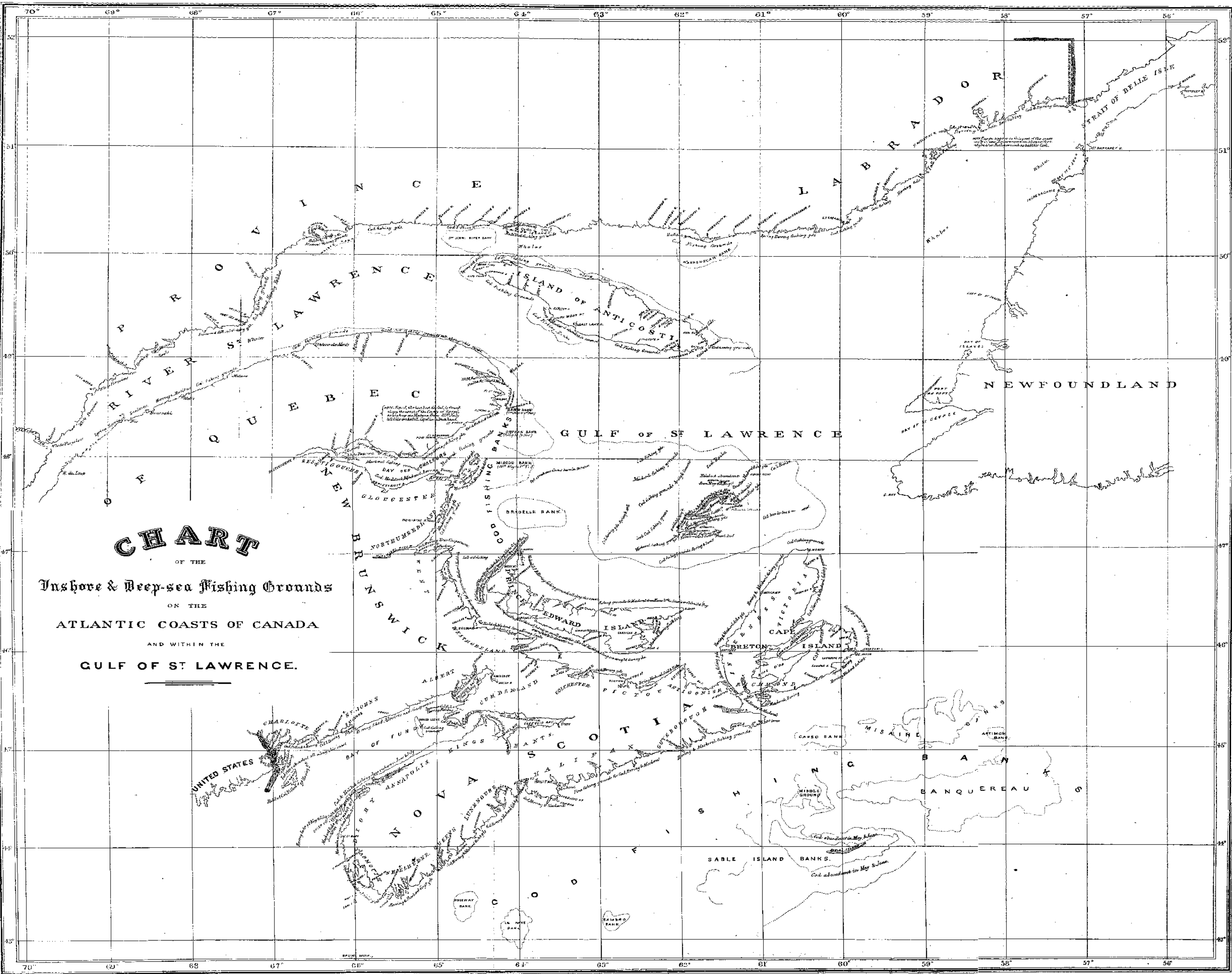
The districts within which British subjects carry on fishing on the coasts, and in the bays, harbours and creeks of Canada, extend from the Bay of Fundy to the Gulf of St. Lawrence inclusive. The superficial area of these extensive fishing grounds, as shown on the accompanying map, comprises many thousands of square miles, forming the home of a great variety of the most prolific and valuable of sea-fish, the capture of which contributes in an important degree to British and American commerce, and supplies vast quantities of food to several millions of people. The chief of these fish, in the pursuit of which British subjects and United States' citizens now participate in common, under Treaty arrangements, are mackerel, codfish, herring, halibut, haddock, hake, pollack, and many of the smaller varieties taken principally for bait.

It appears by the subjoined statement (Appendix A) that the produce of these fisheries caught by British subjects has greatly increased during seven years past. Their steady development and increasing wealth, as shown by this Return, proves that a very considerable amount of industry and enterprise is embarked therein, and also that they are capable of still further expansion. This marked improvement in their condition and yield for the period specified in the Table, is an important circumstance in relation to the present inquiry. It shows that, as an article of commerce and a source of food, their actual productiveness keeps pace with the yearly increasing demands made on them for all the purposes of foreign and domestic trade, and of local consumption. Also, they are now of much greater value than they were during the existence of the Reciprocity Treaty. The admission of American fishermen to concurrent rights under the Treaty of Washington, is therefore, in every respect, highly advantageous to the United States' citizens.

#### CHAPTER II.—*Advantages derived by United States' Citizens.*

##### 1. *Liberty of fishing in British waters.*

Liberty to prosecute freely the sea fisheries "on the coasts and shores, and in the bays, harbours, and creeks" of Canada, is in itself a very valuable concession to United States' citizens. It concedes the common use of extensive and productive fishing grounds, which are readily accessible to American fishermen, and are advantageously situated as regards their home market. The full value of this important concession can be but imperfectly determined by reference merely to the precise number of vessels and fishermen engaged in the business of fishing in these waters, or to the exact quantity of fish taken therefrom in the course of each successive



# CHART

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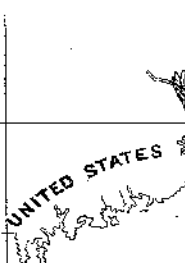
## Inshore & Deep-sea Fishing Grounds

ON THE

### ATLANTIC COASTS OF CANADA

AND WITHIN THE

### GULF OF ST. LAWRENCE.



season. Doubtless the amount of capital thus invested, the employment afforded, the trade and industry thereby promoted, and the necessary food supplied, will be justly regarded by the Commission as forming material elements in the calculation of probable benefits derived by the American nation. But, as it is desirable to refer to such specific data as may fairly establish the equitable foundation and practical character of the present claim, we propose to show, by such evidence as the case admits,—

- (1.) The number of United States' fishing vessels frequenting these waters;
- (2.) The kinds and quantities of fish it is customary for them to take, and the profits accruing to them thereby;
- (3.) The amount of capital embarked in these operations, and other advantages accruing to United States' citizens thereby.

*First.* The official records of the United States' Government show that in 1868 the "enrolled and licensed" vessels engaged in the cod and mackerel fisheries numbered 2,220; in 1869 there were 1,714 vessels so employed; in 1870 their numbers were 2,292; in 1871 there were 2,426 vessels thus engaged; and in 1872 there were 2,385.

The classification of decked fishing vessels in the United States is confined nominally to the cod and mackerel fisheries, but no doubt includes such vessels as embark also in the herring, halibut, haddock, hake, pollack, and bait fisheries on the coasts of Canada. There are, certainly, fluctuations from year to year in the number of vessels engaged, as well as in the success of their respective voyages, but there is a remarkable concurrence in the statements made by various informants that an average number, ranging between 700 and 1,200, of the United States' vessels have annually resorted to British waters for fishing purposes for many years past.

These vessels are variously occupied on the shores of Canada throughout each season. Some of them resort to the Gulf of St. Lawrence from early spring time to late autumn in pursuit of cod, mackerel, herrings, and halibut. Others frequent the western coast of Nova Scotia and the Bay of Fundy throughout the season. During the existence of the Reciprocity Treaty, when free access was afforded to British waters, it was admitted by an American authority, Mr. E. H. Derby, that about 600 of these vessels fished every year for mackerel alone on the Gulf coasts of Canada; and it is probable that as many more fished along the Atlantic coasts of Canada, and also on the banks and ledges off shore. Captain Scott, R.N., commanding the Marine Police, and Captain Nickerson, of the same force, both state that as many as 1,200 United States' fishing vessels have been known to pass through the Gut of Canso in a single season. Inspector Venning states that, during the existence of the Reciprocity Treaty the annual number was from 1,200 to 1,500. The Executive Council of Prince Edward Island, in a Minute dated 17th February, 1874, states that 1,000 sail of United States' vessels were engaged in the mackerel fishery alone in the year 1872. The former commander of the Government cruiser *La Canadienne*, in his report for 1865 estimates that there were in that year from 1,050 to 1,200 American vessels engaged exclusively in the mackerel fishery of the Gulf of St. Lawrence. Subsequently, in 1866, the actual number of United States' vessels duly licensed by the Canadian Government, on passing through the Gut of Canso for the inshore mackerel fisheries was 454, as shown by official returns of the local Collectors of Customs. The exact number of other vessels which then refused to take out licenses on the pretext that they intended fishing in outside waters was not, of course, recorded; but we are justified in assuming from the observations of qualified persons, whose oral or written testimony will be offered to the Commission if required, that at least 600 more were also engaged in the mackerel and other fisheries in British waters.

It is stated in the annual report of the United States Secretary of the Treasury for 1871 that "The district of Gloucester is most extensively engaged in this occupation; her cod and mackerel fleet amounting to 548 vessels, 28,569 tons, showing an increase of 97 vessels since June 30th, 1870." The same authority states in the annual report for 1872 that "the tonnage employed in the cod and mackerel fisheries has increased somewhat for the past three years."

Thirty-nine new fishing vessels were built at the port of Gloucester, Massachusetts, alone, in 1874, and about fifty more were to be built in the next following year; and as there are several other important outfitting ports in the same State, besides many others in the States of Maine, New Hampshire, Rhode Island, Connecticut, and New York, it is fair to infer that a corresponding increase in the fishing fleet from these numerous ports will also take place now that the Canadian fisheries are reopened to their vessels. These five States added 243 schooners to their fishing fleet in 1866, when the inducements to build were less certain. There is therefore good reason to

anticipate that in the course of the twelve years stipulated in the present Treaty a still greater impetus will be given to the fishing industry and commerce of the United States. Such a result may be more confidently expected in consequence of the rapid increase of population and extension of settlements, the more numerous markets opened up by railway enterprises, and the growing demand for fish food from the seaboard to replace the failing supplies from inland waters.

The withdrawal of New England tonnage from the whale fishery, in consequence of the rapid decline of that pursuit as a paying adventure, will most likely have the effect of engaging 300 other sail in the more lucrative branches of marine industry. Mr. R. D. Cutts, in an able report to the United States' Government on the political importance and economic conditions of the Fisheries, expresses some apprehension of the imminent failure of the cod and other fisheries on the Grand Banks. Should such ensue, it would probably engage additional tonnage in the inshore fisheries around the coasts of Canada.

We are therefore warranted in reckoning a yearly average number of vessels as availing themselves of the privileges accorded to United States' citizens by the Treaty of Washington at about 1,000, reserving the right to show the probability of a still larger number being so engaged.

*Second.*—American fishermen pursue their calling around the islands and in the harbours of the Bay of Fundy, and along parts of the coasts of Nova Scotia and New Brunswick bordering the said Bay; down the south coast of Nova Scotia, and around the Island of Cape Breton; thence through the Strait of Canso, along the northern coast of Nova Scotia and New Brunswick; thence through the Strait of Northumberland, and all around Prince Edward Island, particularly on its western, northern, and eastern coasts, resorting especially to the bays and harbours of the southern shore to transship cargoes and procure supplies; thence into Miramichi Bay, the Bay of Chaleur, and Gaspé Bay; thence around the Magdalen Islands and Anticosti Island; thence up the south shore of the River St. Lawrence to Father Point, and down the north shore of the River and Gulf of St. Lawrence from Point des Monts to Blanc Sablon Bay. These localities abound with codfish, mackerel, herrings, halibut, haddock, pollack, hake, and a variety of other and smaller fishes used expressly for bait, such as spring-herring, capelin, smelts, sandlaunce, gaspereaux, also such bait as squid and clams. These are the principal descriptions of fish captured by United States' citizens in British waters. They generally frequent the inshores, and are there caught in the largest quantities and of the finest quality, and with greater certainty and facility than elsewhere. A considerable portion of the codfish taken by American fishermen is doubtless caught on the banks and ledges outside, such as Green, Miscou, Bradelle and Orphan Banks; and within Treaty limits around the Magdalen Islands, and on the southern coast of Labrador. Latterly it has been the practice to use cod seines close inshore, and to fish with trawls and lines near the coasts of Nova Scotia, New Brunswick, Quebec and Anticosti: there is also a small portion of the other fishes named taken at various distances from the shore.

A majority of the fishing fleet frequenting British waters, being fitted almost exclusively for the mackerel fishery, that pursuit will be first considered as to the quantity taken by each vessel. In an ordinary voyage or "trip" from an American port to the Gulf fishing grounds and back, without the liberty of resorting freely to the bays, creeks, and harbours, and the inshores generally, to fish, refit, transship, &c., but with only illicit opportunities to use these privileges, the maximum return for each vessel would be about 110 barrels; but being privileged to fish, and to land and refit, and to transfer each fare to steamers or railways in Canada, and afterwards to replenish stores and resume operations, the vessels would return immediately while the fishing is good, to catch a second fare, which is similarly disposed of, and often a third trip is made before the season closes. Captain P. A. Scott, R.N., of Halifax, Nova Scotia, states that these facilities, combined with freedom of inshore fishing, enable each mackerelman to average about 800 barrels per season, worth 12,100 dollars. Captain D. M. Browne, R.N., of Halifax, makes the same statement. Captain J. A. Tory, of Guysboro, Nova Scotia, states that it is common, with such advantages, for each vessel to catch from 1,000 to 1,500 barrels of mackerel in three trips. Mr. E. H. Derby estimates the catch of vessels "in the mackerel business from 500 to 700 barrels." Mr. William Smith, late Controller of Customs at St. John, New Brunswick, now Deputy Minister of Marine and Fisheries, computes the catch of mackerel by American vessels at 10 barrels per ton. The late Mr. M. H. Perley, Her Majesty's Commissioner under the Treaty of 1854, reports in 1859 having accosted five United States' vessels actively fishing about three miles from Paspébiac, in Chaleur

Bay, and several in Miramichi Bay, having upwards of 900 barrels of mackerel each. It appears from a return made by the Collector of Customs at Port Mulgrave, in the Gut of Canso, that among 134 vessels of the American mackerel fleet which were casually spoken at that port, in 1873, the names of which he gives, there were 33 having over 300 barrels a-piece; 55 having over 400 barrels each; 28 having over 500 barrels each; 12 having over 600 barrels each; and 7 having over 700 barrels a-piece. Probably these were not the largest fares secured, as the vessels were reported before the fall fishery (usually the best) had taken place. In the year 1874 164 United States' fishing vessels took, at the east point of Prince Edward Island, 383 barrels per vessel. The catch of mackerel in that season by the Island fishermen, who are few in numbers and fish mostly in open boats and with seines, was altogether inshore, and amounted to 27,317 barrels.

From testimony which we are prepared to lay before the Commission, we may confidently state that at a very moderate computation each American fishing vessel frequenting British waters obtains through the privileges conferred by the Treaty a catch of at least 300 barrels of mackerel alone, worth 12 dollars per barrel, at each trip,—or a gross value of 3,600 dollars per vessel.

The proportion of codfish taken and forming part of mixed fares would be comparatively small when distributed amongst a large number of vessels fishing principally for mackerel and herrings. It is estimated that vessels fishing for cod, herrings, and other fish during the intervals of mackereling, usually take of herrings 300 barrels; codfish, 100 quintals; halibut, 200 quintals; haddock, pollack, and hake, 100 quintals; and bait fishes (exclusive of herrings, used fresh), 200 dollars' worth; each vessel averaging about 2,000 dollars' worth in all. Many of these vessels, or others of smaller tonnage, are engaged in fishing around the western coasts of Nova Scotia, and in the Bay of Fundy, both before and after their regular voyages to the eastern and Gulf fishing grounds. But the maximum number of vessels and the value of catch reckoned in this claim, for the purpose of stating a basis of computation, without prejudice, however, to whatever addition to the number of vessels engaged and the quantity and value of fish caught may be substantiated in further evidence, does not specifically include the catch of those smaller vessels which are constantly occupied in the inshore fishings of the western coasts of the Maritime Provinces for other kinds besides mackerel. This reservation is necessarily due, if not to the moderation of the claim involved, at all events to the obvious difficulty of ascertaining with exactness the movements and operations of a fleet of foreign vessels, of varied tonnage, numbering between 1,000 and 3,000, besides the many small boats attached, which are continually moving about in different and distant localities, or frequenting throughout each season the countless indentations of a sinuous coast nearly 4,000 miles in lineal extent.

In recapitulation of the above, it is estimated that each United States' fishing vessel will, on a moderate computation, take within British Canadian waters 3,600 dollars' worth of mackerel, and 2,000 dollars' worth of other fish; or a total of 5,600 dollars' worth of fish of all kinds as an average for each trip. This estimate is, however, made, as stated in the case of the number of vessels engaged, without prejudice to any larger catch per vessel, which we may be able to substantiate in evidence before the Commission.

*Third.*—The estimated amount of capital embarked in this business by United States' citizens exceeds 7,000,000 dollars. Mr. Lorenzo Sabine, formerly President of the Boston Board of Trade, estimates it at 7,280,000 dollars; another high American authority, Mr. E. H. Derby, reckons it as upwards of 8,000,000 dollars. It employs about 16,000 men afloat, besides many others ashore. That the investment is a profitable one is proved by the annual increase of vessels and men engaging in it, and also the more costly appliances which are provided in these fishing pursuits. If the construction and equipment of vessels for the various fisheries which United States' citizens so persistently follow in British waters was not proved to be highly advantageous, it is reasonable to assume that it would cease to engage a large amount of capital, for the use of which so many other attractive enterprises exist. It must be concluded, therefore, that the inshore fisheries afford never-failing occupation for men and money preferable to many other lucrative industries.

The advantages resulting to the commerce and supply of United States' citizens generally from the privileges to which American fishermen are admitted by this Treaty are most important. The demand for fish food in all parts of the American Union is yearly increasing, and immense efforts are now being made to supply this want. A population already exceeding 40,000,000, constantly augmenting in numbers

by immigration from foreign countries, and where the people consume the products of the sea to a very large extent, requires much more of this kind of food than the failing fisheries of the United States can now produce. Their productive power is no longer equal to the consumptive capacity of the nation. The rapid means of transport, and the improved methods of preservation now available, are fast bringing the inhabitants of the interior practically within easy reach of the seaboard; and fish of all kinds, even the most inferior descriptions, and qualities not hitherto saleable, are required to supply the public want. The magnitude of the present fish trade of the United States is hardly conceivable from the meagre and partial statements derived from official returns. These Tables publish only the "products of American fisheries received into the Customs districts," which form but a small proportion of the enormous quantities of fish landed from United States' boats and vessels, and much of which is obtained from the sea-coasts of Canada.

We have referred elsewhere to Reports made by American officials regarding the deteriorated condition of the fisheries on the coasts of the New England States. They affirm that owing to such decline "the people are obliged to resort to far-distant regions to obtain the supply which formerly could be secured almost within sight of their homes." The above state of things already renders it necessary for United States' citizens to secure access to Canadian fisheries; and the growing demand for local consumption before mentioned, apart from the requirements of their foreign trade, must tend greatly to increase this necessity.

Were United States' citizens unable to supply such an extensive demand in consequence of being precluded from fishing in British Canadian waters, it would no doubt be supplied through British subjects, who would also catch more fish in their own exclusive waters than if fishing in the same limits concurrently with American fishermen. This consideration, therefore, forms an additional reason for the compensation which we now claim.

