



UNITED STATES. No. 2 (1887).

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FURTHER CORRESPONDENCE respecting North  
American Fisheries: 1886-87.

[In continuation of "United States No. 1, 1887 :"  
C. 4937.]

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*Presented to both Houses of Parliament by Com-  
mand of Her Majesty. April 1887.*

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LONDON :  
PRINTED BY HARRISON AND SONS.

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## Further Correspondence respecting North American Fisheries.

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No. 1.

*Mr. Phelps to the Earl of Iddesleigh.—(Received December 4.)*

My Lord,

*Legation of the United States, London, December 2, 1866.*

REFERRING to the conversation I had the honour to hold with your Lordship on the 30th November, relative to the request of my Government that the owners of the "David J. Adams" may be furnished with a copy of the original Reports, stating the charges on which that vessel was seized by the Canadian authorities, I desire now to place before you in writing, the grounds upon which this request is preferred.

It will be in the recollection of your Lordship, from the previous correspondence relative to the case of the "Adams," that the vessel was first taken possession of for the alleged offence of having purchased a small quantity of bait within the port of Digby, in Nova Scotia, to be used in lawful fishing. That later on, a further charge was made against the vessel, of a violation of some Custom-house Regulation, which it is not claimed, so far as I can learn, was ever before insisted on in a similar case. I think I have made it clear in my note of the 2nd June last, addressed to Lord Rosebery, then Foreign Secretary, that no act of the English or of the Canadian Parliament existed at the time of this seizure, which legally justified it on the ground of the purchase of bait, even if such an act would have been authorized by the Treaty of 1818. And it is a natural and strong inference, as I have in that communication pointed out, that the charge of violation of Custom-house Regulations was an afterthought, brought forward in order to sustain proceedings commenced on a different charge and found untenable.

In the suit that is now going on in the Admiralty Court at Halifax for the purpose of condemning the vessel, still further charges have been added. And the Government of Canada seek to avail themselves of a clause in the Act of the Canadian Parliament of the 22nd May, 1868, which is in these words: "In case a dispute arises as to whether any seizure has or has not been legally made, or as to whether the person seizing was or was not authorized to seize under this Act. . . . the burden of proving the illegality of the seizure shall be on the owner or claimant."

I cannot quote this provision without saying that it is, in my judgment, in violation of the principles of natural justice, as well as those of the common law. That a man should be charged by police or Executive officers with the commission of an offence, and then be condemned upon trial, unless he can prove himself to be innocent, is a proposition that is incompatible with the fundamental ideas upon which the administration of justice proceeds. But it is sought in the present case to carry the proposition much further, and to hold that the party inculpated must not only prove himself innocent of the offence on which his vessel was seized, but also of all other charges upon which it might have been seized, that may be afterwards brought forward and set up at the trial.

Conceiving that if the clause I have quoted from the Act of 1868 can have effect (if allowed any effect at all) only upon the charge on which the vessel was originally seized, and that seizure for one offence cannot be regarded as *prima facie* evidence of guilt of another, the counsel for the owners of the vessel have applied to the prosecuting officers to be furnished with a copy of the Reports made to the Government of Canada in connection with the seizure of the vessel, either by Captain Scott, the seizing officer, or by the Collector of Customs at Digby, in order that it might be known to the defendant, and be shown on trial, what the charges

are on which the seizure was grounded, and which the defendant is required to disprove. This most reasonable request has been refused by the prosecuting officers.

Under these circumstances I am instructed by my Government to request of Her Majesty's Government that the solicitors for the owners of the "David J. Adams," in the suit pending in Halifax, may be furnished, for the purposes of the trial thereof, with copies of the Reports above mentioned. And I beg to remind your Lordship that there is no time to be lost in giving the proper direction, if it is to be in season for the trial, which, as I am informed, is being pressed.

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

No. 2.

*Mr. Phelps to the Earl of Iddesleigh.—(Received December 4.)*

My Lord, *Legation of the United States, London, December 3, 1886.*

I HAVE the honour to acknowledge the receipt of your note of the 30th November, on the subject of the Canadian fisheries, and to say that I shall at an early day submit to your Lordship some considerations in reply.

Meanwhile, I have the honour to transmit, in pursuance of the desire expressed by your Lordship in conversation on the 30th November, a copy of an outline for a proposed *ad interim* arrangement between the two Governments on this subject, which has been prepared by the Secretary of State of the United States.

And I likewise transmit, in connection with it, a copy of the instruction from the Secretary of State which accompanied it, and which I am authorized to submit to your Lordship.

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

Inclosure 1 in No. 2.

*Proposal for the Settlement of all Questions in Dispute in relation to the Fisheries on the North-eastern Coasts of British North America.*

WHEREAS, in the 1st Article of the Convention between the United States and Great Britain, concluded and signed in London on the 20th of October, 1818, it was agreed between the High Contracting Parties "that the inhabitants of the said United States shall have for ever, in common with the subjects of His Britannic Majesty, the liberty to take fish of every kind on that part of the southern coast of Newfoundland which extends from Cape Ray to the Rameau Islands, on the western and northern coast of Newfoundland, from the said Cape Ray to the Quirpon Islands, on the shores of the Magdalen Islands, and also on the coasts, bays, harbours, and creeks, from Mount Joly on the southern coast of Labrador, to and through the Straits of Belleisle, and thence northwardly indefinitely along the coast, without prejudice, however, to any of the exclusive rights of the Hudson's Bay Company; and that the American fishermen shall also have liberty for ever to dry and cure fish in any of the unsettled bays, harbours, and creeks of the southern part of the coast of Newfoundland, here above described, and of the coast of Labrador; but so soon as the same, or any portion thereof, shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such portion so settled without previous agreement for such purpose with the inhabitants, proprietors, or possessors of the ground;" and was declared that "the United States hereby renounce for ever any liberty heretofore enjoyed or claimed by the inhabitants thereof to take, dry, or cure fish on or within 3 marine miles of any of the coasts, bays, creeks, or harbours of His Britannic Majesty's dominions in America not included within the above-mentioned limits; provided, however, that the American fishermen shall be admitted to enter such bays or harbours for the purpose of shelter, and of repairing damages therein, of purchasing wood, and obtaining water, and for no other purpose whatever. But they shall be under such restrictions as may be necessary to prevent their taking, drying, or curing fish therein, or in any other manner whatever



abusing the privileges hereby reserved to them;" and whereas differences have arisen in regard to the extent of the above-mentioned renunciation, the Government of the United States and Her Majesty the Queen of Great Britain, being equally desirous of avoiding further misunderstanding, agree to appoint a Mixed Commission for the following purposes, nameiy:—

1. To agree upon and establish by a series of lines the limits which shall separate the exclusive from the common right of fishing on the coasts and in the adjacent waters of the British North American Colonies, in conformity with the 1st Article of the Convention of 1818, except that the bays and harbours from which American fishermen are in the future to be excluded, save for the purposes for which entrance into bays and harbours is permitted by said Article, are hereby agreed to be taken to be such bays and harbours as are 10 or less than 10 miles in width, and the distance of 3 marine miles from such bays and harbours shall be measured from a straight line drawn across the bay or harbour, in the part nearest the entrance, at the first point where the width does not exceed 10 miles, the said lines to be regularly numbered, duly described, and also clearly marked on charts prepared in duplicate for the purpose.

2. To agree upon and establish such Regulations as may be necessary and proper to secure to the fishermen of the United States the privilege of entering bays and harbours for the purpose of shelter and of repairing damages therein, of purchasing wood, and of obtaining water, and to agree upon and establish such restrictions as may be necessary to prevent the abuse of the privilege reserved by said Convention to the fishermen of the United States.

3. To agree upon and recommend the penalties to be adjudged, and such proceedings and jurisdiction as may be necessary to secure a speedy trial and judgment, with as little expense as possible, for the violators of rights and the transgressors of the limits and restrictions which may be hereby adopted:

Provided, however, that the limits, restrictions, and Regulations which may be agreed upon by the said Commission shall not be final, nor have any effect, until so jointly confirmed and declared by the United States and Her Majesty the Queen of Great Britain, either by Treaty or by laws, mutually acknowledged.

#### ARTICLE II.

Pending a definitive arrangement on the subject, Her Britannic Majesty's Government agree to instruct the proper colonial and other British officers to abstain from seizing or molesting fishing-vessels of the United States unless they are found within 3 marine miles of any of the coasts, bays, creeks, and harbours of Her Britannic Majesty's dominions in America, there fishing, or to have been fishing, or preparing to fish within those limits, not included within the limits within which, under the Treaty of 1818, the fishermen of the United States continue to retain a common right of fishery with Her Britannic Majesty's subjects.

#### ARTICLE III.

For the purpose of executing Article I of the Convention of 1818, the Government of the United States and the Government of Her Britannic Majesty hereby agree to send each to the Gulf of St. Lawrence a national vessel, and also one each to cruize during the fishing season on the southern coasts of Nova Scotia. Whenever a fishing-vessel of the United States shall be seized for violating the provisions of the aforesaid Convention by fishing or preparing to fish within 3 marine miles of any of the coasts, bays, creeks, and harbours of Her Britannic Majesty's dominions included within the limits within which fishing is by the terms of the said Convention renounced, such vessel shall forthwith be reported to the officer in command of one of the said national vessels, who, in conjunction with the officer in command of another of said vessels of the different nationality, shall hear and examine into the facts of the case. Should the said commanding officers be of opinion that the charge is not sustained, the vessel shall be released. But if they should be of opinion that the vessel should be subjected to a judicial examination, she shall forthwith be sent for trial before the Vice-Admiralty Court at Halifax. If, however, the said commanding officers should differ in opinion, they shall name some third person to act as Umpire between them, and should they be unable to agree upon the name of such third person, they shall each name a person, and it shall be determined by lot which of the two persons so named shall be the Umpire.

## ARTICLE IV.

The fishing-vessels of the United States shall have in the established ports of entry of Her Britannic Majesty's dominions in America the same commercial privileges as other vessels of the United States, including the purchase of bait and other supplies ; and such privileges shall be exercised subject to the same Rules and Regulations and payment of the same port charges as are prescribed for other vessels of the United States.

## ARTICLE V.

The Government of Her Britannic Majesty agree to release all United States' fishing-vessels now under seizure for failing to report at Custom-houses when seeking shelter, repairs, or supplies, and to refund all fines exacted for such failure to report. And the High Contracting Parties agree to appoint a Joint Commission to ascertain the amount of damage caused to American fishermen during the year 1886 by seizure and detention in violation of the Treaty of 1818, said Commission to make awards therefor to the parties injured.

## ARTICLE VI.

The Government of the United States and the Government of Her Britannic Majesty agree to give concurrent notification and warning of Canadian Customs Regulations, and the United States agrees to admonish its fishermen to comply with them, and co-operate in securing their enforcement.

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Inclosure 2 in No. 2.

*Mr. Bayard to Mr. Phelps.*

Sir,

*Department of State, Washington, November 15, 1886.*

THE season for taking mackerel has now closed, and I understand the marine police force of the territorial waters in British North America has been withdrawn, so that no further occasion for the administration of a strained and vexatious construction of the Convention of 1818, between the United States and Great Britain, is likely for several months at least.

During this period of comparative serenity, I earnestly hope that such measures will be adopted by those charged with the administration of the respective Governments as will prevent the renewal of the proceedings witnessed during the past fishing season in the ports and harbours of Nova Scotia, and at other points in the maritime provinces of the Dominion, by which citizens of the United States engaged in open-sea fishing were subjected to much unjust and unfriendly treatment by the local authorities in those regions, and thereby not only suffered serious loss in their legitimate pursuit, but, by the fear of annoyance, which was conveyed to others likewise employed, the general business of open-sea fishing by citizens of the United States was importantly injured.

My instructions to you during the period of these occurrences have from time to time set forth their regrettable character, and they have also been brought promptly to the notice of the Representative of Her Majesty's Government at this capital.

These representations, candidly and fully made, have not produced those results of checking the unwarranted interference (frequently accompanied by rudeness and an unnecessary demonstration of force) with the rights of our fishermen guaranteed by express Treaty stipulations, and secured to them—as I confidently believe—by the public Commercial Laws and Regulations of the two countries, and which are demanded by the laws of hospitality to which all friendly civilized nations owe allegiance. Again I beg that you will invite Her Majesty's Counsellors gravely to consider the necessity of preventing the repetition of conduct on the part of the Canadian officials which may endanger the peace of two kindred and friendly nations.

To this end, and to insure to the inhabitants of the Dominion the efficient protection of the exclusive rights to their inshore fisheries, as provided by the Convention of 1818, as well as to prevent any abuse of the privileges reserved and guaranteed by that instrument for ever to the citizens of the United States engaged

in fishing, and responding to the suggestion made to you by the Earl of Iddesleigh in the month of September last that a *modus vivendi* should be agreed upon between the two countries to prevent encroachment by American fishermen upon the Canadian inshore fisheries, and equally to secure them from all molestation when exercising only their just and ancient rights, I now inclose the draft of a Memorandum which you may propose to Lord Iddesleigh, and which, I trust, will be found to contain a satisfactory basis for the solution of existing difficulties, and assist in securing an assured, just, honourable, and therefore mutually satisfactory settlement of the long-vexed question of the North Atlantic fisheries.

I am encouraged in the expectation that the propositions embodied in the Memorandum referred to will be acceptable to Her Majesty's Government, because, in the month of April 1866, Mr. Seward, then Secretary of State, sent forward to Mr. Adams, at that time United States' Minister in London, the draft of a Protocol which in substance coincides with the first Article of the proposal now sent to you, as you will see by reference to vol. i of the United States' Diplomatic Correspondence for 1866, p. 98 *et seq.*

I find that in a published instruction to Sir F. Bruce, then Her Majesty's Minister in the United States, under date of the 11th May, 1866, the Earl of Clarendon, at that time Her Majesty's Secretary of State for Foreign Affairs, approved them, but declined to accept the final proposition of Mr. Seward's Protocol, which is not contained in the Memorandum now forwarded.

Your attention is drawn to the great value of these three propositions as containing a well-defined and practical interpretation of Article I of the Convention of 1818, the enforcement of which co-operatively by the two Governments, it may reasonably be hoped, will efficiently remove those causes of irritation of which variant constructions hitherto have been so unhappily fruitful.

In proposing the adoption of a width of 10 miles at the mouth as a proper definition of the bays in which, except on certain specified coasts; the fishermen of the United States are not to take fish, I have followed the example furnished by France and Great Britain in their Convention signed at Paris on the 2nd of August, 1839. This definition was referred to and approved by Mr. Bates, the Umpire of the Commission under the Treaty of 1853, in the case of the United States' fishing-schooner "Washington," and has since been notably approved and adopted in the Convention signed at the Hague in 1882, and subsequently ratified in relation to fishing in the North Sea between Germany, Belgium, Denmark, France, Great Britain, and the Netherlands.

The present Memorandum also contains provisions for the usual commercial facilities allowed everywhere for the promotion of legitimate trade, and nowhere more freely than in British ports and under the commercial policies of that nation. Such facilities cannot with any show of reason be denied to American fishing-vessels when plying their vocation in deep-sea fishing-grounds in the localities open to them equally with other nationalities. The Convention of 1818 inhibits the "taking, drying, or curing fish" by American fishermen in certain waters and on certain coasts, and when these objects are effected, the inhibitory features are exhausted. Everything that may presumably guard against an infraction of these provisions will be recognized and obeyed by the Government of the United States, but should not be pressed beyond its natural force.

By its very terms and necessary intendment the same Treaty recognizes the continuance permanently of the accustomed rights of American fishermen in those places not embraced in the renunciation of the Treaty to prosecute the business as freely as did their forefathers.

No construction of the Convention of 1818 that strikes at or impedes the open-sea fishing by citizens of the United States can be accepted, nor should a Treaty of Friendship be tortured into a means of such offence, nor should such an end be accomplished by indirection. Therefore, by causing the same Port Regulations and commercial rights to be applied to vessels engaged therein as are enforced relative to other trading craft, we propose to prevent a ban from being put upon the lawful and regular business of open-sea fishing.

Arrangements now exist between the Governments of Great Britain and France and Great Britain and Germany for the submission in the first instance of all cases of seizure to the joint examination and decision of two discreet and able commanding officers of the navy of the respective countries whose vessels are to be sent on duty to cruize in the waters to be guarded against encroachment. Copies of these Agreements are herewith inclosed for reference. The additional feature of an Umpire, in case of a

difference in opinion, is borrowed from the terms of Article I of the Treaty of the 5th June, 1854, between the United States and Great Britain.

This same Treaty of 1854 contains in its first Article provision for a Joint Commission for marking the fishing limits, and is therefore a precedent for the present proposition.

The season of 1886 for inshore fishing on the Canadian coasts has come to an end, and assuredly no lack of vigilance or promptitude in making seizures can be ascribed to the vessels of the marine police of the Dominion. The record of their operations discloses but a single American vessel found violating the inhibitions of the Convention of 1818 by fishing within 3 marine miles of the coast. The numerous seizures made have been of vessels quietly at anchor in established ports of entry, under charges which, up to this day, have not been particularized sufficiently to allow of an intelligent defence. Not one has been condemned after trial and hearing, but many have been fined without hearing or judgment for technical violations of alleged Commercial Regulations, although all commercial privileges have been simultaneously denied to them. In no instance has any resistance been offered to Canadian authority, even when exercised with useless and irritating provocation.

It is trusted that the Agreement now proposed may be readily accepted by Her Majesty's Ministry.

Should the Earl of Iddesleigh express a desire to possess the text of this despatch, in view of its intimate relation to the subject-matter of the Memorandum, and as evidencing the sincere and cordial disposition which prompts this proposal, you will give his Lordship a copy.

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

(Inclosures.)

1. Memorandum of draft Proposals.
2. Arrangement of the 14th November, 1885, between France and Great Britain (with other papers).\*
3. Convention for regulating the Police of the North Sea Fisheries, signed at the Hague on the 6th May, 1882.

No. 3.

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

Sir, *Foreign Office, December 8, 1886.*  
I HAVE to acknowledge the receipt of your despatch of the 12th ultimo, and to request you, in reply, to acquaint Mr. Bayard that Her Majesty's Government have desired the Canadian Government to furnish them with a Report on the circumstances attending the alleged inhospitable treatment of the United States' fishing-schooners "Laura Sayward" and "Jennie Seaverns" by the Canadian authorities.

I am, &c.  
(Signed) IDDESLEIGH.

No. 4.

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

Sir, *Foreign Office, December 8, 1886.*  
I AM directed by the Earl of Iddesleigh to transmit to you copy of a despatch from Her Majesty's Minister at Washington, inclosing copies of notes which he has received from Mr. Bayard, protesting against the conduct of the Dominion authorities in their dealings with the United States' fishing-vessels "Laura Sayward" and "Jennie Seaverns;"† and I am to request that Mr. Secretary Stanhope will procure a Report on

\* See "Newfoundland, January 1886," C.—4641.

† See "United States No. 1 (1887)," p. 154.

these cases from the Canadian Government, with a view to its communication to the Government of the United States.

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

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No. 5.

*Sir J. Pauncefote to Sir R. Herbert.*

Sir, *Foreign Office, December 9, 1886.*  
I AM directed by the Earl of Iddesleigh to transmit to you, to be laid before Mr. Secretary Stanhope, copy of a note from the United States' Minister at this Court, inclosing an outline for an *ad interim* arrangement between the two Governments on the subject of the North American Fisheries, accompanied by a despatch from Mr. Bayard containing some observations thereon.\*

I am to suggest that the views of the Governments of Canada and Newfoundland with regard to this proposal should be obtained with the least possible delay, in order that Her Majesty's Government may be able to consider at an early date what reply should be made to Mr. Phelps' communication.

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

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No. 6.

*The Earl of Iddesleigh to Mr. Phelps.*

Sir, *Foreign Office, December 10, 1886.*  
I HAVE the honour to acknowledge the receipt of your note of the 3rd instant, inclosing an outline for an *ad interim* arrangement between Great Britain and the United States on the subject of the North American fisheries, accompanied by a despatch from Mr. Bayard containing some observations thereon.

I beg leave to state, in reply, that Her Majesty's Government will not fail to give immediate and careful consideration to this communication, in consultation with the Colonial Governments concerned, and that I hope shortly to be in a position to address a further communication to you on the subject.

I have, &c.  
(Signed) IDDESLEIGH.

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No. 7.

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

Sir, *Foreign Office, December 10, 1886.*  
I TRANSMIT herewith, for your information, a copy of a letter from the Colonial Office inclosing a copy of an Order of Her Majesty in Council assenting to the Reserved Bill of the Legislature of Canada, entitled "An Act further to amend the Act respecting Fishing by Foreign Vessels."†

I am, &c.  
(Signed) IDDESLEIGH.

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No. 8.

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

Sir, *Foreign Office, December 11, 1886.*  
I TRANSMIT herewith, for your information, copies of correspondence, as marked in the margin,‡ concerning a proposal made by the United States' Government for an

\* No. 2.

† See "United States No. 1 (1887)," p. 169.

‡ Nos. 2, 5, and 6.

*ad interim* arrangement between the two Governments on the subject of the North American Fisheries question.

I am, &c.  
(Signed) IDDESLEIGH.

No. 9.

*Sir J. Pauncefote to Sir R. Herbert.*

Sir,

*Foreign Office, December 11, 1886.*

I AM directed by the Earl of Iddesleigh to transmit to you a copy of a note from the United States' Minister at this Court, asking that the solicitors retained for the defence in the case of the "David J. Adams" may be supplied with a full Report of the charges made against that vessel;\* and I am to request that you will suggest to Mr. Secretary Stanhope that inquiry should be made, by telegraph, whether the Canadian Government feel themselves able to comply with this request, and, if not, that they should be requested to state the grounds on which it is refused.

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

No. 10.

*Sir L. West to the Earl of Iddesleigh.—(Received December 13.)*

My Lord,

*Washington, December 2, 1886.*

I HAVE the honour to inclose to your Lordship, herewith, a further note which I have received from the Secretary of State, complaining in strong terms of the conduct of the Canadian authorities in the case of the American fishing-schooner "Molly Adams," the captain of which vessel states, in a letter to the Secretary of State, copy of which is inclosed, that he had seventeen men on board whom he had rescued from the British schooner "Neskilita," of Lockport (Nova Scotia).

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

Inclosure 1 in No. 10.

*Mr. Bayard to Sir L. West.*

Sir,

*Department of State, Washington, December 1, 1886.*

AS possessing an additional and very disagreeable bearing upon the general subject of the harsh treatment of American fishing-vessels during the late season by the local authorities of the maritime provinces of Her Majesty's Dominion of Canada, I have the honour to send you herewith a copy of a letter addressed to me under date of the 12th ultimo, by Captain Solomon Jacobs, master of the American fishing-schooner "Molly Adams," of Gloucester, Massachusetts. You will share, I doubt not, the regret I feel at such churlish and inhospitable treatment of a vessel which had freely and with great loss and inconvenience, rendered such essential service to the suffering and imperilled crew of a Nova Scotian vessel. But for his generous act, Captain Jacobs would have had no occasion to put into Malpeque, or, subsequently, when short of provisions, into Port Medway. As his narrative shows, the local authorities at Malpeque treated him with coldness and rudeness, making no provision to receive the Nova Scotian crew he had saved from such imminent danger, even causing him to incur a pecuniary burden in completion of his humane rescue, and even treating the landing of the property so saved from the wreck of the Nova Scotian vessel on her own shores, as not lawful for an American fishing-vessel "within the 3-mile limit."

The treatment of Captain Jacobs at Port Medway is a fitting sequel to that received by him at Malpeque. Having undergone fourteen days' detention in the latter port, and having shared his purse and slender stock of provision with the men he had rescued, he put to sea, when, his supplies falling short by reason of his charitable action, he asked

leave to purchase at Port Medway "half a barrel of flour, or enough provisions to take his vessel and crew home." With full knowledge of the cause of Captain Jacobs' dearth of provisions, even this the Collector at Port Medway absolutely refused, and threatened Captain Jacobs with the seizure of his vessel "if he bought anything whatever." The urgent need of supplies in which Captain Jacobs stood is shown by the fact that, although the run, with favourable weather, from Port Medway to his home port, Gloucester, Massachusetts, only occupied three days, his crew were on half rations for two days, and without food for one day of that time. It is painful to conjecture what might have been their distress had the "Molly Adams" encountered storms or head winds.

I am confident that Her Majesty's Government, than which none has more generously fulfilled the obligations of the unwritten code of sea-faring humanity, will hasten to rebuke the treatment of Captain Jacobs at the hands of the local authorities of Nova Scotia, by exhibiting gratitude for his act in saving seventeen of their own people from death, and tendering him compensation for the delays and expenses he has undergone through the breaking-up of his legitimate fishing venture.

The closing part of Captain Jacobs' letter may serve to show the irresponsible and different treatment he was subjected to in the several ports he visited, where the only common feature seems to have been a surly hostility. At Port Hood, for instance, Captain Jacobs being sick, his brother landed and reported in his stead, and, after paying the regular fee, was told that his report was a nullity, and that the vessel would be liable to a penalty for unauthorized landing of her crew unless her captain reported in person, which, although ill, he was compelled to do, and the fee was thereupon levied a second time. This is a small matter, measured by the amount of the fee, but it is surely discreditable, and has a tendency which cannot be too much deplored.

In my late correspondence, I have treated of the necessary and logical results of permitting so irritating and unfriendly a course of action, and I will not therefore now enlarge on this subject.

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

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Inclosure 2 in No. 10.

*Captain Jacobs to Mr. Bayard.*

Sir, *Gloucester, November 12, 1886.*  
I WOULD most respectfully ask your attention to the following facts, as showing the spirit and manner of the application of law on the part of the officials of the Dominion of Canada.

On or about the 26th September, when off Malpeque, Prince Edward's Island, I fell in with the British schooner "Neskilita," of Lockport, Nova Scotia, which had run on Malpeque Bar in making the harbour. It was blowing very heavy, sea running high. The crew was taken off by my vessel about 12 o'clock at night. There were seventeen men in all. We took care of them and fed them for three days. The "Neskilita" became a total wreck. We saved some of the material.

The cutter "Critic," Captain McClennan, one of the Canadian cruisers, was lying in the harbour of Malpeque. The Captain boarded my vessel, and I reported to him the facts of the wreck, and the condition of the men. They had saved a portion of their clothing. He neither offered to care for the wrecked crew, to feed them, or to give them or myself any assistance whatever. Having some of the wrecked material on board I asked the Captain of the cutter for permission to land it. He referred me to the local Collector.

I went to the Collector, and he referred me back to the Captain of the cutter. As the cutter had gone out the captain of the "Neskilita" assumed the responsibility, and took the things ashore. The Captain of the cutter told me that I could put the saved material on board a Nova Scotia vessel if I went outside of the 3-mile limit to do it.

I endeavoured to get some of the people on shore to take the wrecked crew, but no one would do it unless I would be responsible for their board. Finally, I gave the crew 60 dollars, enough to pay their passage home on the cars, and also gave them provisions to last during their journey. Malpeque is a barred harbour, and it is only in smooth water that it is safe to go out over the bar, and my vessel drawing 14 feet of water, and there was only 14 feet of water on the bar, it was impossible for me to go out. By being

detained in port in disposing of this wrecked crew, I lost over ten days of valuable time before I could get out to fish, and during that time the fleet took large quantities of mackerel. Having to feed so many on my vessel left me short of provisions, and in a short time afterwards I put into Port Medway and stated the circumstances, and asked permission to buy half a barrel of flour or enough provisions to take my vessel and crew home.

This was absolutely refused, and the Collector threatened me that if I bought anything whatever he would seize my vessel. I was obliged to leave without obtaining, and came home in three days, on short rations, a distance of 300 miles. The wind and weather being favourable we had a good passage, but yet we were without provisions for one day before we arrived home. I wish to state most emphatically that the officials differ in their construction of our rights. Fees are different in every part, and as there is no standard of right fixed by our own Government, the fishermen are at the mercy of a class of officials hostile to them and their business, and with but little knowledge of law and its application. For instance, at Souries, Prince Edward's Island, 15 cents is charged for reporting; at Port Mulgrave, Nova Scotia, 50 cents is charged. At Port Hood, I being sick, my brother went to the custom-house to report. The official charged him 25 cents, and told him that unless the captain reported in person the report was invalid; that men from the vessel would not be allowed ashore unless the captain reported. In the afternoon of the same day I was able to go to the office, and was charged 25 cents for my report, making 50 cents.

In the matter of anchorage fees, at Port Mulgrave, Nova Scotia, I paid 1 dol. 50 c.; at Malpeque, 1 dollar; at Sydney, 1 dol. 17 c. At some ports we have to pay anchorage fees every time we go in, as at Halifax. At others, twice for the season. Now I would most respectfully state that the official service throughout is actuated apparently from a principle of annoyance wherever and whenever it can be so applied; that there is only harmony of action in this regard alone, and that local Laws and Regulations are enforced against us without regard to any rights we may have under Treaty.

That the effect of this enforcement is not to promote, but to interfere, and to limit, by unjust pains, fees and penalties, the right of shelter, obtaining wood and water, and making of repairs guaranteed by Treaty of 1818; that, instead of the restriction contemplated, the local Laws make a technical obligation that is without their province or power and enforce penalties that should never be admitted or allowed by our Government.

And I would pray, that in the case recited, and many others that can be shown if required, we may be protected from local Laws and their enforcement, that abridge our rights, and have never received the sanction of the two Great Contracting Powers in the construction and agreement of the Treaty of 1818.

I have, &c.

(Signed) SOLOMON JACOBS.

*North Sydney, C.B., October 13, 1886.*

"Molly Adams," 117 tons, Captain Jacobs. To Harbour Commissioners: to amount of harbour dues, 1 dol. 17. c.

Received payment,  
(Signed) M. J. THUAN.

*Dominion of Canada. Harbour Dues.*

*Malpeque, Prince Edward's Island, 1886.*

Received from Solomon Jacobs, master of the schooner "Molly Adams," from , 118 tons register, the sum of 1 dollar, being harbour dues at this port.

(Signed) EDWARD LARKINS, *Harbour-master.*

*Dominion of Canada. Harbour Dues.*

*Port Mulgrave, N.E., August 30, 1886.*

Received from Solomon Jacobs, master of the schooner "Molly Adams," from North Bay, 117 tons register, the sum of 1 dol. 50 c., being harbour dues at this port.

(Signed) DUNCAN C. GILLIES, *Harbour-master.*



*Mr. Bramston to Sir J. Pauncefote.—(Received December 15.)*

Sir,

*Downing Street, December 15, 1886.*

I AM directed by Mr. Secretary Stanhope to acknowledge the receipt of your letter of the 11th instant, inclosing a copy of a note from the United States' Minister at this Court asking that the solicitors for the defence in the case of the "David J. Adams" may be supplied with a full Report of the charges made against that vessel.

Before making any representation to the Canadian Government upon this subject, the Secretary of State would point out that Mr. Phelps' request is that the necessary directions may be given for supplying to the solicitors for the owners of the "David J. Adams" copies of certain official Reports made in May last by the Canadian officers to their official superiors, and would be glad to learn whether the question has presented itself to Lord Iddesleigh from the point of view from which it strikes Mr. Stanhope, viz., that the United States' Government are inviting Her Majesty's Government to intervene in the conduct of this litigation, and by the pressure of its Executive to endeavour to induce the Canadian Government to furnish the other litigant with documents which, seemingly under the advice of counsel, it has already refused to give.

Assuming that the facts respecting the charge of violating the Customs Law are as alleged by Mr. Phelps, they can probably be elicited at the trial by ordinary methods of examination; while, if elicited, they would not, as it appears to Mr. Stanhope, necessarily save the vessel from the sentence of the Court, whatever grounds they might furnish for the Government not enforcing a forfeiture if pronounced.

I am also to point out that Mr. Phelps does not identify, and apparently has not been supplied with a copy of, the Canadian Act of 1868, upon which he mainly founds his present request. It is, in point of fact, the Statute cap. 61 of that year, providing for the issue of licences to foreign fishing-vessels and for the forfeiture of vessels fishing without a licence, a Statute which, so far as relates to the issue of licences, has, as Lord Iddesleigh is aware, been inoperative since 1870. The section (No. 10) which appears to Mr. Phelps to be in violation of the principles of natural justice is habitually found in laws against smuggling, and in the present case appears to be based upon the common sense rule of law that a man who pleads that he holds a licence, or other similar document, shall be put to the proof of his plea, and required to produce the document. The suggestion that the section quoted by Mr. Phelps will be applied to seizures not "under the Act" needs no answer, and may be left to the Court to deal with should occasion arise.

Unless the counsel for the vessel have not been furnished with the Report of the Minister of Marine and Fishery approved by the Canadian Privy Council on the 14th June, 1886,\* and transmitted to the Foreign Office from this Department on the 29th June, they will have learned that from a date immediately after the seizure "there was not the slightest difficulty in the United States' Consul-General and those interested in the vessel obtaining the fullest information," and that "apart from the general knowledge of the offences which it was claimed the master had committed, and which was furnished at the time of the seizure, the most technical and precise details were readily obtainable at the Registry of the Court and from the Solicitors for the Crown."

On reference to the Marquis of Lansdowne's despatch of the 11th May, 1886,† transmitted to the Foreign Office on the 4th June, it would be seen that before the 11th May the United States' Government must have learnt the nature of the charges brought against the "David J. Adams," and that they included "violation of the Customs Act, 1883." The same information is contained in the Report of the Minister of Marine and Fisheries above cited.

With these passages before him, Mr. Stanhope finds a difficulty in believing that the counsel for the vessel are not fully aware of the charges which they will have to meet, although they have not obtained the particular Report to which Mr. Phelps alludes.

Under these circumstances, Mr. Stanhope is doubtful whether there would be advantage in telegraphing the proposed inquiry to the Canadian Government; but if Lord Iddesleigh, after considering this letter, still thinks it important that the request should be preferred, he would ask to be supplied with the text of the message which Lord Iddesleigh desires should be sent.

I am, &c.

(Signed) JOHN BRAMSTON.

\* See "United States No. 1 (1887,)" p. 76.

† Ibid., p. 56.

No. 12.

*Sir J. Pauncefote to Sir R. Herbert.*

Sir,

*Foreign Office, December 15, 1886.*

WITH reference to my letter of the 4th October last, I am directed by the Earl of Iddesleigh to transmit to you, to be laid before Mr. Secretary Stanhope, a copy of a despatch from Her Majesty's Minister at Washington, inclosing copy of a further note from the United States' Secretary of State, protesting against the action of the Canadian authorities with regard to the United States' fishing-schooner "Molly Adams."\*

I am to request that the Dominion Government may be asked to furnish a Report, as soon as possible, upon the allegations now made by the master of the United States' vessel, as well as on the previous note from Mr. Bayard on this subject inclosed in my letter of the 4th October last.

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

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No. 13.

*Mr. Bramston to Sir J. Pauncefote.—(Received December 16.)*

Sir,

*Downing Street, December 16, 1886.*

WITH reference to your letters of the 4th, and to the reply from this Department of the 23rd ultimo, respecting the United States' fishing-vessels "Pearl Nelson" and "Everett Steele," I am directed by Mr. Secretary Stanhope to transmit to you, to be laid before the Earl of Iddesleigh, copies of despatches, with their inclosures, from the Governor-General of Canada, on the subject.

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

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Inclosure 1 in No. 13.

*The Marquis of Lansdowne to Mr. Stanhope.*

Sir,

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

I HAVE the honour to transmit herewith a copy of an approved Minute of the Privy Council of Canada, furnishing the Report asked for in your telegraphic message of the 6th November, with reference to the detention of the American schooner "Everett Steele," at Shelburne, Nova Scotia, for an infraction of the Customs Regulations of the Dominion.

I have, &c.  
(Signed) LANSDOWNE.

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Inclosure 2 in No. 13.

*Report of a Committee of the Honourable the Privy Council for Canada, approved by His Excellency the Governor-General in Council on the 18th November, 1886.*

THE Committee of the Privy Council are in receipt of a telegram from the Right Honourable the Secretary of State for the Colonies, in the words "United States' Government protest against proceedings of Canadian authorities in case of 'Pearl Nelson' and 'Everett Steele,' said to have put into Arichat and Shelburne respectively, for purposes sanctioned by Convention. Particulars by post. Send Report soon as possible."

The Minister of Marine and Fisheries, to whom the telegram was referred, submits that the schooner "Everett Steele" appears, from the Report of the Collector of Customs at Shelburne, to have been at that port on the 25th March last, and sailed without reporting. On her return to Shelburne in September she was detained by the Collector of Customs for an infraction of the Customs Law.

The captain having assured the Collector that he had been misled by the Deputy

Harbour-master, who informed him his vessel could remain in port for twenty-four hours without entering, and that he had no intention of violating the Customs Regulations, this statement was reported to the Minister of Customs at Ottawa, when the vessel was at once allowed to proceed to sea, and that no evidence is given of any desire or intention of denying to the captain of the "Everett Steele" any Treaty privileges he was entitled to enjoy.

The Committee, concurring in the above, respectfully recommend that your Excellency be moved to transmit a copy of this Minute, if approved, to the Right Honourable the Secretary of State for the Colonies.

All which is respectfully submitted for your Excellency's approval.

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

Inclosure 3 in No. 13.

*The Marquis of Lansdowne to Mr. Stanhope.*

Sir,

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

WITH reference to your telegraphic message of the 6th instant, asking to be furnished with a Report in the case of the "Pearl Nelson" and "Everett Steele," I have the honour to transmit herewith a copy of an approved Minute of the Privy Council of Canada embodying a Report of my Minister of Marine and Fisheries, to which is appended a copy of the correspondence which has passed between the Commissioner of Customs for Canada and the United States' Consul-General at Halifax relating to the case of the American schooner "Pearl Nelson."

I have, &c.

(Signed) LANSDOWNE.

Inclosure 4 in No. 13.

*Report of a Committee of the Honourable the Privy Council for Canada, approved by His Excellency the Governor-General in Council on the 18th November, 1886.*

THE Committee of the Privy Council are in receipt of a telegram from the Right Honourable the Secretary of State for the Colonies in the words:—

"United States' Government protest against proceedings of Canadian authorities in case of 'Pearl Nelson' and 'Everett Steele,' said to have put into Arichat and Shelburne respectively for purposes sanctioned by Convention. Particulars by post. Send Report soon as possible."

The Minister of Marine and Fisheries, to whom the telegram was referred, submits a copy of a letter addressed by the Commissioner of Customs for Canada to the Consul-General of the United States at Halifax, and also a copy of Mr. Phelan's reply thereto.

The Minister submits that it is clear, from Captain Kempt's affidavit, that he was guilty of an infraction of the Customs Regulations in allowing men to land from his vessel before she had been reported, and the Minister of Customs having favourably considered Captain Kempt's representations as to his ignorance of the Customs Regulations requiring that vessels should be reported before landing either men or cargo therefrom has remitted the fine of 200 dollars which had been imposed in the case of the American schooner "Pearl Nelson."

The Minister further submits that it would appear from the Collector of Customs' Report that his remark that "he would seize the vessel," had reference solely to her violation of the Customs Law, and that no evidence is given of any desire or intention of denying to the captain of the "Pearl Nelson" any Treaty privileges he was entitled to enjoy.

The Committee, concurring in the above, respectfully recommend that your Excellency be moved to transmit a copy of this Minute, if approved, to the Right Honourable the Secretary of State for the Colonies.

All which is respectfully submitted for your Excellency's approval.

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

## Inclosure 5 in No. 13.

*Mr. Parmelee to Mr. Phelan.*

Sir,

Ottawa, October 22, 1886.

I HAVE the honour to acknowledge the receipt of your letter of the 11th instant, re seizure of the American schooner "Pearl Nelson" for an infraction of the Customs Laws, &c.

