

CANADA.—NEWFOUNDLAND.

CORRESPONDENCE

RELATING TO THE

SETTLEMENT OF CLAIMS

ARISING OUT OF TRANSACTIONS

AT

FORTUNE BAY AND ELSEWHERE.

(In Continuation of United States No. 2 (1881) [C.—3059] 1881.)

Presented to both Houses of Parliament by Command of Her Majesty.
August 1883.



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TABLE OF CONTENTS.

Serial No.	From or to whom.	Date.	Subject.	Page.
1	Sir W. V. Whiteway -	May 20, 1881	Enclosing a Memorandum by Mr. Justice Bennett on the Fortune Bay affair and the consequent American claims.	1
2	To Foreign Office -	May 21, 1881 (Extract.)	Transmitting copy of a letter from Sir W. Whiteway, and stating that if Lord Granville is of opinion that it is desirable, for diplomatic reasons, to agree to a prompt payment to the United States Government, Lord Kimberley is prepared to assent to that course.	10
3	To Administrator Sir F. B. T. Carter (Newfoundland).	October 11, 1881	Informing him that the United States Government have accepted the sum of 15,000 <i>l.</i> in full satisfaction of their claims, and conveying the views of Her Majesty's Government generally on the subject, with directions to submit to the Colonial Legislature a vote for the repayment of the sum in question to the Imperial Exchequer.	10
4	Governor Sir H. F. B. Maxse (Newfoundland).	November 26, 1881 (Rec. Dec. 15, 1881.)	Transmitting copy of a Minute of Council on the papers recently received from the Secretary of State, and stating that there is much annoyance felt that the Newfoundland case was not printed with the other Parliamentary Papers.	11
5	To Foreign Office -	January 3, 1882 (Extract.)	Transmitting copy of a Despatch to the Governor of Newfoundland, and of the reply thereto, in which complaint is made that the Newfoundland case is not sufficiently set forth in the papers recently presented to Parliament; enclosing also for consideration of Foreign Office, copy proposed reply to the Governor's Despatch.	13
6	Foreign Office - -	March 3, 1882	Concurring in the proposed Despatch to Governor in reply to his Despatch 26th November last regarding repayment to Her Majesty's Government of the sum paid in satisfaction of the United States claims.	14
7	To Administrator Sir F. B. T. Carter (Newfoundland).	March 15, 1882 (Extract.)	Instructing Governor to call the attention of Ministers to the letter from the Colonial Department to Sir W. Whiteway of the 26th May, and requesting that he will point out to them the desirability of an early settlement of the amount due to Her Majesty's Government by the Colony.	14
8	Governor-General the Marquis of Lorne (Canada).	March 11, 1882 (Rec. March 28, 1882.)	Transmitting copy Report of a Committee of the Privy Council, with a report by the Acting Minister of Marine and Fisheries, stating that in his opinion the Dominion Parliament cannot properly be asked to vote any sum of money on account of the Aspee Bay portion of the Fortune Bay fishery claims.	15

Serial No.	From or to whom.	Date.	Subject.	Page.
9	To Governor-General the Marquis of Lorne (Canada).	April 11, 1882	Stating that Her Majesty's Government have received with regret the expression of opinion on the part of the Government of Canada, and that Her Majesty's Government will be much disappointed if their action in the matter is now repudiated by the Dominion.	19
10	To Foreign Office -	April 14, 1882	Transmitting copy of a Despatch from the Governor-General of Canada regarding the Aspee Bay claims, with copy of the reply thereto.	20
11	The High Commissioner for Canada.	April 15, 1882	Stating that he has received telegraphic instructions from his Government to repay to Her Majesty's Government the sum of 150 <i>l.</i> advanced on account of the Aspee Bay fishery claims.	20
12	To Treasury - -	April 19, 1882	Transmitting copy letter from the High Commissioner for Canada, with copy of a Despatch to the Governor-General, and the reply thereto, on the subject of the Aspee Bay claims.	20
13	To Foreign Office -	April 19, 1882	Transmitting copy of a letter from the High Commissioner for Canada informing of having received authority to repay to Her Majesty's Government the sum advanced in settlement of the Aspee Bay claims.	21
14	Administrator Sir F. B. T. Carter (Newfoundland).	June 2, 1882 (Rec. June 16, 1882.)	Explaining the reasons why no legislative action has been taken in regard to the repayment to Her Majesty's Government of the amount of the American claims, and enclosing copy of a speech by Mr. Harvey showing the hostile feeling on the subject in the Colony generally.	21
15	To Foreign Office and Treasury.	June 23, 1882	Transmitting copy Despatch from the Officer Administering the Government of Newfoundland, enclosing a report of a speech by Mr. Harvey in the Legislative Council.	22
16	Governor-General the Marquis of Lorne (Canada).	July 29, 1882 (Rec. Aug. 15, 1882.)	Transmitting copy Report of a Committee of the Privy Council, embodying a Report by the Minister of Marine and Fisheries, recommending the payment of 150 <i>l.</i> to Her Majesty's Government in settlement of the Aspee Bay claims.	23
17	To Foreign Office and Treasury.	August 23, 1882	Transmitting copy of a further Despatch from the Governor-General of Canada on the subject of the Aspee Bay claims.	23
18	To Administrator Sir F. B. T. Carter (Newfoundland).	March 13, 1883	Observing that, though no direct reference is made in Governor's opening speech to the Assembly to the question of the Fortune Bay claims advance on the part of Her Majesty's Government, it is presumed that the papers will be laid before the Legislature, who should be urged to settle the matter speedily.	24
19	To Treasury - -	March 16, 1883	Forwarding copy Despatch addressed to the Officer Administering the Government of Newfoundland, on the subject of the settlement of the Fortune Bay claims advance.	24
20	Administrator Sir F. B. T. Carter (Newfoundland).	April 2, 1883 (Rec. April 16, 1883.)	Explaining the circumstances of the non-reference in his speech to the Fortune Bay claims.	24

Serial No.	From or to whom.	Date.	Subject.	Page.
21	To Treasury and Foreign Office.	April 30, 1883	Transmitting copy Despatch from the Administrator of Newfoundland with respect to the Fortune Bay claims, and suggesting that the lesser amount referred to should be accepted by Her Majesty's Government in settlement of the affair.	26
22	Treasury - - -	May 31, 1883	Stating that Treasury will be willing, on condition that a substantial payment on account is at once made by the Newfoundland Government, to consider favourably any application that may be made for the remission of the remainder.	26
23	To Governor Sir H. F. B. Maxse (Newfoundland).	June 16, 1883	Stating that Her Majesty's Government will be willing, if the Colony will undertake to pay at once into the Imperial Exchequer the amount of Judge Bennett's assessment, to consider favourably any application which the Colonial Government may make to be relieved from the payment of the whole sum of 14,850 <i>l.</i>	27
24	To Treasury - - -	June 25, 1883	Transmitting copy of a Despatch to the Governor of Newfoundland on the subject of the repayment to Her Majesty's Government of the sum advanced on account of the Fortune Bay claims.	27
25	Governor Sir H. F. B. Maxse (Newfoundland).	July 3, 1883 (Rec. July 12, 1883.)	Transmitting copy of a Minute in Council, with a Bill of Exchange for 3,604 <i>l.</i> 3 <i>s.</i> 4 <i>d.</i> , being the amount of Judge Bennett's assessment, and requesting that this sum may be accepted in full discharge of the indebtedness of the Colonial Government.	28
26	To Treasury - - -	July 17, 1883	Transmitting copy of a Despatch from the Governor of Newfoundland, enclosing a bill for 3,604 <i>l.</i> 3 <i>s.</i> 4 <i>d.</i> , and stating that Lord Derby proposes to inform the Governor that Her Majesty's Government are willing to relieve the Colony of any further payment.	28
27	Treasury - - -	July 23, 1883	Concurring in the proposal to relieve the Colony of Newfoundland of any further payment beyond the sum of 3,604 <i>l.</i> 3 <i>s.</i> 4 <i>d.</i> just received, and stating that immediate steps will be taken to present a supplementary estimate to cover the remainder of the advance.	29
28	To Governor Sir H. F. B. Maxse (Newfoundland).	August 4, 1883	Stating that, in consideration of the sum of 3,604 <i>l.</i> 3 <i>s.</i> 4 <i>d.</i> which has now been paid by the Colony, Her Majesty's Government are willing to waive their claim to any further payment.	29

CORRESPONDENCE

RELATING TO THE

FORTUNE BAY FISHERY CLAIMS.

No. 1.

SIR W. V. WHITEWAY, K.C.M.G., to the RIGHT HON. THE EARL OF
KIMBERLEY.

MY LORD,

May 20, 1881.

I HAVE the honour to enclose the paper to which I referred, and I also send, for facility of reference, the papers which were published in the United States relating to the Fortune Bay affair. I had not all the papers from Her Majesty's Government, and of necessity was obliged to hand the American publications to Judge Bennett.

I have, &c.

The Right Hon. the Earl of Kimberley, (Signed) W. V. WHITEWAY.
&c. &c. &c.

Enclosures in No. 1.

MEMORANDUM.

I, THOMAS R BENNETT, Judge of the Northern District Court at Harbour Grace, Newfoundland, do solemnly declare as follows:—

I have resided in Fortune Bay more than 20 years, and have an intimate knowledge of the fishery, especially in its relations with American fishermen, from its inception more than 25 years ago until quite recently. I remember the winter of 1878, and know that the herring fishery was a failure for American and Newfoundland fishermen alike, and that the chief causes to which it is attributable were—

1. An unusual but not unprecedented scarcity of fish ;
2. An intermixture of small and useless fish, which made seining unprofitable and tedious work, because of the labour required to pick and cull the fish ;
3. Because the winter was exceptionally mild, and unsuited for freezing the fish.

The Honourable Sir William V. Whiteway, K.C.M.G., Premier, and Her Majesty's Attorney-General, having confidence in my knowledge of this subject, has submitted to me the accompanying papers and documents connected with the claim made by the Government of the United States for compensation for alleged wrongs done by fishermen of Newfoundland to certain fishermen of the United States at Long Harbour, Fortune Bay, during the winter of 1878. He has requested me to investigate the claim, for the purpose of ascertaining a reasonable and just amount to be tendered the United States' Government as full compensation for the alleged interference with their fishermen, upon the basis laid down in the Despatch of Lord Granville dated the 27th day of October, A.D. 1880, in order to preserve that amity heretofore existing between the fishermen of the two countries, and to avoid the inconveniences attending an arbitration.

In the following Report I have given a careful consideration to the circumstances connected with the transactions in question.

(Signed) T. R. BENNETT,
Judge of District Court.

REPORT.

BEFORE minutely analysing the claims I would remark that the statements and affidavits on both sides are much exaggerated. Both parties appear to have been irritated; the Americans by being interfered with in the exercise of what they considered to be their rights, for I believe they were under the impression, however erroneous that opinion may have been, that their rights under the treaty extended to fishing from the strand, and the Newfoundland fishermen were doubtless incensed at the breach of a law relating to Sunday fishing, a day which they had always observed as a day of rest.

The greatest harmony and good fellowship had always existed in Fortune Bay between the fishermen of both countries until Sunday, the 6th day of January 1878; and since that day until the present time not a single case of dispute has arisen between them in that locality, although several hundred visits have been made by Americans for bait and cargoes.

There were more than 60 seines belonging to Newfoundlanders lying idle on that Sunday; more than two-thirds of them were of American manufacture, and they were not inefficient means for capturing the fish, nor were the Newfoundlanders inexpert at the business; on the contrary, they were so expert that each American seine owner had engaged a Newfoundland crew to work it for him. These facts show that no feeling of hostility exists against Americans, and that our people were impelled to act as they did by a feeling that the others were not acting fairly towards them in capturing fish on a day which they by custom and law had always observed as a day of rest, and which the Americans had kept decently during their past 25 years' intercourse.