## 2. *Liberty to land for the purposes of drying nets, curing fish, &c.*

The privileges secured to United States' subjects in this respect by the Treaty of Washington are the liberty to land for purposes connected with fishing on the coasts of Labrador, the Magdalen Islands, and the other portions of the seaboard of the Dominion of Canada. As the rights thus secured to United States' fishermen for a period of twelve years vary somewhat in the different localities above named, it will be well to consider them separately.

Under the Convention of 1818, United States' citizens were privileged to fish on certain parts of the coast of Labrador, but were restricted in the liberty of drying and curing fish to unsettled places. Such districts as were then occupied or might subsequently become settled were reserved for the exclusive use of British fishermen, and rights and properties possessed by the Hudson's Bay Company were likewise reserved from common user. Gradual settlement during fifty years past has filled up nearly all available landing places along the southern coast of Labrador, between Blanc Sablon and Mount Joly; and the establishments maintained by the Hudson's Bay Company, whose rights and privileges are now acquired by Canada, have confirmed the exclusive occupancy contemplated by the Convention. Under such altered circumstances United States' fishermen might have been excluded under the terms of the Convention from using these landings, without the free use of which the fisheries cannot be profitably pursued. The fish taken in these waters include herrings, cod fish, and sometimes mackerel, which are seined on the main shore, and among the islands throughout that region, and the famous "Labrador herring," which abounds there.

The Convention of 1818 entitled United States' citizens to fish on the shores of the Magdalen Islands, but denied them the privilege of landing there. Without such permission the practical use of the inshore fisheries was impossible. Although such permission has tacitly existed, as a matter of sufferance, it might at any moment have been withdrawn, and the operations of United States' fishermen in that locality would thus have been rendered ineffectual. The value of these inshore fisheries is great: mackerel, herring, cod, halibut, capelin, and launce abound, and are caught inside of the principal bays and harbours, where they resort to spawn. Between 300 and 400 United States' fishing vessels yearly frequent the waters of this group, and take large quantities of fish, both for curing and bait. A single seine has been known to take at one haul enough of herrings to fill 3,000 barrels. Seining mackerel is similarly productive. During the spring and summer fishery of the year 1875, when the mackerel were closer inshore than usual, the comparative failure of American



fishermen was owing to their being unprepared with suitable hauling nets and small boats, their vessels being unable to approach close enough to the beaches.

In the case of the remaining portions of the seaboard of Canada, the terms of the Convention of 1818 debarred United States' citizens from landing at any part for the pursuit of operations connected with fishing. This privilege is essential to the successful prosecution of both the inshore and deep sea fisheries. By it they would be enabled to prepare their fish in a superior manner in a dry and salubrious climate, as well as more expeditiously, and they would be relieved of a serious embarrassment as regards the disposition of fish offals, by curing on shore the fish which otherwise would have been dressed on board their vessels, and the refuse thrown overboard.

All the advantages above detailed have been secured for a period of twelve years to United States' fishermen. Without them fishing operations on many parts of the coast would be not only unremunerative but impossible; and they may therefore be fairly claimed as an important item in the valuation of the liberties granted to the United States under Article XVIII of the Treaty of Washington.

### 3. *Transshipping cargoes and obtaining supplies, &c.*

Freedom to transfer cargoes, to outfit vessels, buy supplies, obtain ice, engage sailors, procure bait, and traffic generally in British ports and harbours, or to transact other business ashore, not necessarily connected with fishing pursuits, are secondary privileges which materially enhance the principal concessions to United States' citizens. These advantages are indispensable to the success of foreign fishing on Canadian coasts. Without such facilities, fishing operations, both inside and outside of the inshores, cannot be conducted on an extensive and remunerative scale. Under the Reciprocity Treaty these conveniences proved very important, more particularly as respects obtaining bait and transferring cargoes. The American fishermen then came inshore everywhere along the coast and caught bait for themselves, instead of requiring, as previously, to buy, and preserve it in ice, saving thereby much time and expense. They also transshipped their fish and returned with their vessels to the fishing ground; thus securing two or three fares in one season. Both of these, therefore, are distinct benefits. There are other indirect advantages attending these privileges; such as carrying on fishing operations nearer the coasts, and thereby avoiding risks to life and property, as well whilst fishing as in voyaging homeward and back; also having always at command a convenient and commodious base of operations. They procure cheap and regular supplies without loss of time, enabling them always to send off their cargoes of fish promptly by rail and steamers to meet the current market demand for domestic consumption or foreign export, instead of being compelled to "beat up" to Gloucester or Boston with each cargo, seldom returning for a second; and it may be remarked that all their freight business in fish from provincial ports is carried on in American bottoms, thus creating a profitable business for United States' citizens.

The advantages above described of being able to make second and third full fares, undoubtedly, in most instances, doubles the catch which can be made in British Canadian waters by a vessel during one season, and it therefore may be reasonably estimated that it enables United States' fishermen to double their profits.

### 4. *Formation of fishing establishments.*

The privilege of establishing permanent fishing stations on the shores of Canadian bays, creeks, and harbours, akin to that of landing to dry and cure fish, is of material advantage to United States' citizens. Before the Treaty the common practice with American vessels was to take away their cargoes of codfish in a green state and to dry them at home. Those codfish caught on the banks off-shore are usually fine, well-conditioned fish, but, being cured in bulk instead of being cured or packed ashore, are of inferior value. Apart from the fishing facilities and business conveniences thus afforded to Americans for prosecuting both the deep-sea and inshore fisheries, there are climatic advantages connected with this privilege of a peculiar nature, which attach to it a special value. It is a fact universally known and undisputed that codfish, for example, cured on our coasts, command a much higher price in foreign markets than those cured in the United States. This is due in a great measure to the dryness and salubrity of the climate and the proximity of the fishing grounds. Permanent curing establishments ashore also enable the fishermen to obtain more frequent "fares," and the dealers to carry on the business of curing and shipping on a much more extensive and economic scale, than if their operations were conducted afloat. There are further advantages derivable from permanent establishments ashore, such as the accumulation of stock and fresh fish preserved in snow or ice, and others kept in frozen and fresh state by artificial freezing; also, the preservation of fish in cans hermetically sealed. The great saving of cost and of substance, and the rapid

preparation of a more saleable, more portable, and more nutritive article of food, which commend these improved methods of treating edible fishes to general adoption, will, undoubtedly, induce enterprising dealers to avail themselves very extensively of the remarkable opportunities which free access, and an assured footing on Canadian coasts, are calculated to afford. The broad effect of these increased facilities is to be found in the abundant and increasing supply to the American public of cheap and wholesome fish, which supply would certainly diminish or fail without the advantages secured by the Treaty of Washington.

5. *Convenience of reciprocal free market.*

A reciprocal free market for any needful commodity, such as fish, entering extensively into daily consumption by rich and poor, is so manifest an advantage to everybody concerned, the producer, the freighter, the seller and consumer alike, that the remission of Canadian duties on American-caught fish imported into Canada, cannot, in our opinion, form a very material element for consideration. The benefits conferred by a cheap and abundant supply of food are evident, especially to countries where, as in the United States and Canada, the chief necessities of life are expensive, and it is so desirable to cheapen the means of living to the working classes.

6. *Participation in improvements resulting from the Fisheries Protection Service of Canada.*

In addition to the statutory enactments protecting the Canadian Fisheries against foreigners, and regulating participation in them by the United States' citizens, under Treaty stipulations, the Provincial Governments have for many years past applied an organized system of municipal protection and restriction designed to preserve them from injury and to render them more productive. A marked increase in their produce during the last decade attests the gratifying results of these measures.

A large number of fishery officers is employed by the Government of the Dominion in the Maritime States at an annual cost of about 75,000 dollars. This staff is actively engaged, under an organized system controlled by the Department of Marine and Fisheries, in fostering and superintending fish culture in the rivers and estuaries. Regulations are enforced for the protection of these nurseries, and considerable expense has been incurred in adapting and improving the streams for the reproduction of river fish.

The intimate connection between a thriving condition of river and estuary fishings and an abundant supply in the neighbouring deep-sea fisheries has not, perhaps, as yet been sufficiently appreciated. It is, however, obvious that the supply of bait fishes thus produced attracts the deep-sea fish in large numbers. Their resort is consequently nearer inshore than formerly, and the catch of the fishermen who have the privilege of inshore fishing is proportionately increased, whilst they pursue their operations in safer waters, and within easier reach of supplies. In addition to the measures above described for the increase of the fisheries, special care has been devoted to the protection of the spawning grounds of sea fishes, and the inshores now swarm with valuable fish of all kinds, which, owing to the expense incurred by the Canadian Government, are now abundant in places hitherto almost deserted.

It will also be necessary for the proper maintenance of these improvements and for the preservation of order in the fishing grounds, as well in the interest of the United States as of the Canadian fishermen, to supplement the existing Fisheries Service by an additional number of officers and men, which will probably entail an increase of at least 100,000 dollars on the present expenditure.

In all these important advantages produced by the restrictions and taxation imposed on Canadians, United States' fishermen will now share to the fullest extent, without having as yet in any way contributed towards their cost: it may then fairly be claimed that a portion of the award to be demanded of the United States' Government shall be in consideration of their participation in the fruits of additional expenditure borne by Canadians to the annual extent, as shown above, of nearly 200,000 dollars.

*Summary.*

The privileges secured to United States' citizens under Article XVIII of the Treaty of Washington, which have been above described particularly and in detail, may be summarized as follows:—

1. The liberty of fishing in all inshore waters of the Dominion; the value of which is shown by the kinds, quantity, and value of the fish annually taken by United States' fishermen in those waters, as well as by the number of vessels, hands, and capital employed.



2. The liberty to land for the purpose of drying nets and curing fish, a privilege essential to the successful prosecution of fishing operations.

3. Access to the shores for purposes of bait, supply, &c., including the all-important advantage of transferring cargoes, which enables American fishermen to double their profits by securing two or more full fares during one season.

4. Participation in the improvements resulting from the Fisheries Service maintained by the Government of the Dominion.

The above privileges may be considered as susceptible of an approximate money valuation, which it is respectfully submitted should be assessed as well with reference to the quantity and value of fish taken, and the fishing vessels and fishermen employed, as to other collateral advantages enjoyed by United States' citizens.

It has been stated in the preceding portions of this Chapter that an average number of at least 1,000 United States' vessels annually frequent British Canadian waters. The gross catch of each vessel per trip has been estimated at 5,600 dollars, a considerable proportion of which is net profit, resulting from the privileges conferred by the Treaty.

These privileges profitably employ men and materials representing in industrial capital several millions of dollars; the industries to the advancement of which they conduce, support domestic trade and foreign commerce of great extent and increasing value; they also serve to make a necessary and healthful article of food plentiful and cheap for the American nation. It is not merely the value of "raw material" in fish taken out of British Canadian waters which constitutes a fair basis of compensation; the right of this fishery was an exclusive privilege, the sole use of which was highly prized, and for the common enjoyment of which we demand equivalents to be measured by our just estimation of its worth; we enhance the main concession on this point by according kindred liberties and indispensable facilities, all of which are direct advantages; and, in order to illustrate the assessable value of the grant, we adduce certain data relating to the number of United States' fishing vessels more immediately interested, and the gross quantity and value of their catch in British Canadian waters.

In addition to the advantages above recited the attention of the Commissioners is respectfully drawn to the great importance attaching to the beneficial consequences to the United States of honorably acquiring for their fishermen full freedom to pursue their adventurous calling without incurring constant risks, and exposing themselves and their fellow countrymen to the inevitable reproach of wilfully trespassing on the rightful domain of friendly neighbours. Paramount, however, to this consideration is the avoidance of irritating disputes, calculated to disquiet the public mind of a spirited and enterprising people, and liable always to become a cause of mutual anxiety and embarrassment.

It was repeatedly stated by the American members of the Joint High Commission at Washington, in discussing proposals regarding the Canadian fisheries, "that the United States desired to secure their enjoyment, not for their commercial or intrinsic value, but for the purpose of removing a source of irritation." This commendable desire evidently was reciprocated by the British Commissioners in assenting to the proposition that the matter of disagreement as regards a money equivalent "should be referred to an impartial Commission." It should not be lost sight of that an offer for the reciprocal free admission of coal, salt, fish, and lumber, had previously been made by the United States' Commissioners, "entirely in the interest of a peaceful settlement," but was declined by the British Commissioners as inadequate. It is now shown that the contention of the British Commissioners regarding the "great value" of these fisheries was well founded, and that the privileges subsequently accorded by the Treaty of Washington as in part compensatory are of no appreciable value.

It must be admitted, therefore, that the concessions made by Great Britain in the interests of American fishermen, quite irrespective of their commercial value, are indeed extremely valuable to the United States. Probably, it will be said that in this respect, there is an international gain. But it seems impossible for British subjects, if unmolested in their rights and privileges, to occasion any such irritation as the United States' Commissioners expressed their anxiety to avoid. The provocation would be confined entirely to foreign intruders seeking their own gains at the cost and injury of British fishermen, thereby, perhaps, involving both nations in serious difficulties and incalculable expense. The duty (with its attendant cost) of guarding against any such vexations on the part of United States' citizens, devolves solely on the American Government. If, to avoid the onerous responsibility of

fulfilling it, and at the same time to secure for the inhabitants and trade of the country the concurrent use of these valuable privileges, the Government of the United States requires to pay fair equivalents, it certainly cannot be expected that Great Britain would abate the just estimation placed on them because of a mere assertion by the United States as beneficiary "that their value is over-estimated," or that any further measure of concession is due to international amity. Great Britain claims to have fully reciprocated the desire expressed by the United States' Commissioners; and being in possession of proprietary rights of special importance and value to herself, the mutual enjoyment of which was voluntarily sought on behalf of United States' citizens, we are justified in asking the present Commission to consider these circumstances in determining the matter thus referred to equitable assessment under the present Treaty.

### CHAPTER III.—*Advantages derived by British Subjects.*

#### 1. *Liberty of fishing in United States' waters and other privileges connected therewith.*

The privileges granted to British subjects by Article XIX of the Treaty of Washington are the same right of fishing and landing for purposes connected with fishing in United States' waters, north of the 39th parallel of north latitude, as are granted to United States' citizens in British North American waters. It may at the outset be stated that this Concession is absolutely valueless.

That the several kinds of sea fishes formerly abundant on the north-eastern sea-coasts of the United States have not merely become very scarce, but are in some localities almost extinct, is an unquestionable fact. An exhaustive investigation into the causes of their decline was commenced in 1871 by Professor Baird, the Chief of the United States' Fisheries Commission, and is still in progress. This eminently thorough and scientific investigator reports, substantially, that the failing supply of edible coast fishes is mainly due to over-netting and incessant fishing by other means. These causes, joined to continuous havoc made by predaceous fishes, have considerably exhausted the coast fisheries along the southern and north-eastern sea-board of the United States. The Fishery Commissioners of the States of Massachusetts and Maine, in their reports for 1872, endorse the official statements of the Federal Commissioner. They add that the sea fishes on the coasts of New England have "almost entirely disappeared," and that "the people are obliged to resort to far distant regions to obtain the supply which formerly could be secured almost within sight of their homes." The following extracts from Professor Baird's report, published in 1873, are conclusive:—

"In view of the facts adduced in reference to the shore fisheries, there can be no hesitation in accepting the statement that there has been an enormous diminution in their number, although this had already occurred, to a considerable degree, with some species, by the beginning of the present century."

"The testimony everywhere, with scarcely an exception, both from line-men and trappers, was that the whole business of fishing was pretty nearly at an end, and that it would scarcely pay parties to attempt to continue the work on a large scale in 1873."

When the above statements are fairly considered, and when we also consider that the only remedy for this state of decline is to diminish the numbers and restrict the catchment powers of fishing engines in use, it is highly improbable that any foreigner will resort to these waters for fishing purposes.

In a geographical sense, the fishery grounds thus formally opened to British subjects comprise about 2,000 square miles, distant and unproductive, and which, for these and other reasons, are practically unavailable to the British fisherman. It is shown above that the best United States' authorities concur in opinion that these fisheries are rapidly becoming exhausted, affording scarcely remunerative employment for American fishermen, who are themselves obliged every season to abandon these grounds, and resort in large numbers to the more productive waters of Canada. It is as impossible to conceive in theory that British fishermen should forsake their own abundant waters to undertake a long and arduous voyage to these distant and unremunerative fisheries, as it is an undisputed matter of fact that they do not, and in all probability never will, do so.

A similar concession embodied in the Reciprocity Treaty of 1854, which embraced three degrees more in a southerly direction, extending along the coasts of Delaware, Maryland, Virginia, and part of North Carolina to the thirty-sixth parallel of north

latitude, proved during the twelve years it existed of no practical value whatsoever, not a single British fisherman having utilized it.

The question of bait must now be considered, as some importance may, perhaps, be attached by the United States to the supposed advantages derived in this respect by British subjects. It might appear at first sight that the privilege of resorting to the inshores of the Eastern States to procure bait for mackerel fishing was of practical use. Menhaden are said to be found only in United States' waters, and are used extensively in the mackerel fishing, which is often successfully pursued with this description of bait, especially by its use for feeding and attracting the shoals. It is, however, by no means indispensable; other fish baits, plentiful in British waters, are quite as successfully used in this particular kind of fishing business, and very generally in other branches, both of deep-sea and inshore fishing, as, for example, fresh herrings, alewives, capelin, sandlaunce, smelts, squids, clams, and other small fishes caught chiefly with seines close inshore. British fishermen can thus find sufficient bait at home; and can purchase from American dealers any quantities they require much cheaper than by making voyages to United States' waters in order to catch it for themselves. It is a remarkable fact that for six years past, American fishermen have bought from Canadians more herring bait alone than all the menhaden bait imported into Canada during the same period. The menhaden bait itself can also be bred and restored to places in the Bay of Fundy, on the western coast of Nova Scotia, where it existed up to the time of its local extermination.

It is notorious that the supply both of food and bait fishes has become alarmingly scarce along the United States' coasts. At Gloucester alone some thirty vessels are engaged during about six months in each year catching menhaden for bait. They sell about 100,000 dollars worth annually, and, by catching them immoderately in nets and weirs for supplying bait and to furnish the oil mills, they are rapidly exterminating them. The Massachusetts Fishery Commissioners, in their Report for 1872, state that "It takes many hands working in many ways to catch bait enough for our fishing fleet, which may easily be understood when it is remembered that each George's man takes fifteen or twenty barrels for a trip; and that each mackereler lays in from 75 to 120 barrels, or even more than that." One of the principal modes for the capture of bait and other fishes on the New England Coast is by fixed traps or pounds on the shore. By means of these, herrings, alewives, and menhaden are caught as bait for the sea fishery, besides merchantable fish for the markets, and the coarser kinds for the supply of the oil factories. There are upwards of sixty of these factories now in operation on the New England Coast. The capital invested in them approaches 3,000,000 dollars. They employ 1,197 men; 383 sailing vessels, and 29 steamers, besides numerous other boats. The fish material which they consume yearly is enormous, computed at about 1,191,100 barrels, requiring whole fishes to the number of about 300,000,000. These modes of fishing for menhaden and other bait are furthermore such as to preclude strangers from participating in them without exceeding the terms of the Treaty; and even without this difficulty, it must be apparent that such extensive native enterprises would bar the competition and suffice to ensure the virtual exclusion of foreigners.

The attention of the Commissioners is therefore respectfully drawn to the following points:—

1. The "sea fishery" is distant and unproductive.
2. The inshores are occupied to the fullest possible extent, and the supply, especially in the matter of bait, is rapidly becoming exhausted.
3. British fishermen have not, either during the Reciprocity Treaty or the Treaty of Washington, availed themselves of the freedom of fishing in United States' waters.

A careful consideration of these points will, we believe, lead to the conviction that in this respect no advantage whatever accrues to British subjects.