The Commissioner of Customs Report in connection with this matter, which has been approved by the Minister of Customs, reads as follows:—

"The Undersigned, having examined this case, has come to the conclusion that the captain of the vessel did violate the provisions of sections 25 and 180 of 'The Customs Act, 1883,' by landing a number of his crew before going to the custom-house to report; that his plea of having come into port solely from stress of weather is inconsistent with the circumstances, and is denied by the Collector of Customs, who reports that 'the night was one of the finest and most moderate experienced there this summer,' and that 'his crew were landed only in the morning.' That even if the 'stress of weather' plea was sustained by facts it would not exempt him from the legal requirement of reporting his vessel before 'breaking bulk' or landing his crew, and it is evident that there was nothing to hinder his reporting, as the crew appear to have had no difficulty in handling the vessel's boats; that it was very easy for the crew or any of them to have taken valuable contraband goods ashore on their persons, in the absence of any Customs Officer at the landing-place. Inasmuch, however, as there is no charge of actual smuggling preferred against the vessel, the Undersigned respectfully recommends that the deposit of 200 dollars be refunded, deducting therefrom any expenses incurred

(Signed) "J. JOHNSON,"

I trust the above may be considered a satisfactory answer to your letter referred to.

I have, &amp;c.

(Signed) W. G. PARMELEE, *Assistant Commissioner.*

## Inclosure 6 in No. 13.

*Mr. Phelan to Mr. Parmelee.*

Sir,

Halifax, November 2, 1886.

I HAVE the honour to acknowledge the receipt of your communication of the 22nd ultimo, concerning the action of the Customs Department of Canada in the case of the American schooner "Pearl Nelson," and to say I was much pleased at the decision arrived at in that case. I have informed the Government of the United States that the fine in the case referred to was ordered to be refunded.

I have also to say that the Department of State, in acknowledging the receipt of a despatch from me, setting forth that you had placed all the papers in the cases of the American schooners "Crittenden" and "Holbrook" in my hands for perusal, said "the attention of Mr. Parmelee in referring the matter to you is appreciated. It shows a proper spirit."

I trust the Department of Customs will pass on the other cases as soon as possible.

I have, &amp;c.

(Signed) M. H. PHELAN, *Consul-General,*

## No. 14.

*The Earl of Iddesleigh to Mr. Phelps.*

Sir,

Foreign Office, December 16, 1886.

I HAVE the honour to acknowledge the receipt of your note of the 27th ultimo, relative to the case of the "Marion Grimes," stated to have been fined and detained at Shelburne, Nova Scotia, in October last.

As other cases besides that of the "Marion Grimes" are alluded to in the documents forwarded with your note, it will be desirable to take each case separately, and to inform you shortly of the steps which Her Majesty's Government have taken in regard to them.

In respect to the case of the "Marion Grimes," I have already received, through Her Majesty's Secretary of State for the Colonies, a copy of a despatch from the Dominion Government,\* in which they express their regret at the action taken by Captain Quigley in hauling down the United States' flag. I have transmitted a copy of this despatch to Her Majesty's Minister at Washington, with instructions to communicate it to Mr. Bayard, and I beg leave now to inclose a copy of it for your information.†

Her Majesty's Government cannot doubt that, as respects the incident of the flag, the apology thus spontaneously tendered by the Canadian Government will be accepted by the United States' Government in the friendly and conciliatory disposition in which it is offered; whilst as regards the other statements concerning Captain Quigley's conduct, Her Majesty's Government do not at present feel themselves in a position to express any opinion.

The Dominion Government have been requested to furnish a full Report on the various circumstances alleged, and when this is received I shall have the honour to address a further communication to you upon the subject.

As concerns the cases of the "Julia Ellen" and "Shiloh," it will probably suffice to communicate to you the inclosed copies of Reports from the Canadian Government relative to these two vessels.‡ These Reports have already been sent to Her Majesty's Minister at Washington for communication to Mr. Bayard.§

The protest made by the United States' Government in the case of the "Everett Steele" was not received in this country until the 1st ultimo, and, although the Canadian Government have been requested, by telegraph, to furnish a Report upon the circumstances alleged, sufficient time has not yet elapsed to enable Her Majesty's Government to be in possession of the facts as reported by the Dominion authorities.

Her Majesty's Government greatly regret that incidents of the description alluded to should occur; and they can only renew the assurance conveyed to you in my note of the 30th ultimo, that whilst firmly resolved to uphold the undoubted Treaty rights of Her Majesty's North American subjects in regard to the fisheries, they will also maintain the equally undoubted right of United States' fishermen to obtain shelter in Canadian ports under such restrictions as may be necessary to prevent their abusing the privileges reserved to them by Treaty.

I notice that in Mr. Bayard's note to you of the 6th ultimo, concerning the case of the "Marion Grimes," and also in his note to Sir L. West of the 19th October last, relative to the case of the "Everett Steele," an old discussion is revived which Her Majesty's Government had hoped was finally disposed of by the correspondence which took place on the subject in 1815 and 1816.

I allude to the argument that a right to the common enjoyment of the fisheries by Great Britain and the United States, after the separation of the latter from the mother country, was recognized by the Treaty of 1783, although the exercise of that right was made subject to certain restrictions.

I refer to this point merely to observe that the views of Her Majesty's Government in relation to it have not been modified in any way since the date of Lord Bathurst's note of the 30th October, 1815, to Mr. John Quincy Adams.

I have, &c.  
(Signed) IDDESLEIGH.

No. 15.

*Sir J. Pauncefote to Sir R. Herbert.*

Sir,

*Foreign Office, December 16, 1886.*

I AM directed by the Earl of Iddesleigh to transmit to you a copy of a note from the United States' Minister at this Court, calling attention to the circumstances attending the detention of the "Marion Grimes" at Shelburne, Nova Scotia, and requesting the withdrawal of Captain Quigley, of the Canadian cruiser "Terror."¶

I am to request that you will move Mr. Secretary Stanhope to call for a full Report from the Canadian Government upon the circumstances alleged; and I am in the meanwhile to inclose a copy of the reply which Lord Iddesleigh has addressed to Mr. Phelps.¶

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

\* See "United States No. 1 (1887)," p. 150.

† Ibid., p. 156.

‡ Ibid., p. 146.

§ Ibid., p. 156.

¶ Ibid., p. 153.

¶ No. 14.

## No. 16.

*Sir P. Currie to Mr. Bramston.*

Sir,

*Foreign Office, December 23, 1886.*

IN reply to your letter of the 15th instant, I am directed by the Earl of Iddesleigh to request you to state to Mr. Secretary Stanhope that his Lordship is of opinion that the solicitors of the owners of the "David J. Adams" are not entitled to the documents they seek to procure, as otherwise they could obtain them by the ordinary process of the Courts, and that, under these circumstances, it does not lie with Her Majesty's Government to interfere with the course of justice.

I am, however, to add that his Lordship considers it would be advisable to inform the Canadian Government of the application made by Mr. Phelps, and to inquire whether they concur in a reply being made thereto in the above sense, and whether they have any observations to offer before such a reply is sent.

I am, &c.  
(Signed) P. CURRIE.

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## No. 17.

*Sir L. West to the Earl of Iddesleigh.—(Received December 24.)*

My Lord,

*Washington, December 10, 1886.*

I HAVE the honour to acknowledge the receipt of your Lordship's despatches of the 26th ultimo, which I received on the 7th instant, and to inform your Lordship that I communicated copies of the correspondence therein contained respecting the conduct of the Canadian authorities in the cases of the American vessels "Rattler," "Shiloh," "Julia Ellen," "Mascotte," and "Marion Grimes" to the Secretary of State on the 8th instant.

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

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## No. 18.

*Sir L. West to the Earl of Iddesleigh.—(Received December 24.)*

My Lord,

*Washington, December 10, 1886.*

I HAVE the honour to inclose to your Lordship herewith the correspondence on the Fisheries question which has been laid before Congress, as published in the newspapers.\* The official print is not yet ready for distribution.

Your Lordship will perceive that in his letter transmitting this correspondence the Secretary of State recommends that a Commission should be appointed to take perpetuating proofs of the losses sustained during the past year by American fishermen in consequence of the interference of the Canadian authorities with their legitimate occupations.

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

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## No. 19.

*Sir L. West to the Earl of Iddesleigh.—(Received December 24.)*

My Lord,

*Washington, December 12, 1886.*

WITH reference to your Lordship's despatch of the 26th ultimo, I have the honour to inclose to your Lordship herewith copy of a note which I have received from the Secretary of State, acknowledging the receipt of the copy of a despatch from the Officer administering the Government of Canada, expressing the regret of the Dominion Government at the action of their authorities in the case of the American vessel "Marion Grimes."

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

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## Inclosure in No. 19.

*Mr. Bayard to Sir L. West.*

Sir,

*Department of State, Washington, December 11, 1886.*

I HAVE the honour to acknowledge your note of the 7th instant, with which you communicate, by the direction of the Earl of Iddesleigh, a copy of the Report of a Committee of the Privy Council of Canada, approved the 26th October last, wherein the regret of the Canadian Government is expressed for the action of Captain Quigley, of the Canadian Government cruizer "Terror," in lowering the flag of the United States' fishing-schooner "Marion Grimes," whilst under detention by the Customs authorities in the harbour of Shelburne, Nova Scotia, on the 11th October last.

Before receiving this communication, I had instructed the United States' Minister at London to make representation of this regrettable occurrence to Her Majesty's Minister for Foreign Affairs; and desire now to express my satisfaction at this voluntary action of the Canadian authorities, which, it seems, was taken in October last, but of which I had no intimation until your note of the 7th instant was received.

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

## No. 20.

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

Sir,

*Downing Street, December 24, 1886.*

WITH reference to previous correspondence respecting the North American Fisheries question, I am directed by Mr. Secretary Stanhope to transmit to you, for the information of the Earl of Iddesleigh, a copy of a despatch from the Governor-General of Canada, reporting the condemnation of the United States' fishing-vessel "Highland Light" by the Vice-Admiralty Court at Charlottetown, Prince Edward Island.

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

## Inclosure 1 in No. 20.

*The Marquis of Lansdowne to Mr. Stanhope.*

Sir,

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

I HAVE the honour to forward, for your information, a copy of a letter from the Department of Fisheries, stating that the United States' fishing-vessel "Highland Light," seized on the 1st September last for fishing within the 3-mile limit, was condemned and ordered to be sold on the 12th instant by the Vice-Admiralty Court at Charlottetown, Prince Edward Island.

It is understood that no defence was entered to the suit.

I have, &c.  
(Signed) LANSDOWNE.

## Inclosure 2 in No. 20.

*Mr. J. Tilton to the Governor-General's Secretary.*

Sir,

*Ottawa, December 7, 1886.*

I HAVE the honour to state, for the information of his Excellency the Governor-General, that this Department was advised by telegraph, under date the 1st instant, from Mr. E. J. Hodgson, Q.C., the Counsel for the Government in the case of the Queen v. the schooner "Highland Light," seized on the 1st September last for fishing within the 3-mile limit, that the Vice-Admiralty Court at Charlottetown, Prince Edward Island, had condemned the vessel referred to and ordered her to be sold on the 12th instant.

The Department understands that no defence was entered to the suit.

I have, &c.  
(Signed) JOHN TILTON,  
*Deputy Minister of Fisheries.*

No. 21.

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

Sir, *Foreign Office, December 24, 1886.*  
 WITH reference to previous correspondence, I transmit to you, for communication to the United States' Government, Reports from the Government of Canada relative to the cases of the United States' fishing-vessels "Pearl Nelson" and "Everett Steele."\*  
 I am, &c.  
 (Signed) IDDESLEIGH.

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No. 22.

*Mr. Meade to Sir J. Pauncefote.—(Received December 29.)*

Sir, *Downing Street, December 27, 1886.*  
 WITH reference to your letter of the 23rd instant, and to previous correspondence respecting the case of the "David J. Adams," I am directed by the Secretary of State for the Colonies to transmit to you, for the information of the Earl of Iddesleigh, a copy of a telegram which has been sent to the Governor-General of Canada on the subject.  
 I am, &c.  
 (Signed) R. H. MEADE.

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Inclosure in No. 22.

*Mr. Stanhope to the Marquis of Lansdowne.*

(Telegraphic.) *Colonial Office, December 24, 1886.*  
 UNITED STATES' Government request solicitors of "David J. Adams" may be given, for purposes of trial, copies of Reports by Scott or Customs officers in connection with seizure. Her Majesty's Government propose to answer to following effect: Solicitors appear to be not entitled to documents desired, otherwise they would obtain all necessary papers by means of legal procedure. Under the circumstances, it does not lie with Her Majesty's Government to interfere with course of justice. Do you concur or does your Government consider it desirable to offer observations before Her Majesty's Government answer?

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No. 23.

*Mr. Meade to Sir J. Pauncefote.—(Received December 29.)*

Sir, *Downing Street, December 27, 1886.*  
 WITH reference to your letter of the 15th instant, relating to the case of the United States' fishing-vessel "Mollie Adams," I am directed by Mr. Secretary Stanhope to transmit to you a copy of a despatch which was addressed to the Governor-General of Canada upon the subject upon the following day.  
 I am also to inclose a copy of a further despatch which Mr. Stanhope has addressed to the Governor-General, having reference to the general question of the treatment of United States' fishing-vessels in Canadian ports.

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

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Inclosure 1 in No. 23.

*Mr. Stanhope to the Marquis of Lansdowne.*

My Lord, *Downing Street, December 16, 1886.*  
 WITH reference to my despatch of the 6th October, I have the honour to transmit to you a copy of a letter, with its inclosures, from the Foreign Office, relative to the case of the United States' fishing-vessel "Mollie Adams."



I request that you will obtain from your Government, and forward to me as soon as possible, a Report on the circumstances of the case.

I have, &c.  
(Signed) E. STANHOPE.

Inclosure 2 in No. 23.

*Mr. Stanhope to the Marquis of Lansdowne.*

My Lord,

*Downing Street, December 27, 1886.*

WITH reference to my despatch of the 16th instant, relating to the case of the United States' fishing-vessel "Mollie Adams," and referring to the general complaints made on the part of the United States' Government of the treatment of American fishing-vessels in Canadian ports, I think it right to observe that, whilst Her Majesty's Government do not assume the correctness of any allegations without first having obtained the explanations of the Dominion Government, they rely confidently upon your Ministers taking every care that Her Majesty's Government are not placed in a position of being obliged to defend any acts of questionable justice or propriety.

I have, &c.  
(Signed) E. STANHOPE.

No. 24.

*Mr. Meade to Sir J. Pauncefote.—(Received December 29.)*

Sir,

*Downing Street, December 28, 1886.*

WITH reference to your letter of the 6th October, respecting the case of the United States' fishing-vessel "Crittenden," I am directed by Mr. Secretary Stanhope to transmit to you, to be laid before the Earl of Idlesleigh, a copy of a despatch, with its inclosures, from the Governor-General of Canada on the subject.

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

Inclosure 1 in No. 24.

*The Marquis of Lansdowne to Mr. Stanhope.*

Sir,

*Government House, Ottawa, December 4, 1886.*

IN reply to your despatch of the 12th October last, transmitting a copy of a letter, with its inclosures, from the Foreign Office, requesting to be furnished with a Report in the case of the United States' fishing-vessel "Crittenden," I have the honour to forward herewith a copy of an approved Minute of the Privy Council of Canada, embodying a Report of my Minister of Marine and Fisheries, to which is appended a statement of the Customs officer at Steep Creek on the subject.

I have, &c.  
(Signed) LANSDOWNE.

Inclosure 2 in No. 24.

*Report of a Committee of the Honourable the Privy Council approved by His Excellency the Governor-General in Council on the 16th November, 1886.*

THE Committee of the Privy Council have had under consideration a despatch, dated the 12th October, 1886, from the Secretary of State for the Colonies, transmitting a copy of a letter from Mr. Bayard, United States' Secretary of State, to the British Minister at Washington, calling attention to an alleged denial of the rights guaranteed by the Convention of 1818, in the case of the American fishing-schooner "A. R. Crittenden," by the Customs officer at Steep Creek, in the Straits of Canso, Nova Scotia.

The Minister of Marine and Fisheries, to whom the despatch and inclosure were referred, submits a statement of the Customs officer at Steep Creek, and observes that the captain of the "Crittenden" violated the Customs Laws by neglecting to enter his vessel as requested by the Customs officer, and in landing and shipping a man, clearly exceeded any Treaty provision he was entitled to avail himself of.

It would appear that the remark made by the Customs officer, that "he would seize the vessel," had reference solely to the captain's violation of the Customs Regulations, and, the Minister submits, cannot be construed into a denial of any Treaty privilege the master was entitled to enjoy.

The Committee, concurring in the above, respectfully recommend that your Excellency be moved to inform the Right Honourable the Secretary of State for the Colonies in the sense of the Report of the Minister of Marine and Fisheries.

All which is respectfully submitted for your Excellency's approval.

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

Inclosure 3 in No. 24.

*Mr. J. H. Carr to the Deputy Minister of Fisheries, Ottawa.*

Sir,

*Steep Creek, November 1, 1886.*

YOURS of the 28th October came to hand to-day, and, in reply, can state to you that part of the crew of the schooner "Crittenden" came on shore at Steep Creek, and landed their barrels and filled them with water. I went direct to the men who were filling the barrels, and told them to come and enter before taking wood and water; they said they would not enter or make any report. I told them that I would seize the schooner "Crittenden" for violating the Customs Laws; they said they would risk that, as the schooner was now out of the way, about 3 miles from my station, down the strait, and it was impossible for me to board the vessel. They also landed a man the same day, with his effects, and on their return from Gloucester to the Bay St. Lawrence they shipped a man. Was looking out for the vessel, but could not catch her. I reported the case to the Collector of Customs at Port Hawkesbury, and on the schooner "Crittenden's" return from the Bay St. Lawrence she was seized, and Collector Bourinot got the affidavits of the captain of the said schooner and also of some of the crew, which he stated to the Department. I was in the office at the time when Collector Bourinot received a telegram from the Department to release the schooner "Crittenden" on the deposit of 400 dollars.

I am, &c.

(Signed) JAMES H. CARR, pro Collector.

No. 25.

*Sir L. West to the Earl of Iddesleigh.—(Received December 30.)*

My Lord,

*Washington, December 18, 1886.*

I HAVE the honour to inform your Lordship that a Bill has been introduced into the House of Representatives, and referred to the Committee on Foreign Affairs, which provides that "the President be and is hereby authorized to appoint a Commission to proceed to such places in the United States or elsewhere as may be designated by the Secretary of State, to take testimony, under oath or affirmation in relation to the losses and injuries inflicted since the 31st December, 1885, by British authorities, Imperial or Colonial, upon citizens of the United States engaged in the fisheries on the north-east coasts of British North America; said Commission to have the same powers as a Commissioner of a Circuit Court."

I have, &c.

(Signed) L. S. SACKVILLE WEST.

No. 26.

*Mr. Bramston to Sir J. Pauncefote.—(Received December 30.)*

Sir,

*Downing Street, December 29, 1886.*

WITH reference to the letter from this Department of the 27th instant, relating to the case of the United States' fishing-vessel "David J. Adams," I am directed by

Mr. Secretary Stanhope to transmit to you, to be laid before the Earl of Iddesleigh, a copy of a telegram from the Governor-General of Canada, from which it appears that his Ministers concur in the answer proposed to be sent to the United States' Minister in reply to his note of the 2nd December.

Mr. Stanhope would be glad to receive a copy of the communication upon the subject which Lord Iddesleigh may now send to Mr. Phelps.

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

Inclosure in No. 26.

*The Marquis of Lansdowne to Mr. Stanhope.*

(Telegraphic.)

December 27, 1886.

REFERRING to your telegram of the 24th December, my Government concur in answer suggested.

No. 27.

*Mr. Meade to Sir J. Pauncefote.—(Received December 31.)*

(Extract.)

*Downing Street, December 30, 1886.*

I AM directed by Mr. Secretary Stanhope to transmit to you, for the information of the Earl of Iddesleigh, a copy of a despatch from the Governor-General of Canada, inclosing a letter addressed by Her Majesty's Minister at Washington to the Officer administering the Government of the Dominion, requesting to be furnished with information in connection with Canadian Laws regulating the sale and exportation of fresh herring from Grand Manan Island, together with Lord Lansdowne's reply.

Inclosure 1 in No. 27.

*The Marquis of Lansdowne to Mr. Stanhope.*

Sir, *Government House, Ottawa, December 7, 1886.*

I HAVE the honour to forward herewith, for your information, a copy of a despatch from Her Majesty's Minister at Washington, transmitting a copy of a letter from the Secretary of State of the United States, with its inclosures, asking to be furnished with authentic information respecting Canadian Laws regulating the sale and exportation of fresh herring from Grand Manan Island, together with a copy of my reply thereto.

I have, &c.  
(Signed) LANSDOWNE.

Inclosure 2 in No. 27.

*Sir L. West to General Lord A. Russell.*

My Lord, *Washington, October 28, 1886.*  
I HAVE the honour to inclose to your Lordship herewith copy of a note which I have received from the Secretary of State, together with copy of inclosure, asking for authentic information respecting the Canadian Laws regulating the sale and exportation of fresh herring from Grand Manan Island.

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

Inclosure 3 in No. 27.

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

Sir, *Ottawa, December 3, 1886.*  
WITH reference to your telegram of the 17th ultimo calling attention to your despatch of the 28th October last, transmitting a copy of a letter from the Secretary of

State of the United States, with its inclosures, requesting to be furnished with authentic information respecting the Canadian Laws regulating the sale and exportation of fresh herring from Grand Manan Island, I have the honour to forward herewith, for communication to Mr. Bayard, a copy of an approved Report of a Committee of the Privy Council, to which is appended a copy of the Customs Laws of Canada containing the desired information.

I have, &c.  
(Signed) LANSDOWNE.

Inclosure 4 in No. 27.

*Report of a Committee of the Honourable the Privy Council, approved by His Excellency the Governor-General in Council on the 24th November, 1886.*

THE Committee of the Privy Council having had their attention called by a telegram, dated the 18th November instant, from Her Majesty's Minister at Washington, to his former despatch of the 28th October ultimo, inclosing a copy of a note from the Honourable Mr. Bayard, and inclosures, asking for authentic information respecting the Canadian Laws regulating the sale and exportation of fresh herring from Grand Manan Island.

The Minister of Marine and Fisheries, to whom said despatch was referred for early report, states that any foreign vessel, "not manned nor equipped nor in any way prepared for taking fish," has full liberty of commercial intercourse in Canadian ports upon the same conditions as are applicable to regularly registered foreign merchant-vessels; nor is any restriction imposed upon any foreign vessel dealing in fish of any kind different from those imposed upon foreign merchant-vessels dealing in other commercial commodities.

That the Regulations under which foreign vessels may trade at Canadian ports are contained in the Customs Law of Canada (a copy of which is herewith), and which render it necessary, among other things, that upon arrival at any Canadian port a vessel must at once enter inward at the custom-house, and upon the completion of her loading clear outwards for her port of destination.

The Committee recommend that your Excellency be moved to transmit a copy of this Minute, together with a copy of the Customs Laws, as containing authentic information respecting Canadian Laws regulating the sale and exportation of fresh herring to Her Majesty's Minister at Washington, for the information of the Honourable Mr. Bayard, Secretary of State for the United States.

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

No. 28.

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

Sir,

*Foreign Office, January 6, 1887.*

WITH reference to your despatch of the 24th September last, I transmit to you herewith, for communication to the United States' Government, copy of a despatch from the Governor-General of Canada, inclosing a Report from his Government on the case of the United States' fishing-vessel "Crittenden."\*

I am, &c.  
(Signed) IDDESLEIGH.

No. 29.

*Sir L. West to the Earl of Iddesleigh.—(Received January 7, 1887.)*

My Lord,

*Washington, December 24, 1886.*

I HAVE the honour to acknowledge the receipt of your Lordship's despatch of the 8th instant, and to inform your Lordship that I have duly advised Mr. Bayard that Her

\* See Inclosures in No. 24.

Majesty's Government have called upon the Canadian Government for a Report on the alleged inhospitable treatment by the Canadian authorities of the American fishing-schooners "Laura Sayward" and "Jennie Seaverns."

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

No. 30.

*Sir R. Herbert to Sir J. Pauncefote.—(Received January 10.)*

Sir, *Downing Street, January 8, 1887.*  
WITH reference to the letter from this Department of the 23rd November last, respecting the alleged proceedings of the Canadian authorities in the case of the United States' fishing-vessels "Pearl Nelson" and "Everitt Steele," I am directed by Mr. Secretary Stanhope to transmit to you, to be laid before the Earl of Iddesleigh, a copy of a despatch which was addressed to the Governor-General of Canada on the 22nd November, together with a copy of the reply which has now been received from Lord Lansdowne.

I am to state that copies of the Governor-General's previous despatches of the 29th November, referred to in the one now sent, were communicated to the Foreign Office in the letter from this Department of the 16th ultimo.\*

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

Inclosure 1 in No. 30.

*Mr. Stanhope to the Marquis of Lansdowne.*

My Lord, *Downing Street, November 22, 1886.*  
WITH reference to my telegram of the 6th instant, I have the honour to transmit to you, for communication to your Government, copies of two letters from the Foreign Office, with their inclosures, respecting the alleged proceedings of the Canadian authorities in the case of the United States' fishing-vessels "Pearl Nelson" and "Everitt Steele."

I shall no doubt be favoured shortly with the Report on the subject requested in my telegram.

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

Inclosure 2 in No. 30.

*The Marquis of Lansdowne to Mr. Stanhope.*

Sir, *Government House, Ottawa, December 20, 1886.*  
I HAD the honour of receiving your despatch of the 22nd November in regard to the case of the "Everitt Steele" and "Pearl Nelson," recently detained at Shelburne and Arichat, Nova Scotia, for non-compliance with the Customs Regulations of the Dominion.

2. The circumstances under which the conduct of these vessels attracted the attention of the Customs authorities were set out in the Privy Council Orders of the 18th November, certified copies of which were forwarded to you under cover of my despatches of the 29th November.

3. The information contained in these documents was obtained in order to comply with the request for a Report on these two cases which you had addressed to me by telegram on a previous date. I have now carefully examined the fuller statements made by Mr. Bayard, both as to the facts and as to the considerations by which the conduct of the local officials should, in his opinion, have been governed. You will, I think, find, on reference to the Privy Council Orders already before you, that the arguments advanced by Mr. Bayard have been sufficiently met by the observations of my Minister of Marine and Fisheries, whose Reports are embodied in those Orders.

4. It is not disputed that the "Everitt Steele" was in Shelburne Harbour on the 25th March, and sailed thence without reporting. In consequence of this omission on the master's part his vessel was, on her return to Shelburne in September, detained by

\* See No. 13.

the Collector. The master having explained that his presence in the harbour had been occasioned by stress of weather, and that his failing to report was inadvertent, and this explanation having been telegraphed to the Minister at Ottawa, the vessel was at once allowed to proceed to sea; her release took place at noon on the day following that of her detention.

5. In the case of the "Pearl Nelson" it is not denied that nine of her crew were landed in Arichat Harbour at a late hour on the evening of her arrival, and before the master had reported to the Custom-house. It is obvious that if men were to be allowed to go on shore under such circumstances, without notification to the authorities, great facilities would be offered for landing contraband goods, and there can be no question that the master, by permitting his men to land, was guilty of a violation of sections 25 and 180 of the Customs Act. There seems to be reason to doubt his statement that he was driven into Arichat by stress of weather; but, be this as it may, the fact of his having entered the harbour for a lawful purpose would not carry with it a right to evade the Law to which all vessels frequenting Canadian ports are amenable. In this case, as in that of the "Everitt Steele," already referred to, the statement of the master that his offence was due to inadvertence was accepted, and the fine imposed at once remitted.

6. I observe that, in his despatch relating to the first of these cases, Mr. Bayard insists with much earnestness upon the fact that certain "prerogatives" of access to the territorial waters of the Dominion were specially reserved under the Convention of 1818 to the fishermen of the United States, and that a vessel entering a Canadian harbour for any purpose coming within the terms of Article I of that Convention has as much right to be in that harbour as she would have to be upon the high seas; and he proceeds to institute a comparison between the detention of the "Everitt Steele" and the wrongful seizure of a vessel on the high seas upon the suspicion of being engaged in the Slave Trade. Mr. Bayard further calls attention to the special consideration to which, from the circumstances of their profession, the fishermen of the United States are, in his opinion, entitled, and he dwells upon the extent of the injury which would result to them if they were debarred from the exercise of any of the rights assured to them by Treaty or Convention.

7. I observe also that in Sir Julian Pauncefote's letter inclosed in your despatch it is stated that the Secretary of State for Foreign Affairs wishes to urge upon the Dominion Government the great importance of issuing stringent instructions to its officials not to interfere with any of the privileges expressly reserved to United States' fishermen under Article I of the Convention of 1818.

8. I trust that the explanations which I have already been able to give in regard to the cases of these vessels will have satisfied you that the facts disclosed do not show any necessity for the issuing of instructions other than those already circulated to the local officials intrusted with the execution of the Customs and Fishery Law.

9. There is certainly no desire on the part of my Government (nor, I believe, does the conduct of the local officials justify the assumption that such a desire exists) to curtail in any respect the privileges enjoyed by United States' fishermen in Canadian waters. It cannot, on the other hand, be contended that because these privileges exist and are admitted by the Government of the Dominion, those who enjoy them are to be allowed immunity from the Regulations to which all vessels resorting to Canadian waters are, without exception, subjected under the Customs Act of 1883 and the different Statutes regulating the fisheries of the Dominion.

10. In both of the cases under consideration there was a clear and undoubted violation of the law, and the local officials would have been culpable if they had omitted to notice it. That there was no animus on their part or on that of the Canadian Government is, I think, clearly proved by the promptitude with which the circumstances were investigated, and the readiness shown to overlook the offence and to remit the penalty incurred as soon as proof was forthcoming that the offence had been unintentionally committed. In support of this view I would draw your attention to the letter (see inclosure to my despatch of the 29th November) of Mr. Phelan, the Consul-General for the United States at Halifax, who has expressed his own satisfaction at the action of the authorities in the case of the "Pearl Nelson," and who also refers to a communication received by him from the Department of State, in which it is stated that the conduct of the Assistant Commissioner of Customs in dealing with two other cases of a somewhat similar complexion "shows a proper spirit."

I have, &c.  
(Signed) LANSLOWNE.

## No. 31.

*The Earl of Iddesleigh to Mr. Phelps.\**

Sir,

*Foreign Office, January 11, 1887.*

HER Majesty's Government have considered the request contained in your note of the 2nd ultimo, to the effect that the owners of the "David J. Adams" may be furnished with copies of the original Reports, stating the charges on which that vessel was seized by the Canadian authorities; and I have now the honour to state to you that if the owners of this vessel are legally entitled to be furnished with those Reports, they can obtain them by the process of the Courts; and there seems no ground for the interference of Her Majesty's Government with the ordinary course of justice.

As regards the means of obtaining information for the purposes of the defence, I would point out that in the Report of the Canadian Minister of Marine and Fishery, of which a copy was communicated to you on the 23rd July last, it is stated that, from a date immediately after the seizure, "there was not the slightest difficulty in the United States' Consul-General and those interested in the vessel obtaining the fullest information;" and that, "apart from the general knowledge of the offences which it was claimed the master had committed, and which was furnished at the time of the seizure, the most technical and precise details were readily obtainable at the Registry of the Court, and from the Solicitors for the Crown."

With respect to the statement in your note, that a clause in the Canadian Act of the 22nd May, 1868, to the effect that, "In case a dispute arises as to whether any seizure has or has not been legally made, or as to whether the person seizing was or was not authorized to seize under this Act, the burden of proving the illegality of the seizure shall be on the owner as claimant," is in violation of the principles of natural justice, as well as of those of the common law, I have to observe that the Statute referred to is cap. 61 of 1868, which provides for the issue of licences to foreign fishing-vessels, and for the forfeiture of such vessels fishing without a licence; and that the provisions of Article 10, to which you take exception, are commonly found in laws against smuggling, and are based on the rule of law that a man who pleads that he holds a licence or other similar document shall be put to the proof of his plea, and required to produce the document.

I beg leave to add that the provisions of that Statute, so far as they relate to the issue of licences, have been inoperative since the year 1870.

I have, &amp;c.

(Signed) IDDESLEIGH.

## No. 32.

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

Sir,

*Foreign Office, January 11, 1887.*

WITH reference to my despatch of the 24th ultimo, I transmit to you herewith, for communication to the United States' Government, a copy of a despatch from the Governor-General of Canada relative to the cases of the American fishing-vessels "Pearl Nelson" and "Everitt Steele."†

I am, &amp;c.

(Signed) IDDESLEIGH.

## No. 33.

*Sir J. Pauncefote to Sir L. West.*

Sir,

*Foreign Office, January 13, 1887.*

WITH reference to previous correspondence, I transmit to you herewith, for communication to the United States' Government, a copy of a Report by the Minister of Justice of the Dominion of Canada upon the seizure of the American fishing-vessel "David J. Adams."‡

I am, &amp;c.

(For the Secretary of State),

(Signed) JULIAN PAUNCEFOTE.

\* Copy to Colonial Office, January 11, 1887.

† Inclosure 2 in No. 30.

‡ "United States No. 1 (1887)," p. 170.

## No. 34.

*Sir J. Pauncefote to Mr. Phelps.*

Sir,

*Foreign Office, January 14, 1887.*

WITH reference to my predecessor's note of the 30th November last, I have the honour to transmit to you a copy of a Report from the Canadian Minister of Justice upon the seizure of the American fishing-vessel "David J. Adams."\*

I have forwarded a copy of this Report to Her Majesty's Minister at Washington, for communication to the United States' Government.

I have, &amp;c.

(For the Secretary of State),

(Signed)

JULIAN PAUNCEFOTE.

## No. 35.

*Sir L. West to the Earl of Iddesleigh.—(Received January 18.)*

My Lord,

*Washington, January 6, 1887.*

I HAVE the honour to acknowledge the receipt of your Lordship's despatch of the 24th ultimo, and to inform your Lordship that I have communicated the Reports therein inclosed from the Government of Canada, relative to the cases of the American fishing-vessels "Pearl Nelson" and "Everett Steele," to the United States' Government.

I have, &amp;c.

(Signed)

L. S. SACKVILLE WEST.

## No. 36.

*Mr. Meade to Sir Pauncefote.—(Received January 18.)*

Sir,

*Downing Street, January 18, 1887.*

WITH reference to previous correspondence respecting the United States' proposals for an *ad interim* arrangement on the Fisheries question, I am directed by Secretary Sir H. Holland to transmit to you, to be laid before the Marquis of Salisbury, the decypher of a telegram and a copy of a despatch from the Governor-General of Canada on the subject.

I am, &amp;c.

(Signed)

R. H. MEADE.

## Inclosure 1 in No. 36.

*The Marquis of Lansdowne to Mr. Stanhope.*

(Telegraphic.)

*(Received January 7, 1887.)*

CAN state positively that Canadian Government will resist Bayard proposal in present shape. Position laid down in Clarendon-Bruce despatch 11th May, 1886, will, however, be accepted by them in substance.

## Inclosure 2 in No. 36.

*The Marquis of Lansdowne to Mr. Stanhope.*

Sir,

*Government House, Ottawa, December 23, 1886.*

I HAVE the honour to inform you that I have received from Sir Lionel West a despatch dated the 22nd instant, inclosing copies of a letter from Mr. Bayard to Mr. Phelps dated the 15th November, 1886,† and of a Memorandum in which is contained the draft of a proposal by Mr. Bayard "for the settlement of all questions in dispute in relation to the fisheries on the north-eastern coasts of British North America." These papers, of which printed copies were sent to me, have no doubt been transmitted to you through the Foreign Office. •

2. I have referred Mr. Bayard's letter and the Memorandum to my Advisers, and I shall, as soon as possible, lay before you the formal expression of their opinion upon the subject. As, however, many Members of my Government are absent from their Offices

\* "United States No. 1 (1887)," p. 170.

† Inclosures in No. 2.



at this season of the year, and as some time must necessarily elapse before Mr. Bayard's proposal can be reviewed at length, it is as well that I should, without further loss of time, make you aware of some of the objections to which it is open, and which will, I have no doubt whatever, be made to it.

3. I would, before going further, observe that I have read with satisfaction Mr. Bayard's expression of his hope that advantage will be taken of the period of "comparative serenity" which is likely to prevail during the next few months, in order to arrive at an understanding which might put an end to any doubts which now exist with regard to the rights and privileges of United States' fishermen in Canadian waters.

4. I should, however, be slow to admit that the proceedings taken by the Canadian authorities during the past fishing season deserved to be characterized in the terms applied to them by Mr. Bayard. The Reports which I have from time to time had the honour of sending to you have shown that the acts of interference which Mr. Bayard describes as involving the unjust and unfriendly treatment of citizens of the United States were rendered necessary in consequence of the violation by them of the laws to which all vessels resorting to Canadian waters are, without exception, amenable.

5. My Government does not yield to that of the United States in its desire to reduce within the narrowest limits the occasions for interference with the fishermen of the latter Power, and should it prove to be the case that there is no prospect of the establishment of closer and mutually advantageous relations between the two countries, either in respect of the fish trade and fishing or of commercial intercourse generally, it will certainly be desirable that steps should be taken to determine beyond dispute the precise limits which divide the waters in which Canadian fishermen have the exclusive right of fishing from those in which that right is common to fishermen of all nations. A proposal for the appointment of a Mixed Commission to which this duty should, subject to the concurrence of the Governments of the Powers interested, be intrusted, was, as Mr. Bayard points out, made in the year 1866 by the American Government, and formed the subject of negotiations which were eventually superseded by those which led to the Treaty of 1871, and to the appointment of the Halifax Commission, which, however, did not deal with the question of the limits of the territorial waters of Canada. If Mr. Bayard had simply reverted to the Adams-Clarendon Memorandum of 1866, omitting the concluding paragraph, to which objection was taken at the time by Lord Clarendon, and which, as Mr. Bayard, at p. 2 of his letter, points out, is not contained in the Memorandum which he now submits, I should have regarded more hopefully than I do at this moment the prospect of an understanding being arrived at before another fishing season commences.

6. The 1st Article, however, of the draft proposal now submitted by Mr. Bayard, while in other respects following closely the Adams-Clarendon Memorandum, differs from that Memorandum, not only in the omission of the final paragraph of the latter, but also in that it adds (see Mr. Bayard's draft Article 1, Subsection 1) the important stipulation, that the bays and harbours from which American fishermen are in the future to be excluded, save for the purposes for which entrance into the bays and harbours is permitted by said Article, are hereby agreed to be taken to be such bays and harbours only as are 10, or less than 10, miles in width.

7. This reservation would involve the surrender of the exclusive right of fishing in bays which have hitherto been regarded as beyond all question within the territorial waters of Canada, such, for instance, as the right of fishing in the inner waters of the Bay des Chaleurs at points 40 or 50 miles from its mouth, which, roughly speaking, may be said to be less than 20 miles wide at its opening.

8. I observe that Mr. Bayard in that part of his letter which refers to this suggestion, has cited Conventions entered into by France and Great Britain in 1839, and subsequently by other European Powers, in support of his contention that there should be no exclusive right of fishing in bays measuring more than 10 miles at their opening. It is, I think, obvious that local arrangements of this kind must be made with reference to the geographical peculiarities of the coasts which they affect, and to the local conditions under which the fishing industry is pursued in different parts of the world, and that it does not by any means follow that because the 10-mile limit is applicable upon portions of the coast of the Continent of Europe, it is therefore applicable under the peculiar circumstances, geographical and political, which are present in the case of the North American Continent. A reference to the action of the United States' Government, and to the admissions made by their statesmen in regard to bays on the American coasts, will, I think, strengthen this view of the case. The award in regard to the Bay of Fundy, upon which Mr. Bayard also relies in this part of his argument, was, I believe,

justified mainly upon the ground that one of the headlands which formed this bay was in the territory of the United States, and that it could not therefore be regarded as a Canadian Bay.