It is quite true that a smaller number of vessels have visited Fortune Bay since, but not for the cause alleged, nor is it credible, if those small schooners could make a net profit of 2,000 to 3,000 dollars for a short voyage when they purchased their cargoes, that they would forego the business, even if they could not safely exercise their right to catch fish for themselves. They would continue to purchase their cargoes rather than lose a trade, if it were as profitable as they represent. The real reason why they do not visit the bay in as great numbers as before is because they can now obtain an abundant supply of excellent herrings from British fishermen at Grand Manan and other places in the Bay of Fundy, within 150 miles of their own port, while Fortune Bay is over 800 miles distant.

That the winter of 1878 was exceptionally mild, and therefore unsuitable for freezing herrings, and that they were very scarce and two-thirds small and unfit for use, are facts within the knowledge of every resident in Fortune Bay, some of which are confirmed by the truthful and reliable Report (p. 16, Message of President to Congress) of W. F. McLaughlin, Esq., the American Consular Agent at St. Pierre Miquelon, at the entrance to Fortune Bay, and about 60 miles from Long Harbour.

All the depositions on both sides show that whatever damage was done occurred on Sunday, the 6th January, and that the Americans continued to haul their seines after that day is asserted by every Newfoundland witness, nor is any specific aggression on any other day alleged by the Americans.

That they were not in fear and were not molested or "driven away" is proved by the attested return from the Customs Department hereto annexed. It shows that some of those who have deposed that they were "driven away" did not leave before the 16th day of March, nearly two and one half months after the alleged "outrage."

If the basis for compensation indicated in the last paragraph of Earl Granville's Despatch* be strictly adhered to it will be difficult to show that any other fisherman is entitled to compensation except the schooners "Ontario" and "New England," whose seines were destroyed. They claim for value of seines 1,400 dollars, and for 2,000 barrels of herrings, the whole amounting to 6,700 dollars. It is to be observed that these herrings were taken by strand fishing, and could not have been caught in any other way. They were, by the destruction of their seines, deprived of the opportunity of using them afterwards during that voyage, and although the herrings said to have been enclosed were taken in violation of treaty rights, yet their value may be taken as a most liberal estimate of the losses they sustained by being interfered with and being deprived of the means to prosecute the fishery within their treaty rights.

The other seines were uninjured. Those that had been set were worked from the shore. They all claim that they intended to fish them by using the strand, and that they had a right to do so under the treaty. They endeavoured in several depositions to show that they were not trespassing on private property, and that they had been using a public beach. (*See depositions, Charles Dagle, Willard E. Poole, p. 85, and Michael Murray, p. 86, President's Message.*)

Perhaps no stronger argument than these facts could be adduced to show that the Government and people of Newfoundland had not been disposed to interpret the treaty rigidly nor enforce it strictly against American fishermen. They had been permitted to use the strand in common with Newfoundland fishermen so freely that they believed it to be their right. But not content with this generous concession, which they had availed themselves of every day previous to the 6th January, they attempted to exercise it to the prejudice of Newfoundlanders at a time when they were at rest. Hence arose the disturbance and the demand for payment for herrings, which could not have been captured without using the strand.

I know that seine fishing cannot be successfully conducted at Long Harbour except from the strand. Neither Americans nor Newfoundlanders ever attempt it in any other way, and were they to do so it would be a failure.

* No. 60, page 71, of Foreign Office Paper [C.-3059] of 1881.

The whole of these claims, when tested on the basis laid down in Lord Granville's Despatch, are reduced to one doubtful and extravagant demand for 6,700 dollars made by Pew and Sons, owners of the "Ontario" and "New England," and as they unquestionably suffered some loss by the destruction of their property they should be paid without scrutinizing their account too severely.

With regard to the claims made for other vessels, I propose to review them from the American standpoint, and not upon the basis laid down by Lord Granville, and shall endeavour to show the utmost amount which, according to their own affidavits, coupled with the official Customs return of Newfoundland, they would be entitled to receive.

Of the 22 vessels said to have been at Long Harbour on the 6th January, I shall begin with those that had seines, and shall refer again to the "Ontario," McAuly, master, and "New England," Dago, master, owned by Pew and Sons. (Their claim and depositions are on pp. 57, 58, and 59, President's Message.)

They had two seines joined together and these were the only seines destroyed. They allege that these seines were worth 1,400 dollars, and contained by their estimate 2,000 barrels of herrings, more than sufficient to load their vessels.

They estimate their total loss for seines and herrings at 6,700 dollars. This was an enormous haul of herrings, and most improbable at that season of the year. During the spawning season in the month of May at Magdalen Islands, at St. George's Bay, and in one or two localities in Fortune Bay, it might be possible to haul that quantity, but during 20 years I never knew or heard of a haul exceeding 500 or 600 barrels at one time; and it is a striking fact that the only seine whose herrings were not thrown away hauled 100 barrels (that of Captain Jacobs).

There is a great contrast between the quantity actually secured by one seine and the quantities assumed to have been in the other seines which were not secured.

But these claimants, Pew and Sons, were those alleged to have been the greatest sufferers, and extravagant as is their estimate of loss, I have, for the reasons already given, suggested that they should be paid 6,700 dollars.

Having secured their seine and herrings unmolested on that day they could not have hauled any more during the next ten days, as it would require that time at least to handle and freeze such a large quantity.

If Pew and Sons are allowed the full amount of their claim there can be no further claim by persons alleging that they were depending on Pew and Sons' sales for their herrings, for after the Sunday referred to the other seines which did work (and there was no interference after that day) were unsuccessful.

These vessels remained one month after the 6th January, and cleared out at the Customs on the 4th and 6th February.

"LIZZIE AND NAMARI," DAGLE, Master.

(Deposition on p. 81, President's Message.)

States that he had sold his seine and boat the previous winter to Newfoundland fisherman.

It was no longer American property, and he could not sell the right to violate our laws, whatever he may do himself.

There is no evidence that this seine was used on that day, and had it been interfered with we are not accountable to the United States' Government for any acts done by our own people to our own people.

This deponent clearly, then, has not been injured, and has not a shadow of claim.

The vessel was cleared at the Customs on the 4th February, nearly a month after the "outrage."

"F. A. SMITH," JAS. McDONALD, Master.

(Deposition on p. 83, President's Message.)

He states that he had taken 1,000 barrels. If not interfered with he could not have used his seine again until those were disposed of, which would require several days.

These herrings were taken by strand fishing, but I shall test their value by the standard of Pew and Sons' claim (*see ante*).

	Dollars.
For seines destroyed and herrings (2,000 barrels)	6,700
Less value of seines	1,400
	<hr/>
Value of 2,000 barrels	5,300
	<hr/>
Value of 1,000 barrels at this rate	2,650

This is at a very much higher rate per barrel than is credited in any of the accounts. (*See further on, schooners "Bunker Hill," "Izaak Rich," "Bonanza," "Herbert W. Rogers," and "Moses Knowlton."*)

This vessel was cleared at the Customs on the 6th February.

"WILLIAM E. McDONALD," McDONALD, Master.

(Deposition on p. 82, President's Message.)

The master of this vessel was on shore, and had not attempted to seine on the 6th January.

His seine was probably worked by a Newfoundland crew that had conscientious objections against pursuing their usual avocation on a Sunday. However this may be it is clear from his deposition that at no time during that day did he use his seine, nor is there any indication that he intended doing so. It may be fairly assumed that he was not influenced in his conduct by any action of the mob.

There can be no merits in this claim unless it is assumed that every vessel having a seine, whether she used it or not, was entitled to be paid for a catch of herrings which might possibly have been taken by fishing from the strand. If such a principle were adopted then this vessel might be set down for 1,000 barrels at 2,650 dollars, being at the same rate claimed by Pew and Sons.

It is, perhaps, unnecessary to remark that McDonald's affidavit, charging Newfoundlanders with having placed rocks on the hauling-ground where they fished themselves with a large number of seines, and thereby destroying its use for all time, for the mere purpose of injuring Americans, who are using only five or six seines, is too gross and absurd to require refutation, as is his charge that poor net fishermen had placed their gill-nets in a locality where herrings were not usually caught, and permitting them to rot in the water for the purpose of obstructing Americans.

The animus shown in this affidavit discredits his claim, and leaves an impression that it is without foundation.

This vessel cleared at the Customs on the 5th February, one month after the "outrage."

"HEREWARD," E. STAPLETON, Master.

(Deposition on pp. 84 and 85, President's Message.)

Stapleton says he employed a crew of Newfoundlanders, who set his seine in a strong tideway and utterly destroyed it. Such accidents do occasionally happen with old worn-out seines when set on a rough and rocky sea bottom. However this may have been caused it was the act of his own servants, and he should look to them for redress if they did him a wilful wrong. But it is incredible that men depending on his seine for their wages would sacrifice their own interests merely to injure their employer.

This casualty happened before the 6th January when all were working in harmony.

He confirms the testimony of others that no herrings could, because of their scarceness, be taken in seines after the 6th January, thus showing (on the assumption that we are liable) that our liability would be limited to the losses of that day. If we admitted the claim of other seine owners and pay them the value of herrings they say they might have taken he cannot make a further claim on account of any interest he may have had in them.

His owners in their exhibit (p. 48) attribute their loss to the destruction of their seines by their own hired servants.

Stapleton's statement that all the vessels had agreed to assist in loading each other, thereby competing with each other in the New York market (they not being on a joint account, but separate ventures), is most improbable. None of the seine owners mention

such an arrangement, nor do Pew and Sons, who suffered most, make any claim on that account. In my experience of many years no such co-operation was known; each man was active to obtain a cargo and get to market before others could load and compete with him.

This vessel has clearly no claim.

She was cleared at the Customs on the 8th February, more than a month after the "outrage."

"CHARLES C. WARREN," PETER SMITH, Master.

(Deposition on p. 86, President's Message.)

He says he had his seine in the boat, but took it up because of the disturbance.

He estimates his loss at 3,000 dollars, besides expenses of the voyage. His account is stated in detail on p. 49, and an analysis of it, as well as a few others who have given details, will enable us to form an idea of the character of the claims made, and the extravagant estimate of profits claimed by all.

He charges—

	Dols.	Dols.
For outfits and cash paid for 400 barrels of herrings	-	4,610
He credits—		
800 barrels herrings, at 3 dollars	-	2,400
30 hogsheads salt	-	30
		<u>2,430</u>
Expense, loss	-	2,180
And charges—		
500 barrels herrings	-	2,500
		<u>4,680</u>

He claims that his vessel would carry 1,300 barrels, and that he only got 800 barrels. He has valued the 800 barrels at 2,400 dollars, and the 500 barrels he did not get at 2,500 dollars. He sold the former at 3 dollars per barrel, and charges the latter at 5 dollars per barrel.

Assuming his charges for outfits are correct, his account, on his own showing, would, if he had procured a full cargo of herrings, and no interference had taken place, have resulted in a loss upon the voyage of 150 dollars.

Say from above—

	Dollars.
Outfits and cash paid for herrings	4,610
Less for 400 barrels purchased	560
	<u>4,050</u>
Cr.	
1,300 barrels herrings at the rate he sold (3 dollars)	3,900
	<u>150</u>
Net loss	

Just 4,530 dollars less than he charges in his claim.

Supposing it be admitted that he could have taken the 400 barrels he purchased, and also the 500 barrels to make up the cargo, his claim could not be more than—

	Dollars.
400 barrels herrings purchased	560
500 barrels herrings short at 3 dollars	1,500
	<u>2,160</u>

Apart from his account, and assuming that seines were to be paid for the herrings they might have taken by strand fishing, using Pew and Sons' claim as a standard, this claimant would be put down for 1,000 barrels at 2,650 dollars.

This vessel was cleared at the Customs on the 9th January, an early date for a successful voyage.

“MOSES ADAMS,” JOB JACOBS, Master.

He does not make any deposition.

David Malleson (deposition p. 48) says: “Captain Jacobs being a Newfoundlander the mob allowed him to take in the herrings he had taken.”

His owners, however, in their claim (p. 49), demand for herrings tripped out of seine, but offer no evidence that such an act took place. But if strand fishing is allowed, and its interruption is to be compensated for, there is no distinction can be made between him and the other seine owners, and he would be entitled, on Pew and Sons’ basis, to 1,000 barrels of herrings at 2,650 dollars.

This vessel cleared with a cargo of 600 barrels of frozen herrings, very nearly, if not quite, a full cargo, and he credits them in market at a trifle over 1 dol. 50 c. per barrel.