2. *Customs remissions by United States in favour of Canada.*

The privilege of a free market in the United States for the produce of the fisheries of the Dominion of Canada, excepting fish of the inland lakes and tributary rivers, and fish preserved in oil, remains to be considered. It forms the only appreciable concession afforded by the Treaty for the right of free fishery in British waters, and the collateral advantages derived by United States' citizens. We have already adverted in paragraph 5 of chapter 2 of this Case to the mutual benefit of a reciprocal free market for fish. This is so clearly an advantage to all concerned, and particularly to the nation comprising the largest number of fishermen, traders, and consumers, that it cannot be contended that in this respect any advantage is conceded to Canada which is not participated in by the United States.

*Conclusion.*

For these and other reasons Her Majesty's Government, for the concession of these privileges in respect of the Dominion of Canada, claim, over and above the value of any advantages conferred on British subjects under the Fishery Articles of the Treaty of Washington, a gross sum of 20,000,000 dollars, to be paid in accordance with the terms of the Treaty.

## PART II.

## NEWFOUNDLAND.

## CHAPTER I.

*Introduction and Description of Newfoundland Fisheries.*

It has been already submitted, on page 15 of the Introductory portion of this case that the following basis is the only one which it is possible to adopt under the terms of the first part of Article XVIII of the Treaty of Washington, 1871, namely, that the value of the privileges granted to each country respectively by Articles XVIII, XIX and XXI of that Treaty, *which were not enjoyed under the Ist Article of the Convention of the 20th of October, 1818*, is that which this Commission is constituted to determine.

The position occupied by Newfoundland, in regard to the right of fishing enjoyed by the United States' citizens on her coasts is, however, in many points distinct from that of Canada, and it is desirable to state precisely how the case stands.

By Article I of the Convention of 1818 the inhabitants of the United States acquired "for ever 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, 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, and the 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 the coast of Labrador; but so soon as the same, or any part 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 the United States' renounced for ever any liberty heretofore enjoyed or claimed by the inhabitants thereof to take, dry or cure fish on or within three marine miles of any of the coasts, bays, creeks or harbours of His Majesty's Dominions in America not included within the above-mentioned limits; provided, however, that the United States' fishermen shall be admitted to enter such bays or harbours for the purpose of shelter and of repairing damages therein, of purchasing wood and of obtaining water, and for no other purpose whatever; but they shall be under such restrictions as shall be necessary to prevent their taking, drying or curing fish therein or in any other matter whatever abusing the privileges hereby reserved to them."

In addition to the privileges so enjoyed under the Convention of 1818, Articles XVIII and XXI of the Treaty of Washington granted to United States' citizens:—

(1.) The liberty to take fish of every kind except shell-fish, on the remaining portion of the coast of Newfoundland, with liberty to land on the said coast for the purpose of drying their nets and curing their fish; provided that in so doing they do not interfere with the rights of private property or with British fishermen in the peaceable use of any part of the said coast in their occupancy for the said purpose: the salmon and shad fisheries and all other fisheries in rivers and mouths of rivers being reserved exclusively for British fishermen.

(2.) The admission into Newfoundland of fish oil and fish of all kinds, except fish of the inland lakes and rivers falling into them, and except fish preserved in oil, being the produce of fisheries of the United States, free of duty.

The enjoyment of these privileges to continue for the period of twelve years certain.

In return for the privileges so granted to United States' citizens, British subjects acquired under the same Treaty:—

1. Similar rights of fishing and landing on United States' coasts north of the 39th parallel of north latitude; and,

2. The admission into the United States of fish oil and fish of all kinds, except fish preserved in oil, being the produce of the fisheries of Newfoundland, free of duty.

These privileges also are to continue for a period of twelve years certain.

A reference to the accompanying map will show that the coast, the entire freedom of which for fishing purposes has thus been acquired by the United States for a period of twelve years, embraces that portion extending from the Rameau Islands on the south-west coast of the Island eastward and northwardly, to the Quirpon Islands. This coast contains an area of upwards of 11,000 square miles, including admittedly the most valuable cod fisheries in the world. Fish of other descriptions, namely, herring, capelin, and squid, which are by far the best bait for the successful prosecution of the cod fisheries, can be taken in unlimited quantities close inshore along the whole coast, whilst in some parts are turbot, halibut, and lance.

The subjoined Tables (Appendix B) of the exports of fish from Newfoundland for the past seven years will show the enormous and increasing value of these fisheries; and the Census Returns also annexed (Appendix C) afford the clearest evidence that the catch is very large in proportion to the number of men, vessels, and boats engaged in fishing operations on the coasts of Newfoundland which have been thrown open to United States' citizens under the Treaty of Washington.

In addition to the value, as shown above, of the inshore fisheries, the proximity of the Bank Fisheries to the Coast of Newfoundland forms a very important element in the present inquiry. These fisheries are situated at distances varying from 35 to 200 miles from the coast of Newfoundland, and are productive in the highest degree. Although they are open to vessels of all nations, their successful prosecution depends almost entirely in securing a commodious and proximate basis of operations. Bait, which can be most conveniently obtained in the inshore waters of Newfoundland, is indispensable, and the supply of capelin, squid, and herring is there inexhaustible for this purpose.

With reference to the importance which has from earliest times been attached to the value of the fisheries of Newfoundland, it is to be observed that a great portion of the Articles in the Treaties of 1783 and 1818 between Great Britain and the United States is devoted to careful stipulations respecting their enjoyment; and it will not escape the observation of the Commissioners that the privileges granted to United States' fishermen in those Treaties were always limited in extent, and did not confer the entire freedom for fishing operations which is now accorded by the Treaty of Washington, even on those portions of the coast which were then thrown open to them. Thus, whilst according the privilege of fishing on certain portions of the coast, the Treaty of 1783 denied the right of landing to dry and cure on the shore, and the result was that, so far as concerned dried cod-fish, the concession to the United States was of little or no advantage to them. It was indispensable to the production of a superior article of dried cod-fish that there should be a speedy landing and curing in a suitable climate. The climate of the United States is not adapted for this purpose, whilst that of Newfoundland is peculiarly suitable. This fact is evidenced by the United States having never competed with Newfoundland in foreign markets in the article of dried cod-fish, whilst they were debarred from landing on Newfoundland shores. Again, it is necessary for the prosecution of the fisheries, with reasonable prospects of lucrative results, that the fishermen should be in proximity to their curing and drying establishments.

The Treaty of 1783 was annulled by the war of 1812 and the stipulations of Article I of the Convention of 1818, quoted *in extenso* on page 4 of this case, made important modifications in the privileges heretofore enjoyed by United States' fishermen. Although they had, under this Convention, the liberty of drying and curing fish upon the southern coast of Newfoundland from the Rameau Island to Cape Ray, it was confined to the unsettled bays, harbours, and creeks within these limits, and, it being provided that so soon as any portion thereof should be settled, the liberty should cease, the fishermen of the United States have been prevented, by the coast becoming generally settled, from availing themselves of the liberty so conceded. Previously, therefore, to the Treaty of Washington, United States' fishermen did not interfere with the Newfoundland fishermen as regards the article of dried codfish,

although they prosecuted the herring fishery at Bonne Bay and Bay of Islands on the western coast.

The question of the privileges of fishing on certain portions of the Newfoundland shores enjoyed by French fishermen does not come within the scope of this Commission, yet a passing allusion may be made to it. These privileges consist in the freedom of the inshore fisheries from Cape Ray northwardly to Quirpon Islands, and from thence to Cape John, on parallel 50° of north latitude; and the value attached to this right by the French Government is attested by their solicitude in maintaining it, and by the amount of French capital embarked in the prosecution of these fisheries. This affords another proof of the productiveness of the waters of the island.

## CHAPTER II.

### *Advantages derived by United States' Citizens.*

It will not be a matter of surprise that there should be an absence of exact statistical information when the facts are taken into consideration that, until the Washington Treaty, this vast extent of fishery was exclusively used by the people of Newfoundland—sparsely scattered over a long range of coast, for the most part in small settlements, between the majority of which the only means of communication is by water, and where, up to the present time, there was no special object in collecting statistical details. It is proposed, however, to show, by such evidence as will, it is believed, satisfy the Commissioners, the nature and value of the privileges accorded to the citizens of the United States under the Treaty of Washington. These may be conveniently divided into three heads, as follows:—

I. The entire freedom of the inshore fisheries.

II. The privilege of procuring bait, refitting, drying, transshipping, and procuring supplies.

III. The advantage of a free market in Newfoundland for fish and fish oil.

The privileges granted in return to British subjects will be treated subsequently, and consist of—

1. The liberty of prosecuting fishing operations in United States' waters north of the 39th parallel of north latitude; and

2. The advantages of a free market in the United States for fish and fish oil.

#### *I. The Entire Freedom of the Inshore Fisheries.*

Newfoundland, from that part of its coast now thrown open to United States' fishermen, yearly extracts, at the lowest estimate, 5,000,000 dollars' worth of fish and fish oil, and when the value of fish used for bait and local consumption for food and agricultural purposes, of which there are no returns, is taken into account, the total may be fairly stated at 6,000,000 dollars annually.

It may possibly be contended on the part of the United States that their fishermen have not in the past availed themselves of the Newfoundland inshore fisheries, with but few exceptions, and that they would and do resort to the coasts of that island only for the purpose of procuring bait for the Bank Fishery. This may up to the present time, to some extent, be true as regards cod-fish, but not as regards herring, turbot, and halibut. It is not at all probable that, possessing as they now do the right to take herring and capelin for themselves on all parts of the Newfoundland coasts, they will continue to purchase as heretofore, and they will thus prevent the local fishermen, especially those of Fortune Bay, from engaging in a very lucrative employment which formerly occupied them during a portion of the winter season for the supply of the United States' market.

The words of the Treaty of Washington, in dealing with the question of compensation, make no allusion to what use the United States may or do make of the privileges granted them, but simply state that, inasmuch as it is asserted by Her Majesty's Government that the privileges accorded to the citizens of the United States under Article XVIII are of greater value than those accorded by Articles XIX and XXI to the subjects of Her Britannic Majesty, and this is not admitted by the United States, it is further agreed that a Commission shall be appointed, having regard to the privileges accorded by the United States to Her Britannic Majesty's subjects in Articles Nos. XIX and XXI, the amount of any compensation to be paid by the Government of the United States to that of Her Majesty in return for the privileges accorded to the United States under Article XVIII.



It is asserted, on the part of Her Majesty's Government, that the actual use which may be made of this privilege at the present moment is not so much in question as the actual value of it to those who may, if they will, use it. It is possible, and even probable, that United States' fishermen may at any moment avail themselves of the privilege of fishing in Newfoundland inshore waters to a much larger extent than they do at present; but even if they should not do so it would not relieve them from the obligation of making the just payment for a right which they have acquired subject to the condition of making that payment. The case may be not inaptly illustrated by the somewhat analogous one of a tenancy of shooting or fishing privileges; it is not because the tenant fails to exercise the rights which he has acquired by virtue of his lease that the proprietor should be debarred from the recovery of his rent.

There is a marked contrast, to the advantage of the United States' citizens, between the privilege of access to fisheries the most valuable and productive in the world, and the barren right accorded to the inhabitants of Newfoundland of fishing in the exhausted and preoccupied waters of the United States north of the 39th parallel of north latitude, in which there is no field for lucrative operations even if British subjects desired to resort to them; and there are strong grounds for believing that year by year, as United States' fishermen resort in greater numbers to the coasts of Newfoundland for the purpose of procuring bait and supplies, they will become more intimately acquainted with the resources of the inshore fisheries and their unlimited capacity for extension and development. As a matter of fact, United States' vessels have, since the Washington Treaty came into operation, been successfully engaged in these fisheries; and it is but reasonable to anticipate that, as the advantages to be derived from them become more widely known, larger numbers of United States' fishermen will engage in them.

A participation by fishermen of the United States in the freedom of these waters must, notwithstanding their wonderfully reproductive capacity, tell materially on the local catch, and, while affording to the United States' fishermen a profitable employment, must seriously interfere with local success. The extra amount of bait also which is required for the supply of the United States' demand for the Bank Fishery must have the effect of diminishing the supply of cod for the inshores, as it is well known that the presence of that fish is caused by the attraction offered by a large quantity of bait fishes, and as this quantity diminishes the cod will resort in fewer number to the coast. The effect of this diminution may not in all probability be apparent for some years to come, and whilst United States' fishermen will have the liberty of enjoying the fisheries for several years in their present teeming and remunerative state, the effects of over-fishing may, after their right to participate in them has lapsed, become seriously prejudicial to the interests of the local fishermen.

## II. *The Privilege of procuring Bait and Supplies, Refitting, Drying, Transshipping, &c.*

Apart from the immense value to United States' fishermen of participation in the Newfoundland inshore fisheries must be estimated the important privilege of procuring bait for the prosecution of the bank and deep-sea fisheries, which are capable of unlimited expansion. With Newfoundland as a basis of operations, the right of procuring bait, refitting their vessels, drying and curing fish, procuring ice in abundance for the preservation of bait, liberty of transshipping their cargoes, &c., an almost continuous prosecution of the Bank Fishery is secured to them. By means of these advantages United States' fishermen have acquired, by the Treaty of Washington, all the requisite facilities for increasing their fishing operations to such an extent as to enable them to supply the demand for fish food in the United States' markets, and largely to furnish the other fish markets of the world, and thereby exercise a competition which must inevitably prejudice Newfoundland exporters. It must be remembered, in contrast with the foregoing, that United States fishing craft before the conclusion of the Treaty of Washington could only avail themselves of the coast of Newfoundland for obtaining a supply of wood and water, for shelter, and for necessary repairs in case of accident, *and for no other purpose whatever*; they therefore prosecuted the Bank Fishery under great disadvantages, notwithstanding which, owing to the failure of the United States' local fisheries and the consequent necessity of providing new fishing grounds, the Bank Fisheries have developed into a lucrative source of employment to the fishermen of the United States. That this position is appreciated by those actively engaged in the Bank Fisheries is attested by the statements of competent witnesses, whose evidence will be laid before the Commission.

It is impossible to offer more convincing testimony as to the value to United

States' fishermen of securing the right to use the coast of Newfoundland as a basis of operations for the Bank Fisheries than is contained in the declaration of one who has been for six years so occupied, sailing from the ports of Salem and Gloucester, in Massachusetts, and who declares that it is of the greatest importance to United States' fishermen to procure from Newfoundland the bait necessary for those fisheries, and that such benefits can hardly be over-estimated; that there will be during the season of 1876 upwards of 200 United States' vessels in Fortune Bay for bait, and that there will be upwards of 300 vessels from the United States engaged in the Grand Bank Fishery; that owing to the great advantage of being able to run into Newfoundland for bait of different kinds they are enabled to make four trips during the season; that the capelin, which may be considered as a bait peculiar to Newfoundland, is the best which can be used for this fishery, and that a vessel would probably be enabled to make two trips during the capelin season, which extends over a period of about six weeks. The same experienced deponent is of opinion that the Bank Fisheries are capable of immense expansion and development, and that the privilege of getting bait on the coast of Newfoundland is indispensable for the accomplishment of this object.

As an instance of the demand for bait supplies derived from the Newfoundland inshore fisheries it may be useful to state that the average amount of this article consumed by the French fishermen, who only prosecute the Bank Fisheries during a period of about six months of the year, is from 120,000 to 160,000 dollars annually. The herring, capelin, and squid, amply meet these requirements and are supplied by the people of Fortune and Placentia Bays, the produce of the Islands of St. Pierre and Miquelon being insufficient to meet the demand.

It is evident from the above considerations that not only are the United States' fishermen almost entirely dependent on the bait supply from Newfoundland, now open to them for the successful prosecution of the Bank Fisheries, but also that they are enabled, through the privileges conceded to them by the Treaty of Washington, to largely increase the number of their trips, and thus considerably augment the profits of the enterprise. This substantial advantage is secured at the risk, as before-mentioned, of hereafter depleting the bait supplies of the Newfoundland inshores, and it is but just that a substantial equivalent should be paid by those who profit thereby.

We are therefore warranted in submitting to the Commissioners that not only should the present actual advantages derived on this head by United States' fishermen be taken into consideration, but also the probable effect of the concessions made in their favour. The inevitable consequence of these concessions will be to attract a larger amount of United States' capital and enterprise following the profits already made in this direction, and the effect will be to inflict an injury on the local fishermen, both by the increased demand on their sources of supply and by competition with them in their trade with foreign markets.

### III.—*The advantage of a Free Market for Fish and Fish Oil in Newfoundland.*

It might at first sight appear from the return of fish exports from the United States to Newfoundland, that this privilege was of little or no value; indeed, the duties when collected on this article were of insignificant amount. There is, however, an important benefit conferred by it on United States' fishermen engaged in the Bank Fisheries. In fishing on the banks and deep-sea, heretofore large quantities of small fish were thrown overboard as comparatively useless, when large fish, suitable for the United States' market, could be obtained in abundance; this practice was highly prejudicial to the fishing grounds.

Under the Washington Treaty, two objects are attained; first, a market for the small fish at remunerative prices in Newfoundland; and secondly, the preservation of the fishing grounds.

It is evident that, although at the present time United States' fishermen have been in enjoyment of the privileges conferred by the Treaty of Washington only for a short period, and may not have availed themselves to the full extent of this privilege, the actual profits derived thereby, and which, in certain instances, will be substantiated before the Commissioners by the evidence of competent witnesses, will be more fully appreciated during the remaining years of the existence of the right, and this item must form a part of the claim of Newfoundland against the United States.

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## CHAPTER III.

*Advantages derived by British Subjects.*

Having now stated the advantages derived by United States' fishermen under the operation of the Treaty of Washington, it remains to estimate the value of the privileges granted thereby in return to the people of Newfoundland.

In the first place, the value of the right of fishing on the United States' coast conceded to them must be considered. This consists in the liberty of fishing operations, with certain exceptions already set forth, on that part of the United States' coast north of the 39th parallel of north latitude.

The arguments on this head contained in section 1 of chapter 3, in the "Case" of Canada, will, it is believed, have satisfied the Commissioners that no possible benefit can be derived by the fishermen of Newfoundland in this respect. Indeed, all that has been said with regard to Canada applies with even greater force to the more distant Colony of Newfoundland. Evidence has, however, been collected, and will be laid before the Commissioners, if required, to prove that no fishermen from Newfoundland resort to United States' waters for fishing operations.

Second, and finally, the remission of the duty by the United States on Newfoundland exports of fish and fish oil, must be taken into account, and this, no doubt, will be viewed as the most important item of set-off to the privileges conferred on United States' citizens.

This privilege is, however, reciprocal, and enables the people of the United States to dispose of their fish in Newfoundland markets. When the comparatively small export of Newfoundland fish and fish-oil to the United States is taken into consideration, the amount of duty remitted thereon is so insignificant that it could not, under any circumstances, be entertained as an offset for a participation in the privileges accorded under Article XVIII of the Treaty of Washington.

The Tables annexed (Appendix D) will show not only the small amount of exports of this article from Newfoundland to the United States, but also the large and increasing trade with other countries. Even if a prohibitory duty were imposed in the United States on exports of fish from Newfoundland, it would be a matter of small moment to that Colony, which would readily find a profitable market for the small quantities of fish which would otherwise be exported in that direction.

Again, upon an article so largely consumed as fish is in the United States, a remission of duty must be admitted to be a benefit to the community remitting the duty, as in reality it relieves the consumer, while it affords no additional remuneration to the shipper; and this, as a matter of fact, has been particularly the case as regards Newfoundland fish shipments to the United States.

The opening up of the fishing-grounds in Newfoundland, and their bait supply to United States' enterprise, enables the people of that country to meet the demand for fish food in their markets; already an appreciable falling off has taken place in the exports to that country of Newfoundland caught fish (which has always been very limited), and which, it may not unreasonably be supposed, will soon cease, owing to the extension of United States' fishing enterprise.