9. The *ad interim* arrangement embodied in Article 2 of the Memorandum prejudices in favour of the United States one of the most important of the points which have been in dispute, by deciding adversely to Canada the construction which is to be placed upon Imperial and Canadian Statutes, the proper interpretation of which is at this moment the subject of litigation before the Canadian Courts. It is to be observed that this Article might, in the event of the failure of the two Governments to arrive at a definitive arrangement, a contingency which, considering the relations of the United States' Senate and the President, cannot be dismissed from our contemplation, remain in operation for an indefinite time, greatly to the disadvantage of the people of this country.

10. The procedure suggested in Article 3 for the investigation on the spot of all cases of trespass by the United States' fishing-vessels appears to be open to criticism, as capable of being used for the purpose of frustrating the ends of justice. I would submit that no case has yet been made out for depriving of their jurisdiction, particularly in those cases where the offence must *ex hypothesi* have been committed within the territorial waters of the Dominion, the properly constituted and trustworthy Tribunals of this country, and substituting for them an irregularly composed Court of First Instance, such as that which would come into existence if this Article were to be adopted.

11. Article 4 prejudices in favour of the United States the important question which has arisen as to the commercial privileges to which United States' fishing-vessels are entitled while in Canadian waters. My Government will, I have no doubt, insist upon the necessity of maintaining the distinction made by the Convention of 1818 between fishing-vessels endeavouring to use Canadian bays and harbours as a basis of operations from which to prosecute their industry in competition with Canadian fishermen, and trading vessels resorting to such bays and harbours in the ordinary course of business.

12. The history of the negotiations which preceded the Convention of 1818 makes it perfectly clear that the purchase of bait was not one of the purposes for which it was intended that United States' fishing-vessels should have a right of entering Canadian waters. It is, I observe, proposed by Mr. Bayard in the Article under consideration, that this point also should be decided in anticipation against the Dominion without further discussion.

13. Under Article 5 it is assumed that the seizures and detentions which have taken place during the past season in consequence of non-compliance by United States' fishermen with the Customs laws of Canada have in all cases involved the violation of the Treaty of 1818 by the Canadian authorities, and we are accordingly invited, before submitting our case to examination by the proposed Mixed Commission, to release all United States' fishing-vessels now under seizure for a breach of our Customs laws, and to refund all fines exacted for such illegality. We are, in other words, before going into Court, to plead guilty to all the counts contained in this part of the indictment against us.

14. Indeed, if Mr. Bayard's proposal be considered as a whole, it amounts to this: that the Government of the Dominion is to submit its conduct in the past, and its rights in the future, to the arbitrament of a Commission, without any assurance whatever that the recommendations of that Commission are likely to be accepted by Congress, and that before the inquiry commences it is to place upon record the admission that it has been in the wrong upon all the most important points in the controversy. Such an admission would involve the public renunciation of substantial and valuable rights and privileges for all time, without any sort of equivalent as compensation. Mr. Bayard can, I venture to think, scarcely expect that my Government should agree to so one-sided a proposal, or should make, without any return, concessions so damaging to the interests of this country or so injurious to its self-respect.

15. I trust that Her Majesty's Government will, to the utmost of its ability, discourage that of the United States from pressing these proposals in their present shape, and will avoid any action which might induce the belief that the offer embodied in them is one which deserves a favourable reception at the hands of the Government of the Dominion.

I have, &c.  
(Signed) LANSLOWNE.

## No. 37.

*Sir J. Pauncefote to Sir R. Herbert.*Sir, *Foreign Office, January 22, 1887.*

I AM directed by the Marquis of Salisbury to acknowledge the receipt of your letter of the 18th instant, inclosing copies of a despatch and a telegram from the Marquis of Lansdowne on the subject of the *ad interim* arrangement proposed by the United States' Government for the settlement of the North American Fisheries question.

In reply, I am to state that Lord Salisbury would be glad to receive as soon as possible the full Report upon this proposal which Lord Lansdowne promises to send after consultation with his advisers; but that, in the meanwhile, his Lordship presumes Sir Henry Holland will not think it desirable that any communication upon the subject should be made to the United States' Government.

I am to suggest that, as the next fishing season will commence in about three months from the present date, it may be desirable to telegraph to Canada, urging the importance of receiving the Report of the Dominion Government with the least possible delay.

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

## No. 38.

*Mr. Phelps to the Marquis of Salisbury.—(Received January 29.)*My Lord, *Legation of the United States, London, January 26, 1887.*

VARIOUS circumstances have rendered inconvenient an earlier reply to Lord Iddesleigh's note of the 30th November, on the subject of the North American fisheries. And the termination of the fishing season has postponed the more immediate necessity of the discussion. But it seems now very important that before the commencement of another season a distinct understanding should be reached between the United States' Government and that of Her Majesty, relative to the course to be pursued by the Canadian authorities toward American vessels.

It is not without surprise that I have read Lord Iddesleigh's remark in the note above mentioned, referring to the Treaty of 1818, that Her Majesty's Government "have not as yet been informed in what respect the construction placed upon that instrument by the Government of the United States differs from their own." Had his Lordship perused more attentively my note to his predecessor in office, Lord Rosebery, under date of the 2nd June, 1886, to which reference was made in my note to Lord Iddesleigh of the 11th September, 1886, I think he could not have failed to apprehend distinctly the construction of that Treaty for which the United States' Government contends, and the reasons and arguments upon which it is founded. I have again respectfully to refer your Lordship to my note to Lord Rosebery of the 2nd June, 1886, for a very full, and I hope clear, exposition of the ground taken by the United States' Government on that point. It is unnecessary to repeat it, and I am unable to add to it.

In reply to the observations in my note to Lord Iddesleigh of the 11th September, 1886, on the point whether such discussion should be suspended in these cases until the result of the judicial proceedings in respect to them should be made known, a proposition to which, as I stated in that note, the United States' Government is unable to accede, his Lordship cites in support of it some language of Mr. Fish, when Secretary of State of the United States, addressed to the United States' Consul-General at Montreal, in May 1870. From the view then expressed by Mr. Fish the United States' Government has neither disposition nor occasion to dissent. But it cannot regard it as in any way applicable to the present case.

It is true, beyond question, that when a private vessel is seized for an alleged infraction of the laws of the country in which the seizure takes place, and the fact of the infraction or the exact legal construction of the local Statute claimed to be transgressed is in dispute, and is in process of determination by the proper Tribunal, the Government to which the vessel belongs will not usually interfere in advance of such determination, and before acquiring the information on which it depends. And especially when it is not yet informed whether the conduct of the officer making the seizure will not be repudiated by the Government under which he acts, so that interference will be unnecessary. This is all, in effect, that was said by Mr. Fish on that occasion. In language immediately following that quoted by Lord Iddesleigh, he remarks as follows (*italics being mine*):—

"The present embarrassment is, that while we have *reports* of several seizures upon

grounds, as stated by the interested parties, which seem to be in contravention of international law and special Treaties relating to the fisheries, these *alleged* causes of seizure are regarded as pretensions of over-zealous officers of the British navy and the colonial vessels, which will, as we hope and are bound in courtesy to expect, be repudiated by the Courts before which our vessels are to be brought for adjudication."

But in the present case, the facts constituting the alleged infraction by the vessel seized are not in dispute, except some circumstances of alleged aggravation not material to the validity of the seizure. The original ground of the seizure was the purchase by the master of the vessel of a small quantity of bait, from an inhabitant of Nova Scotia, to be used in lawful fishing. This purchase is not denied by the owners of the vessel. And the United States' Government insists, *first*, that such an act is not in violation of the Treaty of 1818; and, *second*, that no then existing Statute in Great Britain or Canada authorized any proceedings against the vessel for such an act, even if it could be regarded as in violation of the terms of the Treaty. And no such Statute has been as yet produced. In respect to the charge subsequently brought against the "Adams," and upon which many other vessels have been seized, that of a technical violation of the Customs Act in omitting to report at the custom-house, though having no business at the port, (and in some instances where the vessel seized was not within several miles of the landing) the United States' Government claim, while not admitting that the omission to report was even a technical transgression of the Act,—that even if it were, no harm having been done or intended, the proceedings against the vessels for an inadvertence of that kind were in a high degree harsh, unreasonable, and unfriendly. Especially as for many years no such effect has been given to the Act in respect to fishing-vessels, and no previous notice of a change in its construction had been promulgated.

It seems apparent therefore, that the cases in question, as they are to be considered between the two Governments, present no points upon which the decisions of the Courts of Nova Scotia need be awaited or would be material.

Nor is it any longer open to the United States' Government to anticipate that the acts complained of will (as said by Mr. Fish in the despatch above quoted), be repudiated as "the pretensions of over-zealous officers of the . . . colonial vessels." Because they have been so many times repeated as to constitute a regular system of procedure, have been directed and approved by the Canadian Government, and have been in nowise disapproved or restrained by Her Majesty's Government, though repeatedly and earnestly protested against on the part of the United States.

It is therefore to Her Majesty's Government alone that the United States' Government can look for consideration and redress. It cannot consent to become directly or indirectly a party to the proceedings complained of, nor to await their termination before the questions involved between the two Governments shall be dealt with. Those questions appear to the United States' Government to stand upon higher grounds, and to be determined, in large part at least, upon very different considerations from those upon which the Courts of Nova Scotia must proceed in the pending litigation.

Lord Iddesleigh, in the note above referred to, proceeds to express regret that no reply has yet been received from the United States' Government to the arguments on all the points in controversy contained in the Report of the Canadian Minister of Marine and Fisheries, of which Lord Rosebery had sent me a copy.

Inasmuch as Lord Iddesleigh, and his predecessor, Lord Rosebery, have declined altogether, on the part of Her Majesty's Government, to discuss these questions, until the cases in which they arise shall have been judicially decided, and as the very elaborate arguments on the subject previously submitted by the United States' Government remain therefore without reply, it is not easy to perceive why further discussion of it on the part of the United States should be expected. So soon as Her Majesty's Government consent to enter upon the consideration of the points involved, any suggestions it may advance will receive immediate and respectful attention on the part of the United States. Till then, further argument on that side would seem to be neither consistent nor proper.

Still less can the United States' Government consent to be drawn, at any time, into a discussion of the subject with the Colonial Government of Canada. The Treaty in question, and all the international relations arising out of it, exist only between the Governments of the United States and of Great Britain, and between those Governments only can they be dealt with. If in entering upon that consideration of the subject which the United States have insisted upon, the arguments contained in the Report of the Canadian Minister should be advanced by Her Majesty's Government, I do not conceive that they will be found difficult to answer.

Two suggestions contained in that Report are however specially noticed by Lord Iddesleigh, as being "in reply" to the arguments contained in my note. In quoting the

substance of the contention of the Canadian Minister on the particular points referred to, I do not understand his Lordship to depart from the conclusion of Her Majesty's Government he had previously announced, declining to enter upon the discussion of the cases in which the questions arise. He presents the observations of the Report only as those of the Canadian Minister, made in the argument of points upon which Her Majesty's Government decline at present to enter. I do not therefore feel called upon to make any answer to these suggestions. And more especially, as it seems obvious that the subject cannot usefully be discussed upon one or two suggestions appertaining to it, and considered by themselves alone. While those mentioned by Lord Iddesleigh have undoubtedly their place in the general argument, it will be seen that they leave quite untouched most of the propositions and reasoning set forth in my note to Lord Rosebery above mentioned. It appears to me that the questions cannot be satisfactorily treated aside from the cases in which they arise. And that when discussed, the whole subject must be gone into in its entirety.

The United States' Government is not able to concur in the favourable view taken by Lord Iddesleigh of the efforts of the Canadian Government "to promote a friendly negotiation." That the conduct of that Government has been directed to obtaining a revision of the existing Treaty is not to be doubted. But its efforts have been of such a character as to preclude the prospect of a successful negotiation so long as they continue, and seriously to endanger the friendly relations between the United States and Great Britain.

Aside from the question as to the right of American vessels to purchase bait in Canadian ports, such a construction has been given to the Treaty between the United States and Great Britain as amounts virtually to a declaration of almost complete non-intercourse with American vessels. The usual comity between friendly nations has been refused in their case, and in one instance, at least, the ordinary offices of humanity. The Treaty of Friendship and Amity which, in return for very important concessions by the United States to Great Britain, reserved to the American vessels certain specified privileges, has been construed to exclude them from all other intercourse common to civilized life, and to universal maritime usage among nations not at war, as well as from the right to touch and trade accorded to all other vessels.

And quite aside from any question arising upon construction of the Treaty, the provisions of the Customs-house Acts and Regulations have been systematically enforced against American ships for alleged petty and technical violations of legal requirements, in a manner so unreasonable, unfriendly, and unjust, as to render the privileges accorded by the Treaty practically nugatory.

It is not for a moment contended by the United States' Government that American vessels should be exempt from those reasonable port and Custom-house Regulations which are in force in countries which such vessels have occasion to visit. If they choose to violate such requirements, their Government will not attempt to screen them from the just legal consequences.

But what the United States' Government complain of in these cases, is that existing Regulations have been construed with a technical strictness, and enforced with a severity, in cases of inadvertent and accidental violation where no harm was done, which is both unusual and unnecessary, whereby the voyages of vessels have been broken up, and heavy penalties incurred. That the liberal and reasonable construction of these laws that had prevailed for many years, and to which the fishermen had become accustomed, was changed without any notice given. And that every opportunity of unnecessary interference with American fishing-vessels, to the prejudice and destruction of their business, has been availed of. Whether, in any of these cases, a technical violation of some requirement of law had, upon close and severe construction, taken place, it is not easy to determine. But if such Rules were generally enforced in such a manner in the ports of the world, no vessel could sail in safety without carrying a solicitor, versed in the intricacies of revenue and port regulations.

It is unnecessary to specify the various cases referred to, as the facts in many of them have been already laid before Her Majesty's Government.

Since the receipt of Lord Iddesleigh's note, the United States' Government has learned with grave regret that Her Majesty's assent has been given to the Act of the Parliament of Canada, passed at its late Session, entitled, "An Act further to amend the Act respecting fishing by foreign vessels," which has been the subject of observation in the previous correspondence on the subject, between the Governments of the United States and of Great Britain. By the provisions of this Act, any foreign ship, vessel, or boat (whether engaged in fishing or not) found within any harbour in Canada, or within 3 marine miles of "any of the coasts, bays, or creeks of Canada," may be brought into

port by any of the officers or persons mentioned in the Act, her cargo searched, and her master examined upon oath, touching the cargo and voyage, under a heavy penalty if the questions asked are not truly answered: and if such ship has entered such waters "for any purpose" not permitted by Treaty or Convention, or by law of the United Kingdom or of Canada for the time being in force, such ship, vessel, or boat, and the tackle, rigging, apparel, furniture, stores and cargo thereof shall be forfeited."

It has been pointed out in my note to Lord Iddesleigh above mentioned, that the 3-mile limit referred to in this Act is claimed by the Canadian Government to include considerable portions of the high seas, such as the Bay of Fundy, the Bay of Chaleur, and similar waters, by drawing the line from headland to headland. And that American fishermen have been excluded from those waters accordingly.

It has been seen also that the term "any purpose not permitted by Treaty" is held by that Government to comprehend every possible act of human intercourse, except only the four purposes named in the Treaty: shelter, repairs, wood, and water.

Under the provisions of the recent Act therefore, and the Canadian interpretation of the Treaty, any American fishing-vessel that may venture into a Canadian harbour, or may have occasion to pass through the very extensive waters thus comprehended, may be seized at the discretion of any one of numerous subordinate officers, carried into port, subjected to search, and the examination of her master upon oath, her voyage broken up, and the vessel and cargo confiscated, if it shall be determined by the local authorities that she has ever even posted or received a letter, or landed a passenger in any port of Her Majesty's dominions in America.

And it is publicly announced in Canada that a larger fleet of cruisers is being prepared by the authorities, and that greater vigilance will be exerted on their part in the next fishing season than in the last.

It is in the Act to which the one above referred to is an amendment that is found the provision to which I drew attention in a note to Lord Iddesleigh of the 2nd December, 1886, by which it is enacted that in case a dispute arises as to whether any seizure has or has not been legally made, the burden of proving the illegality of the seizure shall be upon the owner or claimant.

In his reply to that note, of the 11th January, 1887, his Lordship intimates that this provision is intended only to impose upon a person claiming a licence the burden of proving it. But a reference to the Act shows that such is by no means the restriction of the enactment. It refers in the broadest and clearest terms to *any* seizure that is made under the provisions of the Act, which covers the whole subject of protection against illegal fishing. And applies not only to the proof of a licence to fish, but to all questions of fact whatever necessary to a determination as to the legality of a seizure, or the authority of the person making it.

It is quite unnecessary to point out what grave embarrassments may arise in the relations between the United States and Great Britain, under such administration as is reasonably to be expected of the extraordinary provisions of this Act and its amendment, upon which it is not important at this time further to comment.

It will be for Her Majesty's Government to determine how far its sanction and support will be given to further proceedings such as the United States' Government have now repeatedly complained of, and have just ground to apprehend may be continued by the Canadian authorities.

It was with the earnest desire of obviating the impending difficulty, and of preventing collisions and dispute until such time as a permanent understanding between the two Governments could be reached, that I suggested on the part of the United States, in my note to Lord Iddesleigh of the 11th September, 1886, that an *ad interim* construction of the terms of the Treaty might be agreed on, to be carried out by instructions to be given on both sides, without prejudice to the ultimate claims of either, and terminable at the pleasure of either. In an interview I had the honour to have with his Lordship, in which this suggestion was discussed, I derived the impression that he regarded it with favour. An outline of such an arrangement was therefore subsequently prepared by the United States' Government, which at the request of Lord Iddesleigh, was submitted to him in my note of the 3rd December, 1886.

But I observe with some surprise, that in his note of the 30th November last, his Lordship refers to that proposal made in my note of the 11th September, as a proposition that Her Majesty's Government "should temporarily abandon the exercise of the Treaty rights which they claim and which they conceive to be indisputable."

In view of the very grave questions that exist as to the extent of those rights, in respect to which the views of the United States' Government differ so widely from those insisted upon by Her Majesty's Government, it does not seem to me an unreasonable proposal, that

the two Governments by a temporary and mutual concession without prejudice, should endeavour to reach some middle ground of *ad interim* construction by which existing friendly relations might be preserved until some permanent Treaty arrangements could be made.

The reasons why a revision of the Treaty of 1818 cannot now, in the opinion of the United States' Government, be hopefully undertaken, and which are set forth in my note to Lord Iddesleigh of the 11th September, 1886, have increased in force since that note was written.

I again respectfully commend the proposal above mentioned to the consideration of Her Majesty's Government.

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

## No. 39.

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

My Lord,

*Washington, January 19, 1887.*

I HAVE the honour to acknowledge the receipt of your Lordship's despatch of the 6th instant, and to inform your Lordship that, in obedience to the instructions therein contained, I have communicated copy of the despatch of the Governor-General, and of the Report which accompanied it, on the case of the United States' fishing-vessel "Crittenden," to the United States' Government.

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

## No. 40.

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

My Lord,

*Washington, January 19, 1887.*

I HAVE the honour to inclose to your Lordship copies of a Bill which has been introduced into the House of Representatives for the protection of American fishermen, in consequence of the denial on the part of the Dominion Government of the right to land and transport American fish in bond over Canadian railroads to the United States.

It is said that American capitalists interested in Canadian railroads are strongly opposed to this Bill.

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

Inclosure in No. 40.

*49th Congress, 2nd Session.—H. R. 10786.*

IN THE HOUSE OF REPRESENTATIVES.

*January 17, 1887.*

Read twice, referred to the Committee on Foreign Affairs, and ordered to be printed.

Mr. Belmont introduced the following Bill:—

*A Bill to protect American Vessels against unwarrantable and unlawful Discriminations in the Ports of British North America.*

BE it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that hereafter, whenever the President shall be satisfied

that vessels of the United States are denied in ports of the British provinces in North America bordering on the Atlantic Ocean, or in the waters adjacent to said provinces, rights to which such vessels are entitled by Treaty or by the law of nations, he may, by Proclamation, prohibit vessels bearing the British flag and coming from such ports from entering the ports of the United States, or from exercising such privileges therein as he may in his Proclamation define; and if, on and after the date at which such Proclamation takes effect, the master or other person in charge of any of such vessels shall do, in the ports, harbours, or waters of the United States, for or on account of such vessel, any act forbidden by such Proclamation aforesaid, such vessel, and its rigging, tackle, furniture, and boats, and all the goods on board, shall be liable to seizure and forfeiture to the United States; and any person or persons preventing or attempting to prevent, or aiding any other person in preventing or attempting to prevent, any officer of the United States from enforcing this Act, shall forfeit and pay to the United States 1,000 dollars, and shall be guilty of a misdemeanour, and, upon conviction thereof, shall be liable to imprisonment for a term not exceeding two years.

Section 2. That the President may also, by such Proclamation, forbid the entrance into the United States of all merchandize coming by land from the provinces of British North America, and may also forbid the entrance into the United States of the cars, locomotives, or other rolling-stock of any Railway Company chartered under the Laws of said provinces; and upon proof that the privileges secured by Article 29 of the Treaty concluded between the United States and Great Britain on the 8th day of May, 1871, are denied as to goods, wares, and merchandize arriving at the ports of British North America, the President may also, by Proclamation, forbid the exercise of the like privileges as to goods, wares, and merchandize arriving in any of the ports of the United States; and any person violating or attempting to violate the provisions of any Proclamation issued under this section shall forfeit and pay to the United States the sum of 1,000 dollars, and shall be guilty of a misdemeanour, and, upon conviction thereof, shall be liable to imprisonment for a term not exceeding two years.

Sec. 3. That whenever, after the issuance of a Proclamation under this Act, the President is satisfied that the denial of rights and privileges on which his Proclamation was based no longer exists, he may withdraw the Proclamation, or so much thereof as he may deem proper, and reissue the same thereafter when in his judgment the same shall be necessary.

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No. 41.

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

My Lord,

*Washington, January 19, 1887.*

WITH reference to my preceding despatch, I have the honour to inclose to your Lordship herewith copies of a preamble and Resolution offered in the Senate in the same sense as the Bill introduced into the House of Representatives on the Fisheries question.

I have, &c.

(Signed) L. S. SACKVILLE WEST.

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Inclosure in No. 41.

*Extract from the "Congressional Record" of January 19, 1887.*

FISHING RIGHTS OF THE UNITED STATES.

*Mr. Gorman* submitted the following Resolution, which was read:—

“Whereas it appears from documents laid before the Senate that the ancient rights of the United States’ fishermen, when bound to the north-east deep-sea fisheries, of transit through Canadian waters, with the incidents appertaining thereto, of shelter, repair, and provisioning in the adjacent ports, such rights being founded on international law and on Treaty, have been obstructed by Canadian authorities, such obstruction being attended by indignity and annoyance, and followed by great loss to the parties interested in such fishing vessels; and

“Whereas such transit, with its incidents of temporary shelter, repair, and pro-



visioning, is part of a system with the transit with similar incidents permitted to Canadian engines, cars, vessels, and goods through the territory and territorial waters of the United States on their way from point to point in Canada, with this distinction, that the transit in the former case is a matter of right, based on international law and Treaty, while in the latter case it is a matter of permission and gratuity:

“*Resolved*,—That the President of the United States is authorized, whenever it shall appear to him that there is an insistance on the part of the Canadian authorities with the obstructions, indignities, and annoyances above recited, to issue his Proclamation prohibiting the transit through the United States or the territorial waters thereof from point to point in Canada, or from Canada to the ocean, of any engines, cars, goods, or vessels proceeding from Canada.”

No. 42.

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

My Lord,

Washington, January 21, 1887.

WITH reference to my despatch of the 18th ultimo, I have the honour to inclose to your Lordship herewith copies of the Bill, and Report thereon, for the appointment of a Commission to investigate losses and injuries inflicted on United States' citizens engaged in the North American fisheries.

I have, &c.

(Signed) L. S. SACKVILLE WEST.

Inclosure 1 in No. 42.

49th Congress, 2nd Session.—H. R. 10241.

[Report No. 3648.]

IN THE HOUSE OF REPRESENTATIVES.

December 17, 1886.

Read twice, referred to the Committee on Foreign Affairs, and ordered to be printed.

January 18, 1887.

Committed to the Committee of the whole House on the state of the Union and ordered to be printed.

Mr. Belmont introduced the following Bill:—

*A Bill for the Appointment of a Commission to investigate concerning Losses and Injuries inflicted since December 31, 1885, on United States' Citizens engaged in the North American Fisheries.*

BE it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that the President be, and is hereby, authorized to appoint a Commissioner to proceed to such places in the United States or elsewhere as may be designated by the Secretary of State, to take testimony, under oath or affirmation, in relation to the losses and injuries inflicted since the 31st December, 1885, by British authorities, Imperial or Colonial, upon citizens of the United States engaged in the fisheries on the north-east coasts of British North America. Said Commissioner shall everywhere have, in respect of the administration of oaths or affirmations and the taking of testimony, the same powers as a Commissioner of a Circuit Court, and shall be paid the same fees as are prescribed for similar services of a Commissioner of a Circuit Court, together with travelling expenses.

## Inclosure 2 in No. 42.

*Report.*

49th Congress, 2nd Session.—Report No. 3648.

## HOUSE OF REPRESENTATIVES.

## NORTH AMERICAN FISHERIES.

Committed to the Committee of the whole House on the state of the Union and ordered to be printed.

January 18, 1887.

Mr. Belmont, from the Committee on Foreign Affairs, submitted the following Report:—

[To accompany Bill H. R. 10241.]

THE Committee on Foreign Affairs, to which were referred the President's Message of the 8th December, 1886 (Ex. Doc. No. 19), and the reply of the Secretary of the Treasury, on the 10th January, 1887 (Ex. Doc. No. 78), to the Resolution of the House adopted on the 14th December, 1886, and House Bill 10241, submits the following Report:—

Your Committee has not only given to those communications the very careful consideration which they deserve, but, during the last Session of the House, made diligent inquiry into the whole subject of American fisheries. They were attended in the committee-room by, among others, William Henry Trescot, Esq., and Charles Levi Woodbury, Esq., of Boston. Mr. Woodbury represented all, or a large majority of, New England owners of fishing-vessels, and both of the gentlemen favoured your Committee with valuable opinions on different phases of the important subject under consideration.

Your Committee is of the opinion that the rightful area of our "American fisheries" has been reduced, and the quantity of fish—fresh, dried, cured, or salted—landed in the United States free of duty has been diminished, by the conduct of local officers in Canada. That conduct has been not only in violation of Treaty stipulations and of international comity, but, during the fishing season just passed, has been inhuman, as the Message of the President clearly establishes.

*The Treaty of 1783.*

The Treaty of Peace defined, in 1783, the area of American fisheries which might in that portion of the world be prosecuted by American vessels. Its IIIrd Article declares:

## ARTICLE III.

It is agreed that the people of the United States shall continue to enjoy unmolested the right—

1. To take fish of every kind on the Grand Bank and all the other banks of Newfoundland;

2. Also in the Gulf of St. Lawrence;

3. And at all other places, in the sea, where the inhabitants of both countries used at any time heretofore to fish. And also, that the inhabitants of the United States shall have liberty—

(1.) To take fish of every kind on such part of the coast of Newfound and as British fishermen shall use (but not to dry or cure the same on that island);

(2.) And also on the coasts, bays, and creeks of all other of His Britannic Majesty's dominions in America;

(3.) And that the American fishermen shall have liberty to dry and cure fish in any of the unsettled bays, harbours, and creeks of Nova Scotia, Magdalen Islands, and Labrador, so long as the same shall remain unsettled; but so soon as the same, or

either of them, shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such Settlement without a previous agreement for that purpose with the inhabitants, proprietors, or possessors of the ground.

When that Treaty of Peace was signed the British Navigation Act of Charles II and other laws prevented trade in foreign vessels with the Anglo-American Colonies. The corner-stone of that policy was a monopoly of colonial trade for British vessels. The American Colonies were founded in subservience to British commerce. A double monopoly was established by England—a monopoly of their whole import, which is all to be from England; a monopoly of their whole export, which is to be sent nowhere but to Great Britain. The Colonies were to send all their products raw to England, and take everything from England in the last stage of manufacture. The Treaty of Peace did not stipulate for a change of that policy as between the United States and Canada, although the American Congress did, in April 1776, sweep away, so far as it could, that monopoly system from the ports it controlled, abolish British custom-houses and put none in their stead, proclaim absolute free trade in the place of heavy restrictions, invite products from any place to come in friendly vessels, and authorize American products to be exported without tax.

After the thirteen States had acquired their independence, American vessels were not only excluded from the ports of the British colonies, but Canada, as a reward for its loyalty, received the exclusive privilege of supplying the British West Indies with timber and provisions, to the great injury of the latter, whose nearest ports were the American Gulf ports and South American ports.

It will be observed that this Article, in ~~confirming~~, confirming, and establishing the thirteen States and their inhabitants in the taking of fish on the banks, in the gulf, and in the sea, uses the word "rights," but uses the word "liberty" in confirming to American fishermen the taking of fish on the coasts, bays, and creeks of every part of the British dominions in America. The word "rights" is thus applied to fishing in the open sea, which by public law is common to all nations, and was intended to affirm that Great Britain did not claim to hold by Treaty engagements, or in any other manner, an exclusive right of fishing therein. The word "liberty" is thus applied to taking fish, to drying and curing fish, on what was, anterior to the Treaty, within the jurisdiction, or territorial waters, of Great Britain, but an exclusive right of taking fish therein was not hers. "Liberty," as thus used, implies a freedom from restraint or interference in fishing along the British coasts.

Canada having been, by the aid of men of the New England Colonies, conquered for the English in 1759, the conquest having been confirmed in 1763 by the Treaty of Paris, and the sovereignty of Newfoundland having been conceded to Great Britain by the peace of Utrecht in 1713, the American colonists, who bravely endured sacrifices in war to accomplish those results, shared therein, as British subjects, down to 1783, when, by Treaty, England stipulated that the citizens of the "free, sovereign, and independent States" of America shall continue to share, and share alike, with British subjects in such coast fishing. Lord North having, in 1775, proposed to the House of Commons to exclude the fishermen of New England from the banks of Newfoundland, and to restrain them from a toil in which they excelled the world, the joint right to the fisheries became a vital part of the great American struggle. "God and nature," said Johnston, "have given that fishery to New England, and not to Old." Americans, Britons, and British Canadians became by the Treaty partners in the fisheries. It created a "servitude of public law" in favour of American fishermen. All British "coasts, bays, and creeks" in America were thereby, as Secretary Manning so aptly says, made a part of our "American fisheries," to which our Tariff laws, thereafter enacted, referred and attached, and so made the products thereof exempt from duty on entry at our ports.

### *The Treaty of Ghent.*

Thus stood American rights and liberties of fishing on the high seas, and within the limits of British dominion in North America, down to the war of 1812, and to the Treaty of peace negotiated at Ghent, which closed that war. Till then it was nowhere denied that American fishermen could fish on the high seas and on those coasts wherever British fishermen could fish. But during the negotiations at Ghent, in 1814, the British negotiators declared that their Government "did not intend to grant to the United States gratuitously the privileges formerly granted by Treaty to them of fishing within the limits of the British sovereignty, and of using the shores of the British territories for purposes connected with the British fisheries." In answer to this declaration the American negotiators said they were "not authorized to bring into discussion any of

the rights or liberties which the United States have heretofore enjoyed in relation thereto."

England contended that the word "right" in the Treaty of 1783 was used as applicable to what the United States were to enjoy in virtue of a recognized independence, and the word "liberty" to what they were to enjoy as concessions strictly dependent on the existence of the Treaty in full force, which concessions fell, as England asserted, on the declaration of war by the United States, and would not be revived excepting for an equivalent.

In the alarming condition of affairs, at home and abroad, in the autumn of 1814, our Government did finally authorize our negotiators at Ghent to agree to the *status quo ante bellum* as the basis of negotiation, provided only that our national independence was preserved. (See introductory notes by Hon. J. C. Bancroft Davis to "Treaties and Conventions," published by the Department of State in 1873, p. 1021.) The Treaty was signed on the 24th December, 1814. How different might have been its terms had there been procrastination till the news came of General Jackson's brilliant victory at New Orleans only fifteen days afterward, or till the escape of Napoleon from Elba only two months later.

### *The Treaty of 1818.*

Within a short time after the close of the year 1814 England announced her purpose to exclude American fishermen from the "liberty" of fishing within one marine league of her shores in North America, and of drying and curing fish on the unsettled part of those territories.

The announcement led up to the Treaty of 1818, whereby the "liberty" conceded in 1783 to belong to American fishermen was confined within narrower limits, and the area of American fisheries was greatly reduced, as well as the quantity of American caught fish arriving exempt from taxation at our ports. That Treaty of 1818, and the misunderstanding under it, led up to the Marcy-Elgin Reciprocity Treaty of 1854, terminating in 1866, which covered by a new stipulation a part of the stipulations contained in the Treaty of 1818. Your Committee do not now express an opinion whether or not the termination of the Reciprocity Treaty of 1854 revived the superseded and dead stipulation of the Convention of 1818, contained in its renunciation sentences, which are the last sentences of the 1st Article, for which stipulation in the Treaty of 1818 a new and positive stipulation was substituted and inserted in the Treaty of 1854, which last-named Treaty might, in accordance with its terms, have been in force indefinitely.

The 1st Article of the Treaty of 1818, which has been the cause of such unnumbered international differences and disputes, is in these words:—

"Whereas differences have arisen respecting the liberty claimed by the United States, for the inhabitants thereof, to take, dry, and cure fish on certain coasts, bays, harbours, and creeks of His Britannic Majesty's dominions in America, it is agreed between the High Contracting Parties that the inhabitants of the said United States shall have for ever, in common with the subjects of His Britannic Majesty, the liberty to take fish of every kind—

"1. On that part of the southern coast of Newfoundland which extends from Cape Ray to the Rameau Islands, on the western and northern coasts of Newfoundland, from the said Cape Ray to the Quirpon Islands;

"2. On the shores of the Magdalen Islands;

"3. And also on the coasts, bays, harbours, and creeks from Mount Joly, on the southern coast of Labrador, to and through the Straits of Belle Isle, and thence northwardly indefinitely along the coast, without prejudice, however, to any of the exclusive rights of the Hudson's Bay Company.

"And that the American fishermen shall also have liberty for ever to dry and cure fish in any of the unsettled bays, harbours, and creeks of the southern part of the coast of Newfoundland, heretofore described, and of the coast of Labrador; but so soon as the same or any portion thereof shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such portion so settled without previous agreement for such purpose with the inhabitants, proprietors, or possessors of the ground.

"And the United States hereby renounce for ever any liberty heretofore enjoyed or claimed by the inhabitants thereof to take, dry, or cure fish on or within 3 marine miles of any of the coasts, bays, creeks, or harbours of His Britannic Majesty's dominions in America not included within the above-mentioned limits:

"Provided, however, that the American fishermen shall be permitted to enter such bays or harbours (1) for the purpose of shelter, and (2) of repairing damages therein; of (3) purchasing wood, and (4) of obtaining water, and for no other purpose whatever. But

they shall be under such restrictions as may be necessary to prevent their taking, drying, or curing fish therein, or in any other manner whatever abusing the privileges hereby reserved to them."

That Article does not allude to, or attempt to interfere with, our rights in the open sea, on the banks, or in the gulf, which were confirmed by the Concession of the independence of the thirteen States. It refers only to the liberty claimed and recognized by the Treaty of 1783, "on certain coasts, bays, harbours, and creeks." It begins by a recital that differences have arisen respecting the "liberty" claimed by American fishermen in those places. It neither mentions nor alludes to any differences about fishing on the high seas. It stipulates that American fishermen may fish on certain specified coasts, bays, harbours, creeks, and shores, and may dry and cure fish in certain unsettled bays, harbours, and creeks, and especially dry and cure on the coasts of Newfoundland, which last the Treaty of 1783 did not embrace. The United States "renounces" any "liberty" to take, dry, or cure fish within 3 miles of any other coasts, bays, creeks, or harbours than those specified in the Article, but the sentence of renunciation contains a stipulation that the American fishermen may enter "such bays or harbours" for four specified purposes, "and for no other purpose whatever," under such restrictions as may be necessary to prevent fishing, drying, or curing "therein."

Unless English words were in 1818 used in that Article in an unusual sense, there is not a sentence or word therein that has reference to anything else than taking, drying, or curing fish by American fishermen, on or within certain coasts, bays, creeks, or harbours therein described. No word or phrase mentioned alludes or refers to deep-sea fishing, or ordinary commercial privileges. The restrictions refer only to fishing, or drying, or curing "in such bays or harbours."

It is to be assumed that when this Treaty of 1818 was signed, the British Statutes of Charles II in restraint of navigation, the rudiments of which are to be seen in 1650, and were aimed at Dutch trade with British sugar Colonies, were, on the English side, rigorously enforced, so that no merchandize could be lawfully imported into Canadian ports excepting in English bottoms. The Treaty of 1818 was concluded on the 20th October of that year, but ratifications were not exchanged till the 30th January, 1819. Certainly on our side there was then in force legislative restriction on navigation almost as severe as was the English enactment after the restoration of Charles II. America had not then emerged from the era of the embargo, Berlin and Milan Decrees, and the influences of the war of 1812. On the 18th April, 1818, the President approved a law closing our ports after the 30th September, 1818, against British vessels coming from a Colony which, by the ordinary laws, is closed against American vessels. Touching at a port open to American vessels could not modify the restriction. Vessels and cargoes entering, or attempting to enter, in violation of the law, were forfeitable. And any English vessel that could lawfully enter our ports was compelled to give a bond, if laden outward with American products, not to land them in a British Colony or territory from which American vessels were excluded. The presumption is that, quite independently of fishing rights and liberties, no American vessel was for long before and after 1818 permitted by English law to touch and trade in Canadian ports. How that system of exclusion was gradually broken down, not by Treaty, but by concerted legislation, the Secretary of State and the Secretary of the Treasury have clearly exhibited in the communications referred to your Committee.

Not till 1822 were American wheat and lumber permitted to go directly from American ports to the British West Indies and be entered there. In 1843 Canada was allowed to import American wheat, and then send it through the St. Lawrence to the English market as native produce—an indirect open blow at the English Corn Laws. Canadian trade entered upon another stage of prosperity in 1846, when the restrictive navigation laws of England were again relaxed for her benefit, and in 1850, when Canada was quite relieved from the injurious influences of those laws; but yet Canada, at this late day, endeavours to return to those obsolete and condemned restraints on trade by excluding deep-sea American fishermen from her ports.

That a sovereign State has exclusive jurisdiction in its own territory, and over its own vessels on the high seas, is nowhere denied. Mr. Fish announced, as Secretary of State, in 1875, "We have always understood and asserted that, pursuant to public law, no nation can rightfully claim jurisdiction at sea beyond a marine league from the coast." No nation has asserted, independently of a Treaty, an exclusive dominion over the sea surrounding its coast applicable to the passing ships of other nations. Why should a vessel which, under stress of weather or necessities of navigation, casts anchor for a few hours in a bay, be subjected to a larger or fuller foreign jurisdiction than a passing vessel,

provided in-shore fisheries are not thereby poached upon or the revenue evaded, or safe navigation endangered or crime attempted or committed? Why need a powerful State take any cognizance of such innocent and casual presence of a little body of foreign seamen? The Treaties which have been made applicable thereto refer to neutrality in war and the exclusive right of fishing, thereby proving the general rule. There is no doubt a well-founded claim, based on usage, over an exclusive dominion of some narrow zone of the sea for some purposes, but those purposes are carefully restricted, among other things, to navigation, rules of the road, lighthouses, quarantine, pilotage, anchorage, revenue, or local fisheries. By the Treaties of 1783 and 1818 there is a zone of the Canadian and Newfoundland coasts open and free to American fishermen.