This is the eighth and last seine, and the demand of the owners for 8,586 dols. 5 c. is the most extravagant and outrageous of the 22.

RECAPITULATION.

(Based on Lord Granville’s Despatch.)

“ONTARIO” and “NEW ENGLAND” owned by PEW AND SONS.

For seines destroyed and consequential damages, 6,700 dollars.

The damages are allowed on the assumption that Americans might legally use seines during the close months, which is denied and at issue, otherwise the damage would be 1,400 dollars.

RECAPITULATION.

(On the basis that American fishermen were interfered with, and prevented fishing from the strand.

Seines.	Vessel.	Master.	Owner.	Amount.
				Dollars.
2	{ Ontario - - -	McAuly - - -	} Pew and Sons -	6,700
	New England - - -	Dago - - -		
0	Lizzie and Namari -	Dagle - - -	Wonson and Co. -	—
1	F. A. Smith - - -	McDonald - - -	Friend - - -	2,650
1	Wm. E. McDonald -	McDonald - - -	Parsons - - -	2,650
0	Hereward - - -	Stapleton - - -	Mansford - - -	—
1	Chas. C. Warren -	Smith - - -	Smith - - -	2,650
1	Moses Adams - - -	Jacobs - - -	Lane and Bros. -	2,650
6				17,300

The above appears to me to be the utmost which can possibly be made up upon the affidavits of the Americans, taking Pew and Sons as a basis, and their claim would doubtless be considered in excess of the actual and legitimate loss sustained by them.

I have taken, although it may be considered as not impossible, but very improbable, the whole quantity of herrings which could possibly have been seined on Sunday, the 6th January with the appliances at hand, at 6,000 barrels, based on Pew and Son’s statement. These seven vessels by their tonnage would carry about 700 barrels each on an average, making 4,900 barrels for their cargoes, leaving 1,100 barrels to be disposed of to other vessels; if divided among the other 15 vessels it would give about 73 barrels to each thus showing how small an injury these 15 vessels could have really suffered.

I will now consider the case of the other 14 vessels.

They were at Fortune Bay, but there is no statement or affidavit showing they were at Long Harbour on the 6th January (Rumsey, deposition, p. 74, states there were only 12 American vessels at Long Harbour), but this is immaterial if the following views are correct,

These vessels were on an ordinary trading voyage, such as they had pursued during the past 25 years. They had no seines or other appliances for carrying on a fishery.

They had entered at the Customs for trade, as they had usually done, and had apparently defrauded the revenue of Newfoundland.

Their sworn statements of cargo in their claims are far larger than their sworn entries for duties, as example, schooner "Izaak Rich" (p. 92 in President's Message) claims for cargo 1,030 dollars, and enters at the Custom House (*see Returns*) in ballast, and makes oath that he has no cargo. All the other entries are of a like character, and some of them will be noticed further on.

There is not the slightest evidence that any one of these vessels was interfered with by the mob. They were, in fact, the very good customers of Newfoundlanders were there any herrings to be caught.

They were not in any sense fishermen following their avocation, nor were they exercising any of the rights conferred on them by the Treaty of Washington. They went to Fortune Bay for the purposes of trade and for no other purpose; consequently had any wrong been done them it must have been in violation of the comity of nations, and could not have been an infraction of the Treaty, which confers fishing privileges only. If we did a wrong to the others in contravention of the Treaty, we are not bound to these traders for that wrong. If we hindered them from trading on a Sunday we had a right to do so because it is contrary to our laws.

For these reasons, and because I have shown that the utmost quantity of herrings at the disposal of the owners of seines would have been 1,100 barrels, that if these 14 vessels had been on a fishing voyage the loss of that quantity, divided among them, would have been so small that it could not have materially affected the results of the voyage, and because I have proposed to pay the owners of seines for the value of their herrings, I am of opinion that these 14 vessels have no claim.

Although these claims are not allowed, it will be interesting to examine a few of them for the purpose of showing their exaggerated character. Most of them have avoided details such as will enable me to thoroughly analyze them, but I shall begin with the schooner—

"BUNKER HILL" (p. 51).

Account stated—

	Dol.	c.
Expenses, cargo for trade, &c.	-	-
Sale of 911 barrels herrings, at 2 dollars	-	-
	3,179	80
	1,962	00
	1,217 80	

The cargo of this vessel had been sold for 3 dollars per barrel, but on account of delay brought 2 dollars per barrel, leaving a loss of	-	981	00
Full cargo would have been 1,300 barrels, but, on account of disturbance, did not obtain but 981 barrels, leaving a deficiency of 319 barrels, which would have cost 478 dol. 50 c., were sold for 957 dollars, leaving a loss of	-	-	-
	-	-	478 50
Total	-	-	2,677 30

(Signed) WALEN AND ALLAN.

The account of loss correctly stated should be—

	Dol.	c.
981 barrels less than contract, at 1 dollar	-	-
319 barrels, profit on	-	-
	981	00
	478	50
	1,459 50	

And their account with full cargo of 1,300 barrels, as per contract, would show as follows:—

	Dol.	c.
Outfits, cargo, &c., as per statement	-	-
Credit—	-	-
1,300 barrels herrings, at contract price, 3 dollars	-	-
	3,179	50
	3,900	00
	720 50	

Profit of voyage, instead of 2,677 dol. 50 c., as per claim.

“ IZAAC RICH,” McDONALD, Master.

(Claim on p. 51, President's Message.)

	Dol.	c.
Charges for cargo supplies - - - - -	1,030	25
Enters at Customs on oath at - - - - -	250	00
His account stated is—		
Debit charges - - - - -	2,986	09
Credits—		
Sale of 918 barrels herrings, at 2 dollars - - - - -	1,836	00
	<hr/>	
	1,150	09
The cargo of this vessel had been contracted for at 3 dollars per barrel, but, on account of the delay they only brought 2 dollars per barrel, leaving a loss of - - - - -		
		918 00
Full cargo would have been 1,200 barrels, but on account of the disturbance did not obtain but 918 barrels, leaving a deficiency of 282 barrels, which would have cost 423 dollars, were sold for 846 dollars, leaving a loss of - - - - -		
		428 00
	<hr/>	
Total claim - - - - -	2,496	09
	<hr/>	
	(Signed)	M. WALLEN.

The real loss for short cargo and price was:—

	Dol.	c.
981 barrels herrings, at 1 dollar - - - - -	981	00
Loss on 282 barrels deficiency - - - - -	428	00
	<hr/>	
	1,409	00

And their account with full cargo of 1,200 barrels, as per contract, would show as follows:—

	Dol.	c.
Debits for outfits, &c. - - - - -	2,986	09
Credits—		
1,200 barrels herrings at contract price, 3 dollars - - - - -	3,600	00
	<hr/>	
	613	91

The real profit of an undisturbed voyage, proved from his own statement.

This vessel remained peaceably trading, and cleared at the Customs on the 17th March.

“ BONANZA.” OWNER, JAS. PROCTOR.

(Claim on p. 52, President's Message.)

	Dol.	c.
Account for expense and profit - - - - -	3,997	17
Deducts value of partial cargo - - - - -	975	00
	<hr/>	
Leaving a loss of - - - - -	3,022	17

This vessel cleared at the Customs, on the 23rd February, with 1,080 barrels, which appears to have been a full cargo.

He credits them at something less than 1 dollar a barrel. With these facts it is unnecessary to investigate this account further.

If this be the value of herrings to those who got cargoes, the loss of those who got none must be very small.

“ JOHN W. BRAY.”

(Claim on p. 54, President's Message.)

Charges a loss of 3,580 dol. 7 c.

He cleared at the Customs on the th January, with 500 barrels of frozen herrings about 100 barrels, and certainly not 150 barrels, short of a full cargo for a vessel of her tonnage (83 tons). (Vessels carry more than one-third less frozen herrings than salted.)

He credits these herrings at 1,525 dol. 45 c., thus fixing the value of frozen herrings at a little over 3 dollars per barrel.

He left for market very early, and was not delayed by the "outrage."

He only lost on the 150 barrels he was short (if he were short) at the same rate as those he credits, 3 dollars per barrel; it would be a little over 450 dollars.

Further comment is unnecessary.

"HERBERT M. ROGERS."

(Claim on p. 53, President's Message.)

Claims for his losses 5,876 dol. 30 c.

He cleared at the Customs on the 2nd February, with 517 barrels of frozen herrings. His vessel, being 77 tons (6 tons smaller than the last), would, perhaps, have capacity to carry 100 barrels more. He got away about the usual time.

He credits these herrings at 1,120 dollars, thus fixing their value at a trifle over 2 dollars per barrel.

The 100 barrels short would have yielded him, at that rate, 200 dollars.

In the face of these facts he estimates the profit of a voyage at 3,930 dol. 17 c.

"MAUD AND EFFIE."

(Claim on p. 51, President's Message.)

Makes his account up carelessly, and recapitulates 1,000 dollars more than it adds correctly, and swears it is correct.

Charges his cargo at 1,405 dol. 2 c., and enters it for duty at 125 dol. 80 c.

His cargo and entry, as well as all the others, proves that he and they were traders, not fishermen.

He cleared at the Customs on the 31st January, 25 days after the "outrage."

"WILDFIRE."

(Claim on p. 50, President's Message.)

Her owner swears she was driven away from Newfoundland.

She was the last vessel that left, and cleared at the Customs on the 16th March more than two months after the "outrage."

"MOSES KNOWLTON."

(Claim on p. 53, President's Message.)

Claims 5,356 dol. 60 c.

Neither master nor owner state that she had arrived at Fortune Bay on the 6th January. She did not enter at the Customs until the 11th day of that month.

He cleared at the Customs on the 16th March, with 400 barrels of herrings, and credits only 180 barrels on his account, 305 dollars, being at the rate of about 1 dol. 70 c. per barrel.

I have examined thus far into these claims for the purpose of showing their character. Even were they reasonable in amount I have already said that the evidence is undoubted that not one of these 14 vessels even attempted to exercise fishery rights from her arrival in Fortune Bay until she left. Not one of them was prepared to fish, not one of them was interfered with, and their losses are to be attributed to the mild winter and scarcity of herrings, and were not caused by the conduct of the people of Newfoundland.

All which is respectfully submitted.

(Signed) T. R. BENNETT.

Harbour Grace, Newfoundland, May 4, 1881.

No. 2.

COLONIAL OFFICE to FOREIGN OFFICE.

(Extract.)

Downing Street, May 21, 1881.

I AM directed by the Earl of Kimberley to transmit to you herewith, to be laid before Earl Granville, a copy of a letter* received from Sir William Whiteway, the Premier of Newfoundland, who is now in London, transmitting a memorandum drawn up by Judge Bennett, of the Northern District Court in the Island, relating to the occurrences at Fortune Bay, in January 1878, and to the claims of United States fishermen in connexion therewith.

If an inquiry with a view to the assessment of compensation to American fishermen were to be proceeded with, this memorandum would afford valuable information, and would, no doubt, be of great assistance to Sir E. Thornton in dealing with the question; but if Lord Granville should be of opinion that it is desirable to agree to the proposed payment at once of the sum which Mr. Blaine is willing to accept in satisfaction of all claims, Lord Kimberley would be prepared to assent to this course. Apart from the great advantage of terminating at once an irritating controversy, it appears to his Lordship that even if the United States Government should, after considering the statement now submitted, consent to a further reduction of their original demand, the cost of the inquiry, added to the compensation, would probably amount to at least as much as the sum which the United States Government is now prepared to accept.

No. 3.

The RIGHT HON. THE EARL OF KIMBERLEY to SIR F. B. T. CARTER, K.C.M.G.,
Administering the Government of Newfoundland.

SIR,

Downing Street, October 11, 1881.

I INFORMED Sir J. Glover by my telegram of the 9th of May last† that the United States were willing to accept the sum of 15,000*l.*, to be paid at once, in full satisfaction of the claims known as the Fortune Bay and Aspee Bay claims, and all other claims up to the 4th of March last, arising out of interruptions from which American fishermen have suffered whilst in the exercise of the rights of fishery allowed to them under the Treaty of Washington; and I added that this arrangement appeared to Her Majesty's Government to be satisfactory.