*Conclusion.*

It has thus been shown that under the Treaty of Washington there has been conceded to the United States,—

First, the privilege of an equal participation in a fishery vast in area, teeming with fish, continuously increasing in productiveness, and now yielding to operatives, very limited in number when considered with reference to the field of labour, the large annual return of upwards of 6,000,000 dollars, of which 20 per cent. may be estimated as net profit, or 1,200,000 dollars.

It is believed that the claim on the part of Newfoundland in respect of this portion of the privileges acquired by United States' citizens under the Treaty of Washington will be confined to the most moderate dimensions when estimated at one-tenth of this amount, namely, 120,000 dollars per annum, or, for the twelve years of the operation of the Treaty, a total sum of 1,440,000 dollars.

Secondly, there has also been conceded to the United States the enormous privilege of the use of the Newfoundland coast as a basis for the prosecution of those valuable fisheries in the deep sea on the banks of that Island capable of unlimited development,

and which development must necessarily take place to supply the demand of extended and extending markets. That the United States are alive to the importance of this fact, and appreciate the great value of this privilege, is evidenced by the number of valuable fishing-vessels already engaged in this branch of the fisheries.

We are warranted in assuming the number at present so engaged as at least 300 sail, and that each vessel will annually take, at a moderate estimate, fish to the value of 10,000 dollars. The gross annual catch made by United States' fishermen in this branch of their operations cannot therefore be valued at less than 3,000,000 dollars, and of this at least 20 per cent., or 600,000 dollars per annum, may fairly be reckoned as net profit; of this profit Newfoundland is justified in claiming one-fifth as due to her for the great advantages derived by United States' fishermen under the Treaty of Washington of securing Newfoundland as a basis of operations and a source of bait supply indispensable to the successful prosecution of the Bank Fisheries. An annual sum of 120,000 dollars is thus arrived at, which, for the twelve years of the operation of the Treaty, would amount to 1,440,000 dollars, which is the sum claimed by Her Majesty's Government on behalf of Newfoundland in this respect.

In conclusion, for the concession of the privileges shown above, Her Majesty's Government claim in respect of the Colony of Newfoundland over and above any alleged advantages conferred on British subjects under the Fishery Articles of the Treaty of Washington, a gross sum of 2,880,000 dollars, to be paid in accordance with the terms of the Treaty.

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SUMMARY.

In Part I of this Case the claim of Her Majesty's Government in respect of the Dominion of Canada, has been stated at a sum of 20,000,000 dollars; their claim in respect of the Colony of Newfoundland has been stated in Part II at a sum of 2,880,000 dollars; or a gross total of 22,880,000 dollars,—which is the amount which they submit should be paid to them by the Government of the United States, under the provisions of Article XXII of the Treaty of Washington of the 8th of May, 1871.

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Inclosure 2 in No. 193.

*Mr. Ford to Governor Sir J. Glover.*

(Confidential.)

Sir,

*Newfoundland, July 4, 1876.*

I HAVE the honour to inclose, for your Excellency's confidential information, a copy of the Case on the part of Newfoundland for the Halifax Fisheries Commission. This has been prepared during my stay at St. John's by the Honourable Mr. Whiteway and the Honourable Mr. Donnelly in consultation with me, and has received the approval of the Executive Council, and I shall not fail on my return to England to submit it for the sanction of Her Majesty's Government.

Your Excellency will perceive that the Case as now prepared, is simply a statement of the claim of Newfoundland to compensation under the terms of the Treaty of Washington, and in order to substantiate it before the Commission, the fullest and most convincing evidence which it may be possible to obtain is necessary.

I have therefore drawn up the inclosed paper of queries on those points which seem to me most important, and I have suggested to Mr. Whiteway and Mr. Donnelly that this should be printed and circulated in those districts where the best evidence may be probably found.

I cannot close this despatch without expressing to your Excellency my most respectful thanks for the great kindness and hospitality you have shown to Mr. Bergne and myself during our visit to this colony; and I trust that your Excellency will convey to the Executive Council, and to the Honourable Mr. Whiteway and the Honourable Mr. Donnelly in particular, the lively sense we entertain of the exceedingly courteous and friendly manner in which we have been received.

I have, &c.  
(Signed) F. C. FORD.

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## Inclosure 3 in No. 193.

*List of Queries.*

1. What is your name and age; where do you reside, and what opportunities have you had of becoming acquainted with the Newfoundland fisheries?
2. Have you observed any United States' fishing vessels in your neighbourhood; if so, how many?
3. Have they come there to fish or to purchase bait?
4. Have you ever sold any bait to United States' fishing vessels? How many have you supplied, and to what extent as to price and quantity?
5. If any United States' vessels have fished in your neighbourhood, state:—
  - (1) What would be the description and value of their catch?
  - (2) Whether they fished entirely within three miles of the shore?
6. At what distance from the shore do Newfoundland fishermen catch cod?
7. Is caplin, herring and squid for bait entirely an inshore fishery, or is bait ever taken at a distance of more than three miles from shore?
8. Do you know of any Newfoundland vessels which have been on a fishing voyage to the United States' coast? that is to say south of the entrance to the Bay of Fundy; and referring to inshore, not deep sea fisheries.

## Inclosure 4 in No. 193.

*Governor Sir J. Glover to Mr. Ford.*

Sir,

*Government House, Newfoundland, July 4, 1876.*

I HAVE the honour to acknowledge the receipt of your letter of this day's date with inclosure.

2. The attention of my Government shall be especially directed to the attainment of such evidence as may be procurable.

3. I will convey to the Members of the Executive Council, and more especially to the Honourable the Solicitor-General, and the Honourable the Financial Secretary, the lively sense you entertain of the friendly and courteous manner in which Mr. Bergne and yourself have been received by the members of the Government.

4. I anticipate that great benefit will result from your visit, in the increased appreciation of the value of our fisheries, which your researches will establish; and that your able representation of our claim before the Commission will obtain for Newfoundland her just share of compensation for the privileges conceded by the Legislature.

5. For myself allow me to add that the visit of Mr. Bergne and yourself will ever be held by me in most pleasing remembrance.

I have, &c.  
(Signed) JOHN H. GLOVER.

## Inclosure 5 in No. 193.

*Mr. Shea to Mr. Ford.**Colonial Secretary's Office, St. John's, Newfoundland,  
July 5, 1876.*

Sir,

HIS Excellency the Governor having inclosed to me, for the information of the Executive Council, your despatch of yesterday to his Excellency, I am to express to you, on the part of the Council, the very great satisfaction afforded them by the visit of yourself and Mr. Bergne.

By Mr. Whiteway and Mr. Donnelly, who have been specially intrusted with the statement of our case for compensation under the Washington Treaty, your assistance has been esteemed of the highest value, and the Council fully share their appreciation of those services which induce a hope all the more confident, for a result in accordance with the legitimate claim of the Colony.

You may feel assured that no diligence will be wanting on the part of this Government in the endeavours to obtain all available information on the points raised by your queries.

I have, &c.  
(Signed) E. W. SHEA, *Colonial Secretary.*

## Inclosure 6 in No. 193.

## COST of outfit of schooner "Osceola," seventy-eight tons, fitted for the Bank Fishery.

	£	s.	d.
Schooner "Osceola," valued.. .. .	650	0	0
Manilla cable and anchors .. .. .	115	0	0
Boats, oars, &c. .. .. .	30	13	9
Fishing gear, including seine.. .. .	82	1	3
130 hogsheads of salt .. .. .	52	0	0
Mats for dunnage .. .. .	0	15	0
Provisions, &c. .. .. .	79	12	2
Ice house and ice .. .. .	11	10	0
Fuel .. .. .	5	10	3
Incidentals .. .. .	44	12	3
Insurance on outfit in 250 <i>l.</i> for three months at 4 per cent. policy .. .. .	10	5	0
Insurance on vessels from St. John's to St. Mary's .. .. .	7	15	0
Insurance on vessel, 650 <i>l.</i> , for four months at 5 per cent. policy .. .. .	32	15	0
	<hr/>		
	1,122	9	8

*Crew*.—Ten men including master; wages, one-half their catch of fish and proportion of bounty; paying fish-making.

One man navigating, 7*l.* per month. Brought in first trip about 400 quintals fish. Expects to make two more trips, or to land 1,000 quintals fish at 20*s.* per quintal net.

Our bounty is 6 dollars per ton register, divided between vessel and crew.

## No. 194.

*Mr. Ford to the Earl of Derby,—(Received August 7.)*

(No. 6. Confidential.)

My Lord,

*London, August 7, 1876.*

IN my despatch No. 14 of the 22nd of November last, I had the honour to inclose a copy of the draft prepared at Ottawa of the Canadian Case for presentation to the Halifax Commission; and I stated that, although in its main features the plan and arrangement met with the approval of the Dominion Government, and of the Counsel retained on behalf of the Maritime Provinces, some points were reserved for further consideration.

The principal question, as to the treatment of which a difficulty was found to exist, was that of the Customs remissions by the United States in favour of Canada; and whilst in England last winter, I had some correspondence with the Dominion Government as to the form in which this would best be presented in the preliminary Case. Not being able to arrive at any exact understanding with them on this point, I thought it desirable to take advantage of my visit to Newfoundland to arrange a meeting with the Minister of Marine and Fisheries to discuss all the matters necessary for preparing the Case in its final shape.

This meeting took place at Halifax, Nova Scotia, on the 11th and 12th ultimo, and the following gentlemen were present: Honourable A. J. Smith, Minister of Marine and Fisheries; Mr. Whiteher, Commissioner of Fisheries; Mr. Bergne and myself.

Some points of detail having been discussed, we entered upon the consideration of the principal difficulty adverted to above, and which is stated in detail in the inclosed Memorandum by Mr. Bergne; the result being that the paragraphs which will be found in the Case inclosed in my despatch No. 5 of the 7th instant were substituted for section 5 of chapter II on page 27; and section 2 of chapter III on pages 35, 36, and 37 of the draft Case submitted to your Lordship in my despatch No. 14 of the 22nd of November of last year.\*

These alterations, and those minor ones which will be found in the Case in its revised form, were approved by the Minister of Marine and Fisheries, who, however, expressed his desire to obtain the opinion of the counsel on the more important point; and I have accordingly furnished him with a copy of the Memorandum inclosed in this despatch for confidential communication to those gentlemen, on the understanding that, in the meanwhile, the Case should be considered as definitively adopted, and that I should proceed to print it at once on my return home, for presentation to your Lordship, and for submission to the Law Officers of the Crown.

\* See these Sections in Amended Draft, Inclosure 1 in No. 193.

The Minister of Marine and Fisheries said that, although in a matter of such importance, he would desire to be fortified by the opinion of counsel, yet he did not anticipate that any objection would be raised by them to the Case in its present shape; and I hope, therefore, that no further changes will be desired on the part of the Dominion of Canada.

I would venture to suggest that, if your Lordship should think proper to communicate a copy of this despatch to the Earl of Carnarvon, his attention might be called to the fact that the alterations made in the Case have been drafted with due regard to his Lordship's suggestions contained in the letter from the Colonial Office, dated the 13th of January last.

I have, &c.  
(Signed) FRANCIS CLARE FORD.

Inclosure 1 in No. 194.

*Memorandum respecting the Method of treating the question of Customs Remissions in the Case.*

(Confidential.)

THE difficulties which present themselves in stating to the best advantage in the preliminary case for presentation to the Halifax Commission the question of the reciprocal remissions of duty by the United States and Canada on fish and fish oil may be stated as follows.

Two different lines of argument are open :—

1st. That these remissions are to be taken at their actual value in money as an offset to the privileges of free fishing.

2nd. That, on a free trade view these remissions are of as much benefit to the country remitting, as to the country in whose favour they are remitted, and must consequently in putting a money value to the balance of privilege granted on either side, be held to be of little or no account.

If the first view were adopted, the case would stand that a sum equal to the value for twelve years of 157,841 dollars per annum, which is the average annual value of the duties remitted by the United States on these articles, must be deducted from any sum the Commission might consider due to Canada for the free right of fishing in her waters conceded to citizens of the United States. This sum to be deducted might indeed possibly be lessened by the value of similar customs remissions made by Canada, amounting to an annual average of 5,724 dollars, thus leaving the balance at 152,117 dollars per annum. It is doubtful whether under a strict interpretation of Article XXII of the Treaty of Washington the remissions by Canada can be taken into account at all. This, however, is of small importance, since the amount of Canadian remissions are but trifling when compared with those of the United States.

In considering this part of the case it must also not be forgotten that there is a possibility that the United States will endeavour to prove before the Commission that the remissions made by them of duty on Canadian fish and fish oil amount to a much larger total than that given here, which is derived from the published Returns. It is probable that a considerable quantity of Canadian caught fish was entered into United States' ports in United States' vessels as though caught by citizens of that country; and it may be contended that, by adopting a more effective system of Customs supervision, this illicit entering might have been prevented, and the total of the duties largely increased.

If, however, the principle were admitted that such remissions of duty were to be taken at their actual money value as a sacrifice by the country remitting them, the British Agent would secure the important advantage of being able to fall back on an offer made by the United States Commissioners at the sittings of the Joint High Commission which preceded the conclusion of the Treaty of Washington. During this Commission one of the most difficult points of negotiation was, what equivalent should be made by the United States for the privilege of access to British North American Fisheries, and after many proposals and counter-proposals an offer was made, subject to some minor conditions by the United States Commissioners, that the Fisheries of both countries should be reciprocally free (those of the United States only north of the 39th parallel of north latitude), and that the duties levied by the United States and Canada respectively on coal, salt, fish and fish oil, timber and lumber should be remitted. This offer was coupled with the condition that the duties on timber and lumber were not to be

remitted until the expiration of a few years ; but the effect would have been substantially as follows :—

The annual value of the duties on these articles in the United States, taking the average of a period from 1864 to 1875, would be—

	Value.		Duty.	
	Dollars.		Dollars.	
Coal .. .. .	773,645	190,886		
Salt .. .. .	91,774	46,182		
Fish .. .. .	1,368,612	157,841		
Timber and lumber .. .. .	7,345,394	1,083,609		
Total .. .. .	..	1,478,518		

and this for twelve years, the period during which the Fishery Articles of the Treaty of Washington remain in force for certain, would amount to a total of 17,742,216 dollars.

The annual value of the duties in Canada on these articles, taking an average of the same period, would be—

	Value.		Duty.	
	Dollars.		Dollars.	
Coal .. .. .	1,196,469	8,491		
Salt .. .. .	99,332	248		
Fish .. .. .	296,362	5,724		
Timber and lumber .. .. .	500,085	6,874		
Total .. .. .	..	21,337		

Or, for twelve years, a total of .. .. . Dollars.  
256,044

The balance in favour of Canada would therefore be —

	Dollars.
	17,742,216
	256,044
Total .. .. .	17,486,172

About 3,500,000*l.* sterling.

It, therefore, follows that the United States were prepared to sacrifice revenue to this amount for the privilege of access to British North American Fisheries, and on the admission of the principle that these remissions are to be taken at their actual value in money, it is a strong argument to say that this is the price actually offered by the United States' Commissioners, and refused by the British as inadequate.

It is, however, doubtful whether such a position could be sustained before the Commission for several reasons. During the negotiations of the Joint High Commission a proposal was made by the United States to purchase the right of free fishing in British North American waters in perpetuity for a sum of 1,000,000 dollars (about 400,000*l.* sterling), and it could scarcely be contended that those who were willing only to make such an offer when it came to a question of money value, would at another moment propose to give so large a sum as 17,486,172 dollars for the same privilege for a period of only twelve years. Had such a sum in money been offered it is idle to suppose that it would not have been accepted. Moreover, it would be extremely difficult for a British Agent to argue in this purely protectionist line. To do so would be to assume that Great Britain has during the past twenty years been making to various countries a gratuitous present of many millions sterling.

If the second view were adopted, viz., that these remissions are not a pecuniary sacrifice by the remitting country, it would follow that such remissions would fall entirely out of account before the Commission, and the relative value of the fisheries opened by each to the other, alone remain to be balanced.

Now as it is amply proved that those of the United States are valueless to British subjects, any value which might be attached by the Commissioners to the free use of British North American fisheries would remain without any offset or deduction.

These are the two main lines of argument open, and it must not be lost sight of

that it is impossible to pass the matter over by simply saying that the Customs remissions are reciprocal, in view of the fact that they stand in the proportion of—

Annual remissions by the United States .. .. .	Dollars.
„ „ by Canada .. .. .	157,841
	5,724

with the above-mentioned possibility of the United States' remissions being made out at a larger figure.

There is, however, a middle course which might possibly be eventually adopted in argument, although not directly expressed in the preliminary case; and this probably comes nearest to the real truth of the question, viz., that though such remissions are no doubt an advantage to the country in whose favour they are made, yet that the country remitting them can afford to make sacrifices of revenue in view of the attendant advantages, and that therefore the remissions cannot certainly be taken at their full money value.

In view of these difficulties the Canadian Counsel, at the meeting of the 6th November, 1875, at St. John, New Brunswick, were of opinion that it would be best to omit all reference to this point from the case, leaving the United States to choose their own ground, and thus place them on the horns of a dilemma. If they said "Customs' remissions are to be taken at their actual money value," the reply would be, "then the offer of 17,486,172 dollars is your own estimate of the value of Canadian fisheries to you;" or if the free trade argument were adopted, the offset would vanish.

No doubt much advantage might be derived by thus reserving our attitude entirely, but there are two serious difficulties in omitting all reference to the question:—

1. The words of Article XXII of the Treaty of Washington are, "that Commissioners shall be appointed to determine, *having regard to* the privileges accorded by the United States to the subjects of Her Britannic Majesty, as stated in Articles XIX and XXI, the amount of any compensation," &c.

Article XXI being the one in which provision is made for the reciprocal remissions of Customs duties, it is questionable whether it would be possible, under the terms of the Treaty, to avoid taking these into account.

2. It is doubtful whether it would be expedient, after stating all the circumstances which tell on the British side, to omit all reference to what the United States will, no doubt, consider the strong point in their favour.

The Case should be a just and dignified statement of the claim preferred on the part of Great Britain, and whilst framed so as not to needlessly commit ourselves to statements which might be inconvenient, should also carry conviction with it as a fair and impartial balancing of the benefits derived by each country.

The force of the arguments used by the Canadian Counsel at St. John, which are embodied in the inclosed Memorandum by Mr. Joseph Doutre, Q.C., and the above considerations of the difficulty of passing over the subject entirely, made it seem desirable to frame, if possible, some statement which, whilst not entirely leaving the question untouched, would yet preserve to us the advantage of concealing the view which we might take on this point until the United States had disclosed the line of argument which they meant to adopt.

It is believed that the paragraphs now inserted in the Case will have this effect.

These were drafted and adopted at a meeting held at Halifax on the 11th July, 1876, at which the Honourable A. J. Smith, Minister of Marine and Fisheries, Mr. Ford, the British Agent, Mr. Whitcher, and Mr. Bergne, were present, the Counsel retained on behalf of the maritime provinces of the Dominion being unfortunately unable to attend.

Halifax, July 12, 1876.

J. H. G. B.

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Inclosure 2 in No. 194.

*Memorandum by Joseph Doutre, Esq., Q.C., respecting the Remission of Duties on Fish and Fish Oil.*

THE money value of the remission of duties by the United States' Government on fish and fish oil can hardly be denied on other grounds than the free trade principle which makes the remission a profit for the party remitting as much as for the other party.

It is considered imprudent to urge such a principle in the British case, firstly to be filed, for two reasons.

1. The policy of the American nation and Government being unequivocally "protection," there is no reasonable hope of changing the views of their Commissioner in this respect.

On the other hand, there is every probability that the third Commissioner will be an Austrian gentleman, whose Government and nation have not yet acknowledged free trade as a profitable policy. The majority of the Commissioners will, therefore, be beyond the possibility of suasion that the Government of the United States did not grant something valuable to Canada by remitting those duties.

2. Granting that the American Agent will set a money value upon the duties remitted, a very strong argument may be based upon the annual income which the United States offered to abandon as a compensation, viz., duties on coal, lumber, salt, &c., articles on which the United States' Government now levies about 1,700,000 dollars annual duties.