That dispute was settled, and a new contract entered into by the Reciprocity Treaty of 1854, which stipulated:—

“Article 1. It is agreed by the High Contracting Parties that in addition to the liberty secured to the United States’ fishermen by the above-mentioned Convention of the 20th October, 1818, of taking, curing, and drying fish on certain coasts of British North American Colonies therein defined, the inhabitants of the United States shall have, in common with the subjects of Her Britannic Majesty, the liberty to take fish of every kind, except shell-fish, on the sea-coasts and shores, and in the bays, harbours, and creeks of Canada, New Brunswick, Nova Scotia, Prince Edward Island, and of the several islands thereunto adjacent (and, by another Article, Newfoundland), without being restricted to any distance from shore, with permission to land upon the coasts and shores of those Colonies and the islands thereof, and also upon the Magdalen Islands, for the purpose of drying their nets and curing their fish; provided that in so doing they do not interfere with the rights of private property, or with British fishermen in the peaceable use of any part of the same coast in their occupancy for the same purpose. It is understood that the above-mentioned liberty applies solely to the sea-fishery, and that the salmon and chad fisheries and all fisheries in rivers and the mouths of rivers are hereby reserved exclusively for British fishermen.”

Similar provision was made in Article II, with like exception, for the admission of British subjects to take fish on a part of the sea-coasts and shores of the United States.

The United States purchased the fishery provisions of this Treaty and exemption from certain restrictions in the Treaty of 1818 by stipulations that certain enumerated articles of the growth and produce of the British Colonies of Canada, New Brunswick, Nova Scotia, Prince Edward Island, and Newfoundland should be admitted at our ports free of duty.

They were the incidents of a larger question, namely, the terms of commercial intercourse between the United States and the British Colonies in North America.

It is not contended anywhere, by anybody, that the stipulations in the Treaty of Peace of 1783, by which the sovereignty and independence of the thirteen States were acknowledged, their boundaries fixed, their right established to navigate the high seas and to fish therein, fell by the war of 1812. Nor is it pretended that the war of 1812 grew out of the exercise of fishing rights under the Treaty of 1783, so as that whatever stipulations therein were intended to be permanent, to bind during war, and to survive war, were extinguished by the war. Even if it be conceded that the “liberty to Americans,” in the Treaty of 1783, to catch or cure and dry fish on the coast of Newfoundland, and “on the coasts, bays, and creeks of all other of Her Britannic Majesty’s dominions in America,” could, on a declaration of war by the United States, have been annulled by England, they were not at any time expressly annulled. If they could have been suspended by the will of England, they were not expressly suspended. If they were suspended by the fact of war, if they were like temporary commercial engagements, or like postal Treaties, there was nothing in the facts of the war of 1812 to prevent them from recommencing their operations automatically with the peace. Nothing in the relations of the two Governments was inconsistent with their survival. Mr. Dana, in his note on Wheaton (p. 353), has stated the rule thus:—

If a war arises from a cause independent of the Treaty, the survival of any clause in the Treaty must depend upon its nature and the circumstances under which it was made.

The question of amendment or survival of the Treaty of 1783, as to certain specified parts of the British coast in America, was, however, by the Treaty of 1818, made of no practical consequence (so long as that Treaty endured) by the renunciation signed by the United States.

*The Canadian Contention.*

The legal effect of the 1st Article of the Treaty of 1818 may be sketched in outline in this wise :—

All the British coast, shores, bays, harbours, and creeks in America were, by that Article, separated into two portions, which were bounded, defined, and indentified. The two may be marked, respectively, as (A) and (B). In the sixth volume of "Papers relating to the Treaty of Washington," published by the Department of State in 1874, is a Map of New Brunswick, Nova Scotia, Newfoundland, and Prince Edward Island, coloured in a way to plainly exhibit these two portions. In all that portion marked (A) it was agreed that the inhabitants of the United States shall have for ever, in common with British subjects, the liberty to take fish of every kind; but as to the portion marked (B), the United States renounced for ever any liberty theretofore enjoyed or claimed to take, dry, or cure any fish. It was stipulated, nevertheless, that "the American fishermen shall be permitted to enter" the portion marked (B) for the purpose of shelter, repairing damages, purchasing wood, obtaining water, and "for no other purpose whatever."

The entire Article referred to inshore fishing. No right, and no liberty whatever, that might concern deep-sea fishermen, did the United States, by the Treaty of 1818, renounce.

This obvious intent and purpose of the Article is confirmed by the last words of the section, which declares: "But they" (the American fishermen) "shall be under such restrictions as may be necessary to prevent their taking, drying, or curing fish therein" (in portion B), "or in any other manner abusing the privileges hereby reserved to them." The "restrictions" to be imposed upon the American fishermen, while in portion (B), are expressly limited, not to such as concern navigation or revenue, but to such as were specifically renounced, namely, to such as "may be necessary to prevent their taking, drying, or curing fish therein, or in any other manner whatever abusing the privileges hereby reserved to them," in order to take, dry, or cure fish therein.

Was it not clearly the intention of the negotiators of this Treaty that the character of these restrictions should be agreed upon by the parties to the Treaty? Is it reasonable to assume that the American negotiators intended that the Canadian provinces, or even the British Government, should have the exclusive power to prescribe "restrictions" which might entirely destroy the value of any unrenounced right and liberty theretofore claimed and enjoyed, or of any conceded "privileges" thereby reserved to American fishermen in portion (B)?

These preliminary explanations will assist to measure the force and bearing upon American deep-sea fishermen of the interpretation put upon the Treaty by the Canadian Dominion during the last summer.

The following extracts are taken from the Message of the President to Congress of the 8th ultimo.

*What Canada has Said.*

On the 5th June, 1886, the Canadian Minister of Marine and Fisheries declared :—

"It appears the 'Jennie and Julia' is a vessel of about 14 tons register, that she was to all intents and purposes a fishing vessel, and, at the time of her entry into the port of Digby, had fishing gear and apparatus on board, and that the Collector fully satisfied himself of these facts. According to the master's declaration, she was there to purchase fresh herring only, and wished to get them direct from the weir fishermen. The Collector, upon his conviction that she was a fishing-vessel, and, as such, debarred by the Treaty of 1818 from entering Canadian ports for the purposes of trade, therefore, in the exercise of his plain duty, warned her off.

"The Treaty of 1818 is explicit in its terms, and by it United States' fishing-vessels are allowed to enter Canadian ports for shelter, repairs, wood and water, and 'for no other purpose whatever.'

"The Undersigned is of the opinion that it cannot be successfully contended that a *bonâ fide* fishing-vessel can, by simply declaring her intention of purchasing fresh fish for other than baiting purposes, evade the provisions of the Treaty of 1818, and obtain privileges not contemplated thereby. If that were admitted, the provision of the Treaty which excludes United States' fishing-vessels for all purposes, but the four above mentioned would be rendered null and void, and the whole United States' fishing fleet be at once lifted out of the category of fishing-vessels, and allowed the free use of Canadian ports for baiting, obtaining supplies, and transshipping cargoes.

"It appears to the Undersigned that the question as to whether a vessel is a fishing-vessel or a legitimate trader or merchant-vessel is one of fact, and to be decided by the

character of the vessel and the nature of her outfit, and that the class to which she belongs is not to be determined by the simple declaration of her master, that he is not at any given time acting in the character of a fisherman.

“At the same time, the Undersigned begs again to observe that Canada has no desire to interrupt the long-established and legitimate commercial intercourse with the United States, but rather to encourage and maintain it, and that Canadian ports are at present open to the whole merchant navy of the United States on the same liberal conditions as heretofore accorded.”

On the 7th June, 1886, the Canadian Governor-General advised the Minister of Foreign Affairs at London:—

“No attempt has been made, either by the authorities intrusted with the enforcement of the existing law or by the Parliament of the Dominion, to interfere with vessels engaged in *bond fide* commercial transactions upon the coast of the Dominion. The two vessels which have been seized are both of them beyond all question fishing-vessels, and not traders, and therefore liable, subject to the finding of the Courts, to any penalties imposed by law for the enforcement of the Convention of 1818 on parties violating the terms of that Convention.”

On the 14th June, 1886, a Committee of the Privy Council for Canada put forth the following opinions and conclusions, which were approved by the Governor-General:—

“It is not, however, the case that the Convention of 1818 affected only the inshore fisheries of the British provinces; it was framed with the object of affording a complete and exclusive definition of the rights and liberties which the fishermen of the United States were thenceforward to enjoy in following their vocation, so far as those rights could be affected by facilities for access to the shores or waters of the British provinces, or for intercourse with their people. It is therefore no undue expansion of the scope of that Convention to interpret strictly those of its provisions by which such access is denied, except to vessels requiring it for the purposes specifically described.

“Such an undue expansion would, upon the other hand, certainly take place if, under cover of its provisions or of any agreement relating to general commercial intercourse which may have since been made, permission were accorded to United States’ fishermen to resort habitually to the harbours of the Dominion, not for the sake of seeking safety for their vessels, or of avoiding risk to human life, but in order to use those harbours as a general base of operations from which to prosecute and organize with greater advantage to themselves the industry in which they are engaged.

“It was in order to guard against such an abuse of the provisions of the Treaty that amongst them was included the stipulation, that not only should the inshore fisheries be reserved to British fishermen, but that the United States should renounce the right of their fishermen to enter the bays or harbours, excepting for the four specified purposes, which do not include the purchase of bait or other appliances, whether intended for the deep-sea fisheries or not.

“The Undersigned, therefore, cannot concur in Mr. Bayard’s contention, that ‘to prevent the purchase of bait, or any other supply needed for deep-sea fishing, would be to expand the Convention to objects wholly beyond the purview, scope, and intent of the Treaty, and to give to it an effect never contemplated.’

“Mr. Bayard suggests that the possession by a fishing-vessel of a permit to ‘touch and trade’ should give to her a right to enter Canadian ports for other than the purposes named in the Treaty, or, in other words, should give her perfect immunity from its provisions. This would amount to a practical repeal of the Treaty, because it would enable a United States’ Collector of Customs, by issuing a licence originally only intended for purposes of domestic Customs regulation, to give exemption from the Treaty to every United States’ fishing-vessel. The observation that similar vessels under the British flag have the right to enter the ports of the United States for the purchase of supplies loses its force when it is remembered that the Convention of 1818 contained no restriction on British vessels and no renunciation of any privileges in regard to them.”

On the 14th August, 1886, the Minister of Marine and Fisheries said:—

“There seems no doubt, therefore, that the ‘Novelty’ was in character and in purpose a fishing-vessel, and as such comes under the provisions of the Treaty of 1818, which allows United States’ fishing-vessels to enter Canadian ports ‘for the purpose of shelter and repairing damages therein, and of purchasing wood and of obtaining water, and for no other purpose whatever.’

“The object of the captain was to obtain supplies for the prosecution of his fishing, and to tranship his cargoes of fish at a Canadian port, both of which are contrary to the letter and spirit of the Convention of 1818.”



On the 30th October, 1886, a Committee of the Canadian Privy Council contended, and the Administrator of the Government in Council upheld the contention—

“That the Convention of 1818, while it grants to United States’ fishermen the right of fishing in common with British subjects on the shores of the Magdalen Islands, does not confer upon them privileges of trading or of shipping men, and it was against possible acts of the latter kind, and not against fishing inshore, or seeking the rights of hospitality guaranteed under the Treaty, that Captain Vachem [McEachern] was warned by the Collector.”

On the 24th November, 1886, a Committee of the Canadian Privy Council declared, and the Governor-General approved the declaration—

“The Minister of Marine and Fisheries, to whom said despatch was referred for early report, states that any foreign vessel, ‘not manned nor equipped, nor in any way prepared for taking fish,’ has full liberty of commercial intercourse in Canadian ports upon the same conditions as are applicable to regularly registered foreign merchant-vessels; nor is any restriction imposed upon any foreign vessels dealing in fish of any kind different from those imposed upon foreign merchant-vessels dealing in other commercial commodities.

“That the Regulations under which foreign vessels may trade at Canadian ports are contained in the Customs Laws of Canada (a copy of which is herewith), and which render it necessary, among other things, that upon arrival at any Canadian port a vessel must at once enter inward at the custom-house, and, upon the completion of her loading, clear outwards for her port of destination.”

*American Fishermen are not Outcasts.*

The foregoing contention, set up not merely by the Canadian Privy Council, but by the Governor-General of the Dominion of Canada, sweeps into the meshes of Canadian legislation to enforce the 1st Article of the Treaty of 1818 every deep-sea fisherman, in his relation to Canadian ports, no matter on what sea or ocean, Atlantic or Pacific, he may have pursued, or may intend to pursue, his industry. That contention places all American deep-sea fishermen entitled to wear the flag of the Union at the masthead of their boats or vessels, be they little or big, under much the same ban in respect to the hospitality of Canadian ports as they would be if pirates, or slave-traders, or filibusters, or other enemies of the human race. “She was a fishing-vessel,” says, on the 5th June, 1886, the Canadian Minister of Marine and Fisheries, and therefore “debarred by the Treaty of 1818 from entering Canada for the purposes of trade.” “The two vessels which have been seized are, both of them, beyond all question fishing-vessels, and not traders,” says the Governor-General of the Dominion of Canada to Lord Granville on the 7th June, 1886, “and therefore liable, subject to the finding of the Courts, to any penalties imposed by law for the enforcement of the Convention of 1818.” “We cannot concur in Mr. Bayard’s contention,” said the Canadian Privy Council on the 14th June, 1886, that “to prevent the purchase of bait or any other supply needed for deep-sea fishing would be to expand the Convention to objects wholly beyond the purview, scope, and intent of the Treaty, and give to it an effect never contemplated.” “American deep-sea fishermen cannot,” said the Canadian Minister of Marine and Fisheries, on the 14th October, 1886, “obtain supplies for the prosecution of his fishing, and to tranship his cargoes of fish at a Canadian port,” because both “are contrary to the letter and spirit of the Convention of 1818.” “The Convention of 1818,” said a Committee of the Canadian Privy Council, on the 30th October, 1886, “does not confer upon United States’ fishermen ‘privileges of trading or of shipping men’ in Canadian ports.” And, finally, a Committee of the Canadian Privy Council declared, in effect, on the 24th November, 1886, that an American vessel manned, equipped, and prepared for taking fish has not the liberty of commercial intercourse in Canadian ports, such as are applicable to other regularly registered foreign merchant-vessels.

Such an interpretation of the present legal effect of the 1st Article of the Treaty of 1818 is, in the opinion of your Committee, so preposterous, in view of concerted laws of comity and good neighbourhood enacted by the two countries, that, had it not been formally put forward by the Dominion of Canada, would not deserve serious consideration by intelligent persons. If all the stipulations of 1818 restraining American fishermen are now in full force (which may well be doubted), your Committee concedes that American fishermen have no more liberty to take fish, or to dry, or cure fish in what has been described as portion (B), than a British fisherman has to take fish in the inner harbour of New York, and to dry or cure fish in the City Hall Park of that city. But the liberty of an American fisherman to take, dry, and cure fish in portion (A), in common with

British subjects, is as complete and absolute as is the right of citizens of New York to fish in the waters of the Hudson River. The Treaty of 1818 furnishes no more excuse for the exclusion of a deep-sea fisherman from the port of Halifax, or any other open port of the Dominion of Canada, than for the exclusion by the Secretary of the Treasury of a deep-sea fisherman from entering the port of New York according to the forms of law, and for the ordinary purposes of trade and commerce. The exclusion, if made, must be justified, if at all, for other reasons than any yet given by Canada.

Keeping in mind the words of the IIIrd Article of the Treaty of Peace in 1783, which not only acknowledged the right of the united American Colonies to fish in the open sea as freely as to navigate the open sea, but also acknowledged and stipulated for the liberty to "take fish of every kind" on coasts, bays, and creeks of all of His Britannic Majesty's dominions in America, it will be discerned that this contention of the Privy Council of Canada makes of the renunciation by the United States in 1818 of the liberty theretofore enjoyed or claimed by American fishermen within 3 miles of certain carefully defined coasts, bays, creeks, or harbours, not merely a renunciation of specific local liberty, but a forsaking, a relinquishment, a surrender, an abandonment by the United States of other rights held up to 1818.

*Certain Canadian Coasts are subservient to American Fishermen.*

The Treaty of 1783 diminished and impaired, and was intended to diminish and impair, British sovereignty over the remaining British Colonies of North America. The United States had conquered full and complete dominion over the right of fishing in the jurisdictional waters of each of the thirteen United States, but the British Colonies did not emerge from the negotiations of the Treaty of Peace with similar dominion over the fisheries on the shores and coasts of the thirteen recognized States. British fishermen cannot fish on the coasts of Massachusetts, but American fishermen can fish on certain shores and coasts of the Dominion of Canada and of Newfoundland. Apart from fishing and the incidents of fishing, it is conceded that the British Government has exclusive control, as against the United States, of the customary and usual rights of navigation in the jurisdictional waters of the British Colonies. What we claim for ourselves, under the rules of public law, and apart from Treaties, we concede to others. Rights of navigation are ordinarily separate from rights of fishing. The Commonwealth of Massachusetts may control the right and liberty of fishing on her coast, as against any Power other than the Government of Washington, but the right of navigation of the jurisdictional waters of Massachusetts is always subject to the control of the United States. The use of waters in respect of navigation is easily distinguishable from the fruit of waters in respect to fishing or fish. The United States have, so far as the British North American Colonies and all the world are concerned, the right of navigating and fishing on the high seas, and in addition the right of fishing in certain British territorial and jurisdictional waters. That right of fishing, either inshore or offshore, should carry with it the natural and necessary navigating incidents of the right.

It may be conceded that, apart from the right of American fishermen to take fish of all kinds within certain clearly defined British waters, American deep-sea fishermen have no greater rights, by Treaty or public law, in British ports, than British fishermen have in American ports, so far as concerns revenue police, maritime tolls or taxes, pilotage, light-houses, quarantine, and all matters of ceremonial. But the contention of the Privy Council of Canada is, that if a vessel bearing the registry, or enrolment, or licence of the Treasury Department (which alone makes her an American vessel) be licensed, equipped, and under contract with her seamen as an American fisherman on the open sea, she thereby comes under the ban of the Treaty of 1818, and is thereby abandoned by the nation whose flag is at her mast-head, and is by the Treaty excluded from an entrance into a Canadian or Newfoundland port, excepting for one of the objects enumerated in that Treaty. Canadian ports are closed to her as to an outcast. An American or a Canadian fishing-vessel on the high seas, and lawfully wearing the flag of its country, should be, if permitted by its own Government to touch and trade, entitled to the same rights of navigation and the same treatment in a foreign port as any trading vessel.

*Canadian Inhumanity.*

If the Privy Council and the Governor-General of the Canadian Dominion excluded all American vessels from all rights of touching or trading in Canadian ports excepting to obtain shelter, repairs, wood, or water, the contention would be logical and more tolerable; but to every American vessel other than a fishing-vessel, be the fisherman big

or little—a schooner, a sloop, a ship, or a steamer of large tonnage—Canadian ports seem to be wide open. If, however, she be an American fishing-vessel on the high seas, she cannot go into a Canadian bay even to bury those of her dead who in life may have been British subjects with a domicile in Canada and a residence on the land near the bay, and may have expressed a wish not to be committed to the sea, but to be lain at rest by their kindred on the spot which gave them birth.

The Treaty of 1818 gave rights of fishing independent of general commercial rights, although it may be said that, as to shelter, repairs, wood, and water, the Treaty did give to fishermen certain commercial rights, or rather a few rights of humanity. The Treaty did not restrain the granting or the exercising of commercial rights. The right, if it be a right, of an American to buy anything in Canada, does not come of the inshore fishing Treaty of 1818. Your Committee are not aware of any Canadian or Newfoundland law which, having been approved by the British Crown, forbids a British subject to there sell ice, or bait, or anything else, to an American, or to trade with him. If there be such a law, then non-intercourse has to that extent been proclaimed against our countrymen.

#### *Canadian Violations of Treaties.*

The contention of your Committee is that the Treaty of 1818 covers differences and disputes about the liberty of American fishermen to take, dry, and cure fish on certain British North American coasts, bays, harbours, and creeks. The Privy Council of Canada, at the bottom of page 32 (Ex. Doc. No. 19, Forty-ninth Congress, second Session), concedes the correctness of this contention. They say:

“The sole purpose of the contention of 1818 was to establish and define the rights of citizens of the two countries in relation to the fisheries on the British North American coast.”

The Treaty is limited to coast fishing, drying, or curing. On certain defined portions of the coast “American fishermen” may fish, but elsewhere on the coast they may not fish, and yet those coast “American fishermen” may, nevertheless, and for certain purposes, enter the bays and harbours in which they cannot fish, under restrictions—to prevent them from doing what? “Taking, drying, or curing fish therein?”

Your Committee contend that the term “American fishermen,” as used in the Treaty of 1818, means the “American fishermen” of and under that Treaty. The rule *noscitur a sociis*, as understood and applied by Judges and lawyers in England and America, limits and defines the term. They have a Treaty right to enter “such bays and harbours” and to remain there, subject, and subject only, to such restrictions “as may be necessary to prevent their taking, drying, or curing fish therein.” The restrictions can only apply to the prevention of such fishing in those bays or harbours. Whatever concerns or is preparation for fishing elsewhere is not thereby to be prevented. It is true that, by the Treaty of 1818, we have stipulated that our fishermen “shall be under such restrictions as may be necessary to prevent their taking, drying, or curing fish therein,” but the Treaty says nothing of “preparing to fish” somewhere else. A fair presentation of the opinions of the Vice-Admiralty Court of Canada, in regard to the meaning of the Canadian phrase “preparing to fish”—which is a stranger to the Treaty of 1818—can be seen in Dr. Wharton’s “International Law Digest,” vol. iii, section 304.

If it be said that our view of the Treaty is strict, severe, and rigid as against Canadian Statutes and officials, your Committee answer that when Canada proposes and endeavours to use a Treaty to arrest and fine American fishermen, seize and confiscate American vessels for the benefit of Canadian seizers, the Government of the United States is entitled to stand on such an interpretation. But even if the Treaty of 1818 covers (which it does not) every American fisherman entering a Canadian harbour, on whatever sea or ocean he may cast a line or draw a seine, the Canadian Statutes do not preserve and enforce the Treaty. They destroy it, so far as the privileges are concerned that are given to American fishermen by the Treaty.

First of all, in order of time and authority, is the Imperial legislation at London in 1819 to enforce the Treaty of the previous year. After forbidding every one, excepting British subjects and American citizens (who could do so within defined limits), to fish, dry, or cure fish anywhere within 3 miles of British coasts in America, that Law of 1819 punishes by forfeiture any offending vessel, and all the articles on board.

Then comes this:—

“That if any person or persons, upon requisition made by the Governor of Newfoundland, or the person exercising the office of Governor, or by any Governor or person exercising the office of Governor, in any other parts of His Majesty’s dominions in

America, as aforesaid, or by any officer or officers acting under such Governor or person exercising the office of Governor, in the execution of any orders or instructions from His Majesty in Council, shall refuse to depart from such bays or harbours; or if any person or persons shall refuse or neglect to conform to any regulations or directions which shall be made or given for the execution of any of the purposes of this Act, every such person so refusing or otherwise offending against this Act shall forfeit the sum of 200*l.*, to be recovered, &c."

It will be seen that not forfeiture, but a fine to be recovered by a suit, is inflicted for refusing or neglecting to depart on notice. The Statutes of Canada are not, as the Canadian Privy Council asserted (p. 32), "expressed in almost the same language" as the foregoing Imperial Statute.

The Prince Edwards' enactment of 1844 gives the key-note of Canadian enactments. It declares:—

"Whereas by the Convention (made between His late Majesty King George III and the United States of America, signed at London, on the 20th day of October, in the year of our Lord 1818), and the Statute (made and passed in the Parliament of Great Britain in the 59th year of the reign of His late Majesty King George III), all foreign ships, vessels, or boats, or any ship, vessel, or boat other than such as shall be navigated according to the laws of the United Kingdom of Great Britain and Ireland, found fishing, or to have been fishing, or preparing to fish, within certain distances of any coast, bays, creeks, or harbours whatever, in any part of His Majesty's dominions in America not included within the limits specified in the 1st Article of the said Convention, are liable to seizure; and whereas the United States did by the said Convention renounce for ever any liberty enjoyed or claimed by the inhabitants thereof to take, dry, or cure fish on or within the above-mentioned limits: provided, however, that the American fishermen be admitted to enter such bays or harbours for the purpose of shelter and of repairing damages therein, of purchasing wood, and of obtaining water, and for no other purposes whatever, but under such restrictions as might be necessary to prevent their taking, drying, or curing fish therein, or in any other manner whatever abusing the privileges thereby reserved to them; and whereas no Rules or Regulations have been made for such purpose, and the interests of the inhabitants of this island are materially impaired; and whereas the said Act does not designate the persons who are to make such seizure as aforesaid, and it frequently happens that persons found within the distances of the coasts aforesaid, infringing the Articles of the Convention aforesaid, and the enactments of the Statute aforesaid, on being taken possession of, profess to have come within said limits for the purpose of shelter and repairing damages therein, or to purchase wood and obtain water, by which the law is evaded, and the vessels and cargoes escape confiscation, although the cargoes may be evidently intended to be smuggled into this island, and the fishery carried on contrary to the said Convention and Statute."

The Canadian enactment of 1868 came next, the second and third sections of which say:—

2. Any commissioned officer of Her Majesty's navy serving on board of any vessel of Her Majesty's navy cruising and being in the waters of Canada for purpose of affording protection to Her Majesty's subjects engaged in the fisheries, or any commissioned officer of Her Majesty's navy, fishery officer, or stipendiary magistrate on board of any vessel belonging to or in the service of the Government of Canada and employed in the service of protecting the fisheries, or any officer of the Customs of Canada, sheriff, magistrate, or other person duly commissioned for that purpose, may go on board of any ship, vessel, or boat within any harbour in Canada, or hovering (in British waters) within 3 marine miles of any of the coasts, bays, creeks, or harbours in Canada, and stay on board so long as she may remain within such place or distance.

3. If such ship, vessel, or boat be bound elsewhere, and shall continue within such harbour or so hovering for twenty-four hours after the master shall have been required to depart, any one of such officers or persons as are above mentioned may bring such ship, vessel, or boat into port and search her cargo, and may also examine the master upon oath touching the cargo and voyage; and if the master or person in command shall not truly answer the questions put to him in such examination, he shall forfeit 400 dollars; and if such ship, vessel, or boat be foreign, or not navigated according to the laws of the United Kingdom or of Canada, and have been found fishing, or preparing to fish, or to have been fishing (in British waters) within 3 marine miles of any of the coasts, bays, creeks, or harbours of Canada, not included within the above-mentioned limits, without a licence, or after the expiration of the period named in the last licence granted to such ship, vessel, or boat under the 1st section of this Act, such ship, vessel, or boat, and the tackle, rigging, apparel, furniture, stores, and cargo thereof shall be forfeited.

The Treaty stipulates that the fishermen shall be under "necessary restrictions" to prevent the doing of the things forbidden by the Treaty, but what may be "necessary" to prevent the prohibited fishing is a political and diplomatic question for the two Signatory Governments to decide. The Treaty permits American fishermen to enter and remain for—

1. "Shelter," which includes a refuge from fogs, winds, storms, and whatever may imperil fishing.
2. "Repairing damages," which includes every damage to fishing-boat or fishing-gear.
3. "Purchasing wood."
4. "Obtaining water."

Conceding that Canada can place an officer on every arriving fisherman as soon as found, the Treaty does not even then authorize a twenty-four hour limit with the result of forfeiture. Nor does the Treaty authorize forfeiture for "preparing to fish."

The Customs Circular issued at Ottawa on the 7th May, 1886, and called a "Warning," recited the 1st Article of the Treaty of 1818, together with the two sections of the Law of 1868 just quoted, and adds:—

"Having reference to the above, you are requested to furnish any foreign vessels, boats, or fishermen found within 3 marine miles of the shore, within your district, with a printed copy of the Warning inclosed herewith.

"If any fishing-vessel or boat of the United States is found fishing, or to have been fishing, or preparing to fish, or hovering within the 3-mile limit, does not depart within twenty-four hours after receiving such Warning, you will please place an officer on board of such vessel, and at once telegraph the facts to the Fisheries Department at Ottawa, and await instructions.

(Signed)

" J. JOHNSON, *Commissioner of Customs.*

"To the Collector of Customs at

Thus, twenty-four hours after finding the American fisherman is made the limit.

Not satisfied with the severity of this legislation of 1868, the Canadian Dominion, in 1870, and while preliminary negotiations for the Joint High Commission and the Treaty of Washington were in progress, amended it so as to enable seizures of our vessels to be made on sight, and without any warning or any notice to depart. The following is a text of the enactment of 1870:—

(33 Victoria, chap. 15.)

*"An Act to amend the Act respecting Fishing by Foreign Vessels. Assented to May 12, 1870.*

"Whereas it is expedient, for the more effectual protection of the inshore fisheries of Canada against intrusion by foreigners, to amend the Act entitled 'An Act respecting fishing by foreign vessels,' passed in the thirty-first year of Her Majesty's reign: Therefore, Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

"1. The third section of the above-cited Act shall be, and is hereby, repealed, and the following section is enacted in its stead:

"3. Any one of such officers or persons as are above-mentioned may bring any ship, vessel, or boat being within any harbour in Canada, or hovering (in British waters) within 3 marine miles of any of the coasts, bays, creeks, or harbours in Canada, into port and search her cargo, and may also examine the master upon oath touching the cargo and voyage; and if the master or person in command shall not truly answer the questions put to him in such examination he shall forfeit 400 dollars; and if such ship, vessel, or boat be foreign or not navigated according to the laws of the United Kingdom or of Canada, and have been found fishing or preparing to fish, or to have been fishing (in British waters) within 3 marine miles of any of the coasts, bays, creeks, or harbours of Canada, not included within the above-mentioned limits, without a licence or after the expiration of the period named in the last licence granted to such ship, vessel, or boat, under the 1st section of this Act, such ship, vessel, or boat, and the tackle, rigging, apparel, furniture, stores, and cargo thereof shall be forfeited."

"2. This Act shall not be construed as one with the said Act 'respecting fishing by foreign vessels.'"

But this is not all. Canadian officials endeavoured, during the last summer, in the fury of their malevolence, to forfeit American vessels for acts which, if committed, their

own laws had not inflicted punishment. In the libel of information against the "Ella M. Doughty" is this article, among other allegations of fishing, preparing to fish, being found having fished, and fishing, drying, and curing in the bay and harbour of St. Anne's:

"Between the 10th and 17th days of May, 1886, the said Warren A. Doughty, the master of the said ship or vessel 'Ella M. Doughty,' and the officers and crew of the said ship or vessel 'Ella M. Doughty,' did, in and with the said ship or vessel 'Ella M. Doughty,' enter into the bay and harbour of St. Anne's aforesaid within 3 marine miles of the shore of said bay and harbour of St. Anne's, and within 3 miles of the coasts, bays, creeks, and harbours of those portions of the dominions in America of His said late Majesty King George III, being now the dominions in America of Her Majesty Queen Victoria, not included in the limits specified and defined in the said 1st Article of the said Convention, and set out and recited in the first paragraph hereof, for the purpose of procuring bait, that is to say, herrings, wherewith to fish, and ice for the preservation on board said vessel of bait to be used in fishing, and of fresh fish to be fished for, taken, and caught by and upon the said vessel and by the master, officers, and crew thereof, and did procure such bait wherewith to fish, and such ice for the purposes aforesaid, and did so enter for other purposes than for the purpose of shelter or repairing damages, or of purchasing wood, or of obtaining water, contrary to the provisions of the said Convention and of the said several Acts, and the said vessel 'Ella M. Doughty' and her cargo were thereupon seized within 3 marine miles of the coast or shores of the said bay and harbour of St. Anne's by Donald McAuley and Lauchlin G. Campbell, officers of the Customs of Canada, as being liable to forfeiture for the breach or violation of the said Convention and of the said several Acts."

Your Committee has been unable to find a Canadian Statute which, at the date of the alleged offence, punished those acts by forfeiture of the offending vessel. None is averred. The article quoted from the "Ella M. Doughty" libel does not set forth where the fishing was to be done for which bait and ice were bought, whether on the ocean or elsewhere, outside of Canadian jurisdiction. The laws of 1868 and 1870 denounce only fishing or preparing to fish "in British waters," which must be, of course, under the Treaty, the prohibited and not permitted British waters.

Thus stood Canadian legislation at the beginning of the summer fishing season which has recently come to an end. There was no Canadian or other law, at the end of forty-eight years from the date of the Treaty, inflicting forfeiture of the vessel and the cargo on board excepting on proof of the offence of fishing, or having been found to have fished, or preparing to fish, on the prohibited coasts. But Canadian officials wished to forfeit the vessels and cargoes of American deep-sea fishermen exercising the liberty "to touch and trade," and send fish by railway, or vessel, to our own markets. What could be done? Nothing less than a new law could avail them, and it was enacted in these words:

(49 Victoria, chap. 114.)

*"An Act further to amend the Act respecting Fishing by Foreign Vessels.*

(Reserved by the Governor-General on Wednesday, the 2nd June, 1886, for the signification of the Queen's pleasure thereon. Royal assent given by Her Majesty in Council, on the 26th day of November, 1886. Proclamation thereof made on the 24th day of December, 1886.)

"Whereas it is expedient for the more effectual protection of the inshore fisheries of Canada against intrusion by foreigners to further amend the Act, intituled 'An Act respecting fishing by foreign vessels,' passed in the thirty-first year of Her Majesty's reign, and chaptered 61:

"Therefore Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

"1. The section substituted by the 1st section of the Act 33 Victoria, chapter 151, intituled 'An Act to amend the Act respecting fishing by foreign vessels,' for the 3rd section of the hereinbefore recited Act, is hereby repealed, and the following section substituted in lieu thereof:

"3. Any one of the officers or persons hereinbefore mentioned may bring any ship, vessel, or boat, being within any harbour of Canada, or hovering in British waters within 3 marine miles of any of the coasts, bays, creeks, or harbours in Canada, into port and

search her cargo, and may also examine the master upon oath touching the cargo and voyage; and if the master or person in command does not truly answer the questions put to him in such examination, he shall incur a penalty of 400 dollars; and if such ship, vessel, or boat is foreign, or not navigated according to the laws of the United Kingdom or of Canada. and (a) has been found fishing, or preparing to fish, or to have been fishing in British waters within 3 marine miles of any of the coasts, bays, creeks, or harbours of Canada, not included within the above-mentioned limits, without a licence, or after the expiration of the term named in the last licence granted to such ship, vessel, or boat under the 1st section of this Act, or (b) has entered such waters for any purpose not permitted by Treaty or Convention, or by any law of the United Kingdom or of Canada for the time being in force, such ship, vessel, or boat, and the tackle, rigging, apparel, furniture, stores, and cargo thereof shall be forfeited.'

"2. The Acts mentioned in the Schedule hereto are hereby repealed.

"3. This Act shall be construed as one with the said 'Act respecting fishing by foreign vessels,' and the amendments thereto."

SCHEDULE.

*Acts of the Legislature of the Province of Nova Scotia.*

Year, Reign, and Chapter.	Title of Act.	Extent of Repeal.
Revised Statutes, third series, c. 94 ..	Of the Coast and Deep Sea Fisheries .. ..	The whole.
29 Vict. (1866), c. 35 .. ..	An Act to amend chapter 94 of the Revised Statutes, "Of the Coast and Deep Sea Fisheries" ..	The whole.
<i>Act of the Legislature of the Province of New Brunswick.</i>		
16 Vict. (1853), c. 69 .. ..	An Act relating to the Coast Fisheries and for the prevention of Illicit Trade .. ..	The whole.

By comparing the foregoing with the Law of 1870 the object will, in the italicised portion of the former, be clearly discovered, which is to deter deep-sea American fishermen from entering Canadian ports, which are as open to all trading-vessels as American ports are to Canadian vessels of every sort.

Forfeiture is to be inflicted for an entry for any purpose, excepting shelter, repairs, wood, or water. Even to get coal for a fishing-vessel propelled by steam is condemned. What the purpose may be for which seizure is to be made may or may not be disclosed by the seizer. The Statute does not require it. The libel, or complaint, filed in Court may not disclose it. The averment may be merely a general one that the vessel entered for a purpose forbidden by Treaty or Statute. The owner must file a claim and answer, or his property will be condemned by default. He must, among strangers, give security for costs, or his claim will be dismissed. Worse than that, the Statute of 1868 declares that, if the owner questions the legality of the seizure, the burden of proof shall be on him. How can he meet a general averment and prove a negative of what is not definitely averred, and of every conceivable purpose of entry? None but the captain may be able to testify to the motive, and what will happen if he, after the seizure, shall die or be absent! The owner will be helpless to contend with the greed of informers or seizers, for the Law of 1871 distributes the possible plunder thus:—

"6. All goods, vessels, and boats, and the tackle, rigging, apparel, furniture, stores, and cargo condemned as forfeited under this Act, shall be sold by public auction, by direction of the officer having the custody thereof, under the provisions of the next preceding section of this Act, and under Regulations to be from time to time made by the Governor in Council; and the proceeds of every such sale shall be subject to the control of the Minister of Marine and Fisheries, who shall first pay therefrom all necessary costs and expenses of custody and sale, and the Governor in Council may from time to time apportion three-fourths or less of the net remainder among the officers and crew of any Queen's ship or Canadian Government vessel from on board of which the seizure was made, as he may think right, reserving for the Government, and paying over to the Receiver-General, at least one-fourth of such net remainder, to form part of the consolidated revenue of Canada."

*Conclusions.*

The Treaties of 1783 and 1818 were made with the British Crown. With that Crown alone can restrictions, Regulations, penalties, and measures be concerted by the United States to enforce and guard their stipulations. With the Dominion of Canada the Government at Washington is not called, or required, or to be expected, either to deliberate or debate, any more than is the British Crown, with a separate member of our Union. It is not to be supposed that a local Colonial Court will, on the trial of a suit for forfeiture, begun under an Imperial or a Colonial Statute, hear or decide an issue with the Treaty of 1818, or rules of international law, or those Statutes. Nor will those Courts award damages for seizures in violation of the Treaty, if made on "probable cause" by the seizers to believe that the Statutes had been violated. Nor can the United States appeal to Colonial Courts for redress against the possible conduct of those Courts under influences of local passion or prejudice.

It plainly appears to your Committee, from the foregoing considerations, that, by the Treaty of Peace in 1783, American citizens became partners with British subjects in all the coast fisheries in North America remaining to Great Britain; that the Treaty of Ghent, which closed the war of 1812, not having referred to the stipulations of the Treaty of Peace in any way affecting the fisheries, Great Britain thereupon urged and obtained in 1818 a diminution of American liberty to take fish on certain well-defined portions of the British coast in North America; that in 1819 there was enacted by Parliament, sitting in London, a law in execution of that Treaty, which punished by forfeiture of vessel and cargo a preparation to fish, and only by a fine a refusal or neglect to depart on a warning or notice so to do; that in 1844 the Island of Prince Edward enacted a law in punishment of what it assumed to be a violation of the Treaty of 1818, which went far beyond the Imperial Statute of 1819; that in 1868 the Canadian Senate and House of Commons prescribed additional proceedings and penalties not warranted by the Treaty, which were in 1870 made more severe and unwarranted, and that in 1886, nearly half-a-century after signing the Treaty, an offence, entirely new in legislation, was denounced in most general terms and punished by confiscation of everything seized.