In my Despatch of the 7th of June,‡ I enclosed copy of a letter which I had caused to be addressed to Sir William Whiteway, explaining the reasons which in the opinion of Her Majesty's Government rendered it advisable that the question should be settled by the payment to the United States Government of the fixed sum mentioned, and I stated that the correspondence upon the subject when laid before Parliament would be communicated to you in due course.

I have now the honour to forward to you the printed correspondence lately presented by command to both Houses of Parliament, from which you will perceive that after prolonged communications with the United States Government, Her Majesty's Government came to the conclusion that the validity of the claim put forward on behalf of the United States fishermen to some compensation must be admitted. With a view to fixing the amount of the indemnity, it was originally proposed that an inquiry should be held by a representative of Her Majesty's Government and a representative of the United States, when it would have been necessary that evidence should be taken, and that the respective sides of the question should be argued by Counsel. Having regard, however, to the length of time already occupied by the negotiations, and to the further delay which such an inquiry would have involved, and also to the considerable expense which would thus have been entailed, Her Majesty's Government came to the conclusion that a more satisfactory, and possibly in the end a less costly settlement would be obtained if the United States Government would consent to accept a fixed sum in satisfaction of all claims. This view met with the concurrence of the United States Government, and after some further discussion Her Majesty's Government, acting upon the information

* No. 1. † See Enclosure in No. 118 of Foreign Office Paper [C.-3059] of 1881. ‡ Not printed.

supplied by the Government of Newfoundland, and upon the statements made by the aggrieved fishermen, decided that a sum of 15,000*l.* might with propriety be offered, on receiving the assurance of the United States Government that it would be accepted in full of all claims arising out of any interruption of American fishermen on the coast of Newfoundland and its dependencies up to the 4th of March last, and without prejudice to any question of the rights of either Government under the Treaty of Washington.

The sum of 15,000*l.* was accordingly offered to the United States Government and accepted by them, it being eventually agreed that it should include a claim by American fishermen to compensation for being deterred from fishing for bait in Aspee Bay, Cape Breton. The occurrence at Aspee Bay, where certain masters of American schooners alleged that they were prevented by the inhabitants from taking squid with their seines and thereby suffered loss, was of a comparatively unimportant character, and Sir E. Thornton reported that 150*l.* should be sufficient to cover it. I have accordingly requested the Governor-General of Canada to move his Government to make the necessary provision for the repayment to Her Majesty's Exchequer of the amount thus paid on account of the Dominion.

The remainder of the sum of 15,000*l.* (a bill for which was drawn by Sir E. Thornton upon Her Majesty's Paymaster-General to Mr. Blaine's order) was paid in respect of the occurrences at Fortune Bay and other places on the coast of Newfoundland, the particulars of which are already in your possession, and will be found recorded in the printed correspondence now forwarded.

Her Majesty's Government consented to provide for the immediate payment of the sum awarded out of Imperial funds, in order that this satisfactory settlement, whereby the possible growth of new claims was prevented and the demands upon the Colonial Treasury were reduced to a precise sum of moderate amount, might not be endangered by a protraction of the negotiations. The payment is, however, obviously one which can only be a temporary charge upon the Imperial revenue, as it relates to a matter in which those who contribute to that revenue are not directly concerned, and an intimation was conveyed to Sir W. Whiteway, in the letter referred to above, that a communication would be made to the Governor of Newfoundland in due course with regard to its repayment by the Colony.

I feel confident that your Government will acknowledge that Her Majesty's Government have made the most favourable settlement of this question in the interests of the Colony of which the circumstances of the case admitted, and that they will recognise the justice of the request which I now make for the repayment of the sum advanced, which became payable in consequence of the acts of inhabitants of Newfoundland. I have, therefore, to request that you will move your Government to submit to the Legislature a vote for the repayment of 14,850*l.* to the Imperial Exchequer; and I may remind you that by the prompt payment to the Newfoundland Government of its proportion of the award of the Halifax Fishery Commission the Colony was placed in possession of a fund to which the amount now repayable to Her Majesty's Government may appropriately be charged.

The Officer Administering the Government.

I have, &c.
(Signed) KIMBERLEY.

No. 4.

GOVERNOR SIR H. F. B. MAXSE, K.C.M.G. (NEWFOUNDLAND), to the RIGHT HON.
THE EARL OF KIMBERLEY. (Received December 15, 1881.)

MY LORD,

Government House, November 26, 1881.

I HAVE the honour to report that your Lordship's Despatch of the 11th October,* and the Parliamentary papers which accompanied it, were laid before Council on two several occasions with a sufficiently long interval between the sittings to enable Council to become acquainted with the contents of the papers in question, these having been transmitted in rotation to each member for this purpose.

2. I have now the honour to forward to your Lordship a copy of a Minute of Council on the subject.

3. There is no question but that this payment to the United States is a very burning question here, the Newfoundland view being that they were entirely in the right throughout.

4. The Council naturally share this view. They do not in the remotest degree impugn the conduct or equity of the Imperial authorities, who they are satisfied acted according to their view of the question for the best of the Colony, but they are much annoyed that their case, as exhibited in the papers transmitted from here, was not also printed with the other Parliamentary papers.

5. The enclosed Minute pretty clearly exhibits what the feelings of Council are in this matter, and on the approaching "last session" of the House of Assembly it is about what might have been expected.

6. I pointed out the fact that Sir Edward Thornton had positively declared that had Her Majesty's Government not settled the matter in the way they did the claims would have been much higher, and reminded Council also of the sum of money received by the Halifax award. I must await your Lordship's instructions before proceeding further.

I have, &c.

(Signed) H. FITZ. B. MAXSE.

The Right Hon. the Earl of Kimberley,
&c. &c. &c.

Enclosure in No. 4.

EXTRACT FROM MINUTES OF COUNCIL of 22nd November 1881.

THE Council having had under consideration the Despatch of the Right Hon. the Secretary of State for the Colonies dated the 11th day of October 1881, with the accompanying printed correspondence presented to both Houses of Parliament, observe the absence of correspondence which took place between Lord Kimberley and the Government of this Colony relative to the proposed submission of the questions at issue to adjudication, when an opportunity would be afforded for a thorough investigation of the claims of the United States.

The Council also notice that whilst Lord Kimberley points in his Despatch to the decision at which Her Majesty's Government had arrived, being based upon information received from this Island, the papers forwarded from this Colony purporting to elucidate the nature of the American claims, notably one prepared by Judge Bennett, are not amongst those which appear to have been laid before Parliament. The Council respectfully refer his Lordship to the papers emanating from this Government as evidencing a strong protest against the legality and equity of the claims of the United States. Confident of the just character of their defence, and conscious of the fictitious basis upon which many of the American claims are founded, as distinct from the principal ground whether the Americans have any claims either legal or equitable under the terms of the treaty, the Council cannot but regret that a sum of money has been paid which appears a general admission of the justness of their claims.

The Council also feel that this payment having been made "without prejudice to any question of the rights of either Government under the treaty of Washington" leaves the substantive matters in dispute in a most unsatisfactory state, for example, notwithstanding that it was most stoutly contended by the American counsel that the Americans had no right of strand fishing, their claim can only be sustained upon the assumption that they have such right.

Had there been, as proposed by Her Majesty's Government, a full inquiry and investigation, and an amount found to be equitably due to the United States Government, this Council are satisfied that a decision under such circumstances would have been cheerfully acquiesced in.

The Council, moreover, cannot appreciate the distinction drawn between the Aspee Bay case in Canada and others of a similar nature occurring in Newfoundland. In the former the damages sworn to by American affidavit appear to be \$7,000. Sir Edward Thornton reduces this to 150/. If proportionate reduction were made in the claims against Newfoundland they would amount to about \$10,000.

The original proposition for arbitration in which this Government acquiesced having been exchanged for another mode of settlement without reference to the local executive, the Council trust that Lord Kimberley will see how important it becomes that before presenting the documents in this matter to the Legislature the Government should be furnished with the reasons which induced Her Majesty's Government to adopt the course they have taken.

(Signed) E. D. SHEA,
Clerk, Executive Council.

COLONIAL OFFICE to FOREIGN OFFICE.

(Extract..)

Downing Street, January 3, 1882.

WITH reference to your letter of the 28th of September last,* and to previous correspondence respecting the claims of American fishermen arising out of occurrences at Fortune Bay and elsewhere, I am directed by the Earl of Kimberley to transmit to you, to be laid before Earl Granville, a copy of a Despatch† which was addressed to the Governor of Newfoundland on the 11th October last, requesting that repayment might be made by the Newfoundland Government of the sum of 14,850*l.*, advanced by Her Majesty's Government in satisfaction of the claims of the United States Government in respect of the occurrences which took place in Newfoundland.

I am also to enclose a copy of the reply‡ which has been received from the Governor, transmitting a copy of a minute of his Executive Council upon the subject.

The Newfoundland Government draw attention to the omission from the printed papers laid before Parliament relating to this subject, of documents received from Newfoundland purporting to elucidate the nature of the American claims, especially a paper prepared by Judge Bennett, which was communicated to the Foreign Office in the letter from this Department of the 21st of May last,§ and they request that, before presenting to the Colonial Legislature the documents relating to this matter, they may be informed of the reasons which induced Her Majesty's Government to adopt the course they took in regard to the settlement of the American claims.

Lord Kimberley proposes, in reply to the Governor's Despatch, to instruct him to refer the Council to the letter which was addressed to Sir W. Whiteway from this Department, dated the 26th of May last,|| in which Sir W. Whiteway was informed as follows:—"Lord Granville has expressed a strong opinion, in which Lord Kimberley concurs, that it is desirable to adopt the alternative course which had been proposed, and to settle this question at once by the payment of the sum of 15,000*l.*, which Mr. Blaine is willing to accept, in satisfaction of all claims up to the 4th of March. Apart from the great advantage of terminating at once an irritating controversy, it appears to Her Majesty's Government that, even if the United States Government should, after an inquiry in which evidence might have been adduced in support of the statement of Judge Bennett, have consented to a reduction of their original demand, the cost of the inquiry, added to the compensation, would probably have amounted to at least as much as the United States Government is now prepared to accept.

"Instructions will accordingly be sent to Sir E. Thornton to inform Mr. Blaine that Her Majesty's Government are prepared to settle the United States' claims in the manner above indicated, on the clear understanding that the payment is made without prejudice to any question of the rights of either Government under the Treaty of Washington." Lord Kimberley proposes to point out to the Colonial Government that, an arrangement having been arrived at in the manner explained in the letter above quoted, a document of the nature of Judge Bennett's statement, on which no action was taken in the negotiations with the United States Government, would clearly not have been within the scope of the papers presented to Parliament.

With regard to the remarks of the Council respecting the Aspec Bay claims, Lord Kimberley proposes to reply to the effect that as the claim in this case lay against the Canadian Government, it was obviously necessary that an assessment should be made in this particular case, in order that the amount might be claimed from Canada. Sir Edward Thornton, who was consulted on the matter, estimated the amount at 150*l.*, and Her Majesty's Government acted on his opinion.

Lord Kimberley desires me to request that you will move Earl Granville to inform him whether he approves of the proposed reply to the Governor, or whether he has any suggestions or observations to make upon the subject of the minute of the Executive Council of Newfoundland.

* Not printed.

† No. 3.

‡ No. 4.

§ No. 2.

|| See Enclosure in No. 129 of [C.-3059], 1881.

No. 6.

FOREIGN OFFICE to COLONIAL OFFICE.

SIR,

Foreign Office, March 3, 1882.

I AM directed by Earl Granville to state to you, for the information of the Earl of Kimberley, that he has had under his consideration your letter of the 3rd of January,* with its enclosures, relative to the repayment by the Government of Newfoundland of the sum advanced by Her Majesty's Government in order to satisfy the claims of the Government of the United States on account of the occurrences at Fortune Bay.

In reply I am to request that you will state to Lord Kimberley that Lord Granville concurs in the answer which it is proposed to return to the Despatch from Sir H. Maxse of the 26th of November last† upon this question.

I am, &c.

(Signed) TENTERDEN.

The Under Secretary of State,
Colonial Office.

No. 7.