Reasoning from the American standpoint we may fairly argue that these duties for twelve years would have amounted to a compensation of 20,400,000 dollars, in addition to all other advantages granted by the Treaty.

If this matter were urged in this light by the British Agent, in the first instance we would lose the benefit of this argument, which, although weak for a free-trader, is unanswerable by those who would have set a money value on the remission of duty on fish and fish oil.

The evidence on the money value of the fisheries, derived from the number and tonnage of vessels employed by the United States' fishermen, cannot be very satisfactory, as it is almost impossible in such a precarious enterprize as fishing to arrive at anything certain as regards profits. If, in addition to the rather vague evidence which we can obtain on the possible profits, we can invoke the opinion of the United States, as contained in the offer to remit 1,700,000 dollars annual duties over and above all other advantages, we give a substantial body to that heretofore vague evidence. And if we begin in the first case by denying all money sacrifice on the part of the United States' Government, by the remission of duties on fish and fish oil, how could we logically urge afterwards the valuation put by the United States' Government in offering to remit 1,700,000 dollars more duties?

They would reply with our own argument, that such an offer had no significance or value. The best that could result from those self-contradictory arguments would be that the remission of duties on fish and fish oil cannot be a setoff.

In the meantime we would have lost the benefit of the admission contained in the offer, which is for us of far greater value than anything we may lose by allowing the United States to urge the money value of the duties remitted on fish and fish oil.

It is contended, however, that something has to be said to explain why the authors of the Treaty mentioned the remission of duties as a possible setoff in Article XXI. The assertion of advantages granted by the American Government emanated from the American Representative, and it belongs to the American Agent to make the best he can of this assertion. It is sufficient for us to allege, in a general manner, that the remission of duties on fish and fish oil being reciprocal, the advantage resulting therefrom is not greater on one side than on the other.

For these reasons the Canadian counsel were of opinion that the discussion of the alleged advantages resulting from the remission of duties should be kept back for the Counter-Case.

*St. John, New Brunswick, November 6, 1875.*

No. 195.

*Mr. Ford to Lord Tenterden.—(Received August 7.)*

Dear Lord Tenterden,

*Foreign Office, London, August 7, 1876.*

WHILST I was at Washington Sir Edward Thornton invited Mr. Fish to meet me at dinner; but as we had no opportunity of speaking except on general subjects, Mr. Fish invited me to call on him at the State Department.

This I did, and have recorded in the accompanying Memorandum what passed at our interview.

Mr. Fish does not make our going on with the Three Rules a condition of proceeding with the Halifax Commission; but he purposes (which to my mind amounts to the same



thing) meeting every proposal on our part to doing so, by inquiring "what steps we intend taking with regard to the Three Rules." In short, he wishes that the two questions should be dealt with *pari passu*. It appears to me that we are moving in a "vicious circle," from which there is no escape but by returning an answer to his query. He has afforded us an opportunity of doing so in his note of the 8th of May last, which he considers reopens the question of the Three Rules, and to which note we have as yet given no reply. You will perceive from the inclosed Memorandum that Mr. Fish professes himself ready to adopt either the course of definitively dropping the Three Rules, or that of submitting them. In the latter case he would be prepared to consider the form in which they should be submitted, without making any contemporaneous delay in the appointment of the Commission; and he further seems disposed to waive his former objection to give up the word "open."

Under these circumstances it appears to me that the only apparent means of getting the Commission constituted, is for Her Majesty's Government to decide finally what course they mean to adopt with regard to the Three Rules question; and as Mr. Fish has now expressed himself willing to adopt either alternative, this would be an excellent opportunity of taking a decision in the matter; and if this were done it is my belief that the Commission might meet this year.

Believe me, &c.  
(Signed) FRANCIS CLARE FORD.

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Inclosure in No. 195.

*Memorandum relating to an Interview held by Mr. Ford with Mr. Fish at the State Department at Washington on the 19th of July, 1876.*

ON the morning of the 19th of July I called, by Mr. Fish's invitation, at the State Department at Washington, when the question of delay that had occurred in proceeding with the constitution of the Halifax Commission formed the topic of conversation.

Mr. Fish commenced his remarks by expressing the earnest wish he felt to see all the provisions of the Treaty of Washington, in the negotiation of which he had taken so prominent a part, disposed of before he went out of office in the month of March next.

Everything, he said, had been fulfilled with the exception of two of its provisions, and although these two might possibly have no connection one with the other, still he could not see why he should be called upon to carry out one of them and not the other. They both formed integral portions of the same instrument, and as such, one should not remain settled without the other being equally disposed of.

On my replying that I considered the two questions were totally distinct and had no connection the one with the other, and that, whilst the Constitution of the Halifax Commission had always been urged by Her Majesty's Government, the question of the Three Rules had dropped owing to the United States' Government failing to answer Lord Granville's despatch of December 1871, or having taken any notice of his Lordship's communications with General Schenck on the subject, Mr. Fish said it was true the latter question had, at one time, come to a standstill on a point of etiquette, but he considered he had never received a reply to the draft note he had drawn up in the month of November, 1871.

He was not desirous, however, of continuing a conversation on that point. He would confine his observations to the main question, namely, as to the steps Her Majesty's Government proposed taking at present in dealing with the question. Did they wish to proceed with the stipulation contained in the concluding paragraph of Article VI of the Treaty or did they not? All he wanted was a simple answer to a simple question. For his part he did not care whether or no the Three Rules were submitted to the Maritime Powers. The Rules had been framed for a specific purpose, and had done their work. We might now drop them if we thought fit, but in face of the engagements entered into by the two countries it was of importance that action should be taken in the matter.

The position of Europe was critical, and a war might any day break out in which one or both of the parties to the Washington Treaty might find themselves in the position of neutrals, and the United States' Government for its part was exceedingly anxious to lose no time in having its position clearly defined *vis-à-vis* foreign Powers under the obligations it had assumed under the Treaty of Washington.

An opportunity had now presented itself in which Great Britain could declare her intentions to the United States. He had addressed a note to Sir Edward Thornton on the 8th of May in which he had expressed his readiness to proceed with the nomination

of the Third Commissioner, and had desired at the same time to receive a definite answer as to the steps which Her Majesty's Government had decided to take with regard to the Three Rules question.

Let an answer be given to that note, and he was ready to proceed at once with the Halifax Commission. He would be contented with an intimation on the part of Great Britain that she did not desire to carry out that part of the Washington Treaty relating to the Three Rules. Such an intimation would prove no hindrance to proceeding with the Constitution of the Halifax Commission. All he wanted was an answer of some sort, so that he could say that the stipulations contained in Article VI of the Treaty had been complied with.

He would be equally contented with an intimation on the part of Great Britain that she was prepared to carry out the stipulations, in which case the form in which the Three Rules should be presented might be considered.

On my remarking that in the latter case we might expose ourselves to further delay owing to a reopening of discussions as to contested words and phrases, Mr. Fish said that, so far as he recollected, the only word in discussion related to that of "open;" and I gathered from what he said that he would raise no objection as to its being omitted in accordance with the views expressed at the time by Her Majesty's Government.

Mr. Fish further stated that he saw no reason why the Three Rules should not be submitted without any comment at all on the part of the parties submitting them, and on my remarking that in that case the foreign Powers to whom they were submitted might call upon us to declare whether or no we were agreed between ourselves as to their meaning, Mr. Fish replied that it would be time enough to enter into explanations with them after they were called for.

All Mr. Fish's remarks tended to the same point, namely, that of disposing one way or other of the stipulations contained in Article VI of the Treaty.

On my asking him what he should say supposing Her Majesty's Government were to inform him that they did not consider the present moment an opportune one for reopening the question, he replied, "Oh, that would not satisfy me. I want Her Majesty's Government to say that they will submit the Rules at once, or that they will have nothing more to do with them."

With regard to the selection of the third Commissioner Mr. Fish expressed his annoyance that, in his opinion, Her Majesty's Government had not used their best endeavours at the time to carry out the provisions of the XXIIIrd Article of the Treaty, and that they should be obliged to have recourse to the Austrian Ambassador in London to nominate one.

I fancied I detected in Mr. Fish's tone an insinuation that he thought Her Majesty's Government were likely to obtain an advantage by the third Commissioner being named by a foreigner accredited to the Court of St. James, and I remarked that I could not for a moment suppose he harboured the slightest suspicion that any but a proper and impartial person would be selected by Count Beust. Mr. Fish made no reply, but the expression escaped his lips that "such things have happened."

I cannot help thinking that the disinclination so long manifested on the part of the United States' Government to proceed with the Halifax Commission has, in some degree, originated from such a feeling as that indicated by Mr. Fish. He appears to believe that from the first we were insincere in our endeavours to agree in common upon the choice of a third Commissioner, and now that according to the terms of the Treaty that choice must fall into the hands of one of the Ambassadors accredited to our Court, he fears lest we may acquire a weight, prejudicial to the interests of the United States, by the appointment of a gentleman who may be unacquainted with the special subjects in which he will be called upon to deliberate, but whose friendly feelings and sympathies may already, before the Commission assembles, be enlisted in favour of England and England's cause.

Nevertheless, I am of opinion that Mr. Fish is at present in earnest in his wish of seeing every question still unsettled in the Treaty of Washington finally disposed of during the few remaining months he will still be in office, and that in the event of Her Majesty's Government finding no objection to giving him an answer in reply to his last note of the 8th of May as to their intentions with regard to the Three Rule question, he will proceed at once with the Constitution of the Halifax Commission.

(Signed) FRANCIS CLARE FORD.

No. 196.

*Sir J. Pauncefote to Mr. Herbert.*

Sir,

*Foreign Office, August 14, 1876.*

WITH reference to my letter of the 12th ultimo, I am directed by the Earl of Derby to transmit to you, to be laid before the Earl of Carnarvon, for his Lordship's information, the accompanying copy of a despatch from Mr. Ford, together with its inclosures, giving an account of the steps taken by him towards the preparation of the Case to be presented to the Fisheries Commission at Halifax on behalf of Newfoundland,\* and I am to request that in laying these papers before Lord Carnarvon, you will state to his Lordship that Lord Derby proposes, with his concurrence, to approve Mr. Ford's proceedings.

I am to add that the Case is now being printed, and that a copy will be sent as soon as it is completed.

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

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No. 197.

*Sir J. Pauncefote to Mr. Herbert.*

(Confidential.)

Sir,

*Foreign Office, August 14, 1876.*

I AM directed by the Earl of Derby to transmit to you, to be laid before the Earl of Carnarvon, for his Lordship's information, the accompanying copy of a Confidential despatch from Mr. Ford, together with its inclosures, relative to certain points which were reserved for further consideration in the Case to be presented on behalf of Canada to the Fisheries Commission at Halifax.†

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

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No. 198.

*Sir E. Thornton to the Earl of Derby.—(Received August 14.)*

(No. 208.)

My Lord,

*Washington, July 31, 1876.*

ON the receipt of your Lordship's despatch No. 196 of the 10th instant, and in compliance with your Lordship's instructions, I addressed a note to Mr. Fish on the 26th instant, in the terms of that despatch. As I have used almost entirely the same words, I think it unnecessary to forward to your Lordship a copy of my note.

I have as yet received no answer from Mr. Fish.

I have, &c.  
(Signed) EDWD. THORNTON.

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No. 199.

*Sir J. Pauncefote to Mr. Herbert.*

Sir,

*Foreign Office, August 16, 1876.*

WITH reference to Lord Tenterden's letter of the 12th ultimo, I am directed by the Earl of Derby to transmit to you, to be laid before the Earl of Carnarvon, a copy of a despatch from Her Majesty's Minister at Washington, in regard to the Fisheries Commission and the Three Rules.‡

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

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\* No. 193.

† No. 194.

‡ No. 198.

No. 200.

*Mr. Meade to Sir J. Pauncefote.—(Received August 23.)*

Sir,

*Downing Street, August 21, 1876.*

I AM directed by the Earl of Carnarvon to acknowledge the receipt of your letter of the 14th instant, inclosing a despatch from Mr. Ford, with inclosures, giving an account of the steps taken by him in reference to the preparation of the Case to be presented to the Fisheries Commission at Halifax on behalf of the Colony of Newfoundland.

Lord Carnarvon desires me to state that he concurs in the approval which the Earl of Derby proposes to address to Mr. Ford in regard to his proceedings in this matter.

I am, &amp;c.

(Signed) R. H. MEADE.

No. 201.

*Lord Tenterden to Mr. Ford.*

Sir,

*Foreign Office, August 26, 1876.*

LORD DERBY referred to Her Majesty's Secretary of State for the Colonies your despatch No. 5 of the 7th instant, together with its inclosures, giving an account of the steps taken by you towards the preparation of the case to be presented to the Fisheries Commission at Halifax on behalf of Newfoundland; and I am directed by his Lordship to convey to you the approval of Her Majesty's Government of your proceedings.

I am, &amp;c.

(Signed) TENTERDEN.

No. 202.

*Sir J. Pauncefote to Mr. Herbert.*

Sir,

*Foreign Office, September 5, 1876.*

WITH reference to the letter from this Department of the 14th ultimo, I am directed by the Earl of Derby to transmit to you, to be laid before the Earl of Carnarvon, a copy of the "Case of Her Majesty's Government," which has been prepared by Mr. Ford, in consultation with the Governments of Canada and Newfoundland, for presentation to the Halifax Fishery Commission.\*

The Case, as now printed in a complete shape, includes the claim of Her Majesty's Government on behalf of both Colonies; and Lord Derby proposes, if it meets in substance and arrangement with Lord Carnarvon's approval, to refer it for the consideration of the Law Officers of the Crown.

I am to add, that Mr. Ford has already communicated unofficially copies of the Case to the Earl of Dufferin and to Sir John Glover, together with sufficient extra copies for the use of the members of their respective Governments; but Lord Derby presumes that Lord Carnarvon will think it advisable to communicate copies officially to their Excellencies, inviting them to obtain an expression of the concurrence of the Governments of Canada and of Newfoundland in the Case as it stands at present.

I am, &amp;c.

(Signed) JULIAN PAUNCEFOTE.

No. 203.

*Mr. Ford to the Earl of Derby.—(Received September 7.)*

(No. 8.)

My Lord,

*Foreign Office, September 7, 1876.*

I HAVE the honour to inclose, for your Lordship's information, copy of a despatch which I have received from Admiral Sir A. Cooper Key, commanding Her Majesty's ships

\* Inclosure 1 in No. 193.

on the North American station, inclosing a despatch from Captain Erskine respecting the operations of United States' fishing-vessels in British North American waters.

I have, &c.  
(Signed) FRANCIS CLARE FORD.

Inclosure 1 in No. 203.

*Vice-Admiral Sir A. Key to Mr. Ford.*

Sir, *"Bellerophon," at Halifax, July 20, 1876.*  
I BEG to forward, for your information, a letter I have received from Captain Erskine, of Her Majesty's ship "Eclipse," relative to the American Fishery question, which is at present the only information I can supply you with.

I have, &c.  
(Signed) A. COOPER KEY.

Inclosure 2 in No. 203.

*Captain Erskine to Vice-Admiral Sir A. Key.*

Sir, *"Eclipse," Sydney, Cape Breton, June 14, 1876.*  
WITH regard to your Memorandum of the 24th April last, and the information required for the use of the Halifax Commission, I have the honour to report:—

1. During the cruizes on these coasts in Her Majesty's ship under my command in the fishery seasons of 1875 and 1876, I have never observed an American vessel resorting to the territorial waters of Newfoundland for purposes of fishing.

2. Owing to the dense and continuous fogs which we have experienced this year up to this date, I am unable to form any opinion from personal observation of the number of American vessels availing themselves of the privileges accorded by the Treaty of Washington, but I visited all the ports in Fortune Bay, the great mart of the bait trade, where the Colonial officials reside, and from them have gathered all the information which they could afford on this important subject.

3. The cod fishery carried on by the Americans, so far as Newfoundland is concerned, is, I believe, chiefly, if not altogether, confined to the Banks, but they also do a thriving trade during the winter months by the purchase of herrings, which, preserved in a frozen state, not only find good markets for human consumption in the States, but are likewise used as bait in the fishing off their own coasts in the spring.

4. The schooners employed in this manner, principally from the port of Gloucester, are in every respect thoroughly equipped and well found, and their numbers are yearly increasing. They use bultows of enormous length, and when the vast extent of bait thus spread out is considered, it is astonishing that the ground is not speedily cleared of fish.

The Americans chiefly use herring bait in preference to caplin, as it stands better on the hooks. It is impossible from this side to ascertain with any amount of accuracy the number of vessels employed, as they make a point of evading the ports where Custom-house officers reside, but our Consuls in the States should be in a position to supply the information. The numbers of American vessels annually resorting to Fortune Bay are variously estimated between 300 and 500, and I have heard the number of American bankers put as high as 1,000.

5. Although doubtless by the Treaty of Washington the Americans might have their own bait on our shores of Newfoundland, I have never heard of this having been done. They sometimes make a bargain with the owners of a seine and haul the bait themselves with his net, but during a brisk fishery, when fish is on the ground, time is money, and bait must be procured without delay, and they are quite ready to pay for it at the cheap rare of 60 cents a barrel.

6. Their manner of procedure is as follows:—

During the winter months they bring supplies, &c., in exchange for frozen herrings. When the Bank Fishery opens they run into Fortune Bay, pick up their ice either at St. Pierre, or ports in Newfoundland, where procurable, and are baited by the English fishermen at the rate of 20 dollars or 30 dollars for about sixty or seventy barrels, which lasts them about a month, returning for fresh supplies during the season.

7. To collect the light dues of this extensive fleet, and to regulate the taking of bait for their supply, the Colonial Government have three officials in Fortune Bay, viz., at Grand Bank, Harbour Briton, and St. Jacques, but none of these gentlemen have any means of locomotion with a view of carrying out their duties, and as I steamed into St. Jacques I was much amused to observe the Preventive Officer in full pursuit of a swift American banker, who had been sailing round the Bay for seven hours, while Mr. S. was keeping up an animated but hopeless chase in a small dingy. Fortunately the same day six schooners came in for bait, and five others having hauled off on seeing us and passed on to Bellorun, I sent the Preventive Officer round in the steam-cutter and enabled him to collect 50*l.*, not a sixpence of which would he have seen had it not been for our opportune arrival.

I append a list of all American vessels, whose names we could ascertain, fallen in with during the cruise.

I have, &c.  
(Signed) JAMES E. ERSKINE.

*List of American Vessels fallen in with during the First Cruise.*

Passed between Harbour Briton and St. Jacques :—

“Dora S. Prendall,” schooner, of Boston, and two others, names unknown.

At anchor in St. Jacques :—

“Ada K. Damon,” “John S. Presson,” “Laura Helston,” and “Peter W. Smith,” schooners, of Gloucester.

Passed in Fortune Bay :—

Seventeen American schooners, names unknown.

At Anchor in Belloran :—

“Union,” “Dauntless,” and Moriah,” schooners, from Gloucester.

(Signed) JAMES E. ERSKINE,  
Captain and Senior Officer.

No. 204.

*Sir J. Pauncefote to Mr. Herbert.*

Sir,

*Foreign Office, September 11, 1876.*

I AM directed by the Earl of Derby to transmit to you, to be laid before the Earl of Carnarvon, for his perusal, a despatch from Mr. Ford, in regard to the operations of United States' fishing vessels in British North American waters.\*

I am, &c.

(Signed) JULIAN PAUNCEFOTE.

No. 205.

*The Earl of Derby to Sir E. Thornton.*

(No. 204.)

Sir,

*Foreign Office, October 4, 1876.*

IN the course of the conversation which I had yesterday with M. Pierrrepoint, he alluded to the question of the appointment of a third Fishery Commission by the Austrian Government, with regard to which no steps are being taken at present, and gave me notice that he should wish to discuss the matter hereafter.

I am, &c.

(Signed) DERBY.

No. 206.

*Sir E. Thornton to the Earl of Derby.—(Received October 9.)*

(No. 206.)