*The British Crown proclaims Non-Intercourse.*

A very serious feature of this last-named legislation is that it has been approved by the British Crown, and it proclaims non-intercourse in Canada with American fishing-vessels for general purposes of trade. To that alarming feature your Committee has given careful consideration, and is unanimously of opinion that if, and so long as, non-intercourse with American fishing-vessels shall be thus maintained in the ports or bays of the Dominion of Canada or Newfoundland, a non-intercourse should be immediately begun and maintained in our own ports against Canadian vessels. Those vessels, whether trading or fishing, have, within the meaning of the seventeenth section of the Law of Congress of the 19th June, 1886, "been placed on the same footing" in our ports as our own vessels clearing or entering "foreign." Canadian vessels are British vessels. The British Crown has denied to American fishing-vessels commercial privileges accorded to other national vessels in Canadian ports. The motive and purpose of such denial have been openly and plainly avowed by Canada to be, first, the punishment of such vessels because the United States levies a duty on Canadian fish not "fresh for immediate consumption," such as the Government levies on all such fish not the product of American fisheries and imported from any foreign place whatever; and, secondly, to coerce the United States to exempt such Canadian fish from all customs duties, and to enter into other new reciprocal customs relations with the Canadian Dominion and Newfoundland. It is a policy of threat and coercion, which, in the opinion of your Committee, should be instantly and summarily dealt with. The circumstances will warrant and require, in the opinion of your Committee, not only non-intercourse with Canadian vessels bringing Canadian or Newfoundland fish to our ports, but an exclusion of such fish from entry at our ports, whether brought by railway cars or by any other vehicle or means. It is difficult to believe that Canada, having within the last twenty years so severely burdened herself with taxation by the construction of railways and bridges to bring about easy communication with Detroit, Chicago, St. Paul, and the whole West of our country, as well as with New York and Boston, will now deliberately and offensively enter upon and pursue a policy toward our fishermen which, if persisted in, can but end either in a suspension of commercial intercourse, by land and sea, between her and ourselves, or in consequences even more grave.



*A Law to make a Perpetual Record of the Facts.*

And, furthermore, in regard to seizures of American vessels made during the summer, which has just passed, inasmuch as a true record of the facts under which the seizures were made may be lost, by death of the victims, or by wanderings of a class so migratory as seamen, or by other casualties, and inasmuch as Congress may see fit to compensate American fishermen for the injuries wantonly inflicted on them by the rude hand of tyrannical Canadian officials, there having been no adequate American force at hand for their protection, your Committee advise the enactment of the following:—

*Bill for the Appointment of a Commission to Investigate concerning Losses and Injuries inflicted since December 31, 1885, on United States' Citizens engaged in the North American Fisheries.*

“Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that the President be, and is hereby, authorized to appoint a Commissioner to proceed to such places in the United States or elsewhere as may be designated by the Secretary of State, to take testimony, under oath or affirmation, in relation to the losses and injuries inflicted since the 31st December, 1885, by British authorities, Imperial or Colonial, upon citizens of the United States engaged in the fisheries on the north-east coasts of British North America. Said Commissioner shall everywhere have, in respect to the administration of oaths or affirmations and the taking of testimony, the same powers as a Commissioner of a Circuit Court, and shall be paid the same fees as are prescribed for similar services of a Commissioner of a Circuit Court, together with travelling expenses.”

No. 43.

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

(Extract.)

*Washington, January 25, 1887.*

I HAVE the honour to inform your Lordship that the Senate has passed the Bill copies of which were inclosed in my despatch of the 19th instant, by a vote of 46 to 1, after a debate the official Report of which is herewith inclosed, together with a précis by Mr. Spring Rice.

Inclosure in No. 43.

*Debate in the Senate on the Bill introduced by Mr. Edmunds to authorize the President to protect and defend the Rights of American fishing-vessels in certain cases.—January 24, 1887.*

MR. FRYE suggested that the words, “also if he thinks proper,” should be omitted from the Bill, on the ground that the retaliatory measures would be the first and not the last resort of the President in the existing circumstances.

Mr. Edmunds consented to the omission.

Mr. Ingalls thought it important that the Committee on Foreign Relations should inform the Senate whether this measure was an invitation to negotiate or practically a declaration of war. A simple measure of retaliation was not, in his opinion, sufficient. He suggested that the President should be empowered to appoint a Commission, in order to reach some basis of understanding between Great Britain, Canada, and the United States in regard to the fisheries.

Mr. Frye said that this would be playing into the hands of Canada, whose only object was to secure a Treaty which, as before, would turn out only to her advantage. If the President took advantage of this Bill, Canada would stop her outrages. The British Government had approved the Canadian Statute for enforcing further measures of hostility against American fishermen. The only way of putting a stop to these outrages

was to enforce rigorous measures of retaliation, a policy in which, as there was every reason to believe, the Administration sympathized.

Mr. Ingalls said he understood from Mr. Frye's speech that the Committee on Foreign Relations intended by this Bill not to remit the subject to the domain of diplomacy, but to warn Great Britain that its course, if pursued, would result in war.

Mr. Edmunds took exception to this expression. He said that a breach of a Treaty might be the reason for reciprocal retaliatory measures, intended to bring the offending party to a sense of the inconvenience of such conduct, but it did not necessarily follow that every breach of a Treaty should be followed by actual hostilities.

Mr. Ingalls rejoined that if the purpose of the Bill was to apply the *lex talionis* it did not mean anything. The question must be decided by Treaty or by war.

Mr. Edmunds denied the truth of such an alternative. The Canadians had infringed the Treaty. The United States had recourse to retaliatory measures. The question was, Who could stand it best? He thought the United States could stand it best, and that Canada would be brought to reason.

Mr. Ingalls said that England had always been a ruffian, a coward, and a bully, that she had no purpose to secure a peaceful solution, but only to embitter the relations of the United States and Canada. He rejoiced in the interpretation of the Bill that it was a declaration to Great Britain that she would persist further at her peril.

Mr. Hoar dwelt on the absence of any explanation or apology for the various acts of violence committed by Great Britain. The Bill meant this, that so far from leading to a diminution of customs duties, such proceedings would entail the exclusion of Canadian fish from the United States' market.

Mr. Morgan said that, so far from this being a warlike measure, it was a measure to prevent war. If the troubles were allowed to go on, there would be war in them. Both countries should arm themselves with all powers of law to prevent a conflict.

Mr. Evarts said that the Bill would remove the question from "the threat of collision" by "taking the subject away from local disturbance, irritation, and resentment," and placing it "under the control of both Governments in a deliberate consideration of what should be done in order to have stability of intercourse between the two great nations."

Mr. Hale strongly supported the Bill as leading to a condition where, if further negotiations were desirable or practicable, the way would be cleared. Until the American Congress should send this note—not of menace, but of warning—to their Canadian neighbours these things would continue.

Mr. Vest pointed out that war would be the greatest calamity that could befall the two great English-speaking nations of the world. This commercial embargo was half-sister of war. In a maritime war who could answer for the result? It was an aspect of the question better suited to a Secret Session of the Senate. It should be remembered what was the result of the embargo on which Mr. Jefferson relied to prevent war with Great Britain. Still, he would vote for the Bill, as giving the President a discretionary power.

Mr. Gorman objected to the Bill as failing to strike at the only point in which Canada was vulnerable, that was the exclusion of its cars and engines by which its trade passed through United States' territory.

Mr. Riddleberger opposed the Bill because it was "in the nature of a Treaty with Great Britain. He wanted no Treaty."

Mr. Vest's amendment for the appointment of a Commissioner to take testimony in regard to losses and injuries inflicted on American fishermen was lost. Yeas, 17; Nay, 27.

The Bill was then passed.

Yeas, 46; Nay, 1 (Riddleberger).

No. 44.

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

My Lord,

*Washington, January 26, 1887.*

WITH reference to my despatch of the 19th instant, I have the honour to transmit to you herewith copies of the Report of the Committee of the Senate on Foreign Relations

relative to the rights and interests of American fisheries and fishermen in British North America, as submitted by Mr. Edmunds on the 24th instant.

I have, &c.

(Signed) L. S. SACKVILLE WEST.

Inclosure in No. 44.

49th Congress, 2nd Session.—Report No. 1683.

IN THE SENATE OF THE UNITED STATES.

January 19, 1887.—Ordered to be printed.

MR. EDMUNDS, from the Committee on Foreign Relations, submitted the following:—

*Report.*

[To accompany Bill S. 3173.]

The Committee on Foreign Relations was at the last Session of the Senate instructed to make inquiry into the matter of the rights and interests of the American fisheries and fishermen by Resolution in the following words:—

“*Resolved*,—That the Committee on Foreign Relations be, and it hereby is, instructed to inquire into the rights of American fishing-vessels and merchant-vessels within the North American possessions of the Queen of Great Britain, and whether any rights of such vessels have been violated, and if so, to what extent; that said Committee report upon the subject, and report whether any and what steps are necessary to be taken by Congress to insure the protection and vindication of the rights of citizens of the United States in the premises; that said Committee have power to send for persons and papers, to employ a stenographer, and to sit during the recess of the Senate, either as a full Committee or by any Sub-Committee thereof, and that any such Sub-Committee shall for the purposes of such investigation be a Committee of the Senate to all intents and purposes.

“*Resolved*,—That the necessary expenses of said Committee in said investigation be paid out of the appropriation for the miscellaneous items of the contingent fund of the Senate, upon vouchers to be approved by the Chairman thereof.”

Pursuant to this authority the Committee has proceeded to make the inquiries directed by the Senate, so far as it was practicable to do during the vacation, and has taken a considerable amount of testimony which the Committee believes to be of much value and importance to a proper understanding of the difficulties that have arisen between citizens of the United States and the authority of Her Majesty's dominions in North America, and which also, as the Committee thinks, bears upon other questions of public policy that can be readily understood by those reading this testimony.

The questions touching the right of our citizens engaged either in the operations of fishing or commerce in the North American waters contiguous to Her Majesty's dominions depend, of course, not only upon public law, but upon the Conventional arrangements that have hitherto been entered into between the United States and Her Britannic Majesty's Government.

Without going into a general review of the discussions that have in former years taken place concerning these matters, it is, as the Committee thinks, sufficient to now treat these questions as they are affected by the principles of public law, and by the presently existing Treaty between the United States and Great Britain bearing upon the subject.

This Treaty was concluded in the year 1818. To understand its just and true application it is perhaps proper to refer, by way of inducement, to the state of things theretofore existing.

The Treaty of Peace concluded at the end of the Revolutionary war, which acknowledged the independence of the United States, provided in its IIIrd Article that the people of the United States “shall continue to enjoy unmolested the right to take fish

of every kind on the Grand Bank, and on all the other Banks of Newfoundland ; also in the Gulf of Saint Lawrence, and at all other places in the sea where the inhabitants of both countries used at any time heretofore to fish. And also that the inhabitants of the United States shall have liberty to take fish of every kind on such part of the coast of Newfoundland as British fishermen shall use, but not to dry or cure the same on that island, and also on the coasts, bays, and creeks of all other of His Britannic Majesty's dominions in America ; and that the American fishermen shall have liberty to dry and cure fish in any of the unsettled bays, harbours, and creeks of Nova Scotia, Magdalen Islands, and Labrador, so long as the same shall remain unsettled ; but so soon as the same, or either of them, shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such settlement, without a previous agreement for that purpose with the inhabitants, proprietors, or possessors of the ground."

This Article, it will be observed, recognized an existing right and practice in respect of American fishermen exercising their calling not only at sea on the Banks of Newfoundland, but in all places in the sea, within what would be strictly British waters. And it will be observed also that this Treaty said nothing on the subject of commercial intercourse between the people of the United States and those of the British provinces.

The next Treaty was that of 1794, by the IIIrd Article of which it was provided as follows :--

"It is agreed that it shall at all times be free to His Majesty's subjects, and to the citizens of the United States, and also to the Indians dwelling on either side of said boundary-line (being the land boundary-line between the United States and the British provinces of North America), freely to pass and repass, by land or inland navigation, into the respective countries of the two parties, on the Continent of America (the country within the limits of the Hudson Bay Company only excepted), and to navigate all the lakes, rivers, and waters thereof, and freely to carry on trade and commerce with each other. But it is understood that this Article does not extend to the admission of vessels of the United States into the sea-ports, harbours, bays, or creeks of His Majesty's said territories ; nor into such parts of the rivers in His Majesty's said territories as are between the mouth thereof, and the highest port of entry from the sea, except in small vessels trading *bond fide* between Montreal and Quebec, under such Regulations as shall be established to prevent the possibility of any frauds in this respect ; nor to the admission of British vessels from the sea into the rivers of the United States, beyond the highest ports of entry for foreign vessels from the sea."

A later Article in the Treaty of 1794 (Article XII) provided that for a limited period, named in the Treaty, citizens of the United States might engage in carrying trade to any of His Majesty's islands and ports in the West Indies under certain conditions named. A later Article (Article XIII) provided that vessels belonging to citizens of the United States should be admitted into all the sea-ports and harbours of the British territories in the East Indies, &c. A later Article (Article XIV) provided that there should be between the dominions of His Majesty in Europe and the territories of the United States a reciprocal and perfect liberty of commerce and navigation, &c. Another Article (Article XIII) provided for admitting American vessels in distress into all of His Majesty's ports on manifesting its necessity to the satisfaction of the Government of the place.

So far as the present question is concerned the foregoing represents the state of the Treaty arrangements between the United States and Great Britain down to the close of the war of 1812. By the Treaty of 1815, following the Treaty of Peace of 1814, it was provided in Article I that there should be between the territories of the United States and all the territories of His Britannic Majesty in Europe reciprocal liberty of commerce, &c.

In a later Article of the same Treaty (Article II) it was provided that the intercourse between the United States and His Majesty's possessions in the West Indies and on the Continent of North America should not be affected by any of the provisions of that Article, but that each party should remain in complete possession of its rights with respect of such intercourse.

No other Article of the Treaty touched the question of intercourse between the United States and His Majesty's dominions in North America.

The next Treaty bearing upon the present question was that of 1818, which is now understood to regulate, so far as it goes, fishing interests of whatever kind of the citizens of the United States in the territorial waters of the British dominions in North America.

All of this Treaty that bears directly upon the present subject is contained in Article I, which is in the following words :--

“Whereas differences have arisen respecting the liberty claimed by the United States for the inhabitants thereof to take, dry, and cure fish on certain coasts, bays, harbours, and creeks of his Britannic Majesty’s dominions in America, it is agreed between the High Contracting Parties that the inhabitants of the said United States shall have for ever, in common with the subjects of His Britannic Majesty, the liberty to take fish of every kind on that part of the southern coast of Newfoundland which extends from Cape Ray to the Rameau Islands; on the western and northern coast of Newfoundland from the said Cape Ray to the Quirpon Islands, on the shores of the Magdalen Islands, and also on the coasts, bays, harbours, and creeks, from Mount Joly, on the southern coast of Labrador, to and through the Straits of Belle Isle, and thence northwardly indefinitely along the coast, without prejudice, however, to any of the exclusive rights of the Hudson’s Bay Company: And that the American fishermen shall also have liberty for ever to dry and cure fish in any of the unsettled bays, harbours, and creeks of the southern part of the coast of Newfoundland above described and of the coast of Labrador; but so soon as the same, or any portion thereof, shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such portion so settled without previous agreement for such purpose with the inhabitants, proprietors, or possessors of the ground. And the United States hereby renounce for ever any liberty heretofore enjoyed or claimed by the inhabitants thereof to take, dry, or cure fish on or within 3 marine miles of any of the coasts, bays, creeks, or harbours of His Britannic Majesty’s dominions in America not included within the above-mentioned limits: Provided, however, that the American fishermen shall be permitted to enter such bays or harbours for the purpose of shelter and of repairing damages therein, of purchasing wood, and of obtaining water, and for no other purpose whatever. But they shall be under such restrictions as may be necessary to prevent their taking, drying, or curing fish therein, or in any other manner whatever abusing the privileges hereby reserved to them.”

This Article sets out with stating the precise subject with which it has to deal, viz., that differences have arisen respecting the liberty claimed by the United States for the inhabitants thereof to take, dry, and cure fish on certain coasts, bays, harbours, and creeks of His Britannic Majesty’s dominions in America.

Thus it will be seen that the matter to be dealt with was a claim in favour of the inhabitants of the United States to do certain things within the territorial dominion of His Majesty, and not a matter touching the right of the inhabitants of the United States to cruise, fish, or do any other thing in waters that by the public law of nations did not belong to the territorial jurisdiction of His Majesty. The matter to be dealt with being, then, simply that affecting American fishermen coming within the territorial dominion of His Majesty, it was provided that Americans might fish on that part of the southern coast of Newfoundland which extends from Cape Ray to the Rameau Islands; and on the western and northern coast of Newfoundland from said Cape Ray to the Quirpon Islands and on the shores of the Magdalen Islands, and also on the coasts, bays, harbours, and creeks from Mount Joly, on the southern coast of Labrador, to and through the Straits of Belle Isle, and thence northwardly indefinitely along the coast, without prejudice, however, to any of the exclusive rights of the Hudson Bay Company; and that the American fishermen should have the liberty to dry and cure fish in any of the unsettled bays, harbours, and creeks of the southern part of the coast of Newfoundland above described, and of the coast of Labrador, subject to non-interference with settlers, &c.

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

The Committee is of opinion, in view of this history and of the plain language above quoted, that this Article was intended to deal, and did deal, only with the subject of the admission of American fishermen within the territorial jurisdiction of His Britannic Majesty, as defined by the public law of nations.

The first question for consideration, then, is whether the pretension that has been sometimes asserted by the Government of Great Britain, that American fishing-vessels or others have no right, except at the pleasure of the British Government, to be in or to prosecute lawful pursuits in the great arms of the sea extending between parts of the

mainland belonging to the British, and which are more than 6 marine miles broad, is well founded.

The Committee cannot doubt that any such pretension is ill founded. It is plain that such a pretension is an invasion of the principles of public law now almost universally recognized by all civilized Powers, and one which, it is believed, the British Government would be indisposed to accede to when applied as against its subjects. It would seem to be clear that by the universally recognized public law among civilized nations, territorial jurisdiction of every nation along the sea is limited to 3 marine miles from its coasts, as they may happen to be, whether embracing long lines of open coast or embracing great curvatures of sea-shore, which may, and often do, almost surround vast bodies of the waters of the ocean. The phrase of the Treaty, therefore, speaking of bays, creeks, and harbours of His Britannic Majesty's dominions, must be understood as being such bays, creeks, and harbours as by the public law of nations were and are within the territorial jurisdiction of the British Government. The Committee is therefore clear in its opinion that any pretension that exclusive British jurisdiction exists, either by force of public law or of this Treaty, within headlands embracing such great bodies of water, and more than 6 marine miles broad, must be quite untenable.

Another question may arise in respect of whether American fishing-vessels or other American vessels may lawfully traverse the Gut of Canso (a narrow strait connecting the waters of the Atlantic on the south-east of Nova Scotia and Cape Breton with the waters of the Gulf of St. Lawrence on the north-west). This strait is a few miles long, and much less in some of its parts than 6 miles wide. It is naturally navigable for sea-going vessels, and always has been navigated and used for the passage of vessels from the southward into the Gulf of Saint Lawrence, and back again southward by vessels finding it convenient so to use it.

The Committee is of opinion that, in the absence of special Treaty arrangements, such straits as the Gut of Canso are free for public and peaceable navigation in the same manner that the seas which they connect are. A comparatively recent and notable instance of the application of this principle is found in the case of the Simonoseki Strait, in Japan, connecting the Korean Channel, to the north-west of Japan, with the Pacific Ocean on the south-east. This strait at one of its points is very much less than 3 miles in width; and the passage of mercantile vessels of the United States, Great Britain, France, and the Netherlands having been interrupted there by Japanese batteries, &c., Japan was compelled by these four Governments to make reparation, after both British and American vessels of war had forcibly destroyed the Japanese batteries.

Of course, the right of peaceful passage through the Gut of Canso by unarmed vessels is entirely distinct from any right to fish or do any other thing there than merely to pass through. And if, in such an instance, a purely fishing vessel of the United States, having no other character whatever, should wish to pass through that strait from one part of the sea to another, it is presumed that it would hardly be insisted by the British Government that such a passage for such a purpose was prohibited by the 1st Article of the Treaty of 1818, which, as we have before stated, was applicable only to the matter of taking fish, &c., on the specified coasts, and to the prohibition of American fishermen, as such, to enter the British bays or harbours for any other purposes than those of shelter, repairing damages, purchasing wood, and obtaining water. The general right of passage for all vessels entitled to sail the seas was not in any way mentioned, and it must be presumed it was not intended by the language used in the Treaty to limit or modify such rights.

On the termination of the Reciprocity Treaty of 1854 the fishermen of the United States were remitted to the 1st Article of the Treaty of 1818, already cited, for the definition and regulation of their rights in the British waters therein mentioned. Between the period of the termination of the Treaty of 1854 (namely, 1866) and the Treaty of 1871 some considerable difficulty and discussion took place concerning the question whether the 3-mile line should be ascertained by drawing the same from headland to headland (as across the Bay of Fundy and the Bay Chaleur), or whether it should be drawn 3 miles from the actual shores of such bays and headlands. The general result of those discussions would seem to have been an acquiescence by the British Government in the right of American fishermen to fish within those bays and exterior to a line 3 miles from the shores. By the Treaty of 1871 it was agreed that the fishermen of the United States should have the right to fish inshore under certain limitations therein stated. This last Treaty was terminated through the action of the United States on the 1st day of July, 1885, and the 1st Article of the Treaty of 1818 again came into operation.

Concluding, then, from what has been before stated, that there is no serious

difficulty in respect of the question where American fishermen can carry on their operations, it would seem to be easy to know precisely what our fishermen may and may not do in the territorial waters adjacent to the British dominions.

What they may do may be stated as follows:—

1. They have the liberty to take fish “on that part of the southern coast of Newfoundland which extends from Cape Ray to the Rameau Islands.”

2. They have the right to take fish “on the western and northern coast of Newfoundland from the said Cape Ray to the Quirpon Islands.”

3. Also “on the shores of the Magdalen Islands.”

4. Also on the coasts, bays, harbours, and creeks from Mount Joly on the southern coast of Labrador, to and through the Straits of Belle Isle, and thence northwardly indefinitely along the coast,” subject to any exclusive rights of the Hudson Bay Company.

5. The right “to dry and cure fish in any of the unsettled bays, harbours, and creeks of the southern part of the coast of Newfoundland,” before described, and of the coast of Labrador, without interfering with the rights of settlers, &c.

6. The right of American fishermen in their character as such to enter the bays and harbours of Great Britain in America for the purpose (a) of shelter, (b) of repairing damages, (c) of purchasing wood, (d) of obtaining water, and for no other purpose whatever.

But they are to be under such restrictions in respect of their entry into bays and harbours where they are not entitled to fish “as may be necessary to prevent their taking and drying, or curing fish therein, or in any other manner whatever abusing the privileges hereby reserved to them.”

The things that by this Article American fishermen must not do are:—

1. Fish within 3 miles of any of the shores of the British dominions, excepting those specially above named.

2. Enter within this 3-mile limit except for the purposes last stated.

The American fishermen, in their character as such purely, must not enter the prohibited waters other than for the purposes of shelter, repairing damages, purchasing wood, and obtaining water; and in doing this they are subject to such reasonable restrictions as shall be necessary to prevent their fishing or curing fish in prohibited waters or on prohibited shores, and thereby abusing the privilege of entering those waters for the necessary purposes stated.

What, then, are such necessary restrictions?

Following the Treaty of 1818, Great Britain passed the Act of the 14th June, 1819 (59 Geo. III, cap. 38), on the subject of American fishing and other vessels within the waters of the British dominions in North America, which provided—

1. That the British King might make such Orders in Council, either directly or through the Governor of Newfoundland or others, as should be deemed proper and necessary for carrying into effect the purposes of the Fishery Article of that Treaty.

2. A prohibition and punishment of fishing, &c., within the 3-mile limit, other than the coasts in respect of which the Treaty provided that Americans might fish.

3. Forfeiture of vessels, &c., found fishing, &c., within the prohibited limits. This forfeiture was to be enforced in the ordinary course, as in the case of forfeitures under the Revenue Laws.

4. That American fishermen might enter any of the bays and harbours of the British dominions in America for the purposes named in the Treaty, subject to such restrictions for preventing abuse of that privilege as His Majesty, or the Governor, or person exercising the office of Governor in any part of the British dominions in America, might make.

5. That if any person should refuse to depart from such bays, &c., on the requirement of the Governor, &c., or neglect to conform to any of the Regulations so made, he should be punished by a fine of 200*l*.

The next Legislative Act touching American fishermen appears to be the Act of Prince Edward's Island of the 3rd September, 1844, which provided that the officers of Her Majesty's Customs, &c., or any person specially holding a commission for that purpose, should have authority to go on board any ship, vessel, or boat, within any port, bay, creek, or harbour in that island, or “hovering” within 3 marine miles of any of the coasts, bays, &c., thereof; and in either case freely to stay on board such ship, vessel, or boat as long as she shall remain within such port or distance; and if any such ship, vessel, or boat be bound elsewhere, and shall continue so hovering for the space of twenty-four hours after the master shall have been required to depart, it shall be lawful for any of the above-enumerated officers, &c., to bring such ship, &c., into port, and to

search and examine her cargo, and examine the master upon oath touching the cargo and voyage; and if there be any goods on board prohibited to be imported into this island, such ship, &c., and the cargo laden on board thereof, shall be forfeited; and if said ship, &c., shall be foreign, and not navigated according to the laws of Great Britain and Ireland, and shall have been found fishing, or preparing to fish, or to have been fishing, within such distance of such coasts, bays, creeks, or harbours of this island, such ship, &c., and its cargo shall be forfeited; and if the master or any person in command thereof shall not truly answer the question which shall be demanded of him in such examination, he shall forfeit the sum of 100*l*.

The Act then provides for the methods of investigation, condemnation, &c.

The Revised Statutes of Nova Scotia of 1851, chapter 94 (which may have re-enacted some earlier Act), provided—

1. That officers of the Colonial Revenue, Sheriffs, Magistrates, or any other person duly commissioned for that purpose, “may go on board any vessel or boat within any harbour in the province, or hovering within 3 marine miles of any of the coasts or harbours thereof, and stay on board so long as she may remain within such place or distance.”

2. That “if such vessel or boat be bound elsewhere, and shall continue within such harbour or so hovering for twenty-four hours after the master shall have been required to depart, any one of the officers above mentioned may bring such vessel or boat into port and search her cargo, and also examine the master upon oath touching the cargo and voyage; and if the master or person in command shall not truly answer the questions demanded of him in the examination he shall forfeit 100*l*.; and if there be any prohibited goods on board, then such vessel or boat, with the cargo thereof, shall be forfeited.”

3. That “if the vessel or boat shall be foreign, and not navigated according to the laws of Great Britain and Ireland, and shall have been found fishing, or preparing to fish, or to have been fishing, within 3 marine miles of such coasts or harbours, such vessel or boat, or cargo, shall be forfeited.”

It then provides for the method of procedure, &c. This provision was re-enacted in the Revised Statutes of Nova Scotia by the Provincial Act of the 7th May, 1858. This re-enactment contained in its 22nd section of Title 25, Chapter 94, a provision suspending those parts of it relating to American fishing-vessels during the continuance of the Treaty of Reciprocity of 1854.

The Committee has not been able to discover any Orders in Council made by the British King, as authorized by the Act (59 Geo. III, cap. 58); and so far as we have been able to examine, the regulation of the entrance of American fishermen within the limits wherein they were not entitled to fish has been made by Colonial Statutes such as have been above recited. That of Prince Edward's Island of 1843 (6 Vict., cap. 14) the Committee thinks fairly illustrates the nature of legislative Regulations on the subject down to the Reciprocity Treaty of 1854, and so, in effect, until the expiration of that Treaty in 1866. This Act provided—

1. Proper officers were authorized to go and remain on board an American fishing-vessel during her continuance within the waters where she was not entitled to fish.

2. If the vessel was bound elsewhere, and should continue hovering within the 3-mile limit for twenty-four hours after she had been required to depart, then the officer might take her into port, search her cargo, examine the master, &c.

3. If, on such examination, any goods should be found prohibited to be imported into the island, there should be a forfeiture.

4. If the vessel should have been found fishing, or preparing to fish, or to have been fishing, in prohibited waters, a forfeiture should follow.

It will be seen that this provision carefully excludes the right to seize and proceed against an American fishing-vessel that had come within British waters, where fishing was not allowed, for the purposes named in the Treaty, and only authorized British officers to require the vessel to depart if, instead of coming into a bay or roadstead and coming to anchor, she was “hovering” on the coast and within the prohibited limits; and provided for her forfeiture when so “hovering” only upon its being discovered, on an examination, that she had contraband goods on board, or had been violating the provisions of the Treaty by abusing the privilege of her entrance and shelter by fishing, &c. And in all these cases the ordinary modes of judicial investigation and fair play were provided for, except—

(a.) That the burden of proof was thrown on the claimant of the vessel in case of dispute as to whether the seizure had been lawful;

(b.) That no suit should be brought for an illegal seizure until one month after



notice in writing had been served on the seizing officer of an intention to sue, and the grounds of action;

(c.) And, further, that a Statute of Limitations, in respect of all such illegal seizures, of three months only, was provided.

The Committee does not see any just ground of criticism of those parts of this Act that relate to the conduct of American fishing-vessels coming within waters where fishing was prohibited; but when it comes to the matter of just and reasonable judicial determination of any question arising, the Committee does think that the methods and limitations of procedure were harsh and unjust, and beyond the right of the British Government to provide, under its authority by the Treaty to make only such restrictions as should be necessary to prevent the abuse by the American fishermen of their right to enter non-fishing waters.

But the foregoing species of legislation has been considerably improved upon, in an unjust direction, by the Dominion Act of the 22nd May, 1868 (31 Vict., cap. 61), which authorized the officials to require any vessel which was not hovering on the coast, but which had come within a harbour, to depart from such harbour on twenty-four hours' notice, and, on failure of such departure, to bring her into port for that mere cause, and without any suspicion or ground of suspicion that she had violated, or intended to violate, either the Treaty or the laws of Canada, and without any limitation as to the length of time she might be detained in port, or any security for just and fair treatment of the American fishing-vessel which might have sought shelter in such harbour, or come there for any of the lawful causes named in the Treaty.

It also provided for punishing the master if he failed to answer any question put to him touching the cargo or voyage.

It also provided that the consent of the seizing person should be necessary in order to enable the Judge of the Admiralty Court to release the vessel on proper security.

It also, as in the case of the former Act, put the burden of proving innocence on the claimant.

It also provided that no suit should be brought for any illegal conduct of those officers until after a month's notice in writing, and that the notice should contain the cause of action.

It also provided that "no evidence of any cause of action shall be produced except such as shall be contained in such notice."

It also provided that every such action should be brought within three months after the cause of action had arisen.

It also provided that if, in any such suit, judgment should be given against the seizing person, and there should be a certificate of probable cause, then the plaintiff should only recover  $3\frac{1}{2}$  cents damages and no costs, and that no fine beyond 20 cents should be imposed upon the respondent.

On the 12th May, 1870, the Dominion Act of 33 Vict., cap. 15, was passed, repealing the 3rd section of the last-mentioned Act on the subject of bringing vessels into port, &c., and provided, in lieu thereof, that any of the officers or persons before mentioned might bring any vessel, being within any harbour in Canada, or hovering in British waters within 3 miles of the coast, into port, search her cargo, examine her master on oath, &c., without any previous notice to depart, which had been required by the former Act. So that an American vessel, fishing at sea, being driven by stress of weather, want of wood or water, or need of repairing damages, which should run into a Canadian harbour, under the right reserved to it by the Treaty of 1818, the moment her anchor was dropped or she was within the shelter of a headland, was, at the discretion of the Canadian official, to be immediately seized and carried into port, which might be, and often would be, many miles from the place where she would have her safe shelter or could obtain her wood and water or repair her damages.

The Committee thinks it is not too much to say that such a provision is, in view of the Treaty, and of the common principles of comity among nations, grossly in violation of rights secured by the Treaty and of that friendly conduct of good neighbourhood that should exist between civilized nations holding relations such as ought to exist between the United States and Her Majesty's dominions.

This last provision was substantially re-enacted, with the Royal approval of the Queen, given on the 26th November, 1886, with the addition that if any such vessel had entered such waters for any purpose not permitted by Treaty or Convention, or by any law of the United Kingdom or Canada for the time being in force, she should be forfeited, &c.

From all this it would seem that it is the deliberate purpose of the British

Government to leave it to the individual discretion of each one of the numerous subordinate Magistrates, Fishery Officers, and Customs Officers of the Dominion of Canada to seize and bring into port any American vessels, whether fishing or other, that he finds within any harbour in Canada or hovering within Canadian waters. The Statute does not even except those Canadian waters in which, along a large part of the southern coast and the whole of the western coast of Newfoundland, they are entitled to fish, to say nothing of the vast extent of the continental coast of Canada.

The Committee repeats its expression of the firm opinion that this legislation is in violation of the Treaty of 1818, as it respects American fishing-vessels, and in violation of the principles of comity and good neighbourhood that ought to exist in respect of commercial intercourse, or the coming of the vessels of either, having any commercial character, within the waters of the other. Had it been intended to harass and embarrass American fishing and other vessels, and to make it impracticable for them to enjoy their Treaty and other common rights, such legislation would have been perfectly adapted to that end.

The instances in which this sort of legislation has been applied during the last year, to the great embarrassment and injury of American rights and interests—although in some of them it may doubtless appear that there has been some merely formal or technical violation of some Canadian Customs Statute or Regulation—are the following:—

*Vessels denied the Right or Privilege of purchasing Coal or Ice or of transhipping Fish at Ports of the Dominion, or refused other Rights or Privileges therein.*

- “Novelty” (steam-ship) denied the right to take in coal, or purchase ice, or tranship fish in bond to the United States, at Pictou, N. S., July, 1886. (H. R. Ex. Doc. No. 19, Forty-ninth Congress, second session, pp. 24-25, 49-50-51. This Rep., 3, 15, 105, 106.)
- “Golden Hind,” of Gloucester, Mass., was refused the right to take water in Port Daniel, Bay of Chaleur, July 23, 1886. (H. R. Ex. Doc. No. 19, Forty-ninth Congress, second session, pp. 43, 47, 192-193. This Rep., 162.)
- “Mollie Adams,” of Gloucester, Mass., Solomon Jacobs, master; his water supply having become exhausted by accident, Captain Jacobs put into Port Mulgrave, N.S., on the 31st August, 1886, to replenish the same, but was refused the privilege of buying barrels, and notified that if he did purchase barrels his vessel would be seized. A serious loss was occasioned through this action. (H. R. Ex. Doc. No. 19, Forty-ninth Congress, second session, pp. 45-46, 61-63. This Rep., 88, 146.)
- “A. R. Crittenden,” of Gloucester, Mass., Joseph E. Graham, master. Stopped at Steep Creek, Strait of Canso, July 21, 1886, homeward bound from the open-sea fishing grounds to obtain supply of water, which was refused, the Customs officer notifying Captain Graham that if he took in water his vessel would be seized. (H. R. Ex. Doc. No. 19, Forty-ninth Congress, second session, pp. 47, 48, 152. This Rep., 153, 196.)
- “Pearl Nelson,” of Provincetown, Mass., Murdock Kemp, master. Was seized in the harbour of Arichat, N. S., September 8, 1886, and compelled to pay commercial fees, but was denied privileges which such fees are paid to secure. (H. R. Ex. Doc. No. 19, Forty-ninth Congress, second session, pp. 54-61, 193-197. This Rep., 54, 66.)
- Laura Sayward,” of Gloucester, Mass., Medo Rose, master. Was, on the 6th October, 1886, while in the port of Shelburne, N. S., refused permission to buy provisions, &c., sufficient to last the crew on the homeward trip of the vessel; the vessel's papers were retained by the Collector for an undue length of time, &c. (H. R. Ex. Doc. No. 19, Forty-ninth Congress, second session, pp. 58-59.)
- “Jeannie Seaverns, of Gloucester, Mass., Joseph Tupper, master. While in the port of Liverpool, N. S. Captain Quigley, of the Dominion cruiser “Terror,” prevented Captain Tupper from landing to visit relatives in Liverpool, and forbade Captain Tupper's relatives from going on board the “Jeannie Seaverns,” placing a guard aboard of her while she was in that port. (H. R. Ex. Doc. No. 19, Forty-ninth Congress, second session, pp. 58-59, and 60)
- “Jeannie and Julia,” of Eastport, Me., W. H. Farris, master. While in Digby Harbour, N. S., April (?) 18, 1886, was denied the privilege of buying herring. (H. R. Ex. Doc. No. 19, Forty-ninth Congress, second session, pp. 169-170.)
- “James A. Garfield,” threatened with seizure on opportunity; charged with having

- purchased bait or ice in Dominion port or ports. (H. R. Ex. Doc. No. 19, Forty-ninth Congress, second session, p. 171.)
- "Abbie A. Snow," of Gloucester, Mass., Jeremiah Hopkins, master. Subjected to constant surveillance in harbour at Shelburne, N. S., by Captain Quigley, of Dominion cruiser "Terror," who finally boarded her with an armed guard, took Captain Hopkins ashore under armed guard, and threatened him with trouble if he revisited Shelburne. (This Rep., pp. 135-136, 138.)
- "Highland Light," of Provincetown, Mass. Seized off the north-east point of Prince Edward Island for catching fish within 3-mile limit. (This Rep., pp. 34, 153.)
- "Eliza A. Thoms," of Portland, Me., having gone ashore at Malpeque, laden with a fare of fish, the owners were not permitted to ship home either the fish, boats, or seines by vessels, but were, after delay, compelled to ship them by rail. (This Rep., pp. 259-260.)

*Vessels seized by Canadian Authorities on the charge of violating the Fishery Regulations of the Dominion.*

- "David J. Adams," owned at Newburyport, Mass.; Aldon Kinney, master. Seized at Digby, N. S., May 7, 1886. (Senate Ex. Doc. No. 217, Forty-ninth Congress, first session; H. R. Ex. Doc. No. 19, Forty-ninth Congress, second session, pp. 6, 13, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 140, 141, 142, 148, 149, 150, 164, 168, 176, 177, 178, *et seq.* This Rep., p. 151.)
- "Ella M. Doughty," owned at Kennebunk, Me.; Warren A. Doughty, master. Seized at Englishtown, C. B., May 17, 1886. Released June 19, 1886; bail, 3,400 dollars. Proceedings for remission. (Senate Ex. Doc. No. 217, Forty-ninth Congress, first session; H. R. Ex. Doc. No. 19, Forty-ninth Congress, second session, pp. 141, 142, 143, 144, 145, 146. This Rep., 255.)
- "City Point," owned at Booth Bay, Me.; Stephen Keene, master. Seized at Shelburne, N. S., July 3, 1886. Released on payment of 400 dollars, alleged fine. (Senate Ex. Doc. No. 217, Forty-ninth Congress, first session; H. R. Ex. Doc. No. 19, Forty-ninth Congress, second session, pp. 44, 178, 193. This Rep., 238.)
- "George W. Cushing," owned at Bath, Me.; C. B. Jewett, master. Seized at Shelburne, N. S., July 3, 1886. Released on payment of 400 dollars, alleged fine. (Senate Ex. Doc. No. 217, Forty-ninth Congress, first session; H. R. Ex. Doc. No. 19, Forty-ninth Congress, second session, pp. 142, 178, 182, 184. This Rep., 262.)
- "C. B. Harrington," owned at Portland, Me.; John Frelick, master. Seized at Shelburne, N. S., July 3, 1886. Released on payment of 400 dollars, alleged fine. (Senate Ex. Doc. No. 217, Forty-ninth Congress, first session. This Rep., 262.)