THE RIGHT HON. THE EARL OF KIMBERLEY to SIR F. B. T. CARTER,
K.C.M.G., Administering the Government of Newfoundland.

(Extract.)

Downing Street, March 15, 1882.

HER Majesty's Government have had under consideration the extract from the Minutes of Council of the 22nd November 1881, which accompanied Sir F. Maxse's Despatch of the 26th of that month,‡ in reply to mine of the 11th of October,§ respecting the settlement of the claims known as the Fortune Bay and Aspee Bay claims.

The Government of Newfoundland observe that the printed papers laid before Parliament relating to this subject do not contain certain documents received from the Colony which might elucidate the nature of the United States' claims, especially a paper prepared by Judge Bennett, and they request that before the documents relating to this matter are presented to the Colonial Legislature they may be informed of the reasons which induced Her Majesty's Government to adopt the course they took in regard to the settlement of the United States' claims.

I request that you will refer your Ministers to the letter which was addressed to Sir W. Whiteway from this Department on the 26th of May last,|| in which he was informed as follows:—

Lord Granville has, expressed a strong opinion, in which Lord Kimberley concurs, that it is desirable to adopt the alternative course which had been proposed, and to settle this question at once by the payment of the sum of 15,000*l.*, which Mr. Blaine is willing to accept in satisfaction of all claims up to the 4th of March. Apart from the great advantage of terminating at once an irritating controversy, it appears to Her Majesty's Government that even if the United States Government should, after an inquiry in which evidence might have been adduced in support of the statement of Judge Bennett, have consented to a reduction of their original demand, the cost of the inquiry, added to the compensation, would probably have amounted to at least as much as the United States Government is now prepared to accept.

“Instructions will accordingly be sent to Sir E. Thornton to inform Mr. Blaine that Her Majesty's Government are prepared to settle the United States' claims in the manner above indicated, on the clear understanding that the payment is made without prejudice to any question of the rights of either Government under the Treaty of Washington.”

The Government of Newfoundland will doubtless perceive that an arrangement having been arrived at in the manner explained in the letters above quoted, a document of the nature of Judge Bennett's statement, on which no action was taken in the negotiations with the United States Government, would clearly not have been within the scope of the papers presented to Parliament.

With regard to the Aspee Bay claims, as the amount involved in that case was known to be very small, it was thought desirable that the Dominion Government should

* No. 5.

† No. 4.

‡ No. 4.

§ No. 3.

|| See enclosure in No. 129 of [C.-3059] 1881.

be at once invited to make provision for its repayment, and it was necessary to ascertain what sum Canada might reasonably be asked to repay. Sir Edward Thornton was accordingly consulted, and he estimated the amount at 150%.

As the Newfoundland Legislature is now in session, I request that you will take an early opportunity of drawing the attention of your Government to the desirability of an early settlement of the amount due by the Colony to Her Majesty's Government.

No. 8.

GOVERNOR-GENERAL THE MARQUIS OF LORNE, K.T., G.C.M.G. (CANADA), to
the RIGHT HON. THE EARL OF KIMBERLEY. (Received March 28, 1882.)

MY LORD,

Government House, Ottawa, March 11, 1882.

IN reply to your Lordship's Despatch, of the 30th June 1881,* acquainting me, for the information of my Government, that the sum of 150% had been applied, out of the 15,000% awarded on account of the Fortune Bay claims, to compensate the owners of certain American fishing vessels for losses alleged to have been sustained by them at Aspee Bay, Nova Scotia, and requesting repayment of the amount from the Government of Canada, I have the honour to forward herewith a copy of an approved report of a Committee of the Privy Council of the Dominion, to which is appended a copy of a report of the Acting Minister of Marine and Fisheries, which states that, in his opinion, Parliament cannot properly be asked to vote any sum of money for the purpose specified.

The Right Hon. the Earl of Kimberley,
&c. &c. &c.

I have, &c.
(Signed) LORNE.

Enclosure 1 in No. 8.

COPY of a REPORT of a COMMITTEE of the HONOURABLE the PRIVY COUNCIL for CANADA, approved by his Excellency the GOVERNOR-GENERAL on the 1st day of March 1882.

THE Committee of Council have had under consideration the Despatch dated 30th June 1881, from Her Majesty's Secretary of State for the Colonies, in which it is represented that in an agreement made between the British and American Governments to settle certain claims made against Great Britain for interference by the inhabitants of Newfoundland with United States fishermen at Fortune Bay, it was considered advisable to include (amongst the definite claims) losses alleged to have been sustained by American fishing vessels at Aspee Bay, Nova Scotia, and that part of the compensation, amounting to the sum of 150%, was applied to that purpose, which amount the Canadian Government is requested to refund.

The Acting Minister of Marine and Fisheries, to whom the Despatch has been referred, states that he is of opinion, considering all the circumstances described in his report, dated 28th February 1882, hereto annexed, Parliament cannot properly be asked to vote any sum of money for the purpose specified in Lord Kimberley's Despatch.

The Committee concur in the report of the Acting Minister of Marine and Fisheries, and submit the same for your Excellency's approval, and they recommend that a copy of this Minute, when approved, and of the report hereto annexed, be forwarded to Her Majesty's Secretary of State for the Colonies.

Certified.
(Signed) J. O. CORÉ,
Clerk, Privy Council, Canada.

Enclosure 2 in No. 8.

Marine and Fisheries, Canada,
Ottawa, February 28, 1882.

REFERRING to a Despatch of the Earl of Kimberley, dated 30th June 1881, representing that in an agreement made between the British and American Governments to settle certain claims made against Great Britain for interference by the inhabitants of Newfoundland with United States fishermen at Fortune Bay, it was considered advisable

* See Enclosure in No. 148 of Foreign Office Paper [C.—3059] of 1881.

to include (amongst the definite claims) losses alleged to have been sustained by American fishing vessels at Aspee Bay, Nova Scotia, and that part of the compensation, amounting to the sum of 150*l.*, was applied to that purpose, which amount the Canadian Government is requested to refund, the undersigned has the honour to report as follows :—

1. The Government of Canada having been invited to assist in negotiating the Fishery Articles of the Treaty of Washington, which were afterwards ratified by the Dominion Parliament and the Provincial Legislature of Prince Edward Island, since included in the Dominion, it is presumable that in carrying out these articles all differences affecting matters of detail would necessarily be referred before settlement to the Canadian authorities, who are sincerely desirous to maintain their reciprocal obligations, and to protect, if necessary, United States citizens in the full enjoyment of the rights and privileges accorded to them by that treaty. They would be also ready and willing to make just compensation for any injury or loss to American fishermen which, upon inquiry, they should be found to have sustained through interference with their legitimate fishing operations by inhabitants of Canada. It is, however, considered essential that any such instances, where claims to indemnity arise, should be carefully investigated, as otherwise precedents might occur which would involve the Government, sooner or later, in frequent disputes of a trivial character.

2. The present correspondence between the British and American Governments, and the accompanying documents, show that complaints were made by the American Government of interference with American fishermen when exercising, or about to exercise, the rights claimed to them by the treaty.

These complaints are of two classes :—

- (a.) Where it is alleged in the complaint that violence was used, and the nets and seines of American fishermen were destroyed, and they themselves driven from the fishing-ground, viz., at Fortune Bay and Job's Cove, in Newfoundland, and damages were alleged to the amount of \$105,000.
- (b.) Where the complaint did not charge violence, but simply that resident fishermen (having no legal or judicial authority) forbid them to fish in certain localities and by certain means, as in the case of the schooner "Mist," Captain Cozzens, master, who complains of threats at Broad Cove, Newfoundland, and claims \$800 damages; also of the schooner "Cadet," James L. Anderson, master, who makes a similar complaint against certain fishermen at Aspee Bay, in Cape Breton, within the Dominion of Canada.

In the voluminous correspondence which passed between the British and American Governments, and in the action of the United States House of Representatives, the latter class of complaints (which includes the occurrence at Aspee Bay) is evidently dropped, and forms no part of the grounds upon which a formal claim for damages exceeding \$100,000 is urged.

Under date 7th March 1881, in referring to one of these cases, that of the "Mist," Mr. Evarts specifically states that he "does not entertain the claim, and had so informed the claimant."

3. The first mention made in the correspondence connected with these negotiations of any claim arising out of alleged interference at Aspee Bay, in Nova Scotia, occurs in a reported conversation between Sir Edward Thornton and Mr. Blaine on the 5th May 1881, after the lump sum had been settled, when Sir Edward Thornton voluntarily "concluded that although Aspee Bay was not on the coast of Newfoundland, these claims were among those for which a demand had been made by Mr. Evarts of the sum of \$105,305.02."

The Aspee Bay depositions having been made in September 1879, about a month after the claims forming the demand for \$105,305.02 were made up by Mr. Evarts and presented to Mr. Welsh, it seems impossible that any sum could have been reckoned on account of the occurrence at that place.

The original claims for the Fortune Bay affair (class a.), in 1878, amounted to \$103,162 $\frac{7}{10}$. There were 22 specific claims, ranging from \$2,496 $\frac{9}{10}$ to \$8,506 $\frac{9}{10}$ each, the total of which amounted to that sum of \$103,162 $\frac{7}{10}$. Other two claims for cases at Job's Cove, in 1879, were afterwards admitted without specifying their amount, but the ultimate demand on the British Government was for \$120,000, being the original demand with interest, and these two special claims added. The telegram of Mr. Evarts to Mr. Lowell, dated 3rd March 1881, makes this conclusive as follows :—"** * ** All the previous communications either way related to Fortune Bay claims. Claims of number hundred nine (Job's Cove claims) were introduced specifically by Secretary as

“ additional to Fortune Bay, and I accepted the sum offered for both. I cannot consent to any modification of the completed settlement of specific claims. I have at no time treated except of definite pecuniary interests of claimants in my charge. The agreed sum measured these claims, and goes to these claimants. I have been willing to give every assurance to cover all claims brought to the knowledge of either Government, and authorise you to inform Secretary that as a matter of fact no others were entertained by this Government. * * * * ”

4. On the 27th October 1880, long after the occurrence at Aspee Bay, Earl Granville, in a Despatch to Mr. Lowell, says:—“ Her Majesty’s Government have no hesitation in admitting that the conduct of the Newfoundland fishermen in violently interfering with United States fishermen and destroying or damaging some of their nets is indefensible and much to be regretted,” and further informs him that, “ Her Majesty’s Government are quite willing that they (the American fishermen) should be indemnified for any injuries and losses which, upon a joint inquiry, may be found to be sustained by them, and in respect of which they are reasonably entitled to compensation.”

For the purpose of a full inquiry it is presumed that the Newfoundland Government was duly notified of the claims preferred; and assurances were given by Her Majesty’s Government that every opportunity would be afforded for a defence, particularly in view of the probable necessity of requiring the Colonial Government to refund whatever damages might be awarded.

The undersigned cannot suppose that Her Majesty’s Government would have been less considerate to the Dominion of Canada had the Aspee Bay occurrence been entertained or considered by either of the negotiating parties as forming a portion of the injuries on account of which compensation was claimed.

5. It is shown by the correspondence that an offer of a lump sum of 15,000*l.*, or 75,000*8*, was made by the British Government as a settlement in full. Exception was taken by the United States Government to the words “ in full ” because of the possibility, as remarked by Mr. Evarts to Sir Edward Thornton, on the 28th February 1880, that “ something might be occurring on the coasts of Newfoundland, of which we must necessarily be ignorant.”

The proposition was then made to refer the claims to Sir Edward Thornton and Mr. Blaine for assessment of damages, and on the 2nd April 1881, Earl Granville, in his Despatch to Sir Edward Thornton, informs him that the Colonial authorities prefer this mode of settlement to the payment of a lump sum, in view of the “ desirability of obtaining the co-operation and concurrence of the Government of Newfoundland,” and authorises him to settle either by a lump sum or by assessment of individual claims, and adds “ under present circumstances they would prefer an arrangement by assessment.”

The original mode of settlement preferred by Her Majesty’s Government being by a lump sum, it is presumable that this change was made at the instance of the Government of Newfoundland.