My Lord,

*Washington, September 25, 1876.*

WITH reference to my despatch No. 208 of the 31st of July last, I have the honour to inclose copy of a note which I have received from Mr. Fish, in answer to mine

of the 26th of that month, which, as I informed your Lordship in the despatch above-mentioned, I had addressed to him. Mr. Fish's note, though dated the 18th instant, did not reach me till the evening of the 21st.

Your Lordship will perceive that it is principally occupied with a long history of the negotiations which have taken place with regard to the submission of the Three Rules to the Maritime Powers, in accordance with the stipulation contained in the VIth Article of the Treaty of May 8, 1871. This review appears to me to be rather useless, and not to call for much comment.

I must, however, be allowed to say that my recollection is positive that during the discussion as to which of the two Governments owed an answer to the other, Mr. Fish said that he did not consider that my having read to him Earl Granville's despatch relative to the word "open," and having left a copy of it with him, was an official communication.

It would appear that subsequently General Schenck, in a conversation with his Lordship upon the subject, said that he would ask Mr. Fish for an explanation of the statement made by me. If he did so, it would have been natural that Mr. Fish should have then denied his having made any such statement; but it does not appear that General Schenck communicated any explanation of the matter to Earl Granville.

Mr. Fish has alluded to several conversations which he and I have had at various dates with regard to the submission of the Three Rules, but he omits to say that I hardly ever failed to conclude the conversation by stating that Her Majesty's Government was awaiting an answer to Earl Granville's despatch with regard to the word "open," and to the note addressed by his Lordship to General Schenck on the 25th of October, 1873. I remember very well that on one occasion Mr. Fish said that he was under the impression that instructions had been sent to General Schenck with regard to the last-mentioned note, and that he would look over the papers and see what had taken place on this point. He did not, however, subsequently recur to the question.

I did not certainly state to Mr. Fish that I had received your Lordship's Confidential despatch No. 63 of the 10th of April, 1875, nor communicate to him its precise contents, but both before and after the receipt of that despatch I constantly repeated to him that Her Majesty's Government was awaiting a formal and official communication from the Government of the United States.

Mr. Fish, in the inclosed note, has now made a formal statement that the United States' Government is ready to omit the word "open," which was objected to.

Your Lordship will perceive that Mr. Fish states that the stipulation in the VIth Article of the Treaty, by which the Contracting Parties agree to observe the Rules as between themselves in the future, and requires them to bring them to the knowledge of other Maritime Powers, and invite them to accede to them, is regarded by the United States as indivisible, so that a failure to comply with one part thereof may, and probably will, be held to carry with it the avoidance and nullity of the other.

Mr. Fish in his note makes no allusion whatever to the appointment of the third Commissioner for the Fisheries Commission, and I presume that he has determined not to proceed with that matter until Her Majesty's Government shall have declared its intention with regard to the submission of the Three Rules to the Maritime Powers.

I have, &c.  
(Signed) EDWD. THORNTON.

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Inclosure in No. 206.

*Mr. Fish to Sir E. Thornton.*

Sir,

*Department of State, Washington, September 18, 1876.*

IN a note which I had the honour to address you on the 8th of May last, I referred to the obligation assumed by Great Britain and the United States in connection with the Three Rules laid down in the VIth Article of the Treaty of Washington, and expressed the desire of this Government that steps might be taken to carry out these provisions of the Treaty.

The note, which you did me the honour to address me on the 26th of July, was received during the pressure of business attending the last days of a protracted Session of Congress, which, with my subsequent absence from Washington, has prevented my earlier reply. In it you refer at length to the correspondence and interviews upon the question, and state as a conclusion that a recapitulation of the negotiations would show

that the delay which had occurred could not with justice be laid to Her Majesty's Government; but your note failed to express the views of Her Majesty's Government as to a compliance with the obligation assumed by the Treaty, or to bring the two Governments nearer to a disposition of the question.

With reference to the question of delay, I may be permitted to remind you, that although it is stated in my note of the 8th of May, that the obligation of the two Governments to bring the Three Rules to the knowledge of the Maritime Powers, and to invite them to accede to them, was assumed at the time the Treaty went into effect, and that no measures had been taken to comply with the obligation, I made no allusion to Her Majesty's Government as being peculiarly and entirely responsible for the delay which had occurred. As you have seen fit, however, to advert to that question at length, it seems proper to refer to some facts and steps in the progress of the negotiations not touched on in your note as part of the history of the case, and to explain what is thought to be the true bearing of some others.

It is true, as stated by you, that shortly after the date of the Treaty some question arose as to the proper construction of the Second Rule, which was raised, however, mainly by Her Majesty's Government. No real difference existed between the two Governments, and when it was suggested that some expression of the views of the United States as to the meaning of this Rule was desired by Great Britain, a telegram was addressed on June 10th to General Schenck, which stated, among other things, that "the President understands and insists that the Second Rule in Article VI does not prevent the open sale of arms and other military supplies in the ordinary course of commerce, as they have been heretofore sold in neutral countries to friendly belligerents."

This telegram was read to Lord Granville, who expressed his entire satisfaction with the views of the United States, as therein expressed, and informed General Schenck that he agreed that it was advisable to incorporate in the note to be addressed to the Maritime Powers the understanding of the two Governments as to the proper construction to be given to the Second Rule.

This view of the President was also, if I am not mistaken, referred to with expressions of approval and assent in the debates in the British Parliament on the Treaty of Washington, and was substantially and almost in terms adopted by Lord Granville in an instruction to you under date of June 13, 1871.

In the month of June 1871 you submitted to me a draft note to be addressed to the Maritime Powers, to which some changes, mostly verbal, were suggested, and concerning which it may be said no important differences remained except as to the insertion of the word "open" before the words "sale of arms," &c., proposed by the United States, and the retention of the words of "export or exportation" proposed by Great Britain.

The words "open sale" of arms, &c., having been used in the original telegram of the 10th June to General Schenck, expressing the understanding of the United States as to the meaning of the Rule, and having been understood to be entirely satisfactory to Great Britain, were insisted on, and the words "or export," &c., which had been suggested by Her Majesty's Government, were objected to by the United States for reasons the force of which seemed afterwards to be appreciated by Her Majesty's Government, and they were omitted from the draft subsequently presented by Her Majesty's Chargé d'Affaires.

In the meanwhile you had left the United States, and as the matter did not progress, and Congress was soon to assemble, I addressed a telegram to General Schenck upon October 26, asking that instructions be sent to Mr. Pakenham, Her Majesty's Chargé d'Affaires *ad interim* during your absence, who appeared to be entirely without authority to proceed, and I was informed by General Schenck, in reply, that he had expressed to Lord Granville, in a conversation upon the 27th of October, the hope that instructions would be sent to Mr. Pakenham to agree to the words "open sale," in the place of the words "sale or export," and that Lord Granville informed him that instructions had been sent to Mr. Pakenham no longer to insist upon the insertion of the words proposed by Her Majesty's Government, and objected to by the United States. The words proposed were "open sale," and the words objected to were the words "or export."

Among the papers relating to this subject submitted to Parliament in 1874 is an instruction addressed by Lord Granville to Mr. Pakenham, dated October 5, 1871, in which his Lordship says:—

"In order to secure identity in the Commissions of the British and American Ministers, I send you a draft in which the alterations suggested by Mr. Fish in the original draft, and reported by Sir E. Thornton in his despatch of the 7th of July, are adopted."

Also another instruction from Lord Granville to Mr. Pakenham, dated October 27,



which refers to the interview above mentioned with General Schenck, and states that General Schenck deemed it advisable that he (Mr. Pakenham) should be instructed to agree to the words suggested in my telegram of the 10th of June, that "the President understands and insists that the second rule of Article VI does not prevent the open sale of arms or other military supplies in the ordinary course of commerce," and adds, "I informed General Schenck that I sent information to you on the 5th to inform Mr. Fish that Her Majesty's Government would no longer insist upon the insertion of the words proposed and objected to."

Mr. Pakenham soon after, namely, on the 30th of October, 1871, submitted to me a proposed form of a note. He stated that Great Britain had adopted all our suggestions, but proposed some changes of expression to make the language more euphonious. An examination of the form of the note left by Mr. Pakenham with me showed that the word "open" before "sale," which had been one of the suggestions made in behalf of the United States, was omitted. Mr. Pakenham's assurance to me that all of the suggestions had been adopted led me to the belief that the omission of this word was a clerical error; the subsequent publication of the instructions of Lord Granville to Mr. Pakenham, before referred to, tended to confirm that belief.

After a conference with Mr. Pakenham on the 2nd November, I addressed him a note upon the 3rd of November, inclosing a counter-draft of the note, in which certain changes were suggested in phrasology, and the word "open" was inserted as the correction of a clerical omission.

Subsequently Mr. Pakenham informed me that Lord Granville raised some further question in reference to the use of the words "open sale," and I addressed an instruction upon the subject to General Schenck, who was not able, however, to obtain an interview with Lord Granville, or reach any adjustment of the matter prior to the meeting of Congress in December following.

Upon the 16th and 18th December General Schenck had interviews with Lord Granville, from which it appears that the omission of the word "open" in the draft forwarded to Mr. Pakenham for protestation was claimed to have been intentional, and Lord Granville strongly objected to the use of the word, and on December 22, 1871, addressed a note to you on the subject, which on January 12, 1872, you did me the honour to read to me, on which a copy was left with me.

In this instruction Lord Granville gave reason why the United States should not, in the opinion of Her Majesty's Government, further insist upon the insertion of the word "open."

You state in your note that fifteen months elapsed from this date before the question was again brought forward. The interruption, which thus as you say suspended for some months the discussion of this question, arose from circumstances which have now passed into history, and cannot in any sense be attributed to the United States.

A conversation occurred between us on the subject, however, upon the 26th of January, 1872, but within a few days thereafter questions arose involving the existence and carrying out the entire Treaty, pending the adjustment of which a step in this particular matter was clearly inexpedient.

In the summer of 1872 these questions were adjusted, and the arbitration proceeded at Geneva, but General Schenck informed me that after these questions were disposed of Lord Granville had asked his opinion as to taking up this question prior to the conclusion of the proceedings of the Tribunal of Arbitration, and had fully concurred in the opinion which he expressed, that after the delay which had occurred, the Rules could hardly be submitted in advance of the award, which was then soon to be made.

It will be remembered, therefore, that when the negotiations were interrupted early in 1872 by the causes to which I have adverted, the two Governments were perfectly in accord as to the fact that the Treaty imposed an obligation upon each to submit the Rule; that the proper manner of submission was by an identic note, and that the terms of this note were substantially agreed upon, except that the United States had proposed the use of the words "open sale," and Her Majesty's Government had desired that word to be omitted.

The Geneva Tribunal having made its award, the time appeared to have arrived for a renewal of the negotiations and a disposal of the subject.

In an interview between us on the 23rd of April, 1873, some reference was made as to which of us was to make the next advances. I stated that, dismissing formality of intercourse, I should be pleased to know the intention of Her Majesty's Government as to the note, to which you replied, referring back to the question of a reply to a note addressed to Mr. Pakenham, that it was for this Government to take the next step.

I disclaimed all desire to revive a controversial correspondence, but said that I reverted to the subject to see if something could not be agreed upon.

You told me that you supposed that your Government was somewhat indifferent, believing that some of the European Powers might reject the proposal, and that since the award at Geneva Great Britain might hesitate to submit the rules as had been proposed.

You inquired, however, whether the United States would submit the rules, omitting the word "open," and I intimated that to avoid a renewal of the controversy which had arisen in reference to that word, this Government might consent to its omission, or to the substitution of some other phrase, whereupon you stated that you would consult your Government, which might desire some change in the form of the note, and I replied that we would be prepared to receive and treat frankly any proposal on the subject.

According to my recollection this interview went much further than would be gathered from the details given in your note, and the question was treated by me with a desire to avoid the side issues which had arisen, and all controversy, and to reach a conclusion in the matter.

Upon the 5th June you informed me that Lord Granville appreciated the desire of the United States to bring the rules before the Maritime Powers by an identical note, but feared that since the interruption of the correspondence events and discussions had taken place making it difficult to submit the rules in the manner proposed, to which reply was made, as you have stated, that no important differences between the two Governments as to the construction of the Rules were known to exist, and that it was not advisable to attempt a joint construction of the Rules in anticipation of some question calling for their practical application. But, again, at this interview no intimation was given as to what the intentions or desires of Her Majesty's Government actually were.

My recollection of an interview which I had with you on the 12th of June (which I suppose to have been the same referred to by you as having taken place on the 14th of June) varies in some respects from your account of it. I feel sure that you must have misapprehended me when you supposed me to state that your reading me a despatch and leaving with me a copy of it, did not constitute an official communication of its contents.

In reply to my inquiry whether you intended to answer my previous note respecting the proposed note, you said that you supposed it had been answered by the instruction of Lord Granville, which you had read to me. To this I answered that I did not so understand it, that the British Government had invited our consideration of a draft note, that he had proposed certain amendments to it, that Lord Granville had thereupon requested General Schenck to ask our construction of the word "open," and that this request had been complied with by telegraph, and the answer communicated to Lord Granville. Thereupon Lord Granville had sent an instruction to the British Legation in Washington, which was read to me. I said that when a correspondence was being carried on at Washington on the invitation of Her Majesty's Government, and a note had been addressed to Her Majesty's representative at this capital, inclosing a counter-draft of the proposed note to the Maritime Powers, that the reading and leaving with me a copy of an instruction from the Foreign Office to yourself, could not be considered an answer to my note to Mr. Pakenham. I further said that some of his Lordship's points might perhaps have been assented to, but negotiations had been suspended by the questions arising in regard to the Geneva Arbitration, and I explicitly stated that, should the British Government desire it, possibly the word "open," to which exception was taken, might be withdrawn, thus practically waiving the only question of difference as to the form of the note.

You asked me, in reply to this, whether I thought it advisable to submit the note when we had reason to think, if not to know, that accession to the Rules by other Powers would be refused.

I replied that the Treaty required the Contracting Parties to bring the Rules to the knowledge of other nations, and to invite their accession, and that we expect both parties to comply with its requirements.

You asked me whether the United States would submit the rules separately in case Great Britain refused to submit them, when I stated in reply that that question could be decided only when it arose.

In this connection I think it proper to state with regard to your statement that General Schenck admitted to Lord Granville that the communication by you of his instruction was an answer to our proposal of amendments, that General Schenck was

not authorised to make such a statement, and did not communicate to his Government that he had done so.

In a despatch addressed by you to Lord Granville, in reference to this conversation, dated June 14, 1873, and printed among the papers on the subject laid before Parliament in 1874, you represent me very correctly as thinking "that it was high time that the correspondence between the two Governments should be closed, by Her Majesty's Government either refusing or consenting to join with that of the United States in addressing the invitation to the Maritime Powers."

On the 13th of October, 1873, General Schenck, under instructions to that effect, called at the Foreign Office, to represent the anxious desire of this Government to have executed the provision of the Treaty as regards the bringing of the Three Rules to the notice of the Maritime Powers. In a note to General Schenck, dated October 25, Lord Granville, referring to this instruction, says, "You added that what Mr. Fish now really desired was that some progress should be made in submitting these rules to other Powers, as provided in the Treaty, and that at all events the matter should be brought to an issue in some way or other; that the rules should be submitted with comment or without comment, or agreement come to not to submit them at all, some action should be taken. It might not be believed that the other Powers would accept the rules in the sense that had been attached to them, nevertheless that something ought to be done."

It was quite plain that General Schenck endeavoured to impress upon Lord Granville the strong desire on the part of the United States to dispose of the subject, which I had endeavoured to impress upon yourself.

It seemed, however, that at this time Her Majesty's Government, while apparently unwilling to proceed with the form of submission which had been practically agreed on, either had not reached any conclusion as to the course to be adopted, or were not prepared to state what their conclusions were.

His Lordship states that he agrees that the two Governments should decide on the course they will pursue, intimates that Her Majesty's Government would think it necessary to accompany the submission with certain comments growing out of the proceedings of the Tribunal of Geneva, and referring also to what he supposed was a probability that all the other Powers might not accept the rules, which might suggest changes in the mode of submission, intimated the readiness of Her Majesty's Government to consider any suggestion on this head which might be offered by the United States.

These communications, therefore, did little more than to indicate a hesitancy to proceed in the manner which had been substantially agreed on, and to suggest apprehended difficulties, but proposed no means of meeting such difficulties, or the requirements of the Treaty and the wishes of the United States, although Lord Granville had been informed by you of my intimation of a readiness on the part of the United States to agree to the omission of the word "open," which had become the solitary apparent and admitted obstacle to an agreement upon the terms of the note.

In his note to General Schenck of the 25th October, 1873, Lord Granville says that Her Majesty's Government would think it necessary to accompany the submission of the rules with a comment, and makes a reference of dissent from some of the principles laid down by the Tribunal of Geneva. But, although the United States had repeatedly expressed the opinion that an agreement could be reached for the submission of the rules, and had endeavoured to take up the negotiation where it had been interrupted, this suggestion of a new element to be introduced was not accompanied with any statement of what would be the nature or extent of the comment which it was intimated that Her Majesty's Government would think necessary to accompany the submission of the rules.

The United States was ready to accept the draft substantially as submitted by Great Britain, omitting the one word which had for a time been the subject of discussion, and had expressed their readiness. Lord Granville recognized this, and assumed that the word "open" would disappear.

It is in no spirit of criticism or of controversy that I submit that after this expressed readiness of the United States to waive the expression for which it had contended, and especially after the declaration by Great Britain of opinion that Her Majesty's Government would think it necessary to accompany the submission with a comment, it was for Her Majesty's Government to indicate its views, and the United States could not be expected to propose a deviation from the plan of submission to which the assent of both Governments had practically been given. It was for the Government which desired to make a comment in connection with the submission to propose the interpretation which it desired to submit.

It is not impossible that the sudden and great financial crisis which came alike upon both continents towards the close of the year 1873, may have been not without effect in diverting attention for a time from this question.

The conversation between Lord Granville and General Schenck, to which you refer as of the 18th of February, 1874, occurred, I believe, the day after it became evident that the change of Ministry in Great Britain, which took place three days thereafter, was to happen. His Lordship's object seems to have been, before retiring from office, to express what had been the opinion of Her Majesty's Government, "although," as he says, "now it was of no practical bearing."

General Schenck evidently considered it in this light, because, although on his return to the United States in March he informed me that such a conversation had occurred, in which he had suggested that it was his opinion the rules should be submitted pure and simple, the details of the conversation have never been communicated to this Government.

You say that in March, 1875, further inquiry was made by me on the question, and that Lord Derby stated in a despatch addressed to you on April 10, that Her Majesty's Government had not felt it necessary to raise any question in the matter which had not been adverted to by the Government of the United States since the conversation which Lord Granville had with General Schenck on the 18th of February, 1874, and that Her Majesty's Government awaited a formal communication from the United States; and at this date you close your review of the negotiation, and draw your conclusion that it will be seen from the above recapitulation that the delay in dealing with the matter cannot be laid to Her Majesty's Government.

I am not aware that the Government of the United States has been informed in any manner, prior to the reception of your note, of the instruction addressed to you upon the 10th of April, 1875, or of the views of Lord Derby as therein expressed, nor is it perceived why a recapitulation of the discussion of the question relating to the rules, especially where the question of delay was the subject of comment, should conclude with the date which you have taken. Various negotiations have taken place since the 10th of April, 1875, in none of which has any reference been made, so far as I am able to recall, to this instruction of Lord Derby, and to all of which reference should be made if any conclusions are to be drawn from the entire negotiation as a whole.

On the 24th of June, 1875, I inquired from you whether your Government was prepared to do anything in relation to the joint note to the Maritime Powers, whereupon considerable conversation occurred as to the whole subject, being a recapitulation of many of the matters which had been previously discussed. You stated, however, that you thought it possible that Her Majesty's Government was unwilling to make an application to other Governments which might be refused, and I ventured to say that if your Government were reluctant to carry out that part of the Treaty, this Government would frankly consider the question, upon which you said that you would examine the papers.