*Vessels seized by the Canadian Authorities on the charge of violating Commercial or Trading Laws or Regulations of the Dominion.*

- "W. D. Daisley," of Gloucester, Mass. Seized at Souris, October 1886, on the charge that one of the crew had landed flour at Canso in the previous August. (This Rep., p. 197.)
- "The Druid," of Gloucester, Mass.; John McQuinn, master. Sailing under register to buy fish, not to catch, and having on board no apparatus for fishing, was twice boarded by the Captain of the Dominion cruiser "Houlette," with armed men, and once detained two nights and a day under armed guard at Malpeque on a charge of technical violation of Customs Regulations; subsequently released. (This Rep., pp. 129-132.)
- "Moro Castle," of Gloucester, Mass.; Edwin Joyce, master. Seized at Port Mulgrave, in the Strait of Canso, September 11, 1886; stripped and held for an offence alleged to have been committed in 1884. (This Rep., p. 217, *et seq.*)

*Vessels detained by Canadian Authorities on the charge of violation of Fishery or Trading Regulations of the Dominion of Canada.*

- "Joseph Story," owned at Essex, Mass. Seized at Baddek, Cape Breton, April 24, 1886; released April 25, 1886. (Senate Ex. Doc. No. 217, Forty-ninth Congress, first session.)
- "Matthew Keany," owned at Bath, Me. Detained twenty-four hours. (Sen. Ex. Doc. No. 217, Forty-ninth Congress, first session.)
- "Hereward," owned at Essex, Mass.; McDonald, master. Seized July 3, 1886, at Canso.

(Sen. Ex. Doc. No. 217, Forty-ninth Congress, first session; H. R. Ex. Doc. No. 19, Forty-ninth Congress, second session, p. 190).

"Everett Steele," of Gloucester, Mass.; Charles E. Forbes, master. Detained in the port of Shelburne, N. S., 10th September, 1886, by Captain Quigley, of the "Terror," who boarded the "Steele," took her papers, and put her in charge of a policeman till the following day, when she was discharged by the Collector. (H. R. Ex. Doc. No. 19, Forty-ninth Congress, second session, pp. 52, 53, 54, 56, 153. This Rep., 216.)

*Vessels warned off by Canadian Authorities on the ground that they were about to violate the Fishery or Trading Laws or Regulations of the Dominion.*

"Annie M. (or H.) Jordan," of Gloucester, Mass., was refused entry at the port of St. Andrews, N. B., although licensed to touch and trade. (H. R. Ex. Doc. No. 19, Forty-ninth Congress, second session, pp. 15, 171-172, 175-176. This Rep., 163.)

"Martha A. Bradley," "Rattler," "Eliza Boynton," and "Pioneer," of Gloucester, Mass., were warned by the Sub-Collector of Customs at Canso to keep outside an imaginary line drawn from a point 3 miles outside Canso Head to a point outside St. Esprit, on the Cape Breton coast, a distance of 40 miles. This line, for nearly its entire continuance, is distant 12 to 25 miles from the coast. (H. R. Ex. Doc. No. 19, Forty-ninth Congress, second session, pp. 16, 42, 44, 48-49, 56-57, 120-123, 190-191. This Rep., 153, 195.)

"Thomas F. Bayard," of Gloucester, Mass.; James McDonald, master. Warned off by Customs officials at Bonne Bay, Newfoundland, July 12, 1886. (H. R. Ex. Doc. No. 19, Forty-ninth Congress, second session, pp. 26-27, 46-47, 146-147, 150-151, 187-189.)

"Mascot," of Gloucester, Mass.; Alexander McEachern, master. Warned by Customs officials at Port Amherst, Magdalen Islands, June 10, 1886, that if fresh bait was purchased vessel would be seized. (H. R. Ex. Doc. No. 19, Forty-ninth Congress, second session, pp. 46-47, 118-119-120, 146-147, 150-152.)

*Vessels subjected to Hostile Treatment by Dominion Officials.*

The "Shiloh" and the "Julia Ellen." While these vessels were entering the harbour of Liverpool, N. S., Captain Quigley, of the Canadian cruiser "Terror," fired a gun across their bows to hasten their coming to, and placed a guard of two armed men on board each vessel, which guard remained on board until the vessels left the harbour. (H. R. Ex. Doc. No. 19, Forty-ninth Congress, second session, pp. 44, 122-123. This Rep., 168.)

"Marion Grimes," of Gloucester, Mass.; Alexander Landry, master. Was in port of Shelburne, N. S., October 11, 1886, under detention for alleged infraction of Customs Regulations, and while so there Captain Quigley, of the Dominion cruiser "Terror," compelled Captain Landry to haul down his (the United States') flag; upon its being run up a second time, Captain Quigley went on board the "Grimes" and hauled the flag down with his own hands. (H. R. Ex. Doc. No. 19, Forty-ninth Congress, second session, pp. 124-125, 153-163.)

It will be seen, from the correspondence and papers submitted by the President, in his Message on the subject of the 8th December last (Ex. Doc. No. 19, Forty-ninth Congress, second session), and from the testimony taken by the Committee, that some of these instances of seizure or detention, or of driving vessels away by threats, &c., were in clear violation of the Treaty of 1818, and that others were on such slender and technical grounds, either as applied to fishing rights or commercial rights, as to make it impossible to believe that they were made with the large and just object of protecting substantial rights against real and substantial invasion, but must have been made either under the stimulus of the cupidity of the seizing officer, sharpened and made safe by the extraordinary legislation to which the Committee has referred, whereby the seizing officer, no matter how unjust or illegal his procedure may have been, is made practically secure from the necessity of making substantial redress to the party wronged, or of punishment, or else they must have arisen from a systematic disposition on the part of the Dominion authorities to vex and harass American fishing and other vessels so as to produce such a state of embarrassment and inconvenience with respect to intercourse

with the provinces as to coerce the United States into arrangements of general reciprocity with the Dominion.

In respect of general reciprocity, the experience of the United States during the existence of the Treaty of 1854 was such as to lead Congress, with great unanimity, to terminate it; and the experience of the United States, under such so-called reciprocity as was provided for by the Treaty of 1871, was such as to lead both Houses, with very great unanimity, to terminate that. Each of these instances continued long enough to show fully the general working of the arrangement. The great balance of gain and advantage appeared to be in favour of the Canadians, while the great balance of loss and disadvantage fell on the people of the United States.

Indeed, the Treaty of 1871, so far as it related to the fisheries, &c., was based upon the idea that the right of American fishermen to fish within 3 miles of the Dominion shores was of some considerable value, which the United States thought would be fully compensated by admitting Dominion fishermen to the waters of the United States and admitting their fish free of duty. Notwithstanding this, by the methods and results of settling the balance of pecuniary advantages by the Halifax Commission, the United States paid on the award of that Commission (waiving the serious question of its irregularity) 5,500,000 dollars. So strong was the opinion of the United States, even at that time, that this award was wholly unjust in fact that it is understood that steps were taken to invite the British Government to terminate the Fisheries Clauses of the Treaty of 1871 immediately and before the positive period of ten years had expired, but it could not be accomplished.

From the investigations made by the Committee during the last summer and fall, and as the result of the great mass of testimony taken by it and herewith returned, the Committee believe it to be clear, beyond all dispute, that the right to fish within 3 miles of the Dominion shores is of no practical advantage whatever to American fishermen. The cod and halibut fishing has been for many years almost entirely carried on at long distances from the shores, in the deep waters, on banks, &c.; and it is believed that were there absolute liberty for Americans to fish, without restriction or regulation of any kind, within 3 miles of the Dominion shores, no such fisherman would ever think of going there for the purpose of catching cod or halibut.

As regards the obtaining of bait for this class of fishing, the testimony taken by the Committee in its inquiries clearly demonstrates that there is no necessity whatever for American fishermen to resort to Canadian waters for that purpose. Clam bait is found in immense quantities in our own waters, and there have been instances, so frequent and continuous as to amount to a habit, of the Canadians themselves resorting to American waters or ports for the purpose of obtaining it. The squid bait is found on the very banks where the fishing goes on. So that the instances would be extremely rare when any American fishing-vessel would wish to resort to a Dominion port for the purpose of buying bait for this kind of fishing.

It was also proved before the Committee that, with the rarest exception, it would be absolutely injurious to the pecuniary interests of all concerned for American vessels to resort to Dominion ports or waters, except in need or distress, for the time taken in such departures from the cod and halibut grounds, or from direct sailing to and from them, is so great that, with or without the difference of port expenses, time and money are both lost in such visits.

In respect of the mackerel fishery the Committee finds, as will be seen from the evidence referred to, that its course and methods have of late years entirely changed. While it used to be carried on by vessels fishing with hook and line, and sometimes near the shores, it is now almost entirely carried on by the use of immense seines, called purse-seines, of great length and descending many fathoms into the water. This gear is very expensive, and a fishing-vessel does not usually carry more than one or two. The danger of fishing near the shore with such seines is so great, on account of striking rocks and reefs, that it is regarded as extremely hazardous ever to undertake it. Besides this, the large schools of mackerel, to the taking of which this great apparatus is best adapted, are almost always found more than 3 miles from land, either in great bays and gulfs, or entirely out at sea.

There will be found accompanying this Report (see Appendix) statements showing the total catch of mackerel during certain years, and the parts of the seas where they have been taken; and it will also be seen from the evidence that in general the mackerel fisheries by Americans in the Gulf of Saint Lawrence, and in the Bay of Chaleur have not been remunerative.

In view of all these facts, well known to the great body of the citizens of the United States engaged in fisheries, and embracing every variety of interest connected therewith,

from the wholesale dealer, vessel-owner, and outfitter, to that portion of the crew who receive the smallest share of the venture, it must be considered as conclusively established that there would be no material value whatever in the grant by the British Government to American fishermen of absolutely free fishing; and in this conclusion it will be seen, by a reference to the testimony, that all these interests fully concur.

It will also be noticed, on reference to the evidence, that it appears to show that when by force of the Treaty of 1871 Canadian fish, both salt and fresh, were admitted to the markets of the United States free of duty, no fall of prices to the consumer took place, and that the abrogation of the duty simply redounded to the advantage of the foreign fishermen or the foreign dealers in fish exporting the same to the United States; and that when, on the 1st July, 1885, the duty on salt fish was revived, no part of this duty was borne by the consumers in the United States, and that the cost of fish in the United States was not at all affected. It would follow that the sums received into the Treasury from these fish duties were paid and borne by the Canadians alone. A parallel instance is also found, on reference to the testimony, in the statements of gentlemen engaged in exporting salt fish from the United States to other countries where duties are imposed, these gentlemen stating that the duty thus imposed upon fish came out of their pockets, and not out of the pockets of the foreign consumers.

As regards commercial and other friendly business intercourse between ports and places in the Dominion and the United States, it is, of course, of much importance that Regulations affecting the same should be mutually reasonable and fairly administered. If an American vessel should happen to have caught a cargo of fish at sea 100 miles distant from some Canadian port, from which there is railway communication to the United States, and should be denied the privilege of landing and shipping its cargo therefrom to the United States, as the Canadians do, it would be, of course, a serious disadvantage, and there is, it is thought, nothing in the Treaty of 1818 which would warrant such an exclusion. But the Dominion laws may make such a distinction, and it is understood that, in fact, the privilege of so shipping fish from American vessels has been refused during the last year.

It is also inconvenient and injurious that American vessels of any character, whether engaged in fishing, or licensed to touch and trade, or purely mercantile vessels, should be unable in cases of occasional necessity to resort to Canadian ports for the purpose of buying supplies or any commodities that the ordinary laws of the Dominion allow to be exported at all. Several instances of such injurious and unfriendly action appear to have taken place.

The Treaties between the United States and Great Britain on the subject of intercommunication, and the rights of the citizens and subjects of the one in the ports and territories of the other have not included the British dominions of North America (with possibly certain exceptions as to intercourse by land), and such intercourse, strangely enough, still remains the subject of legislation merely in the two countries. Such legislation to be tolerable must be mutually friendly and reciprocal, and laws upon the subject must be administered fairly and generously, and not in a spirit of carping at small matters or in any other wise in an unfriendly way. The Committee is pained to believe that such has not been the course of British legislation or of administrative practice.

In view of all that has taken place, the Committee thinks it to be the duty of the United States, in a firm and just way, to protect and defend the just and common rights of the people of the United States, whether fishermen, or traders, or travellers, or all, by all such measures as may be within our power. The measures the Committee proposes to this end rest upon a principle universally recognized as right and necessary in the intercourse of nations, and it has often been resorted to in one form or another by many nations.

It is recommended that the President of the United States be invested with the power, and that it be made his duty, whenever he shall be satisfied that unjust, unfair, or unfriendly conduct is practised by the British Government in respect of our citizens and their property within the ports or waters of the British dominions in North America, to deny to the subjects of that Government in British North America and their property, or to any classes of them, such privileges in the waters and ports of the United States as he may think proper to name, and to suspend in respect of such vessels or classes of vessels or such property or classes of property of the subjects of such Government the right of entering or being brought within the waters or ports of the United States, so that he shall be able from time to time, as each emergency may arise, to preserve the intercourse between the United States and that Government in a state of fair equality. The Committee, therefore, recommends the passage of the Bill (S. 3173) herewith reported.

The Committee also recommends that the papers, documents, and maps herewith returned be printed.

All of which is respectfully submitted.

(Signed)

GEO. F. EDMUNDS,  
For the Committee.

49th Congress, 2nd Session, S. 3173.

*A Bill to authorize the President of the United States to protect and defend the Rights of American Fishing-vessels, American Fishermen, American Trading and other Vessels, in certain cases, and for other purposes.*

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, that whenever the President of the United States shall be satisfied that American fishing-vessels or American fishermen, visiting or being in the waters or at any ports or places of the British dominions of North America, are or then lately have been denied or abridged in the enjoyment of any rights secured to them by Treaty or Law, or are or then lately have been unjustly vexed or harassed in the enjoyment of such rights, or subjected to unreasonable restrictions, Regulations, or requirements in respect of such rights; or whenever the President of the United States shall be satisfied that any such fishing-vessels or fishermen, having a permit under the laws of the United States to touch and trade at any port or ports, place or places, in the British dominions of North America, are or then lately have been denied the privilege of entering such port or ports, place or places, in the same manner and under the same Regulations as may exist therein applicable to trading vessels of the most favoured nation, or shall be unjustly vexed or harassed in respect thereof, or shall be prevented from purchasing such supplies as may there be lawfully sold to trading vessels of the most favoured nation; or whenever the President of the United States shall be satisfied that any other vessels of the United States, their masters or crews, so arriving at or being in such British waters or ports or places of the British dominions of North America, are or then lately have been denied any of the privileges therein accorded to the vessels, their masters or crews, of the most favoured nation, or unjustly vexed or harassed in respect of the same, then, and in either or all of such cases, it shall be lawful, and it shall be the duty of the President of the United States, in his discretion, by Proclamation to that effect, to deny vessels, their masters and crews, of the British dominions of North America, any entrance into the waters, ports, or places of or within the United States (with such exceptions in regard to vessels in distress, stress of weather, or needing supplies as to the President shall seem proper), whether such vessels shall have come directly from said dominions on such destined voyage or by way of some port or place in such destined voyage elsewhere; and also, if he think proper, to deny entry into any port or place of the United States of fresh fish or salt fish or any other product of said dominions, or other goods coming from said dominions to the United States. The President may, in his discretion, apply such Proclamation to any part or to all of the foregoing-named subjects, and may qualify, limit, and renew such Proclamation from time to time as he may deem necessary to the full and just execution of the purposes of this Act. Every violation of any such Proclamation, or any part thereof, is hereby declared illegal, and all vessels and goods so coming or being within the waters, ports, or places of the United States contrary to such Proclamation shall be forfeited to the United States; and such forfeiture shall be enforced and proceeded upon in the same manner and with the same effect as in the case of vessels or goods whose importation or coming to or being in the waters or ports of the United States contrary to law may now be enforced and proceeded upon. Every person who shall violate any of the provisions of this Act, or such proclamation of the President made in pursuance hereof, shall be deemed guilty of a misdemeanour, and, on conviction thereof, shall be punished by a fine not exceeding 1,000 dollars, or by imprisonment for a term not exceeding two years, or by both said punishments, in the discretion of the Court.

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

(Extract.)

My Lord,

Washington, January 27, 1887.

WITH reference to my despatch of the 25th January, I have the honour to add a précis of Senator Evarts' speech on the Fishery Bill. His contention is clearly put in so far as the nature of the Treaty of 1818 is concerned and the results of the interpretation of it, but he entirely ignores the persistent refusal of this Government, after the denunciation of the Treaty of 1854, to re-establish the commercial relations which existed under it, and which in fact were the outcome of the statutory legislation upon which he lays so much stress.

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Inclosure in No. 45.

*Précis of Speech of Senator Evarts in the Debate in the Senate on the Fisheries Bill,  
January 24, 1887.*

MR. EVARTS clearly establishes that the Treaty of 1818 is essentially a Fishery Treaty regulating the fisheries between the two countries, and that in the absence of a Treaty of Commerce, and after the denunciation of the Fishery Articles of the Treaty of 1871, the two countries were brought back to the interpretation of that of 1818.

The effect of the enforcement of the Regulations which Canada claims as a right under this Treaty has been to exclude American fishermen from what would be an ordinary suitable and necessary intercourse of comity in matters of commerce.

If such a construction of the Treaty is admitted, the remedy for the interruption of commerce which has taken place under it must be found in a modification or qualification of that Treaty by negotiation.

If this construction is not admitted, there can be no other ground for the interruption complained of, except under the claim that there is no Commercial Treaty which obliges Great Britain and her dependency in the Dominion to admit the commercial intercourse which has hitherto been carried on.

If, then, on that ground, and on that ground alone, this interference is based when taken by the Dominion authorities, the United States' Government has in its power, according to the same right and level of commercial claim, the same measure that Great Britain has. This action, he says, need not be called retaliatory—it is responsive. The first step in disturbing commerce was under the claim that there was no obligatory Treaty of Commerce that held the two countries to enjoy these privileges, and the same line is now taken by the United States' Government. This brings the dispute directly back to whether, under the construction of the Treaty of 1818, none of this disturbance, interruption, and interference on the part of the Dominion authorities can be justified. He did not, however, propose to debate that question. The settled opinion of the Government of the United States now is that the Treaty of 1818 is a Fishing Treaty, and not a Commercial Treaty at all. It is not a restriction of commerce, it is merely an enlargement of fishing rights.

He then goes on to explain that, by the progress of mutual advantage, interest, and good neighbourhood, a commercial intercourse was opened, not by Treaty, but by Statute Law on the one side and on the other, which permitted this reciprocal intercourse, and that it has been destroyed by a meaning attached to the Treaty of 1818 which has the actual and practical result on the part of Great Britain of exercising towards the commerce of the United States what is really an interruption of these interests. He denies that the Treaty of 1818 gives any right of interference with commercial relations, and he repeats that such right can only be based on having no Treaty commercially obliging this relation to be kept open. So long, therefore, as comity and courtesy, freedom of commercial intercourse are withheld, not under Treaty, but by positive law and authority, and only under positive law, the United States so respond by the present Bill.

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No. 46.

*Sir L. West to the Marquis of Salisbury.—(Received February 10.)*

My Lord,

Washington, January 28, 1887.

I HAVE the honour to acknowledge the receipt of your Lordship's despatch of the 13th instant, and to inform your Lordship that I have communicated copy of the Report by the Minister of Justice of the Dominion of Canada inclosed therein to the United States' Government.

I have, &amp;c.

(Signed) L. S. SACKVILLE WEST.

No. 47.

*Sir L. West to the Marquis of Salisbury.—(Received February 15.)*

My Lord,

Washington, January 28, 1887.

I HAVE the honour to acknowledge the receipt of your Lordship's despatch of the 11th instant, and to inform your Lordship that I have communicated copy of the despatch from the Governor-General of Canada, therein inclosed, relative to the cases of the American fishing-vessels "Pearl Nelson" and "Everett Steele," to the United States' Government.

I have, &amp;c.

(Signed) L. S. SACKVILLE WEST.

No. 48.

*Sir L. West to the Marquis of Salisbury.—(Received February 15.)*

My Lord,

Washington, January 28, 1887.

I HAVE the honour to inclose to your Lordship herewith copy of a note which I have received from the Secretary of State, as well as copy of an affidavit which accompanied it, asking for an investigation into the case of the American schooner "Sarah H. Prior," as therein set forth.

I have, &amp;c.

(Signed) L. S. SACKVILLE WEST.

Inclosure 1 in No. 48.

*Mr. Bayard to Sir L. West.*

Sir,

Department of State, Washington, January 27, 1887.

I HAVE the honour to inclose a copy of an affidavit of the captain and two members of the crew of the schooner "Sarah H. Prior," of Boston, stating the refusal of the captain of the Canadian Revenue cutter "Critic" to permit the restoration to the former vessel, in the port of Malpeque, Prince Edward Island, of her large seine, which she had lost at sea, and which had been found by the captain of a Canadian vessel who offered to return the seine to the "Prior," but was prevented from doing so by the captain of the "Critic."

This act of prevention, the reason for which is not disclosed, practically disabled the "Prior," and she was compelled to return home without having completed her voyage, and in debt.

I have the honour to ask that Her Majesty's Government cause investigation of this case to be made.

I have, &amp;c.

(Signed) T. F. BAYARD.

## Inclosure 2 in No. 48.

*Affidavit.*

ON this 28th day of December, A.D. 1886, personally appeared before me Captain Thomas McLaughlin, master, and George F. Little and Charles Finnegan, two of the crew, of the schooner "Sarah H. Prior," of Boston, and being duly sworn, signed, and made oath to the following statement of facts:—

On the 10th September, 1886, the schooner "Sarah H. Prior," while running for Malpeque, Prince Edward Island, and about 7 miles from that port, lost her large seine. Four days afterwards the schooner "John Ingalls," of Halifax, Nova Scotia, Captain Wolfe, came into Malpeque and had the seine on board, which she had picked up at sea. Captain Wolfe offered to deliver the seine to Captain McLaughlin in consideration of 25 dollars, which offer was accepted, and paid him the money. The Canadian Revenue cutter "Critic," Captain McLearn, was lying at Malpeque at the time, and Captain MacLaughlin went to see him to ascertain if there would be any trouble in delivering the seine. Captain McLearn would not allow the captain of the "John Ingalls" to give up the seine, so the latter returned the 25 dollars to Captain McLaughlin.

The schooner "Sarah H. Prior" had two seines, one large and one small size. It was the large one which she lost and the schooner "John Ingalls" picked up. She had to leave Malpeque without it, and consequently came home with a broken voyage, and in debt.

(Signed) THOS. McLAUGHLIN.  
GEORGE F. LITTLE.  
CHARLES FINNEGAN.

*Suffolk S. S., Boston, December 28, 1886.*

Personally appeared before me Thomas McLaughlin, George F. Little, and Charles Finnegan, who signed and made oath that the foregoing statement was true.

(Signed) CHAS. H. HALLSTRAM, *Notary Public.*

## No. 49.

*Mr. Bramston to Sir J. Pauncefote.—(Received February 15.)*

Sir, *Downing Street, February 15, 1887.*  
I AM directed by the Secretary of State for the Colonies to transmit to you, to be laid before the Marquis of Salisbury, a copy of a despatch from the Governor-General of Canada, forwarding an approved Report of a Committee of the Privy Council of the Dominion, which contains the views of the Canadian Government in respect of the outline for an *ad interim* arrangement between the British and United States' Governments on the subject of the North American fisheries, communicated to the Foreign Office by the United States' Minister at this Court, and sent to this Department in your letter of the 9th December.

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

## Inclosure 1 in No. 49.

*The Marquis of Lansdowne to the Secretary of State for the Colonies.*

Sir, *Government House, Ottawa, February 1, 1887.*  
WITH reference to Mr. Stanhope's despatch of the 30th December last, transmitting a copy of a note from the United States' Minister in London, inclosing an outline for an *ad interim* arrangement between the British and United States' Governments on the subject of the North American fisheries, together with a copy of a despatch from Mr. Bayard containing some observations thereon, I have the honour to forward herewith a copy of an approved Report of a Committee of the Privy Council of Canada, containing the views of my Government on the subject.

I have, &c.  
(Signed) LANSDOWNE.

## Inclosure 2 in No. 49.

*Report of a Committee of the Honourable the Privy Council for Canada, approved by his Excellency the Governor-General in Council on the 1st February, 1887.*

THE Committee of the Privy Council have had under consideration a despatch dated 30th December, 1886, from the Right Honourable the Secretary of State for the Colonies, forwarding, for the information of the Canadian Government, a note received through the Foreign Office from the United States' Minister in London, inclosing a draft of a Memorandum for an arrangement between the British and United States' Governments on the subject of the North American fisheries, entitled, a "Proposal for the settlement of the questions in dispute in relation to the fisheries on the north-eastern coasts of British North America," accompanied by a despatch dated Washington, 15th November, 1886, from Mr. Bayard, United States' Secretary of State, containing some observations thereon. Mr. Secretary Stanhope requests your Excellency to obtain at the earliest possible moment from your Excellency's advisers their views on Mr. Bayard's proposals, and to report them to Her Majesty's Government.

The Minister of Marine and Fisheries, to whom the said despatch and inclosures have been referred, reports that Mr. Bayard suggests that as the season for taking mackerel has now closed, "a period of comparative serenity may be expected, of which advantage should be taken in order to adopt measures which will tend to make more harmonious the relations between Canada and the United States as regards the fisheries on the coasts of Canada."

The Minister observes that any indication of a disposition on the part of the United States' Government to make arrangements which might tend to put the affairs of the two countries on a basis more free from controversy and misunderstanding than at present exists must be hailed with satisfaction by the Government of Canada. It is to be regretted that the language in which Mr. Bayard refers to what has taken place during the past year indicates a disposition on his part to attribute to unfriendly motives the proceedings of the Canadian Government, and a tendency to misapprehend the character and scope of the measures which have been taken by it in order to enforce the terms of the Treaty of 1818, and to ensure respect for the municipal laws of the Dominion.

The Minister submits, therefore, that he cannot avoid protesting against such expressions in Mr. Bayard's letter as those in which he alludes to the proceedings of the last few months, as "the administration of a strained and vexatious construction of the Convention of 1818," as "unjust and unfriendly treatment by the local authorities," as "unwarranted interferences (frequently accompanied by rudeness and unnecessary demonstration of force) with the rights of United States' fishermen, guaranteed by express Treaty stipulations and secured to them . . . . by the Commercial Laws and Regulations of the two countries, and which are demanded by the laws of hospitality to which all friendly civilized nations owe allegiance," and as "conduct on the part of the Canadian officials which may endanger the peace of two kindred friendly nations."

The Minister has to observe again, what has frequently been stated in the negotiations on this subject, that nothing has been done on the part of the Canadian authorities since the termination of the Treaty of Washington in any such spirit as that which Mr. Bayard condemns, and that all that has been done with a view to the protection of the Canadian fisheries has been simply for the purpose of guarding the rights guaranteed to the people of Canada by the Convention of 1818, and to enforce the Statutes of Great Britain and of Canada in relation to the fisheries. It has been more than once pointed out in Reports already submitted by the Minister of Marine and Fisheries, that such Statutes are clearly within the powers of the respective Parliaments by which they were passed, and are in conformity with the Treaty of 1818, especially in view of the passage of the Treaty which provides that the American fishermen shall be under such restrictions as shall be necessary to prevent them from abusing the privileges thereby reserved to them.

The Minister has further to call the attention of your Excellency to the fact, that there is no foundation whatever for the following statement in the concluding part of Mr. Bayard's letter:—

"The numerous seizures made have been of vessels quietly at anchor in established ports of entry, under charges, which up to this day have not been particularized sufficiently to allow of intelligent defence; not one has been condemned after trial and hearing, but many have been fined, without hearing or judgment, for technical violation of alleged Commercial Regulations, although all commercial privileges have been simultaneously denied to them."

The Minister observes, in relation to this paragraph, that the seizures of which Mr. Bayard complains have been made under circumstances which have from time to time been fully reported to your Excellency and communicated to Her Majesty's Government, and upon grounds which have been distinctly and unequivocally stated in every case, that, although the nature of the charges has been invariably specified and duly announced, those charges have not in any case been answered; that ample opportunity has in every case been afforded for a defence to be submitted to the Executive authorities, but that no defence has been offered beyond the mere denial of the right of the Canadian Government, that the Courts of the various provinces have been open to the parties said to have been aggrieved, but that not one of them has resorted to those Courts for redress. To this it must be added that the illegal acts which are characterized by Mr. Bayard as "technical violations of alleged Commercial Regulations," involved breaches in most of the cases not denied by the persons who had committed them of established Commercial Regulations which, far from being specially directed or enforced against citizens of the United States, are obligatory upon all vessels (including those of Canada herself) which resort to the harbours of the British North American coast.

With regard to the proposal for a settlement which accompanies Mr. Bayard's letter, the Minister submits the following observations:—

Article 1. The Minister observes that, in referring to this Article, Mr. Bayard states that he is "encouraged in the expectation that the propositions embodied in the Memorandum will be acceptable to Her Majesty's Government, because, in the month of April 1866, Mr. Seward, then Secretary of State, sent forward to Mr. Adams, at that time United States' Minister in London, the draft of a Protocol which, in substance, coincides with the 1st Article of the proposal now submitted.

In regard to this statement, it is to be remarked that Article 1 of the Memorandum, although no doubt to some extent resembling the Protocol submitted in 1866 by Mr. Adams to Lord Clarendon, contains several most important departures from the terms of that Protocol. These departures consist not only in such comparatively unimportant alterations as the substitution in line 1 of the word "establish" for the word "define," without any apparent necessity for the change, and in other minor alterations of the text, but also in such grave changes as that which is involved in the interpolation in section 1 of the important passage in which it is stipulated "that the bays and harbours from which American vessels are in future to be excluded, save for the purposes for which entrance into bays and harbours is permitted by said Article, are hereby agreed to be taken to be such bays and harbours as are 10, or less than 10, miles in width, and the distance of 3 marine miles from such bays and harbours shall be measured from a straight line drawn across the bay or harbour in the part nearest the entrance at the first point where the width does not exceed 10 miles.

This provision would involve a surrender of fishing rights which have always been regarded as the exclusive property of Canada, and would make common fishing grounds of territorial waters which, by the law of nations, have been invariably regarded both in Great Britain and the United States as belonging to the adjacent country. In the case, for instance, of the Baie des Chaleurs, a peculiarly well-marked and almost land-locked indentation of the Canadian coast, the 10-mile line would be drawn from points in the heart of Canadian territory, and almost 70 miles distant from the natural entrance or mouth of the bay. This would be done in spite of the fact that, both by Imperial legislation and by judicial interpretation, this bay has been declared to form a part of the territory of Canada. (See Imperial Statute, 14 & 15 Vict., cap. 63; and "*Mouat v. McPhee*," 5 Sup. Court of Canada Reports, p. 66.)

The Convention with France in 1839, and similar Conventions with other European Powers, although cited by Mr. Bayard as sufficient precedents for the adoption of a 10-mile limit, do not, the Minister submits, carry out his reasoning. Those Conventions were doubtless passed with a view to the geographical peculiarities of the coasts to which they related. They had for their object the definition of boundary lines, which, owing to the configuration of the coast, perhaps could not readily be settled by reference to the law of nations, and involve other conditions which are inapplicable to the territorial waters of Canada.

Mr. Bayard contends that the rule which he asks to have set up was adopted by the Umpire of the Commission appointed under the Treaty of 1853 in the case of the United States' fishing-schooner "*Washington*," that it was by him applied to the Bay of Fundy, and that it is for this reason applicable to other Canadian bays.

The Minister submits, however, that the rule laid down by Mr. Bates with regard to the Bay of Fundy should not be treated as establishing the respective rights of Canada and of the United States as to bays and harbours not included in the terms of the

reference, and in relation to which there was no Agreement to abide by the decision of the Umpire and no decision by him. It may reasonably be contended that as one of the headlands of the Bay of Fundy is in the territory of the United States any rules of international law applicable to that bay are not, therefore, equally applicable to other bays, the headlands of which are both within the territory of the same Power.

As to the second paragraph of the 1st Article, the Minister suggests that before such an Article is acceded to, and, even if the objections before stated should be removed, the Article should be so amended as to incorporate the exact language of the Convention of 1818, in which case several alterations should be made. Thus, the words "and for no other purpose whatever" should be inserted after the mention of the purposes for which vessels may enter Canadian waters, and after the words "as may be necessary to prevent" should be inserted "their taking, drying, or curing fish therein, or in any other manner abusing the privileges reserved, &c."

To make the language conform correctly to the Convention of 1818 several other verbal alterations, which need not be enumerated here, would be necessary in order to prevent imaginary distinctions being drawn hereafter between the Convention of 1818 and any Agreement of later date which may be arrived at.

The Minister, moreover, suggests that, inasmuch as Mr. Bayard has from time to time denied the force and authority of the Customs, Harbour, Shipping, and Police Laws of Canada, it may be well, in order to remove the possibility of misunderstanding on the part of his Government, to insert a proviso expressly recognizing the validity of such enactments.

The proviso in Article 1, in which it is stipulated that any arrangement which may be arrived at by the Commission shall not go into effect until it has been confirmed by Great Britain and the United States, should provide for confirmation by the Parliament of Canada.

2. The Minister submits that Article 2 of the proposed Arrangement is, in his opinion, entirely inadmissible. It would suspend the operation of the Statutes of Great Britain and of Canada, and of the provinces now constituting Canada, not only as to the various offences connected with fishing, but as to Customs, harbours, and shipping, and would give to the fishing-vessels of the United States privileges in Canadian ports which are not enjoyed by vessels of any other class, or of any other nation. Such vessels would, for example, be free from the duty of reporting at the Customs on entering a Canadian harbour, and no safeguard could be adopted to prevent infraction of the Customs laws by any vessel asserting the character of a fishing-vessel of the United States.

Instead of allowing to such vessels merely the restricted privileges reserved by the Convention of 1818, it would give them greater privileges than are enjoyed at the present time by any vessels in any part of the world.

It must, moreover, be borne in mind that, should no "definite arrangement," such as is looked forward to in the proposal be arrived at, these extraordinary concessions, although applied for pending such a definitive arrangement, might remain in operation for an indefinite period, and that the Article would be taken for all time to come as indicating the true interpretation of the Convention of 1818, although the interpretation placed upon that Convention by the Article is, as a matter of fact, diametrically opposed to the construction which has heretofore been insisted upon by successive Canadian Governments.

The Minister further considers it his duty to point out that the Article is beyond the powers of the Imperial Government, which cannot thus suspend or repeal Canadian laws.

3. As to Article 3 the Minister submits that it is entirely inadmissible. It proposes that Her Majesty's Courts in Canada shall, without any show of reason, be deprived of their jurisdiction, and would vest that jurisdiction in a Tribunal not bound by legal principles, but clothed with supreme authority to decide on most important rights of the Canadian people.

It would be a disagreeable novelty to the people of Her Majesty's Canadian dominions to find that any of their rights, or the rights of their country as a whole, were to be submitted to the adjudication of two naval officers, one of them belonging to a foreign country, who, if they should disagree and be unable to choose an Umpire, must refer the final decision of the great interests which might be at stake to some person chosen by lot.

If a vessel charged with infraction of our fishing rights should, by this Extraordinary Tribunal, be thought worthy of being subjected to a "judicial examination," she would be sent to the Vice-Admiralty Court at Halifax, but there would be no redress, no

appeal, and no reference to any Tribunal if the naval officers should think proper to release her.

4. Article 4 is also open to grave objection. It proposes to give the United States' fishing-vessels the same commercial privileges as those to which other vessels of the United States are entitled, although such privileges are expressly renounced by the Treaty of 1818 on behalf of fishing-vessels, which were thereafter to be denied the right of access to Canadian waters, except for shelter, repairs, and the purchase of wood and water. It has already been pointed out in previous Reports on this subject, that an attempt was made, during the negotiations which preceded the Convention of 1818, to obtain for the fishermen of the United States the right of obtaining bait in Canadian waters, and that, as this attempt was successfully resisted, your Excellency will observe that, in spite of this fact, it is proposed, under the Article now referred to, to declare that the Convention of 1818 gave that privilege, as well as the privilege of purchasing other supplies, in the harbours of the Dominion.

5. To this novel and unjustified interpretation of the Convention, Mr. Bayard proposes to give retrospective effect by the next Article of the proposal, in which it is assumed, without discussion, that all United States' fishing-vessels which have been seized since the expiration of the Treaty of Washington have been illegally seized, leaving, as the only question still open for consideration, the amount of the damages for which the Canadian authorities are liable. The Minister submits that the serious consideration of such a proposal would imply a disregard of justice as well as of the interests of Canada, and he is unwilling to believe that it will be entertained, either by your Excellency's advisers or by the Imperial Government.

From the above enumeration of some of the principal objections to which the proposals contained in Mr. Bayard's Memorandum are open, it will be evident to your Excellency that those proposals, as a whole, will not be acceptable to the Government of Canada. The conditions which Mr. Bayard has sought to attach to the appointment of a Mixed Commission involve in every case the assumption that, upon the most important points in the controversy which has arisen in regard to the fisheries on the eastern coast of British North America, Canada has been in the wrong and the United States in the right. The Reports which have already been submitted to your Excellency and communicated to Her Majesty's Government upon this subject have been sufficient to show that the position which has been taken up by the Canadian Government is one perfectly justifiable with reference to the rights expressly secured to British subjects by Treaty, and that the legislation by which it has been and is now being sought to enforce those rights is entirely in accordance with Treaty stipulations, and is within the competence of the Colonial Legislature.

It is not to be expected that, after having earnestly insisted upon the necessity of a strict maintenance of these Treaty rights, and upon the respect due by foreign vessels while in Canadian waters to the municipal legislation by which all vessels resorting to those waters are governed, in the absence, moreover, of any decision of a legal Tribunal to show that there has been any straining of the law in those cases in which it has been put in operation, the Canadian Government will suddenly, and without the justification supplied by any new facts or arguments withdraw from a position taken up deliberately, and by doing so in effect plead guilty to the whole of the charges of oppression in humanity and bad faith which, in language wholly unwarranted by the circumstances of the case, have been made against it by the public men of the United States.

Such a surrender on the part of Canada would involve the abandonment of a valuable portion of the national inheritance of the Canadian people, who would certainly visit with just reprobation those who were guilty of so serious a neglect of the trust committed to their charge.

The Minister, while however objecting thus strongly to the proposal as it now stands, considers that the fact of such a proposal having been made may be regarded as affording an opportunity which has, up to the present time, not been offered for an amicable comparison of the views entertained by your Excellency's Government and that of the United States, and he desires to point out that Mr. Bayard's proposal, though quite inadmissible in so far as the conditions attached to it are concerned, appears to be, in itself, one which deserves respectful examination by your Excellency's advisers. The main principle of that proposal is, that a Mixed Commission should be appointed for the purpose of determining the limits of those territorial waters within which, subject to the stipulations of the Convention of 1818, the exclusive right of fishing belongs to Great Britain.

The Minister cordially agrees with Mr. Bayard in believing that a determination of these limits would, whatever may be the future commercial relations between Canada and

the United States, either in respect of the fishing industry or in regard to the interchange of other commodities, be extremely desirable, and he believes that your Excellency's Government will be found ready to co-operate with that of the United States in effecting such a settlement.

Holding this view, the Minister is of opinion that Mr. Bayard was justified in reverting to the precedent afforded by the negotiations which took place upon this subject between Great Britain and the United States after the expiration of the Reciprocity Treaty of 1854, and he concurs with him in believing that the Memorandum communicated by Mr. Adams in 1866 to the Earl of Clarendon affords a valuable indication of the lines upon which a negotiation directed to the same points might now be allowed to proceed.