On the 3rd May 1881 concurrent instructions were given by the Earl of Kimberley to communicate with the Government of Newfoundland to send a competent person to assist Sir Edward Thornton in the settlement, and by Lord Granville to Sir Edward Thornton to arrange that time be afforded to Her Majesty’s Government to communicate with the authorities of Newfoundland.

Her Majesty’s Government having more than two months previously, on the 24th of February 1881, offered 15,000*l.* in settlement of the American fishery claims, which sum was eventually accepted, it would, after the careful consideration shown towards the Newfoundland authorities, be unjust to Her Majesty’s Government to suppose that they held or admitted that the Dominion of Canada had any pecuniary interest in the settlement either by lump sum or assessment.

6. On the 4th of April 1881, Mr. Blaine offers to accept 16,000*l.*, and give a receipt in full. On the 25th, he offers to take 15,500*l.*, as he is convinced there are no other claims than those presented. On the 27th, Her Majesty’s Government refused to exceed 15,000*l.*, the original offer of February 1881. On the 5th May, Mr. Blaine informed Sir Edward Thornton that he had caused searching inquiries to be made as to whether there existed any other claims besides those which had been already brought before the two Governments, and that he had satisfied himself “ that there were none; and as his Government, therefore, did not wish to place any obstacles in the way of the settlement of the claims in question, it would be prepared to accept the sum of 15,000*l.* originally offered by Her Majesty’s Government in full of the Fortune Bay

“ claims, and of all claims arising out of wrongs done to United States fishermen on the “ coasts of Newfoundland and its dependencies up to the 4th March last.”

This closes the negotiations, and the final settlement is effected.

7. The earliest intimation of the existence of a claim of this nature made to the Dominion Government was by the Despatch of the Earl of Kimberley to his Excellency the Governor General on the 2nd June 1881, stating that it had been settled, in conjunction with the Fortune Bay claims. A later Despatch of the 30th of the same month refers to the case as of a comparatively unimportant character, which was settled without consulting the Government of Canada, because such a reference would have delayed the general settlement agreed upon. If, however, the matter had been considered in the nature of a serious claim when referred to in Sir Edward Thornton's Despatch to Earl Granville, dated 7th June 1880*, there was ample time to communicate the fact to Canada. Also between the date 5th May 1881†, when Sir Edward Thornton voluntarily suggested to Mr. Blaine the inclusion of such a claim in the pending settlement, there was sufficient time for the Government of Canada to be consulted. It was two days later that the Newfoundland Government was notified to send a representative to Washington. The whole matter was closed on the 30th May 1881.

Had the Canadian Government at any time since the occurrence been informed of this complaint, the particulars would have been investigated, and, if the complaint was well founded, prompt reparation would have been offered.

8. Apart from these substantial reasons, there is another serious objection to the recognition of this payment as a “ claim against the Dominion Government,” to which it is desirable in this connexion to advert. The documents referred to this Department, with the Despatch of the Earl of Kimberley, embrace copies of reports by the Committee of Foreign Affairs of the House of Representatives, on which the proposed Bill of 1880, to reimpose customs duties on fish imported into the United States from Newfoundland and Canada, was based.

These reports and the preamble to the Bill set forth :—

“ Whereas the fishermen of the United States have been driven by violence from the fishing grounds in which such freedom of fishery has been granted by said treaty, and laws in limitation of their rights have been passed by the Local Legislatures of said Dominions, and Her Britannic Majesty's Government have refused all redress therefor, and have supported the claim of the said Dominions to enforce said legislation,” &c.

The Committee on Foreign Affairs also reported a joint resolution in terms following :—

“ Whereas American fishermen are deprived of the privileges of fishery conceded to the United States by the treaty with Great Britain, dated the 8th May 1871, by hostile legislation, and the unlawful violence of the inhabitants of the British provinces; and whereas said hostile legislation is sustained and said unlawful violence is not rebuked or restrained by the Government of Great Britain,” &c., &c., &c.

The state of affairs to which these documents relate existed solely in Newfoundland, and although it was proposed by the Bill to collect duties also on fish imported from Canada to form a fund for the satisfaction of claims against that Colony, no such interference and no such legislation had taken place in the Dominion of Canada.

In 1879, agents were commissioned by the American Government to inquire into “ the conduct of the inshore fisheries by American fishermen, and the treatment which “ they had received at the hands of the local authorities and population.”

These Commissioners are reported in the Despatch of Sir Edward Thornton to Earl Granville, dated 7th June 1880,* to have found but this single occurrence at Aspee Bay of which to complain. The acceptance of any responsibility whatever for the dissatisfaction thus forcibly expressed, coupled as it is with phrases and proposals affecting Canada, which the adoption of this payment, however small the sum, might seem to admit, ought therefore to be carefully avoided.

The present opportunity should also be taken to disclaim the unfriendly acts and illiberal spirit imputed to Canada by these unqualified statements. It is sufficient corroboration of this disclaimer to observe that, while the only appreciable interruptions of the pursuits of American fishermen were confined to “ the waters of Newfoundland and its “ dependencies,” on the occasions described in these negotiations, United States citizens have, with this single exception, at Aspee Bay, which both Mr. Evarts and Mr. Blaine appear to have treated as an incident of no practical moment, during nearly ten years

* Page 25 of Foreign Office Paper [C.-3059] of 1881.

† Page 95 of Foreign Office Paper [C.-3059] of 1881.

past, exercised their treaty rights in the inshores of Canada, without any restriction and free from molestation.

9. The undersigned is of opinion that, considering all the circumstances above described, Parliament cannot properly be asked to vote any sum of money for the purpose specified in Lord Kimberley's Despatch.

The whole respectfully submitted.

(Signed) A. W. McLELAN,
Acting Minister of Marine
and Fisheries.

§

No. 9.

The RIGHT HON. THE EARL OF KIMBERLEY to GOVERNOR-GENERAL THE
MARQUIS OF LORNE, K.T., G.C.M.G. (CANADA).

MY LORD,

Downing Street, April 11, 1882.

I HAVE the honour to acknowledge the receipt of your Lordship's Despatch of the 11th ultimo,* enclosing a copy of a report of a Committee of your Privy Council, with a memorandum by the Acting Minister of Marine and Fisheries, stating that in his opinion the Parliament of the Dominion cannot properly be asked to vote a sum of money in repayment of the amount of 150% advanced by the Imperial Government in settlement of what are known as the Aspee Bay claims.

2. Her Majesty's Government have received with regret this expression of opinion on the part of the Government of Canada. The repayment of the amount at which the Aspee Bay claims were assessed by Her Majesty's Minister at Washington was requested in my Despatch of the 30th June last,† not on the ground that the responsibility of Canada for the alleged occurrences at Aspee Bay had been established or admitted by Her Majesty's Government, but on the ground that an inquiry could not be refused if pressed for, and that it did not appear worth while, when the opportunity presented itself of settling these claims at once for a trifling sum in connexion with the settlement of the Fortune Bay claims, to incur the cost and trouble of a formal investigation. There can be no difficulty in placing on record that in reimbursing Her Majesty's Government the sum in question Canada in no way admits the validity of these claims or its responsibility for the transaction, and Her Majesty's Government will be much disappointed if their action in this matter is now repudiated by the Dominion Government.

3. With regard to the contention in Mr. McLean's memorandum that Canada should have been consulted before any decision was arrived at, you will assure your Ministers that the action of Her Majesty's Government did not proceed from the slightest desire to pass them over; they fully recognise that it would on every ground have been proper and desirable to obtain the previous concurrence of the Dominion Government had the circumstances permitted; but it was felt that such a consultation would involve considerable delay and correspondence which might have prejudiced the whole negotiation, and in so very small a matter as the Aspee Bay claims Her Majesty's Government had confidence that the Government of the Dominion would not decline to acquiesce in a settlement made in their interests by the diplomatic representative of Her Majesty, acting as he believed for the best at the moment.

I have, &c.

The Marquis of Lorne.

(Signed) KIMBERLEY.

* No. 8.

† See Enclosure in No. 148 in [C.—3059] of 1881.

No. 10.

COLONIAL OFFICE to FOREIGN OFFICE.

SIR, Downing Street, April 14, 1882.
 WITH reference to the letter from this Department of the 5th of July last,* enclosing copy of a Despatch addressed to the Governor-General of Canada, respecting the settlement of the Aspee Bay claims in connexion with those arising out of the occurrences at Fortune Bay, Newfoundland, I am directed by the Earl of Kimberley to transmit to you, for the information of Earl Granville, a copy of a Despatch† which has been received from the Governor-General of Canada on the subject, together with a copy of the reply‡ which has been returned to the Marquis of Lorne.

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

The Under Secretary of State,
 Foreign Office.

No. 11.

SIR A. T. GALT, G.C.M.G., High Commissioner for Canada, to COLONIAL OFFICE.

Office of the High Commissioner,
 10, Victoria Chambers, London, S.W.
 April 15, 1882.

MY LORD,

I HAVE the honour to state that I am in receipt of telegraphic instructions from the Government of Canada to repay to Her Majesty's Government the sum of 150*l.* advanced in settlement of the claim by the Government of the United States for certain fishing claims in connexion with Aspee Bay.

I request your Lordship will have the goodness to inform me to whom the payment should be made.

I have, &c.
 (Signed) A. T. GALT,
 High Commissioner.

The Right Hon. the Earl of Kimberley,
 &c. &c. &c.

No. 12.

COLONIAL OFFICE to TREASURY.

SIR, Downing Street, April 19, 1882.
 WITH reference to previous correspondence respecting the settlement of the Aspee Bay claims in connexion with those arising out of the occurrences at Fortune Bay, I am directed by the Earl of Kimberley to transmit to you, to be laid before the Lords Commissioners of the Treasury, a copy of a letter § from the High Commissioner for Canada stating that he has received telegraphic instructions from the Dominion Government to repay to Her Majesty's Government the sum of 150*l.*, advanced by them in settlement of this claim, and desiring to be informed to whom payment should be made.

I am to request that in laying this letter before their Lordships you will move them to supply Lord Kimberley with the information desired by Sir Alexander Galt.

I am to enclose, for their Lordship's information, a copy of a Despatch|| received from the Governor General of Canada on this subject on the 28th of March last, together with a copy of the reply¶ which Lord Kimberley returned to the Marquis of Lorne on the 11th instant previous to the receipt of Sir A. Galt's letter now forwarded.

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

The Secretary to the Treasury.

* No. 148 of Foreign Office Paper [C.-3059] of 1881.
 § No. 11.

|| No. 8.

† No. 8.
 ¶ No. 9.

‡ No. 9.

No. 13.

COLONIAL OFFICE to FOREIGN OFFICE.

SIR,

Downing Street, April 19, 1882.

WITH reference to the letter from this Department of the 14th instant*, and to previous correspondence respecting the settlement of the Aspee Bay claims, in conjunction with those arising out of the occurrences at Fortune Bay, I am directed by the Earl of Kimberley to transmit to you, for the information of Earl Granville, a copy of a letter† from the High Commissioner for Canada, stating that he has received telegraphic instructions from the Dominion Government to repay to Her Majesty's Government the sum of 150*l.* advanced by them in settlement of these claims.

I am, &c.

The Under Secretary of State,
Foreign Office.

(Signed) ROBERT G. W. HERBERT.

No. 14.

SIR F. B. T. CARTER, K.C.M.G., Administering the Government of Newfoundland,
to the RIGHT HON. THE EARL OF DERBY. (Received June 16, 1882.)

Government House, Newfoundland,

June 2, 1882.

MY LORD,

WITH reference to your Lordship's Despatch of the 29th April last,‡ respecting the repayment by this Colony of the amount paid by Her Majesty's Government to the Government of the United States as compensation for the losses alleged to have been sustained by American fishermen in consequence of the occurrences at Fortune Bay, I have the honour to state that no movement was made before the Legislature in the Session just closed by the Executive Government on this subject, as they believed that from the intense adverse feeling in both branches, and the country generally, they would not have succeeded in carrying the vote if proposed, and that a failure in this respect would operate prejudicially in accomplishing a final settlement, as I advised your Lordship by telegram of the 25th May last.*

2. I have heard from Sir William Whiteway that it is his intention to visit England some time next month, when he will have an opportunity of explaining at large to your Lordship the position of this question in the Colony.