The summer having passed away, and not having been favoured with your views, on October 28, 1875, I again ventured to inquire from you whether your Government was prepared to act upon the subject, and you replied that you hoped we would not press the subject, and proceeded to give certain reasons why your Government was not desirous to go on with this portion of the Treaty.

It was suggested, however, in reply, that this should not be delayed while other questions under the Treaty were pressed, and that we desired in like manner to dispose of all the questions. You again suggested that you hoped we would afford time, and that no harm could come from postponement. I therefore repeated to you what had been said before, that if your Government desired not to proceed with the submission of the three Rules, it was desirable that it should so declare; otherwise, that the submission should be proceeded with, and adverted to the fact that we had consumed four years upon the question.

Again, on the 20th of January, 1876, in connection with the conversation concerning the Fisheries Commission, I asked if your Government would be prepared, in disposing of that matter, to sign a note to the Maritime Powers submitting the Three Rules, whereupon you again expressed the reluctance of your Government to proceed, and suggested whether the Three Rules might not continue in force between the two Governments and no submission be made, from which I dissented, and repeated what I had previously said, that this Government was of opinion that the subject should be disposed of.

Upon the 17th of February, 1876, I presented the same question—whether your Government was willing to proceed with the Three Rules, and you repeated to me the

disinclination which Her Majesty's Government had to proceed in that matter, and suggested delay until some occasion presented a necessity for doing something, to which I replied that this would be just the moment when it might be impossible to proceed, and that the Rules were intended to guard against that contingency.

Again, on March 9, 1876, in connection with the discussion of the Fisheries Commission, I suggested that we desired to conclude all the obligations of the Treaty, and to dispose of the question of the submission of the Three Rules, whereupon you repeated in much the same manner as before the difficulty in proceeding, and the unwillingness on the part of your Government, and intimated that if the Rules were submitted, Great Britain might desire to make some disclaimers.

On the 30th of April, on my urging that this matter be disposed of, you suggested that under the Treaty no specific time had been named for a submission, although you did not insist upon this as releasing the British Government from their obligation to proceed.

Again, on the 1st of June, 1876, referring to a communication which had been addressed to you concerning the Fisheries Commission, the matter was discussed at some length by you with Mr. Cadwalader, the Assistant Secretary of State, in my absence, and in much the same vein as theretofore, in which the desire of the United States to proceed and dispose of the matter was distinctly expressed, and the same objections given to proceeding on the part of Her Majesty's Government.

In the many interviews which have been had, I am not aware that the position of this Government has been changed in any particular, but has at all times been that the question ought to be disposed of, that the United States was prepared to proceed as had been agreed on; while, from time to time, Her Majesty's Government have made suggestions that some changes in the submission would in their opinion be desirable, the Government of the United States is not in any respect informed as to what really are the precise views or desires of Her Majesty's Government.

I have no desire to prolong a correspondence, and have endeavoured to refer to the various steps in the negotiation as they have actually occurred, nor do I propose to draw any conclusions from this recapitulation.

The United States has been willing, as I have expressed to you on many occasions, to submit the Rules as had been agreed, or to do whatever could properly be done towards meeting any wishes which Her Majesty's Government may entertain, and to co-operate in guarding against any unpleasant or injurious consequence which might arise, or be apprehended from their submission.

In the opinion of the United States, injury is more liable to occur from delay until serious events bring a practical application of the Rule under discussion, and when the two Governments might be called on at an unfavourable moment to act upon or to consider the extent of the obligation of this part of the Treaty. The same clause in the Treaty by which the Contracting Parties agree to observe the rules as between themselves in the future, requires them to bring them to the knowledge of other Maritime Powers, and to invite them to accede to them. The stipulation is regarded by the United States as indivisible, so that a failure to comply with one part thereof may, and probably will, be held to carry with it the avoidance and nullity of the other.

In this view it is desired that some conclusion be definitively reached.

At the close of your note you state that Her Majesty's Government will be prepared to receive and consider any communication or proposal which this Government may think fit to address to it on the question.

On this point I have the honour to say that, as early as November, 1873, the two Governments had, with slight differences, agreed upon an identic note for the submission of the Three Rules to the Maritime Powers, real questions existing only as to the two words to which I have referred.

Her Majesty's Government afterwards ceased to insist upon the words "or export," which they had inserted, and the United States has heretofore expressed its willingness and is now ready to omit the word "open," which was objected to.

Should Her Majesty's Government be ready, therefore, on a consideration of the whole question, to submit the Rules as then agreed, the United States is prepared to do so.

If, on the contrary, Her Majesty's Government are not prepared so to do, and desire to adopt some other course by reason of matters which have affected Great Britain alone, I trust that Her Majesty's Government will feel itself at liberty to indicate in what manner it desires the form heretofore proposed to be varied, or what general course it desires to adopt.

In conclusion, I desire to assure you of the sincere wish of the United States to

co-operate in any manner which may be possible with Her Majesty's Government in reaching a solution of this question.

I have, &c.  
(Signed) HAMILTON FISH.

No. 207.

*Mr. Ford to the Earl of Derby.—(Received October 10.)*

(No. 9. Confidential.)

My Lord,

*Foreign Office, October 9, 1876.*

IN view of the probability of the American Counsel at Halifax, whenever the Fishery Commission may meet there, taking notice of and laying stress upon the admissions that were made by Canadian statesmen during the debates that were held on the Washington Treaty respectively, in the House of Commons at Ottawa in May, 1872, and in the House of Assembly at St. Johns, Newfoundland, in April, 1873, I have placed on record, for your Lordship's information, in the accompanying memorandum, certain statements on the Fishery Articles of the Treaty, which will most probably be quoted, with a view of proving, as shown by the Canadians themselves, that the fishing privileges accorded to the citizens of the United States under the Treaty, are not of greater value than those accorded to Her Britannic Majesty's subjects.

It would certainly have been preferable—and Canadian statesmen have admitted as much to me—had the debate on the Treaty of Washington been held in secret session, as was done at Washington when that Treaty was being discussed by Congress.

The debate held at Ottawa received, moreover, additional publicity, owing to its having been published in the form of a cheap pamphlet, which was widely circulated.

It should not be forgotten, however, that, whilst reading the speeches delivered by Sir John Macdonald, then Premier, and his colleagues, great allowance must be made for the peculiar circumstances under which the language and arguments employed by them were used.

Sir John Macdonald was on the point of facing a general election, and he and his party being the responsible persons, *quo ad* Canada, for the adoption of the Treaty of Washington, were naturally anxious to make out as good a case as possible, with a view, not only to defending the part they had taken in the negotiations at Washington, but of obtaining likewise a majority of the House in favour of the adoption of the Treaty.

With regard to the Fishery Articles of the Treaty, it is indisputable that both Sir John Macdonald and his followers placed a strained and exaggerated estimate on the advantages that would accrue to Canadian fishermen and the country in general by an adoption of those articles. Both he and they strove their utmost to force the Treaty through an unwilling House, in the face of strong popular prejudice, and they finally succeeded in obtaining a majority in favour of the adoption of the Treaty.

Sir John Macdonald was candid enough to state in the course of his speech that "he was laying himself open to the charge of injuring the Canadian case by discussing the advantages of the arrangement, because every word used by him might be quoted and used as evidence against the Canadians hereafter."

He was obliged, however, he said, to run the risk of his language being so used before the Commissioners as an evidence of the value of the Treaty to Canada.

Dr. Tupper, the Minister of Customs, declared that the Treaty of Washington "promoted and protected the great national industries of Canada without injuring a single interest or being counterbalanced by a single drawback."

In short, the whole tenor of the speeches delivered on the part of the Government was directed to proving that the cession to the United States of fishing privileges in British waters was no such great concession after all, and consequently the views enunciated tended to depreciate to a great extent the value of the British North American Fisheries.

In the printed volume of correspondence respecting the British North American Fisheries for 1871—73 a letter is inserted (page 10), which was addressed by Lord Lisgar to Sir Edward Thornton, in which his Lordship expresses it as his opinion that 200,000 dollars a-year would be a fair and moderate tribute for the United States to pay to Canada for having the privileges she enjoyed under the Reciprocity Treaty restored to her.

This opinion of Lord Lisgar's was based on calculations made by Dr. Tupper, and



when I was at Ottawa Dr. Tupper as much as admitted to me that, had it not been for the peculiar circumstances of the case, and the responsibility assumed by the Macdonald Administration, of which he was a member, he would not have been inclined to take so low an estimate of the value of the Canadian fisheries as is contained in his speeches.

With regard to the case of Newfoundland, the speeches made in the Legislature of that Colony did not fall short in their meed of praise of the Fishery Articles of the Treaty of Washington of those delivered at Ottawa.

It would appear that, at the time the Joint High Commission was sitting at Washington in 1871, the members of the Newfoundland Government did not pay much attention to the negotiations that were being carried on there, and it is a matter of deep regret at present with many Newfoundlanders that they had no representative at Washington to look after their interests specially, and who, they conceive, might have obtained better terms for them, notably in having procured the free admission into the markets of the United States of seal oil.

The adoption of the Fishery Articles of the Treaty of Washington in the Newfoundland Legislature was nevertheless due entirely to the influence exercised in favour of it by the mercantile body at St. John, who happened at the time to have a large surplus stock of fish-oil on their hands, which they thought to dispose of advantageously, when the duties were removed in the United States' markets.

Although I am free to confess that the publication of the eulogistic views taken of the Fishery Articles of the Treaty of Washington by leading men both of the Dominion of Canada and of the Colony of Newfoundland may be used to our disadvantage at the Halifax Commission, I still believe that the admissions—many of which cannot be corroborated by facts—are susceptible of satisfactory explanation; and that, as our case is based on sound arguments capable of being substantiated by good evidence, we shall not be sufferers by the somewhat indiscreet utterances made in the heat of debate by over-zealous Parliamentary party speakers.

I have, &c.  
(Signed) FRANCIS CLARE FORD.

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Inclosure in No. 207.

*Extract from Speeches delivered in the Parliament at Ottawa in May, 1872, in favour of the Fishery Articles of the Treaty of Washington.*

Sir John Macdonald expressed his surprise at finding that the portion of the Treaty which was supposed to be most unpopular and most prejudicial to the interests of the maritime provinces had proved to be the least unpopular. He could not have anticipated that Canadian fishermen, who to a man were opposed to the Treaty as inflicting upon them a wrong, would now be reconciled to it. He could not have anticipated that the fishermen of the maritime provinces, who at first expressed hostility, would now, with few exceptions, be anxious for its adoption. It had been stated that the American fisheries were of no value to us. They were not very valuable it is true, but still they have a substantial value for us in this way; that the exclusion of Canadian fishermen would have been a great loss to the fishing interests of the maritime provinces, and for the following reason: It is quite true that the mackerel fishery on these coasts belongs to Canada, and that the mackerel on the American coasts is far inferior in every respect to the Canadian, but it is also true that in American waters the menhaden, which is the favourite bait with which to catch mackerel, is found in American waters, and it is so much the favourite bait that one fishing vessel having it on board will draw away a whole shoal of mackerel in the very face of vessels having an inferior bait. Now the value of the privilege of entering American waters for catching that bait is very great. If Canadian fishermen were excluded from American waters by any combination among American fishermen, or by any Act of Congress, they would be deprived of getting a single ounce of bait.

Again, the only market for the Canadian No. 1 mackerel in the world is the United States. That is our only market, and we are practically excluded from it by the duty that was levied on the fish in the United States.

Let any one go a trip down the St. Lawrence of a summer, as many of us do, and call from the deck of the steamer to a fisherman in his boat, and see for what a nominal price you can secure the whole of his catch, and that is owing to the absence of a market, and to the fact of the Canadian fishermen being completely under the control of the foreigner. With the duty off Canadian fish the Canadian fisherman may send his

catch at the right time when he can obtain the best price to the American market, and thus be the means of opening a profitable trade with the United States in exchange. The United States do not care for our fisheries. The American fishermen are opposed to the Treaty. Those interested in the fisheries are sending petition after petition to the United States' Government and Congress praying that the Treaty may be rejected. They say they do not want to come into our waters.

The fact of throwing open the Canadian fisheries to the citizens of the United States relieves the country of some 84,000 dollars a year, that would have to be expended in maintaining a large marine police to protect them.

*Mr. Macdougall* believed the Treaty of Washington was one framed in the interest of Canada, and that it was a good, desirable, and beneficial Treaty. He had never been convinced that the right to exclude the fishermen of other countries from the privilege of fishing within the three mile limit of Canadian coasts was a right which it was so important to maintain for the sake of any advantage we derived from it. He had heard no arguments, either in the House or elsewhere, nothing had been proved in all the discussions that had taken place to satisfy him that the fishermen of the Colonies would catch more fish, would make more money, would be better off, or be improved in any of their material circumstances by excluding foreign fishermen from Canadian waters. He had not been able to convince himself that the advantage which flowed from exclusive rights over the fishing grounds was serious and substantial in its nature. During the whole time the Reciprocity Treaty of 1854 was in force, American fishermen were permitted to land upon the coasts of Canada, and to fish in the waters of the same. When that Treaty was negotiated there was a great outcry against it in the maritime Provinces. The people there said their interests were seriously menaced by the Treaty, and that if it were ratified irreparable injury would be done to them. But as time went on, and the results of the operation of the Treaty were seen, what was the consequence? Why the people of Nova Scotia and the other Provinces found that the Treaty, while it yielded a nominal right, conferred many and solid advantages. A great trade, which they had never anticipated, sprung up in consequence of the admission of American fishermen, and instead of the ruin they feared, they gained so much in every respect that they desired a continuance of the Treaty, and lamented its repeal. It was found, too, that the people of Prince Edward Island also experienced a great advantage from the Treaty in respect of the trade in coarse grains with the United States, which was largely increased by the permission granted to Americans to frequent their coasts for fishing purposes.

*Mr. Power* believed the Treaty of Washington would restore an important branch of trade to Canadian fishermen, for example. In the spring of each year some forty or fifty vessels resorted to the Magdalen Islands for herring. These vessels carried an average of 900 barrels each, so that the quantity taken was generally about 50,000 barrels of herring. During the existence of the Reciprocity Treaty no United States' vessels went after these fish. All the vessels engaged in that fishery belonged to some one of the Provinces now forming the Dominion. Since the abrogation of the Treaty and the imposition of one dollar per barrel by the United States the case had become entirely changed. Vessels still went there but they were nearly all American.

Now under the Washington Treaty we shall get that important branch of trade back again. The Lower Provinces, Nova Scotia in particular, had a large herring trade with Newfoundland. Vessels went there with salt and other supplies and brought back cargoes of herrings in bulk.

Employment was thus given to the cooper and labourer in preparing these fish for export, and as the business was chiefly prosecuted in the winter months, when other employment was difficult to obtain, it always proved a great boon to the industrious. We lost this trade when we lost the Reciprocity Treaty; but it would return to us under the Washington Treaty. A little more than two years ago two vessels belonging to the Province of Quebec arrived in Halifax from Labrador. They had between them 3,400 barrels of herrings. Not finding sale for them in Halifax they proceeded to New York, where they sold. The duties on these two cargoes amounted to 3,400 dollars in gold. Under the Washington Treaty this amount would go into the pockets of the owners and crews of the vessels instead of into the United States' Treasury, and similar cases occurred almost every day. The same reason applied to the mackerel fishery, but with still greater force, the duty on that fish being 2 dollars per barrel. There was another feature connected with this fishery which ought to have a good deal of weight in making the Washington Treaty acceptable. American vessels following the cod and mackerel fisheries were manned in great part by natives of some part of Canada. The chief cause of this was that the hands fished on shares, viz., one half of



what they caught; those employed on board of United States' vessels got theirs in free of duty, whilst the men employed in the vessels of the Dominion had to pay duty on theirs. A hand catching twenty-five barrels of mackerel to his share on board of a United States' Vessel would receive 50 dollars more than he would receive for the same quantity taken in one of our own vessels. A consequence to this was that our best men went on board the American vessels, and our vessels had to put up with the less capable. Indeed should the present state of things continue much longer our people would be compelled to give up the hook and line fishing altogether, for it was impossible that they could continue to compete against the duty and their other disadvantages.

During the Reciprocity Treaty the number of vessels following the hook-and-line mackerel fishery had increased to about sixty in the county of Luvemburg alone. Since the termination of the Treaty the number had been gradually falling off, until during last season no more than six vessels engaged in that business. He had been assured by vessel owners in Mavre au Bouche, an enterprising settlement at the eastern end of the county of Antégonish, and also by those on the western side of the Strait of Canso, in the county of Gusboro', from both of which places the mackerel and herring fisheries had been extensively prosecuted, that the business will not more than pay expenses, and that unless something was done to relieve the duty levied on the fish in the United States, they would be obliged to abandon the business altogether.

This need create no surprise when it is considered that at the present value of mackerel and herrings the duty is fully equal to 50 per cent. Owing to the advantages offered by skippers of American vessels over our provincially owned vessels, engaged in fishing, not only were our best men induced to give their skill to the Americans in fishing, but in many cases they remained away and their industry was lost to the Provinces. They went to the States in the vessel the last trip in order to get settled up for the season's work, and generally remained there to man the fishing and other vessels of the Republic. A very large proportion of the inhabitants of Gloucester and other fishing towns in Massachusetts and Maine were natives of some of the Provinces of the Dominion. Under the Washington Treaty the inducements to give a preference to American vessels would be removed and our own vessels would be able to select good hands, who would remain at home, the temptation to emigrate, as just explained, being removed.

He had heard it said that the consumer paid the duty. Now whilst this might be the case with some articles, it was not so with fish. In our case in this business our fishermen fished side by side with their American rivals, both carrying the proceeds of their catch to the same market where our men had to contend against the free fish of the American fishermen. Thus an American and a provincial vessel took, say, 500 barrels of mackerel each; both vessels were confined to the same market, where they sold at the same price; one had to pay a duty of 1,000 dollars, whilst the other had not to do so. Who then paid the 1,000 dollars? Most certainly not the purchaser or the consumer, but the poor hard-worked fisherman of this Dominion, for this 1,000 dollars was deducted from his account of sales.

Those who contended that in this case the consumer paid the duty ought to be able to show that if the duty were taken off in the United States the selling price there would be reduced by the amount of the duty. There was nothing in the nature or existing circumstances of the trade to cause any person who understands to believe that this would be the case and, therefore, it would be seen that at present our fishermen laboured under disadvantages which made it almost impossible for them to compete with their rivals in the United States, and that the removal of duties under the Washington Treaty would be a great boon and enable them to do a good business where they now were but struggling or doing a losing trade.

He had heard the fear expressed that the Americans would come into our waters and take the fish away from our people. This was a groundless fear. We did not find American fishermen interfering with us. With the United States' markets open to us on the same terms as to its own fishermen, could any intelligent man suppose that they could come down 400 or 500 miles in vessels costing more to build, equip, and sail than our vessels, and compete with our people who took fish almost at their own doors? Our fisheries were very valuable; their value under favourable circumstances could not be over-estimated, but that value would be great or small just in proportion to the markets we possessed. Americans are quite independent of us in the herring and cod fisheries off the coast of Newfoundland, having free access to the fishing grounds there. The Washington Treaty will give them free access to the mackerel fishing of Prince Edward Island.

Under the Convention of 1818 they possess the right to take all kinds of fish when

or where they please at the Magdalen Islands, and they are about the best fishing grounds in the Dominion. The Americans, then, need care very little for any privileges that we might have the power to withhold from them, which would amount to but a few miles of an inshore mackerel fishery, in return for which the markets of the entire United States were thrown open to us free for all the fish and products of the fisheries of the whole Dominion. The advantages of the Washington Treaty to us were great. We shall not be put to the great expense and greater responsibility of protecting our fishing interests, and we shall cement the friendship and make good customers of 40,000,000 of people.