The Minister has already referred to some of the criticisms which were taken at the time by Lord Clarendon to the terms of the Memorandum. Mr. Bayard has himself pointed out that its concluding paragraph, to which Lord Clarendon emphatically objected, is not contained in the Memorandum now forwarded by him. Mr. Bayard appears, however, while taking credit for this omission, to have lost sight of the fact that the remaining Articles of the draft Memorandum contain stipulations not less open to objection, and calculated to affect even more disadvantageously the permanent interests of the Dominion in the fisheries adjacent to its coasts.

The Minister submits that, in his opinion, there can be no objection on the part of the Canadian Government to the appointment of a Mixed Commission, whose duty it would be to consider and report upon the matters referred to in the three first Articles of the Memorandum communicated to the Earl of Clarendon by Mr. Adams in 1866.

Should a Commission instructed to deal with these subjects be appointed at an early date, the Minister is not without hope that the result of its investigations might be reported to the Governments affected without much loss of time. Pending the termination of the questions which it would discuss, it will, in the opinion of the Minister, be indispensable that United States' fishing-vessels entering Canadian bays and harbours should govern themselves not only according to the terms of the Convention of 1818, but by the Regulations to which they, in common with other vessels, are subject while within such waters.

The Minister has, however, no doubt that every effort will be made to enforce those Regulations in such a manner as to cause the smallest amount of inconvenience to fishing-vessels entering Canadian ports under stress of weather, or for any other legitimate purpose; and he believes that any representation upon this subject will receive the attentive consideration of your Excellency's Government.

The Minister, in conclusion, would remind your Excellency that your Government has always been willing to remove any obstacles to the most friendly relations between the people of Canada and of the United States.

Your Government has not only been disposed from the first to arrive at such an arrangement as that indicated in the Report with regard to the fisheries, but likewise to enter into such other arrangements as might extend the commercial relations existing between the two countries.

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

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

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Annex.

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[The following despatch from Lord Clarendon to Sir F. Bruce contains the Memorandum referred to in the Canadian Report above.]

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*The Earl of Clarendon to Sir F. Bruce.*

Sir, *Foreign Office, May 11, 1866.*  
MR. ADAMS placed in my hands on the 1st instant the paper of which I inclose a copy. The object of it, as you will see, is to provide by mutual agreement between the two Governments for ascertaining the extent of the restrictions imposed, under the 1st Article of the Convention of 1818, upon the fishermen of the United States while

carrying on fishing operations on the coasts of Her Majesty's possessions in North America.

Mr. Adams did not accompany the communication of this paper with any explanatory observations in regard to the particular points the settlement of which was contemplated by the United States by means of the proposed agreement, and therefore it can only be inferred that, leaving out of consideration all question of fishing rights on the part of the United States on the coasts of the British possessions to which their fishermen are specially admitted, the object of the proposed Commission is to inquire into and define the several questions relating to rights of exclusive fishery possessed by Great Britain within bays and between headlands which have in former times been a fruitful source of discussion between the two Governments.

These questions were put in abeyance by the Reciprocity Treaty of 1854, but are now revived with all their difficulties by the abrogation of that Treaty at the demand of the Government of the United States.

The definition of the limits of restriction on fishery retained in the Reciprocity Treaty has occupied a Mixed Commission up to the present time, and their labours were only completed when the entire benefit to be derived from them was, in consequence of the abrogation of the Treaty, no longer enjoyable by the fishermen of either country.

It is probable that the Government of the United States, having in view the process by which the fishing provisions of the Reciprocity Treaty were, in one respect, to be carried into effect, contemplate the possibility, by a similar process of determining (though without having recourse to an international arrangement of the same kind—at all events in the first instance) the various questions which for the time were set at rest by the Treaty of 1854.

Her Majesty's Government will very readily associate themselves with that of the United States in such an attempt, and they therefore authorize you to accept, at least in principle, the proposal for a Mixed Commission for the purposes specified in the first, second, and third clauses of the paper delivered to me by Mr. Adams.

But before you sign a Protocol to that effect, Her Majesty's Government desire that you should obtain from the Government of the United States a more distinct explanation of the duties which it is proposed to confide to the Mixed Commission, and of the limits within which it is to operate; though, if that explanation is such as shall satisfy you that you may safely proceed, you may at once sign such a document without further instructions; if, however, you entertain any doubt on the subject, or would prefer, on so important a question, that Her Majesty's Government should have an opportunity of previously signifying their concurrence in the document you may be prepared to sign, you are at liberty to refer home for definitive instructions.

Her Majesty's Government understand that "the southern coast of Newfoundland, which extends from Cape Ray to the Rameau Islands;" "the western and northern coasts of Newfoundland, from the said Cape Ray to the Quirpon Islands;" "the shores of the Magdalen Islands;" "the coasts, bays, harbours, and creeks from Mount Joly, on the southern coast of Labrador, to and through the Straits of Belle Isle, and thence northwardly, indefinitely, along the coast;" and also "the unsettled bays, harbours, and creeks of the southern part of the coast of Newfoundland here above described, and of the coast of Labrador," will be excluded from the operations of the Commission, whose duty will therefore be confined to ascertaining what is the real extent and meaning of the renunciation, on the part of the United States, "to take, dry, or cure fish on or within 3 marine miles of any of the coasts, bays, creeks, or harbours of His Britannic Majesty's dominions in America not included within the above-mentioned limits;" and, having ascertained these points, then to lay down regulations under which United States' fishermen may be "admitted to enter such bays or harbours for the purpose of shelter and repairing damages therein, of purchasing wood, and of obtaining water;" and to agree upon a system of police for enforcing the conclusions at which the Commission may arrive.

If I have correctly described the object of the United States in the present proposal, Her Majesty's Government will readily accede to it, and will cordially co-operate in removing a source of much irritation between the subjects and citizens of the two countries.

In any case, however, Her Majesty's Government would reserve, as that of the United States are also prepared for themselves to reserve, the right of considering the recommendations of the Joint Commission, before they can finally be held binding on the two Governments; and Her Majesty's Government would hold themselves entitled to maintain, pending the determination of the questions to be discussed, the principles for which they have heretofore contended, and to enforce all regulations and assert all rights



which, previously to the conclusion of the Reciprocity Treaty, the British Government asserted and enforced. Therefore, if the purport of the concluding paragraph of Mr. Adams' paper is meant by the United States to involve an obligation on the part of Her Majesty's Government to continue to allow, during the sitting of the Commission, fishermen of the United States to enjoy in British waters the privileges under the Reciprocity Treaty which the Government of the United States have now renounced for their citizens, you will frankly state to Mr. Seward that into such an engagement Her Majesty's Government cannot enter.

Her Majesty's Government are most desirous that the rights of the Colonies should be so enforced as to give the least possible occasion for complaint or discussion. They have cordially approved, and have recommended to the Governments of the other British Provinces, a proposal made by the authorities of Canada, that American fishermen should for the present season be allowed to enjoy, under special licences, the benefits conferred by the Reciprocity Treaty, and they will be glad to learn that the Lower Provinces have adopted an arrangement intended to prevent the change of circumstances from operating suddenly to the injury of the fishing interests of citizens of the United States; but they cannot engage indefinitely to adhere to this system, though they are perfectly prepared to concert with the United States for substituting for it a more permanent arrangement which, either solely applicable to fisheries, or more generally comprising the common interests of Her Majesty's subjects, and those of the citizens of the United States, shall hold out a promise of mutual interest to both parties, and the strongest assurance of peace and good-will between the two Governments.

You will, of course, freely communicate with Her Majesty's Colonial authorities on the matters referred to in this despatch.

In the meanwhile, I shall take an opportunity to inform Mr. Adams that, while cordially assenting in principle to the proposal which he placed in my hands, and anxiously desiring that it may lead to a good result, Her Majesty's Government have thought that the negotiation would be facilitated by its being carried on between you and Mr. Seward.

I am, &c.  
(Signed) CLARENDON.

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Inclosure in Annex.

*Draft Protocol communicated by Mr. Adams to the Earl of Clarendon in 1866.*

WHEREAS in the 1st Article of the Convention between the United States and Great Britain, concluded and signed in London on the 26th October, 1818, it was declared that:—

“The United States hereby renounce, for ever, any liberty heretofore enjoyed or claimed by the inhabitants thereof to take, dry, or cure fish on or within 3 marine miles of any of the coasts, bays, creeks, or harbours of His Britannic Majesty's dominions in America, not included within certain limits heretofore mentioned:”

And whereas differences have arisen in regard to the extent of the above-mentioned renunciation, the Government of the United States and Her Majesty the Queen of Great Britain, being equally desirous of avoiding further misunderstanding, have agreed to appoint, and do hereby authorize the appointment, of a Mixed Commission for the following purposes, namely:—

1. To agree upon and define, by a series of lines, the limits which shall separate the exclusive from the common right of fishery, on the coasts and in the seas adjacent, of the British North American Colonies, in conformity with the 1st Article of the Convention of 1818. The said lines to be regularly numbered, duly described, and also clearly marked on charts prepared in duplicate for the purpose.

2. To agree upon and establish such regulations as may be necessary and proper to secure to the fishermen of the United States the privilege of entering bays and harbours for the purpose of shelter; and of repairing damages therein, of purchasing wood, and of obtaining water; and to agree upon and establish such restrictions as may be necessary to prevent the abuse of the privilege reserved by said Convention to the fishermen of the United States.

3. To agree upon and recommend the penalties to be adjudged, and such proceedings and jurisdiction as may be necessary to secure a speedy trial and judgment with as little expense as possible, for the violation of rights and the transgression of the limits and restrictions which may be hereby adopted.

Provided, however, that the limits, restrictions, and regulations which may be agreed upon by the said Commission shall not be final, nor have any effect, until so jointly confirmed and declared by the United States and Her Majesty the Queen of Great Britain, either by Treaty or by laws mutually acknowledged and accepted by the President of the United States, by and with the consent of the Senate and by Her Majesty the Queen of Great Britain.

Pending a definitive arrangement on the subject, the United States' Government engages to give all proper orders to officers in its employment; and Her Britannic Majesty's Government engages to instruct the proper Colonial or other British officers to abstain from hostile acts against British and United States' fishermen respectively.

No. 50.

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

Sir, *Foreign Office, February 17, 1887.*  
 I HAVE received your despatch of the 28th ultimo, relative to the case of the United States' schooner "Sarah H. Prior;" and I have to acquaint you that I have requested to be furnished with a Report from the Dominion Government on the subject.  
I am, &c.  
 (Signed) SALISBURY.

No. 51.

*Sir J. Pauncefote to Sir R. Herbert.*

Sir, *Foreign Office, February 17, 1887.*  
 I AM directed by the Marquis of Salisbury to transmit to you, to be laid before Sir Henry Holland, a copy of a despatch from Her Majesty's Minister at Washington, inclosing a copy of a note from the United States' Secretary of State, requesting that an investigation may be made into the case of the United States' schooner "Sarah H. Prior;"\* and I am to request that a Report may be obtained from the Dominion Government on the subject.

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

No. 52.

*Sir L. West to the Marquis of Salisbury.—(Received February 19.)*

My Lord, *Washington, February 4, 1887.*  
 I HAVE the honour to inclose to your Lordship herewith copies of a letter from the Secretary of State, transmitting to the Senate a revised list of the American vessels seized, detained, or warned off from Canadian ports during the last year.

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

Inclosure in No. 52.

*49th Congress, 2nd Session.—SENATE.—Ex. Doc. No. 55.*

*Letter from the Secretary of State transmitting Revised List of Vessels involved in the Controversy with the Canadian Authorities.*

*January 27, 1887.—Ordered to be printed, and also to be bound with Senate Report No. 1683.*

Sir, *Department of State, Washington, January 26, 1887.*  
 RESPONDING to your request, dated the 17th, and received at this Department on the 18th instant, on behalf of the Committee on Foreign Relations, for a revision of the list, heretofore furnished by this Department to the Committee, of all American

vessels seized, warned, fined, or detained by the Canadian authorities during the year 1886, I now inclose the same.

Every such instance is therein chronologically enumerated, with a statement of the general facts attendant.

Very respectfully, &c.  
(Signed) T. F. BAYARD.

Hon. George F. Edmunds, United States' Senate.

*List of American Vessels seized, detained, or warned off from Canadian ports during the last Year.*

- "Sarah B. Putnam."—Beverly, Mass.; Charles Randolph, master.  
Driven from harbour of Pubnico in storm March 22, 1886.
- "Joseph Story."—Gloucester, Mass.  
Detained by customs officers at Baddeck, N. S., in April 1886, for alleged violation of the Customs Laws. Released after twenty-four hours' detention.
- "Seth Stockbridge."—Gloucester, Mass.; Antone Olson, master.  
Warned off from St. Andrews, N. B., about April 30, 1886.
- "Annie M. Jordan."—Gloucester, Mass.; Alexander Haime, master.  
Warned off at St. Andrews, New Brunswick, about May 4, 1886.
- "David J. Adams."—Gloucester, Mass.; Alden Kinney, master.  
Seized at Digby, Nova Scotia, May 7, 1886, for alleged violation of Treaty of 1818, Act of 59 George III, and Act of 1883. Two suits brought in Vice-Admiralty Court at Halifax for penalties. Protest filed May 12. Suits pending still, and vessel not yet released apparently.
- "Susie Cooper."—(Hooper?) Gloucester (?), Mass.  
Boarded and searched, and crew rudely treated, by Canadian officials in Canso Bay, Nova Scotia, May 1886.
- "Ella M. Doughty."—Portland, Me.; Warren A. Doughty, master.  
Seized at St. Ann's, Cape Breton, May 17, 1886, for alleged violation of the Customs Laws. Suit was instituted in Vice-Admiralty Court at Halifax, Nova Scotia, but was subsequently abandoned, and vessel was released June 29, 1886.
- "Jennie and Julia."—Eastport, Me.; W. H. Travis, master.  
Warned off at Digby, Nova Scotia, by Customs officers, May 18, 1886.
- "Lucy Ann."—Gloucester, Mass.; Joseph H. Smith, master.  
Warned off at Yarmouth, Nova Scotia, May 29, 1886.
- "Matthew Keany."—Gloucester, Mass.  
Detained at Souris, Prince Edward Island, one day for alleged violation of Customs Laws, about May 31, 1886.
- "James A. Garfield."—Gloucester, Mass.  
Threatened, about June 1, 1886, with seizure, for having purchased bait in a Canadian harbour.
- "Martha W. Bradly."—Gloucester, Mass.; J. F. Ventier, master.  
Warned off at Canso, Nova Scotia, between June 1 and 8, 1886.
- "Eliza Boynton."—Gloucester, Mass.; George E. Martin, master.  
Warned off at Canso, Nova Scotia, between June 1 and 9, 1886. Then afterwards detained in manner not reported, and released October 25, 1886.
- "Mascot."—Gloucester, Mass.; Alexander McEachern, master.  
Warned off at Port Amherst, Magdalen Islands, June 10, 1886.
- "Thomas F. Bayard."—Gloucester, Mass.; James McDonald, master.  
Warned off at Bonne Bay, Newfoundland, June 12, 1886.
- "James G. Craig."—Portland, Me.; Webber, master.  
Crew refused privilege of landing for necessaries at Brooklyn, Nova Scotia, June 15 or 16, 1886.
- "City Point."—Portland, Me.; Keene, master.  
Detained at Shelburne, Nova Scotia, July 2, 1886, for alleged violation of Customs Laws. Penalty of 400 dollars demanded. Money deposited, under protest, July 12, and, in addition, 120 dollars costs deposited July 14. Fine and costs refunded July 21, and vessel released August 26. Harbour dues exacted August 26, notwithstanding vessel had been refused all the privileges of entry.
- "C. P. Harrington."—Portland, Me.; Frellick, master.  
Detained at Shelburne, Nova Scotia, July 3, 1886, for alleged violation of Customs Laws; fined 400 dollars July 5; fine deposited under protest, July 12; 120 dollars costs deposited July 14; refunded July 21, and vessel released.

"Hereward."—Gloucester, Mass.; McDonald, master.

Detained two days at Canso, Nova Scotia, about July 3, 1886, for shipping seamen contrary to port laws.

"G. W. Cushing."—Portland, Me.; Jewett, master.

Detained July (by another report June) 3, 1886, at Shelburne, Nova Scotia, for alleged violation of the Customs Laws; fined 400 dollars; money deposited with collector at Halifax about July 12 or 14, and 120 dollars for costs deposited 14th; costs refunded July 21, and vessel released.

"Golden Hind."—Gloucester, Mass.; Ruben Cameron, master.

Warned off at Bay of Chaleurs, Nova Scotia, on or about July 23, 1886.

"Novelty."—Portland, Me.; H. A. Joyce, master.

Warned off at Pictou, Nova Scotia, June 29, 1886, where vessel had entered for coal and water; also refused entrance at Amherst, Nova Scotia, July 24.

"N. J. Miller."—Booth Bay, Me.; Dickson, master.

Detained at Hopewell Cape, New Brunswick, for alleged violation of Customs Laws, on July 24, 1886. Fined 400 dollars.

"Rattler."—Gloucester, Mass.; A. F. Cunningham, master.

Warned off at Canso, Nova Scotia, June 1886. Detained in port of Shelburne, Nova Scotia, where vessel entered seeking shelter August 3, 1886. Kept under guard all night and released on the 4th.

"Caroline Vought."—Booth Bay, Me.; Charles S. Reed, master.

Warned off at Paspebiac, New Brunswick, and refused water, August 4, 1886.

"Shiloh."—Gloucester, Mass.; Charles Nevit, master.

Boarded at Liverpool, Nova Scotia, August 9, and subjected to rude surveillance.

"Julia Ellen."—Booth Bay, Me.; Burnes, master.

Boarded at Liverpool, Nova Scotia, August 9, 1886, and subjected to rude surveillance.

"Freddie W. Allton."—Provincetown, Mass.; Allton, master.

Boarded at Liverpool, Nova Scotia, August 9, 1886, and subjected to rude surveillance.

"Howard Holbrook."—Gloucester, Mass.

Detained at Hawkesburg, Cape Breton, August 17, 1886, for alleged violation of the Customs Laws. Released August 20 on deposit of 400 dollars. Question of remission of fine still pending.

"A. R. Crittenden."—Gloucester, Mass.; Bain, master.

Detained at Hawkesburg, Nova Scotia, August 27, 1886, for alleged violation of Customs Laws; 400 dollars penalty deposited August 28 without protest, and vessel released; 375 dollars remitted, and a nominal fine of 25 dollars imposed.

"Mollie Adams."—Gloucester, Mass.; Solomon Jacobs, master.

Warned off into storm from Straits of Canso, Nova Scotia, August 31, 1886.

"Highland Light."—Wellfleet, Mass.; J. H. Ryder, master.

Seized off East Point, Prince Edward Island, September 1, 1886, while fishing within prohibited line. Suit for forfeiture begun in Vice-Admiralty Court at Charlottetown. Hearing set for September 20, but postponed to September 30. Master admitted the charge and confessed Judgment. Vessel condemned and sold December 14. Purchased by Canadian Government.

"Pearl Nelson."—Provincetown, Mass.; Kemp, master.

Detained at Arichat, Cape Breton, September 8, 1886, for alleged violation of Customs Laws. Released September 9 on deposit of 200 dollars. Deposit refunded October 26, 1886.

"Pioneer."—Gloucester, Mass.; F. F. Cruched, master.

Warned off at Canso, Nova Scotia, September 9, 1886.

"Everett Steel."—Gloucester, Mass.; Charles H. Forbes, master.

Detained at Shelburne, Nova Scotia, September 10, 1886, for alleged violation of Customs Laws. Released by order from Ottawa, September 11, 1886.

"Moro Castle."—Gloucester, Mass.; Edwin M. Joyce, master.

Detained at Hawksbury, Nova Scotia, September 11, 1886, on charge of having smuggled goods into Chester, Nova Scotia, in 1884, and also of violating Customs Laws. A deposit of 1,600 dollars demanded. Vessel discharged November 29, 1886, on payment, by agreement, of 1,000 dollars to Canadian Government.

"William D. Daisley."—Gloucester, Mass.; J. E. Gorman, master.

Detained at Souris, Prince Edward Island, October 4, 1886, for alleged violation of Customs Laws. Fined 400 dollars, and released on payment; 375 dollars of the fine remitted.

"Laura Sayward."—Gloucester, Mass.; Medeo Rose, master.  
Refused privilege of landing to buy provisions at Shelburne, Nova Scotia, October 5, 1886.

"Marion Grimes."—Gloucester, Mass.

Detained at Shelburne, Nova Scotia, October 9, for violation of port laws in failing to report at Custom-house on entering. Fined 400 dollars. Money paid under protest and vessel released. Fine remitted December 4, 1886.

"Jennie Seaverns."—Gloucester, Mass.; Joseph Tupper, master.

Refused privilege of landing, and vessel placed under guard at Liverpool, Nova Scotia, October 20, 1886.

"Flying Scud."—Gloucester, Mass.

Detained for alleged violation of Customs Laws at Halifax, November 1, or about that time. Released November 16, 1886.

"Sarah H. Prior."—Boston, Mass.

Refused the restoration of a lost scine, which was found by a Canadian schooner, December 1886.

Boat (name unknown).—Stephen R. Balcom, master, Eastport, Me.

Warned off at St. Andrews, New Brunswick, July 9, 1886, with others.

Two small boats (unnamed).—Charles Smith, Pembroke, Me., master.

Seized at East Quaddy, New Brunswick, September 1, 1886, for alleged violation of Customs Laws.

"Druid" (foreign built).—Gloucester, Mass.

Seized, warned off, or molested otherwise at some time prior to September 6, 1886.

"Abbey A. Snow."—Injury to this vessel has not been reported to the Department of State.

"Eliza A. Thomas."—Injury to this vessel has not been reported to the Department of State.

"Wide-Awake."—Eastport, Me.; William Foley, master.

Fined at L'Etang, New Brunswick, 75 dollars for taking away fish without getting a clearance; again, November 13, 1886, at St. George, New Brunswick, fined 20 dollars for similar offence. In both cases he was proceeding to obtain clearances.

### No. 53.

*Sir L. West to the Marquis of Salisbury.—(Received February 19.)*

My Lord,

*Washington, February 5, 1887.*

I HAVE the honour to inclose to your Lordship herewith a paper containing certain questions respecting the fisheries, put by the Secretary of the Treasury to Professor Baird, of the Fish Commission, as well as the answers returned thereto.

I have, &c.

(Signed) L. S. SACKVILLE WEST.

### Inclosure in No. 53.

*Questions put to Professor Baird by the Secretary of the Treasury on the Fisheries, and Answers thereto.*

1. WHAT are the descriptions of the fish which American fishermen desire to take either in the jurisdictional waters of British North America or in the open sea or open bays near the British Colonial possessions?

*Answer.*—Mackerel is the only species of any importance which American fishermen desire to take within the 3-mile limit, but at present the advantage to be derived from any privilege of fishing within the 3-mile limit is comparatively insignificant.

2. In the method of fishing in the open sea, of what importance is the right to enter in a commercial way British Colonial ports in the neighbourhood?

*Answer.*—Only to purchase either salt, barrels, or ice. The privilege, however, of landing cargoes of fish at provincial ports for shipment to the United States is of considerable importance to vessels engaged in the mackerel fishery, and with it should be coupled the privilege of refitting. Some of the Gloucester owners of vessels are opposed to going to and from provincial ports on account of the loss of time thereby incurred, but as a considerable percentage of the men employed have families in

the provinces, they urge upon the owners the necessity of obtaining bait in these localities.

3. The same question in regard to the fishing on the permitted coasts, and the commercial entry in the prohibited bays and harbours, but not for fishing?

*Answer.*—There is at present comparatively little fishing by American vessels on that portion of the coast to which free access is given by the Treaty of 1818, but vessels fishing in that vicinity should have the same privileges in other ports as are accorded to other vessels, as it would seem unwise to discriminate, and it would, perhaps, owing to the few Settlements of any importance on the permitted coast, be more convenient for the vessels to enter ports in the prohibited districts to purchase the necessary articles than to go out of their way in an opposite direction, where there might be any uncertainty of securing them.

4. What is your estimate of the total tonnage of American vessels, and the number of fishermen therein engaged in the Canadian and North Atlantic fisheries in 1886, and the total value of their catch?

*Answer.*—1,956 vessels, aggregating 115,130 tons, with crews numbering 17,996 men.

The fleet is estimated to have been divided as follows:—

1,530 vessels in the food-fish fishery.

215 in the shell-fish and lobster fisheries.

177 in the capture of whales and seals.

34 in the Menhaden fishery.

5. What change has, in your view, come to American fisheries since the last full year of the Washington Treaty in regard to the quantity, character, and general features of that industry?

*Answer.*—During the year mackerel has been peculiarly scarce. The limited catch, however, cannot in any way be accounted for by the restrictions placed on American vessels within the 3-mile limit.

6. Whatever the new features in the diminished necessity for the purchase of bait in British North American ports?

*Answer.*—The employment of the Gill net obtained from Norway for catching cod-fish, which renders bait no longer necessary.

7. Have you ascertained new facts of public interest in regard to the decreasing importance to American fishermen of the in-shore Canadian fisheries?

*Answer.*—The decreased importance is due to—

1. The increased size of American vessels which did away with the necessity of fishing close to land where harbours could be made in case of storms, and of landing to dry their fish.

2. The substitution of the purse seine for hand-lines, in the capture of mackerel, which has necessitated fishing in deeper water, and at a greater distance from shore.

3. From the change in the location of the mackerel, which has for the last few years enabled American vessels to obtain full cargoes in the vicinity of the American coasts, instead of going to the Gulf of St. Lawrence, where they formerly met with better success, but where of late years, prior to the present season, they have found fishing unsatisfactory.

#### No. 54.

*Sir L. West to the Marquis of Salisbury.\*—(Received February 22.)*

My Lord,

*Washington, February 7, 1887.*

I HAVE the honour to inform your Lordship that the Secretary of the Treasury has sent a long reply to a request of the House Committee on Foreign Affairs for any suggestions he may desire to make with reference to the non-intercourse Bill now under consideration, and for which he proposes to substitute the Bill, copies of which, as published in the newspapers, are herewith inclosed. The Secretary holds that when Treaty rights are curtailed the right to respond exists. The Canadian Act recently approved by the Imperial Government, he maintains, was intended to forfeit any American fishing-vessel which is found having entered Canadian waters to buy ice, bait, or other articles, or for any purpose other than shelter, repairs, wood, or water, on the plea that the Treaty of 1818 permits and stipulates for such legislation. That he

\* Copy to Colonial Office, February 25, 1887.

denies, and contends that such legislation is a repeal and annulment by England of the arrangement made in 1830, and that to that repeal the United States' Government is entitled to respond by a similar repeal of their own Law, and by a refusal hereafter, and while debate or negotiation goes on, to confer hospitality or any privileges whatever in United States' ports on Canadian vessels or boats of any sort. England, he says, may judge for herself of the nature and extent of the comity and courtesy she will show the United States, and the United States simply respond—suspend comity and hospitality.

He therefore proposes a Bill, which is in substance the one before the House, authorizing the President, under given circumstances, to exclude both vessels, goods, engines, and cars coming from Canada. The Secretary considers the question whether or not Article XXIX of the "Alabama" Treaty\* was left standing by the Act of Congress of 1883 (28th June)† and the President's Proclamation thereunder. If, he concludes, the stipulations of this Article are now binding on Great Britain, then it is indisputable that the vessels of the United States are entitled by the Treaty to enter fish as merchandize at the proper custom-house of any Canadian port for conveyance in bond to the United States, for, of necessity, the vessel containing the fish is entitled to enter the port in order to enter the merchandize at the proper custom-house.

In the preamble of this proposed Bill will be found the grounds upon which it is based.

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

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Inclosure in No. 54.

*Extract from the "New York World" of February 7, 1887.*

SECRETARY MANNING'S BILL.—Subject to this policy, therefore, even when repelling aggression; avowing this common duty and ultimate destiny, even when responding to an offensive non-intercourse policy, by offended non-intercourse acts which at any moment we are more anxious to withdraw from than now willing to enter upon, I submit to your Committee, with the greatest deference, the following Bill:—

*"An Act to enable the President to protect and defend the Rights and Privileges of Vessel of the United States.*

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled:

"Whereas, the United States having by Treaty with His Majesty the King of the United Kingdom of Great Britain and Ireland, renounced certain specified incidents and parts of the therein recognized liberties of the United States in the fisheries of the North Atlantic heretofore enjoyed in common with the inhabitants of the places bordering thereon, namely, the liberty to take, dry, and cure fish within 3 marine miles of certain designated coasts, bays, creeks and harbours of the British dominions of North America;

"Whereas, the United States having retained unrenounced the rest and residue of their rights and liberties in the fisheries of the North Atlantic, the Gulf of St. Lawrence, the Newfoundland and Labrador coasts; and,

"Whereas, the United States having by the said Treaty subjected even their right to traverse and their liberty to enter such bays or harbours for the purpose of shelter, and of repairing damages therein, and of purchasing wood, and of obtaining water, to whatsoever restrictions might be necessary to effectuate their said renunciation of taking, drying, and curing fish therein; and,

"Whereas, the aforesaid renunciation of what has now become valueless, and which the United States have no wish to resume or enjoy, has, by those having authority over the lands adjacent to the said bays and harbours, been made a pretext for laws so executed as to enlarge, distend, and pervert the said renunciation into nullification or denial of the said unrenounced, recognized, and common rights and liberties of the United States in the said British waters, coasts, and common sovereignty in the fisheries therein, to wit: Denial at all Canadian ports open to the entry of foreign vessels, to regularly documented vessels of the United States, whether following inshore fishery

\* Treaty of Washington, May 8, 1871.

† See "United States No. 1 (1857)," p. 8. No. 11.

thereabouts on coasts, bays, creeks, harbours, shores, and straits, designated and unrenounced in the said Treaty, or pursuing off-shore fishery, or fishery upon the high seas thereabouts, of rights to which such vessels and their crews are entitled, to wit, likewise, denial at all Canadian ports open for entry by foreign vessels, to regularly documented vessels of the United States, of commercial and trading privileges now ordinary in the intercourse of civilized peoples, and such as in all ports of entry for foreign vessels established by law in the United States, are now, and for many years past have been conceded to and enjoyed by Canadian and British vessels entering and trading at the same; and,

Whereas, for past aggressions and injuries in that regard, redress is delayed or withheld; and,

“Whereas, a recent and more stringent Statute enacted by the Canadian Parliament, and approved by the Queen in Council on the 26th November last, seems to prove those aggressions and injuries deliberate and politic, to forbode their continuance, and to project Canadian non-intercourse with American fishing-vessels for general purposes of trade; therefore,

“Section 1. That whenever the President shall be satisfied that vessels of the United States are, by British or Canadian authority, denied or abridged in the reasonable enjoyment of any rights, privileges, or liberties, on Canadian waters or coasts, or in Canadian ports to which rights, privileges, or liberties, such vessels, their masters or crews, are entitled, by Treaty, or by the law of nations, it shall, in his discretion, be lawful, and it shall, in his discretion, be the duty of the President to close, by a Proclamation to that effect, all the ports of the United States against any and every vessel owned wholly or in part by a subject of Her Britannic Majesty, and coming or arriving from any port or place in the Dominion of Canada or in the Island of Newfoundland, whether directly or having touched at any other port, excepting such vessels shall be in distress of navigation and of needed repairs or supplies therefor, and every vessel thus excluded from the ports of the United States that shall enter, or attempt to enter the same, in violation of this Act, shall, with her tackle, apparel, furniture, and all the cargo on board, be seized and forfeited to the United States, or the value thereof to be recovered of the person or persons making or attempting to make entry.

“Sec. 2. That it shall, in his discretion, be lawful for the President, and it shall, in his discretion, be his duty, whenever he shall be satisfied as is in the 1st section hereof declared, to prohibit, by Proclamation, the entry, or importation, or bringing into any collection, district, or place, in the United States, of any goods, wares, or merchandize, from the aforesaid Dominion of Canada, or Newfoundland, or any locomotive, car, or other vehicle, from the Dominion of Canada; but the President may, in his discretion, apply such Proclamations to any part or all of the things or articles herein named, and may qualify, limit, rescind, or renew the application thereof; and all goods, wares, or merchandize, locomotives, cars, or other vehicles imported or brought, or attempted to be imported or brought, into the United States, contrary to the provisions of this Act, shall be seized and forfeited to the United States, or the value thereof to be recovered of the person or persons so importing or bringing.

“Sec. 3. Any person who shall violate any of the provisions of the 1st or 2nd section of this Act, or any Proclamation of the President made in pursuance hereof, shall be deemed guilty of misdemeanour, and on conviction thereof shall be punished by a fine not exceeding 1,000 dollars, or by imprisonment for a term not exceeding two years, or by both said punishments, in the discretion of the Court.

“Sec. 4. That the President be, and is hereby authorized, to appoint a Commissioner to proceed to such places, in the United States or elsewhere, as may be designated by the Secretary of State, to take testimony, under oath or affirmation, in relation to the losses and injuries inflicted since the 31st December, 1885, by British authorities, Imperial or Colonial, upon citizens of the United States engaged in the fisheries on the north-east coast of British North America. Said Commissioner shall everywhere have, in respect to the administration of oaths or affirmation and the taking of testimony, the same powers as a Commissioner of a Circuit Court, and shall be paid the same fees as are prescribed for similar services of a Commissioner of a Circuit Court, together with travelling expenses.”

The above is but a summary—the Bill, of Act which might be ordained; the preamble, of reasons and grounds. Of course preambles can never create powers, but may serve to explain them. They are rare in the Acts of Congress. The disused form was convenient to enable me to satisfy your request.



No. 55.

*Mr. Bramston to Sir J. Pauncefote.—(Received February 25.)*

Sir, *Downing Street, February 24, 1887.*  
 WITH reference to your letter of the 17th instant, I am directed by Secretary Sir Henry Holland to request that you will inform the Marquis of Salisbury that the Governor-General of Canada has been requested to cause a Report to be furnished of the alleged conduct of the Captain of the Canadian revenue cutter "Critic" in connection with the case of the United States' schooner "Sarah H. Prior."

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

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No. 56.

*Mr. Bramston to Sir J. Pauncefote.—(Received March 1.)*

Sir, *Downing Street, February 28, 1887.*  
 WITH reference to the letter from this Department of the 8th ultimo, and to previous correspondence respecting the alleged action of the Canadian authorities in the case of the United States' fishing-schooners "Pearl Nelson" and "Everitt Steele," I am directed by Secretary Sir H. Holland to transmit to you, to be laid before the Marquis of Salisbury, a copy of a further despatch, with its inclosure, from the Governor-General of the Dominion on the subject.

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

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Inclosure 1 in No. 56.

*The Marquis of Lansdowne to Sir H. Holland.*

Sir, *Ottawa, January 31, 1887.*  
 WITH reference to Mr. Stanhope's despatch of the 22nd November last, transmitting copies of two letters from the Foreign Office, inclosing notes from the Secretary of State of the United States respecting the alleged proceedings of the Canadian authorities in the case of the United States' fishing-vessels "Pearl Nelson" "Everitt Steele," I have the honour to forward herewith a copy of an approved Report of a Committee of the Privy Council, embodying a Report of my Minister of Marine and Fisheries on the subject.

You will observe from the accompanying Minute of Council that in reply to a telegram from the Secretary of State for the Colonies, dated the 6th November last, copies of Orders in Council approved on the 18th of the same month, containing full statements of facts regarding the detention of the above-named vessels were inclosed in my despatches of the 29th November last.

I have, &c.  
 (Signed) LANSDOWNE.

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Inclosure 2 in No. 56.

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

THE Committee of the Privy Council have had under consideration a despatch, dated the 22nd November, 1886, from the Right Honourable the Secretary of State for the Colonies, inclosing letters from Mr. Secretary Bayard, bearing date the 29th October, and referring to the cases of the schooners "Everitt Steele" and "Pearl Nelson."

The Minister of Marine and Fisheries, to whom the despatch and inclosures were referred, reports that in reply to a telegram from the Secretary of State for the Colonies, an Order in Council passed on the 18th November last, containing a full statement of

facts regarding the detention of the above-named vessels, was transmitted to Mr. Stanhope. It will not, therefore, be necessary to repeat this statement in the present Report.

The Minister observes, in the first place, that the two fishing-schooners "Everitt Steele" and "Pearl Nelson" were not detained for any alleged contravention of the Treaty of 1818, or the Fishery Laws of Canada, but solely for violation of the Customs Law.

By this Law all vessels, of whatever character, are required to report to the Collector of Customs immediately upon entering port, and are not to break bulk or land crew or cargo before this is done.

The Minister states that the captain of the "Everitt Steele" had on a previous voyage entered the port of Shelburne on the 25th March, 1886, and after remaining for eight hours, had put to sea again without reporting to the Customs. For this previous offence he was, upon entering Shelburne Harbour on the 10th September last, detained, and the facts were reported to the Minister of Customs at Ottawa. With these facts was coupled the captain's statement that on the occasion of the previous offence he had been misled by the Deputy Harbour-master, from whom he understood that he would not be obliged to report unless he remained in harbour for twenty-four hours. The Minister accepted the statement in excuse as satisfactory, and the "Everitt Steele" was allowed to proceed on her voyage.

The Customs Law had been violated. The captain of the "Everitt Steele" had admitted the violation, and for this the usual penalty could have been legally enforced. It was, however, not enforced, and no detention of the vessel occurred beyond the time necessary to report the facts to head-quarters and obtain the decision of the Minister.

The Minister submits that he cannot discern in this transaction any attempt to interfere with the privileges of United States' fishing-vessels in Canadian waters or any sufficient cause for the protest of Mr. Bayard.

The Minister states that in the case of the "Pearl Nelson" no question was raised as to her being a fishing-vessel, or her enjoyment of any privileges guaranteed by the Treaty of 1818. Her captain was charged with a violation of the Customs Law, and of that alone, by having on that day, before reporting to the Collector of Customs at Arichat, landed ten of his crew.

This he admitted upon oath; when the facts were reported to the Minister of Customs, he ordered that the vessel might proceed upon depositing 200 dollars pending a fuller examination. This was done, and the fuller examination resulted in establishing the violation of the Law, and in finding that the penalty was legally enforceable. The Minister, however, in consideration of the alleged ignorance of the captain as to what constituted an infraction of the Law, ordered the deposit to be returned.

In this case there was a clear violation of Canadian law. There was no lengthened detention of the vessel, the deposit was ultimately remitted, and the United States' Consul-General at Halifax expressed himself by letter to the Minister as highly pleased at the result.

The Minister observes that in this case he is at a loss to discover any well-founded grievance, or any attempted denial of, or interference with, any privileges guaranteed to United States' fishermen by the Treaty of 1818.

The Minister further observes that the whole argument and protest of Mr. Bayard appears to proceed upon the assumption that these two vessels were subjected to unwarrantable interference, in that they were called upon to submit to the requirements of Canadian Customs Law, and that this interference was prompted by a desire to curtail or deny the privileges of resort to Canadian harbours for the purposes allowed by the Treaty of 1818.

It is needless to say that this assumption is entirely incorrect.

Canada has a very large extent of sea-coast, with numberless ports, into which foreign vessels are constantly entering for purposes of trade. It becomes necessary in the interests of legitimate commerce that stringent Regulations should be made, by compulsory conformity to which illicit traffic should be prevented. These Customs Regulations all vessels of all countries are obliged to obey, and these they do obey without in any way considering it a hardship. United States' fishing-vessels come directly from a foreign and not distant country, and it is not in the interests of legitimate Canadian commerce that they should be allowed access to our ports without the same strict supervision as is exercised over all other foreign vessels; otherwise there would be no guarantee against illicit traffic of large dimensions, to the injury of honest trade and the serious diminution of the Canadian revenue. United States' fishing-vessels are cheerfully accorded the right to enter Canadian ports for the purpose of

obtaining shelter, repairs, and procuring wood and water; but in exercising this right they are not and cannot be independent of the Customs Laws.