3. As an illustration of the strong feeling that prevails on the subject I am enclosing for your Lordship's information the reported speech of the Hon. Mr. Harvey in the Legislative Council when the matter in some way was adverted to in debate. And the opinions he expressed may, I think, be regarded as those which are entertained generally in the Colony.

I have, &c.

The Right Hon. the Earl of Kimberley,
&c. &c. &c.

(Signed) F. B. T. CARTER,
Administrator.

Enclosure in No. 14.

April 18, 1882.

Hon. A. HARVEY.—It may not be proper at the present time to ask such a question, but it is highly proper and pertinent for us to express our opinions upon that matter; and under no circumstances should the Colony bear any portion of the 15,000*l.* paid by the British to the American Government for the alleged losses arising from the trumped up Fortune Bay case. That money was paid without consultation with this Colony, and in direct opposition to the known wishes of the Colony, and although he (Mr. H.) was not in the secrets of the cabinet, he should venture to assert that nothing has transpired up to the time that payment was made that would encourage or warrant the British Government in demanding from Newfoundland a reimbursement for an expenditure made of their own volition, and without authority or sanction from this Colony. They

* No. 10.

† No. 11.

‡ Not printed.

have no case whatever upon any principle of reason or justice in making such a requisition, and if a principle of that kind were to be upheld, involving as it would, a complete negation of our legislative independence, then responsible government is so only in name, and would be little better than a delusion and a snare. It might very well suit the views of the British Government to yield to the demands of the Americans so as to smoothen the path of their diplomatic relations at Washington, but with any such motive or actions we have no concern, and if it were done to make soft the couch of Lord Granville let the money come out of the pocket of the British Government, and let not a poor humble struggling colony be called on for an outlay to conserve the interests of Imperial diplomatic expediency. We should firmly decline to respond to any such demand, because besides denying any liability as a matter of right and justice, by yielding to it we should be recognizing a dangerous precedent against ourselves. By our firm but respectful refusal we should show the British Government that in future, when assuming to deal with the financial affairs of Newfoundland, they should first consult the Colony and obtain its approval before undertaking to pay out money on the Colony's account. If a local government, in the absence of the authority of an Act of our own Legislature, should dare to pay any part of that 15,000/. they would deserve the reprobation of the whole Colony, which they would undoubtedly receive. Our local Executive has already taken becoming stand in denying the right of the British Government to oblige us to pay for imaginary injuries to the American fishermen, and they should determinedly abide by that decision. Even were we fairly liable for any portion of the alleged damages, it was *ultra vires* on the part of a British Minister to deal with the matter in the highhanded way that characterised the transaction, completely ignoring the Colony, its wishes and feelings. He hoped no authority will ever be conceded by our Legislature to liquidate any part of the claim, and even should there be in power a government sufficiently strong numerically to carry any such measure, it is well they should be warned in time that it is at their peril they would attempt it. They have but to look at the case of Governor Musgrave in Jamaica, and the trouble that arose there from his act in incurring a liability on behalf of his Imperial masters. That liability was undertaken by him at the instance of the British Government, and then attempted to be saddled upon the Colony, but the Colony refused to foot the Bill. The case tested in the courts was decided against Governor Musgrave, though he acted on behalf of the British Government and in a Crown Colony; and here where we have responsible rule, should any such payment as that they were now discussing be made upon Executive responsibility, and an indemnity therefor should be asked of our Legislature, he should not feel surprised, indeed he should hope, that the Legislature would manfully refuse to give it. In such case let those who acquiesced in the demand, and undertook to deal with the Colony's funds by refunding the British Government the amount demanded, put their hand in their own pockets and make up the sum between them. As a matter of payment by the Colony it should not for a single moment be entertained.

HON. COLONIAL SECRETARY thought this discussion hardly in place just now, as the consideration of the matter in question is not before the house, and the hon. gentleman will understand that as it continues to form the subject of correspondence between the Imperial and local Governments, he (C. S.) was debarred from dealing with it in such a manner as he might otherwise wish to do.

No. 15.

COLONIAL OFFICE to FOREIGN OFFICE and TREASURY.

SIR,

Downing Street, June 23, 1882.

WITH reference to previous correspondence respecting the settlement of the claims preferred by American fishermen on account of occurrences at Fortune Bay and other places, I am directed by the Earl of Kimberley to transmit to you, for communication to ^{Earl Granville} ~~the Lords Commissioners of the Treasury~~, a copy of a Despatch* from the Officer Administering the Government of Newfoundland enclosing a printed report of a speech by Mr. Harvey in the Legislative Council on the subject.

I am, &c.

(Signed) JOHN BRAMSTON.

The Under Secretary of State,
Foreign Office.

The Secretary to the Treasury.

No. 16.

GOVERNOR-GENERAL THE MARQUIS OF LORNE, K.T., G.C.M.G. (CANADA), to
the RIGHT HON. THE EARL OF KIMBERLEY. (Received August 15, 1882.)

MY LORD,

Citadel, Quebec, July 29, 1882.

WITH reference to your Lordship's Despatch of the 30th June 1881,* and to my reply, of the 11th March last,† I have the honour to forward herewith a copy of an approved report of a Committee of the Privy Council of Canada, embodying a report by the Minister of Marine and Fisheries, recommending, for the reasons stated therein, that payment of 150*l.* be made to Sir John Rose, Bart., to settle the claim preferred by Her Majesty's Government against the Government of Canada on account of the Aspee Bay affair.

The Right Hon. the Secretary of State
for the Colonies.

I have, &c.
(Signed) LORNE.

Enclosure in No. 16.

CERTIFIED COPY of a REPORT of a COMMITTEE of the HONOURABLE THE PRIVY COUNCIL FOR CANADA, approved by his Excellency the Governor-General on the 22nd day of July 1882.

THE Committee of Council have had under consideration a Despatch, dated 30th June 1881, setting forth a claim on the Dominion Government for payment of 150*l.* sterling as a part of the sum paid by the Imperial Government to the Government of the United States, in settlement of certain claims for alleged interruptions of their fishery rights under the Washington treaty by inhabitants of Newfoundland, including "the affair of Aspee Bay."

The Minister of Marine and Fisheries, to whom the said Despatch was referred, reported, under date 28th February 1882, that he saw no sufficient reasons why such payment should be made; but since that time there has been placed before him communications of a confidential nature which lead him (notwithstanding the circumstances set forth and the reasons given in his report of the 28th February last) to advise the payment, and he, the Minister, therefore recommends that payment of 150*l.* sterling be made to Sir John Rose, Bart., G.C.M.G., to settle the Aspee Bay claim with the Imperial Government.

The Committee concur in the foregoing recommendation of the Minister of Marine and Fisheries, and submit the same for your Excellency's approval. At the same time the Committee must repeat their regret that this claim was entertained without the knowledge or consent of the Canadian Government, and they desire that it should not be understood that they admit the justice of the claim. They also desire that this Minute be communicated to Her Majesty's Principal Secretary of State for the Colonies.

JOHN J. MCGEE,
Clerk of the Queen's Privy Council
for Canada.

No. 17.

COLONIAL OFFICE to FOREIGN OFFICE and TREASURY.

SIR,

Downing Street, August 23, 1882.

WITH reference to previous correspondence respecting the Aspee Bay claims, I am directed by the Earl of Kimberley to transmit to you, for the information of ^{the Lords Commissioners of the Treasury} ~~the~~ ^{Earl Granville} a copy of a further Despatch,‡ with its enclosure, from the Governor General of Canada on the subject of the payment to Her Majesty's Government of the sum of 150*l.* on this account.

The Under Secretary of State,
Foreign Office.
The Secretary to the Treasury.

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

* Enclosure in No. 148 of Foreign Office Paper [C.-3059] 1881.

† No. 8.

‡ No. 16.

No. 18.

THE RIGHT HON. THE EARL OF DERBY to SIR F. B. T. CARTER, K.C.M.G.
Administering the Government of Newfoundland.

SIR,

Downing Street, March 13, 1883.

I HAVE the honour to acknowledge the receipt of your Despatch of the 17th ultimo,* transmitting copies of the "Royal Gazette," containing the speech with which on the 15th ultimo you opened the first session of the fourteenth General Assembly of Newfoundland.

I notice that your speech contains no direct reference to the question of the repayment of the sum of 14,850/., advanced by Her Majesty's Government on account of the Newfoundland Government in settlement of the Fortune Bay claims; but I presume that the Despatches from the Imperial Government, which will be laid before the Council and Assembly, as mentioned at the end of your speech, will comprise those bearing on this subject.

I need hardly again remind you that Her Majesty's Government rely upon your urging your Government to lose no time in directing the serious attention of the Legislature to this matter in order that a speedy settlement may be arrived at.

The Officer Administering the
Government.

I have, &c.
(Signed) DERBY.

No. 19.

COLONIAL OFFICE to TREASURY.

SIR,

Downing Street, March 16, 1883.

WITH reference to the letter from this Department of the 20th October last,† and to previous correspondence respecting the repayment by the Newfoundland Government of the sum of 14,850/., advanced to them by the Imperial Government in settlement of the Fortune Bay claims, I am directed by the Earl of Derby to transmit to you, for the information of the Lords Commissioners of the Treasury, a copy of a Despatch‡ which has been addressed to the Officer Administering the Government of Newfoundland on the subject.

The Secretary to the Treasury.

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

No. 20.

SIR F. B. T. CARTER, K.C.M.G., Administering the Government of Newfoundland, to the RIGHT HON. THE EARL OF KIMBERLEY. (Received April 16, 1883.)

Government House, Newfoundland,
April 2, 1883.

MY LORD,

I HAVE the honour to acknowledge the receipt of your Lordship's Despatch of the 13th of March last,§ received on the 31st, same month, acknowledging the receipt of copies of the "Royal Gazette" containing the speech with which I opened the present session of the Legislature.

Your Lordship adverts to the absence of reference in my speech to the question of the repayment of the sum of 14,850/., advanced by Her Majesty's Government on account of this Government in settlement of the Fortune Bay claims, and promises that the Despatches from the Imperial Government to be laid before the Council and Assembly, mentioned in the speech, will comprise those bearing on the subject.

* Not printed.

† Not printed.

‡ No. 18.

§ No. 18.

When the speech was being prepared, I called the attention of my Ministry to this subject, but they, after consideration, deemed it inadvisable that reference should then be made to it, as, until after the meeting of new members consequent on the general elections, they were not in a position to assume that a more favourable view would be taken than by the members of the former House, that there had been no communication from Her Majesty's Government since my last Despatch of 2nd June 1882,* and they wished to avoid an adverse pronouncement at so early a stage, and your Lordship will perceive that, however desirous to carry out the directions of Her Majesty's Government, I had no alternative at that juncture than to acquiesce in the advice tendered by my Ministers. Copies of the Despatches have been furnished for both branches.

I had a special meeting of the Executive Council convened this forenoon, when this matter was freely discussed, and the unanimous opinion was that, in both Chambers, an adverse determination would be the result if a vote were proposed, and from all I can gather I am inclined to concur with this view. The Government have a large following on most questions, but on this I fear a negative vote would be given on both sides.

The Government in justification of their position, for the information of Her Majesty's Government, deemed it advisable to formulate a minute embodying their views on this important subject, a copy of which I have now the honour to enclose to your Lordship.

I shall make diligent inquiry respecting any action that may be taken in either branch, which I shall cable to your Lordship, if I should deem it expedient to do so.

I have, &c.

(Signed) F. B. T. CARTER,
Administrator.

The Right Hon. the Earl of Derby,
&c. &c. &c.

Enclosure in No. 20.

EXTRACT FROM MINUTES OF COUNCIL, 2ND APRIL 1883.

THE application by Her Majesty's Government for reimbursement of the sum of 14,850*l.* paid in satisfaction of the Fortune Bay fishery claim, is one to which the general feeling of the Colony is strongly adverse; and it is most improbable, from what has transpired in relation to this matter, that a grant for the amount could be obtained from the Legislature.