*Dr. Tupper.*—The question of the fisheries had been for sixty years a constant source of irritation to England since the War of 1812. It was high time to settle it. The free entry of fish and fish-oil into the United States was no insignificant boon to Canada. In the small Province of Nova Scotia alone the total catch of fish in 1871 amounted to over 5,000,000 dollars, the duty of which would be upwards of 600,000 dollars. The remission of such duties was of great importance. Everybody knew that the right of the Americans to fish in our waters, granted under the Reciprocity Treaty in 1854, was at that time an extremely valuable concession to them, an enormous one, indeed, which had greatly increased the prosperity of the American fishing trade, there being then nothing to prevent competition with the fishermen of the Maritime Provinces. But how altered was the case now. Public meetings had been held at Boston, as well as throughout the fishing districts, at which Congress had been memorialized to prevent Canadians being admitted on an equal footing to the American market. It had been placed on record at those meetings that the Washington Treaty struck a fatal blow at the American fishery interests, inasmuch as while, in 1854, American fishermen were able to compete with Canadians, because they had no high taxes to pay and the cost of outfit was so much less than at present, the war, and the burdens it had left behind, had so changed their position in relation to this question that every Canadian fisherman, who had the fish in the sea at his own door, with all the advantages of cheap vessels and cheap equipment; and if he belonged, as no one doubted, to the same courageous and adventurous class as the Americans, would enter into the competition with an advantage of 40 or 50 per cent. in his favour.

The Washington Treaty, instead of surrendering our fishermen and fisheries to the destructive competition of the foreigner, would have the following result:—American fishermen who employed their industry in the waters of Canada, would become like the American lumbermen who engaged in that trade in the valley of the Ottawa, they would settle upon Canadian soil, bringing with them their character for enterprize and energy, and would become equally good subjects of Her Majesty, and would give Canada the benefit of their talents, their enterprize, and their capital.

Could any one doubt as to the effect of removing the duty which was now levied of 2 dollars per barrel upon mackerel and 1 dollar upon herrings, of taking off this enormous bounty in favour of the American fishermen, and leaving our fishermen free and unrestricted access to the best market for them in the world? Could any one doubt that the practical result would be to leave the Canadians in a very short time almost without any competition at all. The clauses of the Washington Treaty which related to Canada were held by every intelligent fisherman to be a great boon, as something which would take the taxes off them, and relieve them from hundreds of thousands of dollars tribute that they were now compelled to pay to a foreign nation. The fishermen of the United States were, on the other hand, just as much averse to the Treaty as our own people were anxious that it should be carried into effect.

How different would be the future under the Washington Treaty from what it would certainly be had it not been negotiated. What was the state of affairs formerly? Why, many of our fishermen were compelled to go to the United States, abandoning their homes in Canada, in order to place themselves upon an equal footing with the Americans, and not only was their industry lost to the country, but when the fishing was over they went to man the American navy, so that the very bone and sinew of the Dominion were placed in a position in which in case of a collision they would be compelled to act against us and against the country which had given them birth.

He had heard it stated that if Canada had continued the policy of exclusion the American fisheries would very soon have utterly failed, and they would have been at our mercy. This was a great mistake. Last summer he went down in a steamer from Dalhousie to Picton, and fell in with a fleet of thirty American fishing vessels, which had averaged 300 barrels of mackerel in three weeks, and had never been within ten miles of the shore; and from this fact it would be seen that the exclusion of the Americans was not quite as efficient as had been imagined.

(On Dr. Tupper being asked whether these American fishing vessels were within the headlands, he replied that he could not speak as to that; but that the question was altogether a captious one, for it was well known that the headland limit had not been enforced for years.)

The mere fact of bounties being necessary to enable Americans to compete with the Canadians proved the advantageous position enjoyed by the latter. It should be remembered that the commercial marine of Canada amounted to a million tons; and whether in connection with the fishery or the shipbuilding interest, the value to Canada of the Washington Treaty could not be overlooked.

The feeling in Nova Scotia was this, that no greater wrong could be inflicted on the population of that island than by withholding the Treaty of Washington, which promoted and protected their great national industries without injuring a single interest or being counterbalanced by a single drawback.

*Mr. Campbell* said that under the operation of the system that had prevailed since the repeal of the Treaty of 1854, the fishermen of Nova Scotia had, to a great extent, become the fishermen of the United States. They had been forced to abandon their vessels and homes in Nova Scotia and ship to American ports, there to become engaged in aiding the commercial enterprises of that country. It was a melancholy feature to see thousands of young and hardy fishermen compelled to leave their native land to embark in the pursuits of a foreign country, and drain their own land of that aid and strength which their presence would have secured. While Nova Scotia had mechanics who were able to build vessels that would compete in every important respect with those built by our American neighbours, the commercial impediments thrown in the way of Americans fishing in Canadian waters had an injurious effect upon the shipbuilding interest. It had been said that the concessions obtained by the Dominion were not equivalent to those which were granted to the United States. He regarded the privileges granted to Canadians to resort to American waters for the purpose of procuring bait as being of great importance. He believed that to be a very valuable and important concession. By the Treaty of 1818 American fishing-vessels were not permitted to enter our harbours except for the purpose of obtaining wood, water, and shelter. This limitation had produced a good deal of dissatisfaction and did injustice to our shore population. During the continuance of the Reciprocity Treaty, American vessels were constantly in our waters, engaged in a mutually advantageous business with the merchants who lived on shore. Both parties desired a renewal of that relation, which would be decidedly to the advantage of Nova Scotia.

*Mr. Macdonald* stated that the county he represented (Luvenburg) was deeply interested in the Fishery question. The people of that county owned 632 boats, employing upwards of 800 men engaged in the inshore fisheries, 89 schooners, many of them first-class vessels, engaged exclusively in the deep-sea fisheries, and employing nearly 1,000 men, besides 147 other vessels, some of which were at times partially dependent upon the fisheries for employment; but there were nearly 2,000 men who, with their families, derived their living mainly, if not wholly, from the fishing business. The fishing-vessels generally fitted out in spring for Labrador or the Banks, returning about the middle of July or the 1st of August with a fare of codfish, and then fitted out a second time for the hook-and-line mackerel fishing in the bay. High duties levied on fish in the United States' markets killed the mackerel fishing trade in Luvenburg county. Last year (1871) nearly all the fine fleet of vessels above described, after returning from Labrador, instead of going out again for mackerel, were compelled to lay for the remainder of the season idly swinging at their anchors in the harbours and coves around the coast, while the young men who should have formed their fishing crews were either compelled to remain at home or seek other employment elsewhere, some of them, perhaps, on board American vessels, where the fish caught would be worth more than if taken on board their own vessels because they would be free of duty under the American flag. It was thus of vital importance to the fishing people of that county that the Fishery Articles of the Treaty of Washington should be ratified, because they believed—and he judged they rightly believed—that they would be placed on a much better footing than they occupied at the present time. In 1853, the year before the commencement of the Reciprocity Treaty, the total value of the products of the fisheries in Nova Scotia was something less than 2,000,000 dollars, of which only about 30 per cent., or less than 582,000 dollars' worth found a market in the United States. In 1865 the total yield of the fisheries had risen, with various fluctuations, to an aggregate of nearly 3,500,000 dollars, and it was found that the export to the United States had not only kept pace with that aggregate increase but had largely exceeded it, the exports to

the States in that year being about 43 per cent. of the aggregate catch, or nearly 1,500,000 dollars' worth.

Thus it would be seen that under the old Reciprocity Treaty our fishermen lost nothing by allowing their American neighbours to fish in our waters; on the contrary, they had gained in every way. The influence of a free market had acted as a stimulant on their energies, so that although their fishing-grounds were shared by American fishermen their total catch had increased 50 per cent.; and so beneficial was that free market found to be that the exports to the States had increased over 150 per cent. in the twelve years. Nothing could more clearly establish the two important facts that our fishermen have nothing to fear from fair competition with American fishermen in our own waters, and that the free access to the markets of the United States is of the greatest possible importance to us. The Treaty of Washington was decidedly more advantageous to the fishery interests of the Dominion than was the Reciprocity Treaty abolished in 1866. The privilege given by the Washington Treaty to vessels carrying the British flag to fish in United States' waters, it would be found, was no barren privilege, as had been asserted; for besides the privilege of fishing there, which our people might avail themselves of if they choose, we should now build fishing-vessels for our neighbours. We can build fishing vessels much cheaper than they can in the States. It was a fallacy to suppose that the American market was of no value to us. It is a fact that for the best brands of mackerel (Nos. 1 and 2) we had literally no market except that of the United States.

It is well known that large numbers of American vessels resort every spring to the Magdalen Islands; also to Fortune Bay, Newfoundland. Our vessels are driven away from these two fishing-fields because the duty in the United States on the kinds of fish caught there is prohibitory. By the Washington Treaty our fishermen will have these valuable fields of industry restored to them. The effect of the duty on pickled fish in the United States was equal to a tax of 600,000 dollars last year (1871) on the fishing interest of Nova Scotia. It had been stated with reference to the above figure that the duty on mackerel and herring shipped to the States in 1871 was only 90,000 dollars.

That was quite true, and went to prove that the duty was so nearly prohibitory that the export of larger quantities was prevented. For instance, the value of fish caught in Nova Scotia in 1871 was upwards of 5,000,000 dollars; of this quantity there were 228,152 barrels of mackerel, and 201,600 barrels of herrings, the duty on which, if shipped to the United States, would have been upwards of 650,000 dollars.

The benefit arising to us of the American inshore trade is more than an equivalent for the use of our inshore fisheries. Had the Washington Treaty been rejected our fishermen would have been deeply injured.

*Mr. Harrison.*—The privileges given to the Maritime Provinces for the sale of their fish is of very considerable value to them. There is an increased market of about 40,000,000 of people for their fish. Then the fishermen of the Maritime Provinces can live more cheaply than the American fishermen. They can build their vessels more cheaply, and, in addition to the American market, they will have a market at their own doors. If, under these favourable circumstances our fishermen are not able to compete with the fishermen of the United States, they are not the men we take them for. I have no doubt they will profit by the Treaty, and that they are alive to this fact is proved by the little, if any, opposition made to the Treaty by the Representatives in Parliament of the Maritime Provinces.

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*Extracts from Speeches delivered in the House of Assembly at St. John's, Newfoundland, in April 1873, in favour of the Fishery Articles of the Treaty of Washington.*

*Mr. J. I. Little, Q.C.*, said the question of the adoption of the Treaty of Washington by the Newfoundland House of Assembly had been under the consideration of the mercantile body of St. John's and the leading mercantile gentlemen of Conception Bay, who had, he believed, after mature consideration, assented to its acceptance by the Colony.

If we refused to ratify the Washington Treaty the fishermen of Nova Scotia, New Brunswick, and Canada could supply the Americans with the produce of Newfoundland waters duty free.

With all the advantages of being located upon the spot, and of the comparatively small expense of outfits, it was not likely that our fishermen could be injured by the

competition of men coming from the United States who possessed less knowledge and skill, and who were subjected to heavy expenses. He considered that the Colony of Newfoundland was not surrendering anything like an equivalent for the advantages we should derive.

At the present moment the whole western coast from the Ramean Islands to St. George's Bay was open to the Americans to fish concurrently with our fishermen, and had it been found that we were sufferers to any extent by the exercise of this right?

It had been stated that the American fisheries were becoming exhausted, and that the Americans must come to our shores. Such statements appeared to him to be absurd. It might as well be said that the fisheries of the banks of Nova Scotia and of the Gulf of St. Lawrence were being exhausted. It would be asserted, as it had already been, that we were surrendering our rights and depriving our people of their birthright without any return; that we were sacrificing our fishing grounds to the Americans for the sake of Imperial interests. He would deny that our commercial men would sacrifice those rights, upon which our very existence depends, for a mere idea, and without some substantial consideration.

Before introducing this measure (the Bill to carry into effect the provisions of the Treaty of Washington) the Government had taken time to weigh well the interests at stake. A good deal of discussion had been evoked since the Bill was first introduced, and the result had been to confirm the Government in the course they had marked out. The only difference of opinion existing appeared to be upon matters of detail, or as to the propriety of imposing certain conditions; but the result of all the deliberations which had so far taken place was a unanimous determination to accept the measure rather than hazard any further delay.

*Mr. Rendell* believed the effect of the operation of the Treaty would be beneficial to the interests of the Colony. It was true that the Treaty, so far as Newfoundland was concerned, was maimed by a most serious omission, that of not providing for the free admission of seal oil; but even with this defect he considered it better to accept the measure than reject it. As to the injury to the interests of our fishermen resulting from the competition of the Americans fishing in our waters, he did not apprehend it, as it did not appear probable that the Americans would avail themselves much of the privilege.

As far as the northern bays were concerned it would be certain loss to the Americans to provide the necessary outfit and to go to those places to prosecute the fisheries. The only part of the country where there seemed to be any danger of this sort to be apprehended would be about Fortune Bay, and even there it seemed that the probabilities were against it.

Against this, which was only, at most, a doubtful matter, we had the certain and positive advantage of a free market for our cod oil and other produce. Our herring fishery, which was now of but little value for want of a market, would become a most important and valuable fishery. There would be a large and valuable market opened for our codfish among a population always ready to purchase, and the advantage to our fisheries in this particular could hardly be estimated.

*Mr. Rogerson* (Member of the Executive Council and present Receiver-General) believed the operation of the Treaty would be beneficial to the Colony. The admission of the produce of the Newfoundland fisheries into American markets, free of duty, would have an important bearing upon the value of labour in the country, and tend to increase the value of our staple products. We should have a large market immediately open for our cod-oil. The same remark would apply to the herring. The population of the United States was increasing rapidly. The benefit would not be only in the demand created by an additional consumption in the United States, but also in the effect of that demand in raising the markets in other countries. He considered it would be suicidal to the interests of the people of the country to reject the advantages offered to us by the Treaty. He would accept the Treaty, because he recognized in it a means of stimulating the industries of the country, of elevating the condition of the labouring population, and of stimulating life and enterprise in commerce. He did not fear competition; the Americans had already the privilege of fishing over a large portion of the western shore, and did not avail themselves of it in any way to the damage of our fishermen. The commercial body of Newfoundland had arrived at the conclusion that their interests would be benefitted by adopting the Treaty. Our herring fishery had, for many years past, been in a ruinous condition; our exports were met by heavy duties in American ports, while the Americans could come down and take from our waters as much as they required, and take them into their own markets duty free. No trade could be carried on against such unequal competition. If we do not accept the Treaty our produce can only get into the United

States through the Dominion, burthened with double freights, unloading, shipping, land-carriage and other expenses. He believed our fishermen were able to hold their own, and if they allowed the Americans, who were at so great disadvantage to place them, the Newfoundlanders, at a disadvantage they would deserve no pity, but he apprehended no danger from that competition. He believed the effect of the Treaty would be to impart a stimulus and vigour to our trade and fisheries.

*Mr. Brennan* would sanction the Bill. He had been forty years in the fishing business. The Yankee will benefit the herring-fishery, which has become a total failure all over the country of late. He had had boats occupied in the prosecution of that fishery for twenty-five years, and they never cleared 5s. In the Bay of Islands he had known people to throw cargoes of herring overboard. Many would be glad to get half-a-crown per barrel for them. The intercourse with Americans will promote this trade.

*Mr. Munn* said we were no losers during the Reciprocity Treaty. The Americans are not at all likely to avail themselves of the privileges thrown open to them by the Treaty. If the mackerel came back to our shores, probably they would follow them here.

*Mr. Bennett (Premier)* said the free admission of cod-fish, cod-oil, and herrings and other fish into the markets of the United States would be of immense advantage, leading, as it would, to a very much larger consumption of the products of Newfoundland than there could be under present circumstances. When our herrings were subjected to a duty of 5s. per barrel, our codfish to a duty of about 5s. per quintal, and our cod-oil, at present prices, to a duty of nearly 10l. per ton. At present we have scarcely any market to which to send our herrings, and of late that fishery has been comparatively of little value; and although we have many other markets for our codfish and oil, yet the opening of the United States markets must increase our trade. By the Treaty thousands upon thousands of barrels of our herrings would now find their way to the United States at remunerative prices, whereas, of late, they would scarcely pay the cost of catching. Our fishermen have nothing to fear from the competition of Americans. With their superior training and the facilities they possess they should drive American competitors out of the field. The object of the Americans is to catch a large class of fish that are found in deep waters, and they consequently will seldom frequent our shores. During the Reciprocity Treaty they did not compete with us. When we are admitted to free competition with the Americans in their own markets, is it reasonable to suppose that their fishermen can come down here—a distance of 1,000 miles, with their dearer labour—and compete successfully with our fishermen? They could not and would not. American labour can be more profitably employed than in the Newfoundland fisheries; one effect of the Treaty would be to cause our merchants not to continue to encourage the catching of tomcods along the coast, but to fit out for the banks suitable vessels such as the Americans employ for that purpose, and for which the class of vessels that go to Labrador are well adapted.

It was not to be credited that Newfoundland would consent that all the other Provinces of British North America should carry into the United States the produce of their fisheries, duty free, and the products of Newfoundland fisheries should be heavily taxed. He could not see how the large benefits offered by Americans could reasonably be expected by Newfoundlanders, or, indeed, be offered to them, without their giving corresponding benefits in return, and if the benefits to be received were not considered by some to be equivalent to the rights we give, they were at least so valuable that he could not see how any sane man could reject them. He was anxious to accept them in the interests of the country for what was offered.

*Mr. Renouf*, Chairman of the Board of Works, thought the Treaty calculated to confer upon Newfoundland many and untold benefits. During the Reciprocity Treaty were there ever any complaints of any interference with our fishermen? The Americans did not come, nor did they interfere. The admission of cod-oil into the United States, free of duty, must necessarily enhance its value and benefit the fishery interests generally. The Treaty will establish a great competition between the United States and Great Britain in the purchase of our cod-oil. It was not reasonable to suppose that the merchants of St. John's and Conception Bay, who conducted over three-fourths of the trade of the island, would be in favour of a Treaty that was calculated to injure either themselves, the planters, or the fishermen whom they supply for the fisheries. The Treaty contains within it the germs of prosperity.

*The Honourable Speaker* said that until recently his opinion had been strongly opposed to the measure. He had, however, been induced to change his opinion owing to the almost unanimous (for there had only been two dissentient voices) decision

taken at the meeting of the commercial body. The Treaty, in its effect, was very similar to the late Reciprocity Treaty. During its operation it had largely promoted the prosperity of our people, as his own experience in Fortune Bay had fully testified. The people on that part of the island had never been so prosperous as during the twelve years the Treaty was in force. During those years there had been an annual export of from 60,000 to 80,000 barrels of herring to the United States from Fortune Bay, a business which of itself gave lucrative employment to hundreds of our people.

Since the abrogation of the Treaty this profitable business had almost entirely ceased. It had dwindled down to the supplying of some fifteen or twenty American schooners, for none but American vessels could since take herrings into their markets free of duty, and our export of this article had been reduced from 60,000 to 12,000 or 15,000 barrels. He considered this a strong fact in proof of the benefits of a free market in the United States. The Americans, since 1818, had equal fishing rights with us from the Ramean Islands along the whole western coasts, but they had not taken advantage of them to our injury. The Americans would not avail themselves of our inshore fisheries. The fact was that vessels so large as those which the Americans could send to prosecute the fisheries in our waters could not safely or conveniently be brought within the three mile limit. It would not be worth their while to compete with our punts and small boats. It was absurd to suppose the Americans could ever compete with us in supplying bait to the French. The business was too precarious and uncertain, for it often happened that for every load of bait sold to the French at St. Peters, two loads were either thrown away or sold for 2 or 3 francs a barrel.

*Mr. Emerson* accepted the Treaty, as the whole commercial body in their Memorial were in favour of it. He supposed, therefore, it could not act prejudicially to the interests of the island.

*Mr. Walsh* considered the operation of the Treaty would prove beneficial. He looked upon it as a resuscitation of the Reciprocity Treaty that had done so much good.

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