It is contended in the first place that the amount is largely in excess of any conceivable merits of the case, and that these, at their utmost, would not have warranted a payment beyond that which was stated in Judge Bennett's memorandum, upon a minute and careful examination by him of the testimony furnished by the accounts of the American claimants themselves: This view is further established in a published letter of Mr. Whicker, of Ottawa, Commissioner of Fisheries, who quotes a statement of receipted American claims, showing that after all these were discharged from the 14,850*l.*, there remained a surplus of \$22,000 (twenty-two thousand dollars) or 4,500*l.* sterling wholly unclaimed and without any defined purpose of appropriation.

It is moreover held that Her Majesty's Government having regarded the question at issue as one which was to be solved by a payment from the Colonial funds, the assent of the Colony to any proposal was a rightful and necessary preliminary. Her Majesty's Government in initiating proceedings appeared to recognise the right of the Colony by their proposition of a reference to Commissioners before whom the case might have been heard; and this Government informed the Right Hon. the Colonial Minister of its concurrence in this course. It was deemed wiser, however, by Her Majesty's Government to dispense with the investigation at first contemplated, and to arrive at a settlement by the payment of 14,850*l.* The Council do not overlook the reasons assigned by the Right Hon. the Colonial Minister for departure from the original mode of adjustment; but they are obliged also to bear in mind that this Government was not invited to acquiesce in the alternative preferred by Her Majesty's Government and was not informed of it until the whole case had been fully concluded.

No question is raised as to the sufficiency, from an Imperial point of view, of the grounds on which the decision of Her Majesty's Government was based. But the Council respectfully submit that the circumstances of this decision being peculiar and

* No. 11.

exceptional, the Colony cannot be considered accountable for a procedure to which it had not acceded, and that any possible equities would be satisfied by a repayment from the funds of the Colony of the amount shown by Judge Bennett's statement to be the maximum to which the Americans could lay claim.

(Signed) E. D. SHEA,
Clerk, Executive Council.

No. 21.

COLONIAL OFFICE to TREASURY and FOREIGN OFFICE.

SIR, Downing Street, April 30, 1883.

WITH reference to the letter from this Department of the 16th ultimo,* and to previous correspondence respecting the repayment by the Legislature of Newfoundland of the sum of 14,850*l.* advanced by Her Majesty's Government in settlement of the Fortune Bay claims, I am directed by the Earl of Derby to transmit to you, to be laid before the Lords Commissioners of the Treasury
Earl Granville, a copy of a Despatch† from the Officer Administering the Government of the Colony, containing an extract from the minutes of Council on the subject.

Lord Derby is disposed to think that, looking to the strong probability that any proposal for the repayment of the whole sum would receive no support in the Colonial Legislature, it deserves consideration whether Her Majesty's Government should not assent to the modified proposal for repayment by the Colony of the sum of 17,300 dollars (approximately 3,400*l.*), which appears to be the maximum of the assessment of Judge Bennett in his statement communicated to this Department by Sir W. Whiteway on the 20th of May 1881,‡ a copy of which

is herewith enclosed (to Treasury)
accompanied the letter from this Department of the following day (to Foreign Office)
Foreign Office
Treasury

I am to add that a letter in this sense has also been transmitted to the

I am, &c.

The Secretary to the Treasury. (Signed) JOHN BRAMSTON.
The Under Secretary of State, Foreign Office.

No. 22.

TREASURY to COLONIAL OFFICE.

SIR, Treasury Chambers, May 31, 1883.

THE Lords Commissioners of Her Majesty's Treasury have had under their consideration Mr. Bramston's letter of April 30th§ and its enclosures on the subject of the repayment by Newfoundland of the sum of 14,850*l.* advanced by Her Majesty's Government in settlement of the Fortune Bay claims.

Lord Derby in that letter recommends in effect that this country should accept a sum of little more than 3,400*l.* in discharge of an advance of 14,850*l.* made by it on behalf of that Colony. The latter sum was paid to the Government of the United States in settlement of a much larger claim on account of damages stated to have been inflicted by inhabitants of Newfoundland upon the property of citizens of the United States.

There can be no doubt that the Colony, and no other country, is liable for damages arising from such a cause, and my Lords cannot admit that Newfoundland has any claim on equitable grounds to be relieved of this charge. They take note, however, of Lord Derby's statement as to the reluctance of the Colony to discharge this obligation, and they will be prepared, upon receipt of an immediate and substantial payment on account, to consider favourably any application he may make for a remission of the remainder of the debt. They will leave it to Lord Derby to fix the sum (not being less than \$17,300) which should be recommended to the Newfoundland Legislature to be

immediately voted it being, however, clearly understood that in case the suggested sum be not voted, the claim of this country to repayment of the whole sum is not prejudiced.

I have, &c.

The Under Secretary of State,
Colonial Office.

(Signed) LEONARD COURTNEY.

No. 23.

The RIGHT HON. THE EARL OF DERBY to GOVERNOR SIR H. F. B. MAXSE,
K.C.M.G., (NEWFOUNDLAND).

SIR,

Downing Street, June 16, 1883.

I HAVE the honour to acknowledge the receipt of Sir F. Carter's Despatch of the 2nd of April,* enclosing an extract from the minutes of the Executive Council in reference to the repayment by Newfoundland of the sum advanced by Her Majesty's Government in satisfaction of the Fortune Bay fishery claim.

2. Your Ministers contend that the amount of 14,850%. paid to the United States Government on this account was largely in excess of the merits of the case, which at the utmost would not have warranted a payment beyond that stated in Judge Bennett's memorandum of the 4th of May 1881† to be the maximum to which the American fishermen could lay claim, and they urge that the equity of the case would be satisfied by a repayment from the funds of the Colony of the amount so assessed by Judge Bennett, viz., \$17,300.

3. In the opinion of Her Majesty's Government the Colony of Newfoundland and not the taxpayers of this country are liable for the damages arising from the action of the Newfoundland fisherman on the occasion of the Fortune Bay disturbances, and they cannot admit that the Colony has any claim on equitable grounds to be relieved of a charge caused by such action.

4. In consideration, however, of all the circumstances connected with this case, and looking to the fact that the mode of settlement desired by the Colonial Government was not proceeded with, and considering also the little hope which your Ministers hold out that the whole amount paid by Her Majesty's Government will be voted by the Legislature, Her Majesty's Government will be prepared to consider favourably any application which may be made by the Government of Newfoundland to be relieved from the repayment of the whole sum of 14,850%. if your Government will undertake to pay at once into the Imperial Exchequer the amount of Judge Bennett's assessment, it being clearly understood that in case the suggested sum is not paid the claim of this country to repayment of the whole sum is not prejudiced.

5. I trust that this proposal will be appreciated by the Government and Parliament of Newfoundland as being considerate and liberal.

I have, &c.

(Signed) DERBY.

Sir H. F. B. Maxse.

No. 24.

COLONIAL OFFICE to TREASURY.

SIR,

Downing Street, June 25, 1883.

WITH reference to your letter of the 31st ultimo,‡ and to previous correspondence respecting the repayment by the Government of Newfoundland of the sum advanced by Her Majesty's Government in settlement of the Fortune Bay claims, I am directed by the Earl of Derby to transmit to you, for the information of the Lords Commissioners of the Treasury, a copy of a Despatch§ which has been addressed to the Governor of Newfoundland on the subject.

I am, &c.

The Secretary to the Treasury.

(Signed) EDWARD WINGFIELD.

* No. 20.

† Enclosure in No. 1.

‡ No. 22.

§ No. 23.

No. 25.

GOVERNOR SIR H. F. B. MAXSE, K.C.M.G., (NEWFOUNDLAND), to the RIGHT HON. THE EARL OF DERBY. (Received July 12, 1883.)

MY LORD,

Government House, Newfoundland,
July 3, 1883.

I HAVE the honour to acknowledge the receipt of your Lordship's Despatch of the 16th ultimo* on the subject of the repayment by Newfoundland of the sum advanced by Her Majesty's Government in satisfaction of the Fortune Bay fishery claim.

2. Your Lordship is kind enough to inform me that in consideration of the general circumstances of the case Her Majesty's Government will be prepared to consider favourably any application which may be made by the Government of Newfoundland to be released from the repayment of the whole sum, 14,850*l.*, provided my Government will undertake to pay at once into the Imperial Exchequer the amount of Judge Bennett's assessment.

3. I beg to transmit herewith a copy of a Minute in Council on the above subject, and I have further the honour to enclose for transmission to the Imperial Exchequer a bill on the Union Bank of London for the sum of 3,604*l.* 3*s.* 4*d.* sterling, being the equivalent at the present rate of exchange of \$17,300, as assessed by Judge Bennett, in full settlement of the claim in question.

4. I am also requested to make application to your Lordship that the above sum be received by Her Majesty's Government in full discharge of the indebtedness of this Government in the matter of the Fortune Bay fishery claim.

I have, &c.
The Right Hon. the Earl of Derby, (Signed) H. FITZ. B. MAXSE.
&c. &c. &c.

Enclosure in No. 25.

EXTRACT from the MINUTES OF COUNCIL of 30th June, 1883.

HIS Excellency the Governor has laid before the Council the Despatch of the Right Hon. the Secretary of State for the Colonies of 16th June 1883, on the subject of repayment to Her Majesty's Government of the amount paid by them in satisfaction of the Fortune Bay fishery claim.

The Council fully appreciate the spirit of the proposition of Her Majesty's Government to accept the sum of \$17,300, as assessed by Judge Bennett, in full settlement of the claim in question, and they agree that this amount be forthwith transmitted to the Imperial Treasury.

The Council desire thankfully to acknowledge the prompt attention bestowed on this question by the Right Hon. the Secretary of State for the Colonies.

(Signed) E. D. SHEA,
Clerk, Executive Council.

No. 26.

COLONIAL OFFICE to TREASURY.

SIR,

Downing Street, July 17, 1883.

WITH reference to the letter from this Department of the 25th of June†, and to previous correspondence respecting the sum advanced by Her Majesty's Government in settlement of the Fortune Bay claim, I am directed by the Earl of Derby to transmit to you, to be laid before the Lords Commissioners of the Treasury, a copy of a Despatch‡ from the Governor of Newfoundland, enclosing a Minute in Council on the subject, with a bill for the sum of 3,604*l.* 3*s.* 4*d.*

* No. 23.

† No. 24.

‡ No. 25.

Lord Derby proposes, with the concurrence of their Lordships, to inform Sir H. Maxse that Her Majesty's Government are willing, in consideration of this payment, to relieve the Colonial Government from any further payment on account of the sum advanced in settlement of the Fortune Bay claims.

The Secretary to the Treasury.

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

No. 27.

TREASURY to COLONIAL OFFICE.

SIR,

Treasury Chambers, July 23, 1883.

I AM directed by the Lords Commissioners of Her Majesty's Treasury to acknowledge the receipt of Mr. Wingfield's letter of the 17th instant,* enclosing a bill for 3,604*l.* 3*s.* 4*d.*, forwarded by the Governor of Newfoundland, in respect of the Fortune Bay claims; and I am to acquaint you in reply, for the information of the Earl of Derby, that my Lords concur in the proposal to inform Sir H. Maxse that Her Majesty's Government, in consideration of this payment, are willing to relieve the Colonial Government from any further payment on account of the sum advanced in settlement of these claims.

The Under Secretary of State,
Colonial Office.

I have, &c.
(Signed) LEONARD COURTNEY.

P.S.—My Lords will take immediate steps for presenting a supplementary estimate to Parliament to cover the remainder of the advance from civil contingencies.

L. C.

No. 28.

The RIGHT HON. THE EARL OF DERBY to GOVERNOR SIR H. F. B. MAXSE,
K.C.M.G. (NEWFOUNDLAND).

SIR,

Downing Street, August 4, 1883.

I HAVE the honour to acknowledge the receipt of your Despatch of the 3rd ultimo,† enclosing an extract from the Minutes of Council with a bill for the sum of 3,604*l.* 3*s.* 4*d.* in settlement of the payment made by the Imperial Government on account of the Fortune Bay claims, and I have to inform you that in consideration of this payment Her Majesty's Government are willing to relieve the Government of Newfoundland from any further payment on account of the sum advanced in settlement of these claims.

Sir H. F. B. Maxse.

I have, &c.
(Signed) DERBY.

* No. 26.

† No. 25.

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