They have the right to enter for the purposes set forth; but there is only one legal way in which to enter, and that is by conformity to the Customs Regulations.

When Mr. Bayard asserts that Captain Forbes had as much right to be in Shelburne Harbour seeking shelter and water "as he would have had on the high seas, carrying on, under shelter of the flag of the United States, legitimate commerce," he is undoubtedly right; but when he declares, as he in reality does, that to compel Captain Forbes in Shelburne Harbour to conform to Canadian Customs Regulations, or to punish him for their violation, is a more unwarrantable stretch of power than "that of a seizure on the high seas of a ship unjustly suspected of being a slaver," he makes a statement which carries with it its own refutation. Customs Regulations are made by each country for the protection of its own trade and commerce, and are enforced entirely within its own territorial jurisdiction; while the seizure of a vessel upon the high seas, except under extraordinary and abnormal circumstances, is an unjustifiable interference with the free right of navigation common to all nations.

As to Mr. Bayard's observation that by treatment such as that experienced by the "Everitt Steele" "the door of shelter is shut to American fishermen as a class," the Minister expresses his belief that Mr. Bayard cannot have considered the scope of such an assertion, or the inferences which might reasonably be drawn from it.

If a United States' fishing-vessel enters a Canadian port for shelter, repairs, or for wood and water, her captain need have no difficulty in reporting her as having entered for one of these purposes, and the "Everitt Steele" would have suffered no detention had her captain on the 25th March simply reported his vessel to the Collector. As it was, the vessel was detained for no longer time than was necessary to obtain the decision of the Minister of Customs, and the penalty for which it was liable was not enforced. Surely Mr. Bayard does not wish to be understood as claiming for United States' fishing-vessels total immunity from all Customs Regulations, or as intimating that if they cannot exercise their privileges unlawfully they will not exercise them at all.

Mr. Bayard complains that the "Pearl Nelson," although seeking to exercise no commercial privileges, was compelled to pay commercial fees such as are applicable to trading vessels. In reply, the Minister observes that the fees spoken of are not "commercial fees," they are Harbour-master's dues which all vessels making use of legally constituted harbours are by law compelled to pay, and entirely irrespective of any trading that may be done by the vessel.

The Minister observes that no single case has yet been brought to his notice in which any United States' fishing-vessel has in any way been interfered with for exercising any rights guaranteed under the Treaty of 1818 to enter Canadian ports for shelter, repairs, wood, or water; that the Canadian Government would not countenance or permit any such interference, and that in all cases of this class when trouble has arisen it has been due to a violation of Canadian Customs Law which demands the simple legal entry of the vessel as soon as it comes into port.

The Committee, concurring in the above Report, recommend that your Excellency be moved to transmit a copy thereof to the Right Honourable the Secretary of State for the Colonies.

All which is respectfully submitted for your Excellency's approval.

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

No. 57.

Mr. Bramston to Sir J. Pouncefote.—(Received March 1.)

Sir, Downing Street, February 28, 1857.  
WITH reference to previous correspondence relating to an *ad interim* arrangement with the Government of the United States upon the North American Fisheries question, I am directed by Secretary Sir Henry Holland to transmit to you, to be laid before the Marquis of Salisbury, a copy of a telegram which, with his Lordship's concurrence, was sent to the Governor-General on the 24th of this month, together with a copy of a telegram which has been received from the Marquis of Lansdowne in reply.

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

## Inclosure 1 in No. 57.

*Sir H. Holland to the Marquis of Lansdowne.*

(Telegraphic.)

*Downing Street, February 24, 1887.*

YOUR despatch of the 1st February has been carefully considered by Her Majesty's Government, who will communicate with the United States' Government in general accordance with views of your Ministers upon Bayard's proposal for Mixed Commission. There are, however, one or two points on which a further communication will be made to you.

Her Majesty's Government feel it right to intimate to you that, after much consideration of the whole subject, while endeavouring to bring about the *ad interim* arrangement, they are disposed to think that the best and simplest solution of present difficulties might be found if both parties would agree to revert to the condition of things existing under the Treaty of Washington, the fisheries being again thrown reciprocally open, and fish and fish products being again reciprocally admitted duty free. This arrangement, if not permanent, to subsist at least for a term, so as to admit of the discussion of more extended commercial arrangements. They think, however, that it would be the clear interest of the Dominion to offer this arrangement without any suggestion of pecuniary indemnity.

## Inclosure 2 in No. 57.

*The Marquis of Lansdowne to Sir H. Holland.*

(Telegraphic.)

*Ottawa, February 26, 1887.*

IN reply to your telegram of the 24th February, my Government will accept your suggestion of reverting temporarily to condition of things existing under the Treaty of Washington, and do not at present desire to raise question of indemnity.

## No. 58.

*Sir L. West to the Marquis of Salisbury.—(Received March 4.)*

My Lord,

*Washington, February 21, 1887.*

I HAVE already reported to your Lordship the nature of the so-called retaliation Bills which have been introduced into both Houses of Congress, and are still under discussion. In commenting upon the House Bill, which goes further in the way of interference with trade with Canada than the Senate Bill, the "Nation" newspaper of New York remarks that it goes further even than the fishing fraternity desire or approve. The latter would be content with the entire exclusion of Canadian fish from American markets. A monopoly of the fish trade is what they are striving for, and as no monopoly could be more complete than prohibition, they appear not to favour the more drastic measure, the operation of which would, whenever put in force, produce a vociferous outcry all along the border from Passamaquoddy Bay to Paget Sound. "The stoppage of a traffic amounting to more than 70,000,000 dollars per year in order to secure justice respecting a few codfish would be like firing a Columbiad gun to kill a mosquito. The recoil would be far more destructive than the discharge. Why not submit the difficulty to arbitration? But it is said the United States were cheated out of their money by the Halifax Award. If that is true, was not England cheated by the Geneva Award? What has become of the surplus of the 15,000,000 dollars after paying the Alabama claims? Was this overplus greater or less than the 5,500,000 dollars paid by the United States for the Halifax Award? If it was greater, the United States paid it with British gold and had something left over."

I have, &amp;c.

(Signed) L. S. SACKVILLE WEST.

*Sir L. West to the Marquis of Salisbury.—(Received March 10.)*

My Lord,

*Washington, February 24, 1887.*

I HAVE the honour to inclose to your Lordship herewith copies of the retaliatory Bill as passed by the House of Representatives yesterday by a vote of 252 to 1.

This Bill is a substitute for the Senate Bill, and authorizes the stopping of cars carrying goods in transit, provided for under Article XXIX of the Treaty of 1871. This clause, it was objected, would be in violation of the Treaty, and was an evasion unworthy of a civilized country.

The Senate Bill, on the contrary, was retorsion—it was retaliation in kind—always the most efficient. The House, however, refused to adopt the argument, and adhered to the substitute Bill, which was unanimously carried.

I have the honour to inclose a précis which I have made of the debate.

I have, &c.

(Signed) L. S. SACKVILLE WEST.

Inclosure 1 in No. 59.

*Extract from the "Congressional Record" of February 25, 1887.*

STRIKE out all after the enacting clause and insert:—

“That hereafter, whenever the President shall be satisfied that vessels of the United States are denied, in ports or territorial waters of the British dominions in North America, rights to which such vessels are entitled by Treaty or by the law of nations, or are denied the comity of treatment or the reasonable privileges usually accorded between neighbouring and friendly nations, he may, in his discretion, by Proclamation, prohibit from entering the ports of the United States, or from exercising such privileges therein as he may, in his discretion, by such Proclamation, define, vessels owned wholly or in part by a subject of Her Britannic Majesty, and coming or arriving from any port or place in the Dominion of Canada, or in the Island of Newfoundland, whether directly or having touched at any other port, excepting such vessel shall be in distress of navigation and of needed repairs or supplies therefor; and he may also forbid the entrance or importation, either by land or water, into the United States of any goods, wares, or merchandize from the aforesaid Dominion of Canada or Newfoundland, or any locomotive, car, or other vehicle with any goods that may be therein contained from the Dominion of Canada; and upon proof that the privileges secured by Article XXIX of the Treaty concluded between the United States and Great Britain on the 8th day of May, 1871, are denied as to goods, wares, and merchandize arriving at the ports of British North America, the President may also, by Proclamation, forbid the exercise of the like privileges as to goods, wares, and merchandize arriving in any of the ports of the United States; and any person violating or attempting to violate the provisions of any Proclamation issued under this Act, and any person preventing or attempting to prevent any officer of the United States from enforcing such Proclamation shall be guilty of a misdemeanour, and upon conviction thereof shall be liable to a fine of not more than 1,000 dollars, or imprisonment for a term not exceeding two years, or by both said punishments, in the discretion of the Court; and if, on and after the date at which such Proclamation takes effect, the master or other person in charge of any vessel thereby excluded from the ports of the United States, shall do, in the ports, harbours, or waters of the United States, for or on account of such vessel, any act forbidden by such Proclamation aforesaid, such vessel and its rigging, tackle, furniture, and boats, and all the goods on board shall be liable to seizure and forfeiture to the United States; and any goods, wares, or merchandize, and any car, locomotive, or other vehicle coming into the United States in violation of any Proclamation as aforesaid shall be seized and forfeited to the United States.

“Sec. 2. That whenever, after the issuance of a Proclamation under this Act, the President is satisfied that the denial of rights and privileges on which his Proclamation was based no longer exists, he may withdraw the Proclamation, or so much thereof as he may deem proper, and reissue the same thereafter when in his judgment the same shall be necessary.”

## Inclosure 2 in No. 59.

*Précis of Debate on the Canadian Non-Intercourse Bill.*

*Mr. Belmont*, Chairman of the Committee on Foreign Relations, said that the Fishery question demanded the serious consideration of the country. It was not a mere commercial question, but one involving a submission to repeated violations of a Treaty. The Treaty of 1783 declared independence, defined boundaries, and was permanent in its provisions. It conferred also certain rights to deep-sea fisheries and liberties to inshore fisheries, and this distinction between rights to deep-sea fisheries and liberties to inshore fisheries had been maintained in all negotiations. The war of 1812 did not disturb these rights, nor were the fisheries mentioned in any of the Articles of the Treaty of Ghent in 1814. The fishery disputes, however, arising out of the system of non-commercial intercourse existing at that time, led to the Treaty of 1818.

Following upon the Treaty of 1818 were certain concerted legislative enactments, which finally put an end to the non-commercial intercourse. But, in the meanwhile, recourse had been had to retaliatory measures, and in 1827 *Mr. Adams* issued a Proclamation, which was applicable under present circumstances, declaring trade with the British Colonies prohibited, and reviving the restrictions of the Acts of 1818 and the following years. This was in consequence of American vessels having been interdicted from entering British colonial ports in 1826. Under the succeeding Administration, negotiations ensued by which the restrictions on both sides were withdrawn. There is, therefore, a precedent for interdiction of colonial commerce, not as a war measure, but as an incident to a negotiation by which a relief from prior restrictions was obtained.

There is no desire or intention of entering the prohibited waters as defined in the Treaty of 1818, but it is asked that that Treaty be interpreted according to its provisions, which refer only to inshore fisheries. The purpose of the Canadian Government is to strain the Treaty of 1818 to cover deep-sea fishing, and virtually to make the deep-sea fisheries territorial waters of Great Britain covered by the restrictions of the Treaty of 1818 upon inshore fisheries. This purpose is apparent from their legislative enactments of 1844, 1868, 1870, and, finally, the Act against the Proclamation of which by the Queen the United States protested in London. He then quotes *Mr. Bayard's* note of the 29th May, 1886, to *Sir L. West*, notwithstanding which the Act was proclaimed.

He then proceeds to enumerate the vessels which have been driven from Canadian ports in storm and stress of weather, and those which have been refused the privilege of landing to buy provisions, and says that, after the adjournment of Congress, the Canadian Statute may be still more vigorously enforced, and that, for this reason, power of defensive retaliation must be conferred upon the President. He objects to the Senate Bill, which provides that the President shall issue his Proclamation in case he is satisfied that American vessels are denied the rights granted to most favoured nations.

But he went on to say the United States have no Treaty with Great Britain containing any favoured nation clause, nor were the United States prepared to put themselves upon the same footing as any other nation, since under the Treaty of Peace they had certain rights to deep-sea fisheries, rights acquired by joint conquest, rights which no other nation, excepting Great Britain and themselves, possessed. The power conferred on the President should be conferred in distinct terms as regards the transit trade and its interdiction, because Canada, under Article XXIX of the Treaty of 1871, claims the right to send merchandize through the territory of the United States in sealed cars during the winter, when her own ports are closed. The Bill under discussion provided for the stoppage of railway cars, and how necessary this might be is seen from a passage in an article from the "*Quarterly Review*," to the effect that commerce fortunately can, by sealed cars and bonding arrangements, afford to disregard political boundaries. He therefore advocated the substitute Bill under consideration.

In answer to a question as to the meaning of the words, "vessels owned wholly or in part by a subject of Her Britannic Majesty," *Mr. Belmont* said that, if vessels under the British flag were simply shut out, it would not be sufficient, as there might be a transfer of ownership, and that American citizens might perhaps come to some arrangement for their own interests with their Canadian neighbours, and that, for this reason, the words, "wholly or in part," had been inserted in the Bill.

*Mr. Rice* contended, as was argued by *Mr. Phelps*, that American fishing-vessels sailing from American ports for deep-sea fishing had an unquestionable right, if provided with proper permits, to touch at Canadian ports for trading purposes, or to procure bait or other supplies like other vessels. The New England fishermen did not want to go into

Canadian waters or to interfere with the inshore fisheries. If, however, the Canadian Government shuts out American vessels fishing in the deep seas who go into Canadian ports for the purpose of buying supplies, upon the sale of which many of their poor people live, let them do it. The United States say that there is no provision that American vessels shall not go there. They say there is, and that is the question upon which the two Governments have joined issue. "They shut American fishing-vessels out of their ports, and we shut their fish out of our markets."

The Senate Bill, he contended, by which the President was authorized to prohibit all Canadian vessels from coming into American ports and the importation of all Canadian-caught fish and all Canadian products, was sufficient, and went far enough. He advocated therefore the adoption of the Senate Bill.

*Mr. Davis* maintained that the claim now, for the first time, made, that American fishing-vessels are by the terms of the Treaty of 1818 prohibited from commercial intercourse with British North America, is unfounded. If, he said, Great Britain is determined to sustain the Canadian authorities in a policy of commercial non-intercourse with a class of American vessels engaged in a legal and laudable occupation wholly without her jurisdiction, we must prove to her that such policy will be inconvenient and injurious to her interests. But the representations of the United States' Government have been wholly futile. No adequate reply has been vouchsafed, and it is now full time to vindicate by other steps our rights, interest, and honour. The character of the retaliatory legislation proposed was in harmony with international law and numerous precedents.

*Mr. Dingley* said that if the United States' Government was right in assuming that the legislative arrangement with Great Britain obliges the United States to extend commercial privileges to the fishing-vessels of Canada in return for similar privileges granted to American vessels by Canada, then it becomes necessary to arm the President with authority to withdraw such privileges from Canadian fishing-vessels when and so long as Canada declines to concede them to fishing-vessels of the United States.

*Mr. Hitt* attacked the Secretary of State for his subserviency to the British Government in the matter of the temporary arrangement, which, he said, would have been a repetition of the Halifax Commission. Retaliatory measures had become necessary, but he strongly objected to the clause in the Bill providing for stopping locomotives and cars from coming from Canada, which, he said, had a hidden purpose, namely, to defy a Treaty and violate national faith. Under the XXIXth Article of the Treaty of 1871 with Great Britain, goods in transit have a right to go either way through the United States to Canada from American seaports, or through Canada to the United States from Canadian seaports, or the reverse.

Goods in transit are therefore allowed to go through by the Treaty, and the only way it can be done away with is to give two years' notice for its termination. One party to it cannot be held to grant the privilege or right when the other denies it. It expires when violated. But it is intended to reach it by this clause, which adroitly includes cars and locomotives among the things that may be stopped, though they are loaded with goods in transit under Treaty through the United States. The goods may go, but the cars which carry them must not.

"Now," said *Mr. Hitt*, "if such a proposition as that were presented by some crafty savage Chief in making a Treaty he would be laughed at, and yet it is deliberately proposed to the American Congress in order to evade and set at naught, not to violate squarely, a Treaty which is admitted to be in force."

He then proceeded to point out the inconvenience and delay which would be caused by adopting this clause which the Senate had almost unanimously rejected in their Bill, and would probably reject again when sent up to them by the House. A Conference must then ensue, the outcome of which was doubtful.

No. 60.

*Sir L. West to the Marquis of Salisbury.*—(Received March 10.)

(Extract.)

Washington, February 25, 1887.

I HAVE the honour to inclose to your Lordship herewith copies of a Resolution submitted to the Senate yesterday against negotiations with Great Britain having for object any change in existing duties on imports.

## Inclosure in No. 60.

*Extract from the "Congressional Record" of February 25, 1887.*

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RECIPROCITY TREATY WITH CANADA.

*Mr. Hoar.*—I ask leave to submit a Resolution to go over under the Rules:—

*Resolved,*—That it is the judgment of the Senate that under present circumstances a negotiation should be undertaken with Great Britain in regard to existing difficulties with her Province of Canada, which has for its object the reduction, change, or abolition of any of our existing duties on imports.

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No. 61.

*Sir L. West to the Marquis of Salisbury.*—(Received March 10.)

My Lord,

Washington, February 27, 1887.

WITH reference to my despatch of the 25th instant, I have the honour to inclose to your Lordship herewith a short précis which I have made of the speeches of Senators Hoar, Morgan, and Morrill on the Resolution, copies of which were inclosed therein.

I have, &c.

(Signed) L. S. SACKVILLE WEST.

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Inclosure in No. 61.

*Précis of Debate on Non-Reciprocity Resolution in the Senate.*

*Mr. Hoar* said that his Resolution did not undertake to deal with any question of general principle as to existing duties, but it simply affirmed that, in the judgment of the Senate, the present conduct of Canada in regard to American fishing-vessels ought not to be met by a modification of duties merely, and that the attempt to force a change ought to be resisted. The Resolution, moreover, did not affirm opposition to any change of duties or even to Reciprocity Treaties, but simply that it is no time to negotiate with Great Britain for a modification of customs duties when the question of the mal-treatment of American vessels has to be dealt with.

*Mr. Morgan* said that he apprehended that the object of the Resolution was to forestall the President and Department of State in negotiations for a Treaty with Great Britain. It has repeatedly been asserted that a Treaty arrangement for reciprocity which modified the Tariff Laws of the United States, or which would prevent their modification by an Act of Congress, was in itself unconstitutional. He did not concur in the length and breadth of that proposition, nor was he prepared to vote that a Treaty of reciprocity between the United States and Canada would not be a beneficial Treaty to both countries. There might be a Reciprocity Treaty that would be of very great benefit to both countries, but this Resolution proposed to commit the Senate in advance to a broad, firm, unyielding declaration that no reciprocity shall exist between the United States and Canada, which, if run to its logical consequences, would compel the abandonment of the advantages obtained under the Treaty of Washington. He deprecated the discussion of so grave a matter at the close of the Session, and objected that the Senate of the United States has no right, either as a legislative body or as a separate body, to interfere in advance with negotiations between this country and any other country. He objected, moreover, to relieving the President from his constitutional duty of concluding such negotiations as may benefit the country, or to interfering with the exercise of his constitutional Powers so as to anticipate any result, and compel him either to come to a certain conclusion in his negotiations, or to avoid a certain conclusion. This disposition on the part of the Senate he pronounced pragmatism and unwarranted.

*Mr. Morrill* denied the constitutional power of the President even with the aid of the Senate to negotiate a Reciprocity Treaty with Canada, and make it binding as the supreme law of the land. If he may do it with one nation he may do it with all, and thus usurp the entire power of the House of Representatives as to the introduction and consideration of revenue Bills. He then proceeded to argue that any advantageous Treaty with Canada was impossible, for he believed that Reciprocity Treaties were in direct conflict with the



"most-favoured-nation" clause of existing Treaties. To undertake, therefore, to have a Reciprocity Treaty with any nation by which more favours are given to one than to another would be in violation of existing Treaty obligations. Beyond this, any Treaty with Canada has to be made with the condition that the same favours that Canada grants are to be granted to Great Britain, thereby making the whole stipulation utterly valueless so far as the United States are concerned, unless American labour is put upon the level of that of Great Britain in order to undersell in Canada.

*Mr. Hoar* replied that the question of the general policy of Reciprocity Treaties was not involved in this Resolution. It was only intended against the attempt of Canada to compel the United States to open their market to Canadian fishermen, an attempt which is clearly indicated in a speech of *Sir John Macdonald*, who declared that his policy was to compel the United States to open their markets, and that if he persisted in it the Canadian people might confide in him, and that the result should be accomplished. It was to defeat this attempt that his Resolution was directed. He did not intend to press a division, and would allow it to go over under the assurance that the Finance Committee, to which it was referred, would deal with it at once.

## No. 62.

*Mr. Bramston to Sir J. Pauncefote.—(Received March 14.)*

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

WITH reference to previous correspondence relating to the North American Fisheries question, I am directed by Secretary *Sir Henry Holland* to transmit to you, to be laid before the Marquis of Salisbury, a copy of a telegram which was sent to the Governor-General of Canada on the 8th instant, upon the subject of the proposal contained in the 3rd Article of the basis of an arrangement recently suggested on behalf of the United States' Government by *Mr. Bayard*.

I am also to inclose the decypher of a telegram which has been received from the Governor-General in reply.

*Sir Henry Holland*, as at present advised, is disposed to think that there is considerable force in the Governor-General's observations relating to the difficulty which, owing to the extent of coast-line, would be experienced in the cases of vessels seized being promptly dealt with by the national vessels referred to.

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

## Inclosure 1 in No. 62.

*Sir H. Holland to the Marquis of Lansdowne.*

(Telegraphic.)

*March 8, 1887.*

BAYARD'S Arrangement, Article 3.

If last sentence of Article omitted we think joint action of cruisers desirable, and Canadian jurisdiction might be preserved by provision that unless officers agree to release, vessel shall be sent to Halifax. We would also omit words in second sentence defining violations of Convention.

## Inclosure 2 in No. 62.

*The Marquis of Lansdowne to Sir H. Holland.*

(Telegraphic.)

*March 10, 1887.*

YOUR telegram of 8th.

Final answer cannot be sent for two or three days. Some of our objections removed by your amendments, but fear that the national vessels would not be accessible when required, owing to length of coast-line, about 3,000 miles, to be protected. This would occasion prolonged detention of seized vessels. We also doubt whether naval officer would be competent to deal with disputed points of law which would be undoubtedly raised.

*Sir L. West to the Marquis of Salisbury.—(Received March 15.)*

My Lord,

Washington, March 1, 1887.

IN consequence of the action of the House of Representatives in passing the Retaliatory Bill, as reported in my despatch of the 24th ultimo, a conference was appointed upon the disagreeing votes, and the Report of the Managers on the part of the Senate of the Conference was read to that body on the 28th ultimo.

The irreconcilable point of difference, says the Report, on the part of the two Houses is the insistence on the part of the House Managers upon adding to the scope of the Senate Bill and so going beyond it the further provision that in case of injurious treatment to American vessels in British North American waters, it shall be within the competence of the President to absolutely stop intercourse, not only by water, but by land, between the people of the United States and the people of the British territories adjacent, thus cutting off the continuous movement of railway trains from the British provinces to any part of the United States, and, in effect, reciprocally from the United States to the British dominions at all places where there now exist interior railroad lines crossing the boundaries of the two countries, in some cases operated and practically owned by British subjects, and in other cases by American citizens. The Senate Managers have felt it to be a duty to decline to go to this extent. It seems clear to them, and has not been controverted by the House Managers, that the things the President is authorized to do by the Senate Bill in the cases named are none of them in derogation, either directly or indirectly, of any Treaty right or of the peaceful business intercourse of nations, but that the Government in these respects is absolutely free to act in the manner proposed without being subject to the imputation that it is either in any way infringing the most liberal interpretation of any Treaty, or doing any act that nations at peace have not hitherto found themselves from time to time justified in doing, not in a spirit of belligerency, but merely as a matter of countervailing business regulations.

The result of the conference, therefore, has been that the House of Representatives declines to accept the Senate Bill unless provisions are made which the Senate believes to be unwise.

The Report concludes by laying down the principle upon which the two Houses have hitherto acted, namely, that when either House proposes legislation that is satisfactory to the other as far as it goes, and the other House desires to go further and make affirmative and additional law, if it cannot convince its co-ordinate body that it is desirable to go further, the House proposing the affirmative additional legislation must recede.

The pretension, therefore, of the House in the present case is quite untenable.

I have the honour to inclose to your Lordship herewith a précis of Senator Morgan's speech on the Report of the Senate Managers of the Conference.

I have, &c.

(Signed) L. S. SACKVILLE WEST.

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Inclosure in No. 63.

*Précis of Senator Morgan's Speech on the Senate Managers' Report on the Retaliatory Bills.*

SENATOR MORGAN said that the only difficulty in coming to a final arrangement was the apprehension of the Senate Conferees that the proposition submitted by the House would lead to a belligerent conflict with an existing Treaty between Great Britain and the United States. There was no agreement between the two countries in respect to commercial rights except under statute and legislation, and in one particular under Article XXIX of the Treaty of Washington, and it was clearly the duty of the Senate to consider the question whether the proposition of the House was a violation of that Treaty, or whether it might be considered as a threat of the violation of it.

The Committee cannot sanction the proposition.

It is said that the Administration is in favour of it, but he could scarcely think that, in view of the power conferred on the President by the Senate Bill, the Administration sought also the power to prohibit intercourse between the United States and the people of Canada. He could not, he said, conceive any act of legislation or any act of

diplomacy that can be named which is as near the border-line of belligerency as that of prohibiting intercourse and communication between the people of two countries.

Proclaim non-intercourse between father and son, families, friends, merchants, traders, railroad officers, between the United States and Canada, as a measure of retaliation because of injury done to the fisheries, or anything else, and how long can a position so strenuous, so dangerous, and so belligerent, be sustained? A greater power could not be put in the hands of Great Britain than merely to make a Proclamation in this country that the best means to prevent aggression on the fishing interests would be absolute non-intercourse, personal non-intercourse between the people of Canada and the United States. It could not be sustained for three months, perhaps not for three weeks, in the absence of actual hostilities.

He then proceeded to say that as far as the House of Representatives was concerned as claiming for themselves that they are the more immediate representatives of the people than the Senate, he denied it. They are not so in heart or in sentiment. They are not so in any other respect.

The Senate had done all that was necessary under the circumstances, and the Bill they had passed was sufficient, and gave sufficient power to the President. But the power which is demanded as the one supreme thing to be insisted upon is the power to proceed to the very last line of friendly action towards Great Britain, the power next to which only can come the loading of guns and the array of men under arms.

## No. 64.

*Sir L. West to the Marquis of Salisbury.*—(Received March 15.)

My Lord,

Washington, March 2, 1887.

WITH reference to my preceding despatch, I have the honour to inclose to your Lordship herewith copies of the Report of the House Conferees on the Retaliatory Bills, and of the Report of the debate thereupon.\*

It will be seen that the House maintains its attitude towards the Senate by refusing to accept the Bill of that body.

I have, &c.

(Signed) L. S. SACKVILLE WEST.

## No. 65.

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

My Lord,

Washington, March 3, 1887.

WITH reference to my despatch of the 2nd instant, I have the honour to inform your Lordship that the House of Representatives yesterday receded from their amendments to the Senate Retaliatory Bill by a vote of 149 to 134, and the Senate Bill was passed.

I have, &c.

(Signed) L. S. SACKVILLE WEST.

## No. 66.

*Sir J. Pauncefote to Sir R. Herbert.*

Sir,

Foreign Office, March 19, 1887.

I AM directed by the Marquis of Salisbury to transmit to you, to be laid before Sir H. Holland, copies of despatches, as marked in the margin,† on the subject of the proposed Retaliatory Bills introduced into the United States' Legislative Chambers in connection with the North American Fisheries question.

I am to suggest that it may be advisable to ascertain the views of the Canadian Government as to the bearing of Article XXIX of the Treaty of Washington upon this subject.

I am, &c.

(Signed) JULIAN PAUNCEFOTE.

\* Not printed.

† Nos. 59, 60, and 61.

No. 67.

*Mr. Bramston to Sir J. Pauncefote.—(Received March 19.)*Sir, *Downing Street, March 18, 1887.*

I AM directed by Secretary Sir Henry Holland to acknowledge the receipt of your letter of the 25th February last\* relating to the North American Fisheries question, and inclosing a copy of a despatch from Her Majesty's Minister at Washington, with a copy of a Bill which the Secretary to the Treasury of the United States proposes to substitute for the Belmont Bill.

With reference to the question raised by the Secretary to the Treasury, and referred to in the concluding paragraph of Sir L. West's despatch, as to whether Article XXIX of the Treaty of Washington is still in force, I am to state that the Article was not one which was subject to termination under Article XXXIII, and Sir Henry Holland presumes that it is still in force; but he would be glad to know the opinion of the Marquis of Salisbury as to the effect of any legislation of the United States affecting that Article.

Should there be any doubt as to whether this Article is in force or not, it might be advisable to consult the Law Officers of the Crown.

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

No. 68.

*The Marquis of Salisbury to Sir L. West.*Sir, *Foreign Office, March 19, 1887.*

WITH reference to my predecessor's despatch of the 11th January last, I transmit to you herewith, for communication to the United States' Government, a copy of a further despatch from the Governor-General of Canada relative to the cases of the American fishing-vessels "Pearl Nelson" and "Everett Steele."†

I am, &c.  
(Signed) SALISBURY

No. 69.

*The Marquis of Salisbury to Mr. White.*Sir, *Foreign Office, March 24, 1887.*

IN a note of the 3rd December last, addressed to my predecessor, Mr. Phelps was good enough to transmit a copy of a despatch from Mr. Bayard, dated the 15th of the preceding month, together with an outline of a proposed *ad interim* arrangement "for the settlement of all questions in dispute in relation to the fisheries on the north-eastern coasts of British North America."

Her Majesty's Government have given their most careful consideration to that communication, and it has also received the fullest examination at the hands of the Canadian Government, who entirely share the satisfaction felt by Her Majesty's Government at any indication on the part of that of the United States of a disposition to make arrangements which might tend to put the affairs of the two countries on a basis more free from controversy and misunderstanding than unfortunately exists at present. The Canadian Government, however, deprecate several passages in Mr. Bayard's despatch which attribute unfriendly motives to their proceedings, and in which the character and scope of the measures they have taken to enforce the terms of the Convention of 1818 are, as they believe, entirely misapprehended.

They insist that nothing has been done on the part of the Canadian authorities since the termination of the Treaty of Washington in any such spirit as that which Mr. Bayard condemns, and that all that has been done with a view to the protection of the Canadian fisheries has been simply for the purpose of guarding the rights guaranteed to the people of Canada by the Convention of 1818, and of enforcing the Statutes of Great Britain and of Canada in relation to the fisheries. They maintain that such Statutes are clearly within the powers of the respective Parliaments by which they were passed, and are in conformity with the Convention of 1818, Governments.

\* See p. 80.

† Inclosures in No. 56.

especially in view of the passage of the Convention which provides that the American fishermen shall be under such restrictions as shall be necessary to prevent them from abusing the privileges thereby reserved to them.

There is a passage in Mr. Bayard's despatch to which they have particularly called the attention of Her Majesty's Government. It is the following :—

“The numerous seizures made have been of vessels quietly at anchor in established ports of entry, under charges which up to this day have not been particularized sufficiently to allow of intelligent defence; not one has been condemned after trial and hearing, but many have been fined, without hearing or judgment, for technical violation of alleged Commercial Regulations, although all commercial privileges have been simultaneously denied to them.”

In relation to this paragraph the Canadian Government observe that the seizures of which Mr. Bayard complains have been made upon grounds which have been distinctly and unequivocally stated in every case; that, although the nature of the charges has been invariably specified and duly announced, those charges have not in any case been answered; that ample opportunity has in every case been afforded for a defence to be submitted to the Executive authorities, but that no defence has been offered beyond the mere denial of the right of the Canadian Government; that the Courts of the various provinces have been open to the parties said to have been aggrieved, but that not one of them has resorted to those Courts for redress. To this it is added that the illegal acts which are characterized by Mr. Bayard as “technical violations of alleged Commercial Regulations,” involved breaches, in most of the cases not denied by the persons who had committed them, of established Commercial Regulations which, far from being specially directed or enforced against citizens of the United States, are obligatory upon all vessels (including those of Canada herself) which resort to the harbours of the British North American coast.

I have thought it right, in justice to the Canadian Government, to embody in this note almost in their own terms their refutation of the charges brought against them by Mr. Bayard; but I would prefer not to dwell on this part of the controversy, but to proceed at once to the consideration of the six Articles of Mr. Bayard's Memorandum in which the proposals of your Government are embodied.

Mr. Bayard states that he is “encouraged in the expectation that the propositions embodied in the Memorandum will be acceptable to Her Majesty's Government, because, in the month of April 1866, Mr. Seward, then Secretary of State, sent forward to Mr. Adams, at that time United States' Minister in London, the draft of a Protocol which, in substance, coincides with the 1st Article of the proposal now submitted.”

Article 1 of the Memorandum no doubt to some extent resembles the draft Protocol submitted in 1866 by Mr. Adams to Lord Clarendon (of which I inclose a copy for convenience of reference), but it contains some important departures from its terms.

Nevertheless, the Article comprises the elements of a possible accord, and if it stood alone I have little doubt that it might be so modelled, with the concurrence of your Government, as to present an acceptable basis of negotiation to both parties. But, unfortunately, it is followed by other Articles which, in the view of Her Majesty's Government and that of Canada, would give rise to endless and unprofitable discussion, and which, if retained, would be fatal to the prospect of any satisfactory arrangement, inasmuch as they appear, as a whole, to be based on the assumption that upon the most important points in the controversy the views entertained by Her Majesty's Government and that of Canada are wrong, and those of the United States' Government are right, and to imply an admission by Her Majesty's Government and that of Canada that such assumption is well founded.

I should extend the present note to an undue length were I to attempt to discuss in it each of the Articles of Mr. Bayard's Memorandum, and to explain the grounds on which Her Majesty's Government feel compelled to take exception to them. I have therefore thought it more convenient to do so in the form of a counter-Memorandum, which I have the honour to inclose, and in which will be found, in parallel columns, the Articles of Mr. Bayard's Memorandum, and the observations of Her Majesty's Government thereon.

Although, as you will perceive on a perusal of those observations, the proposal of your Government as it now stands is not one which could be accepted by Her Majesty's Government, still Her Majesty's Government are glad to think that the fact of such a proposal having been made affords an opportunity which, up to the present time, had not been offered for an amicable comparison of the views entertained by the respective

The main principle of that proposal is that a Mixed Commission should be appointed for the purpose of determining the limits of those territorial waters within which, subject to the stipulations of the Convention of 1818, the exclusive right of fishing belongs to Great Britain.

Her Majesty's Government cordially agree with your Government in believing that a determination of these limits would, whatever may be the future commercial relations between Canada and the United States, either in respect of the fishing industry or in regard to the interchange of other commodities, be extremely desirable, and they will be found ready to co-operate with your Government in effecting such a settlement.

They are of opinion that Mr. Bayard was justified in reverting to the precedent afforded by the negotiations which took place upon this subject between Great Britain and the United States after the expiration of the Reciprocity Treaty of 1854, and they concur with him in believing that the draft Protocol communicated by Mr. Adams in 1866 to the Earl of Clarendon affords a valuable indication of the lines upon which a negotiation directed to the same points might now be allowed to proceed.

Mr. Bayard has himself pointed out that its concluding paragraph, to which Lord Clarendon emphatically objected, is not contained in the 1st Article of the Memorandum now forwarded by him; but he appears to have lost sight of the fact that the remaining Articles of that Memorandum contain stipulations not less open to objection, and calculated to affect even more disadvantageously the permanent interests of the Dominion in the fisheries adjacent to its coasts.

There can be no objection on the part of Her Majesty's Government to the appointment of a Mixed Commission, whose duty it would be to consider and report upon the matters referred to in the three first Articles of the draft Protocol communicated to the Earl of Clarendon by Mr. Adams in 1866.

Should a Commission instructed to deal with these subjects be appointed at an early date, the result of its investigations might be reported to the Governments affected without much loss of time. Pending the termination of the questions which it would discuss, it would be indispensable that United States' fishing-vessels entering Canadian bays and harbours should govern themselves not only according to the terms of the Convention of 1818, but by the Regulations to which they, in common with other vessels, are subject while within such waters.

Her Majesty's Government, however, have no doubt that every effort will be made to enforce those Regulations in such a manner as to cause the smallest amount of inconvenience to fishing-vessels entering Canadian ports under stress of weather, or for any other legitimate purpose.

But there is another course which Her Majesty's Government are inclined to propose, and which, in their opinion, would afford a temporary solution of the controversy equally creditable to both parties.

Her Majesty's Government have never been informed of the reasons which induced the Government of the United States to denounce the Fishery Articles of the Treaty of Washington, but they have understood that the adoption of that course was in a great degree the result of a feeling of disappointment at the Halifax Award, under which the United States were called upon to pay the sum of 1,100,000*l.*, being the estimated value of the benefits which would accrue to them, in excess of those which would be derived by Canada and Newfoundland from the operation of the Fishery Articles of the Treaty.

Her Majesty's Government and the Government of Canada, in proof of their earnest desire to treat the question in a spirit of liberality and friendship, are now willing to revert for the coming fishing season, and, if necessary, for a further term, to the condition of things existing under the Treaty of Washington, without any suggestion of pecuniary indemnity.

This is a proposal which, I trust, will commend itself to your Government as being based on that spirit of generosity and good-will which should animate two great and kindred nations, whose common origin, language, and institutions constitute as many bonds of amity and concord.

I have, &c.  
(Signed) SALISBURY.

## Inclosure 1 in No. 69.

*Draft Protocol communicated by Mr. Adams to the Earl of Clarendon in 1866.*

[See Inclosure 2 in No. 49 (Inclosure in Annex).]

## Inclosure 2 in No. 69.

*Ad interim Arrangement proposed by the United States' Government.**Observations on Mr. Bayard's Memorandum.*

## ARTICLE I.

WHEREAS, in the 1st Article of the Convention between the United States and Great Britain, concluded and signed in London on the 20th October, 1818, it was agreed between the High Contracting Parties "that the inhabitants of the said United States shall have for ever, in common with the subjects of His Britannic Majesty, the liberty to take fish of every kind on that part of the southern coast of Newfoundland which extends from Cape Ray to the Rameau Islands, on the western and northern coast of Newfoundland, from the said Cape Ray to the Quirpon Islands, on the shores of the Magdalen Islands, and also on the coasts, bays, harbours, and creeks, from Mount Joly on the southern coast of Labrador, to and through the Straits of Belleisle, and thence northwardly indefinitely along the coast, without prejudice, however, to any of the exclusive rights of the Hudson's Bay Company; and that the American fishermen shall also have liberty for ever to dry and cure fish in any of the unsettled bays, harbours, and creeks of the southern part of the coast of Newfoundland, here above described, and of the coast of Labrador; but so soon as the same, or any portion thereof, shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such portion so settled without previous agreement for such purpose with the inhabitants, proprietors, or possessors of the ground;" and was declared that "the United States hereby renounce for ever any liberty heretofore enjoyed or claimed by the inhabitants thereof to take, dry, or cure fish on or within 3 marine miles of any of the coasts, bays, creeks, or harbours of His Britannic Majesty's dominions in America not included within the above-mentioned limits; provided, however, that the American fishermen shall be admitted to enter such bays or harbours for the purpose of shelter, and of repairing damages therein, of purchasing wood, and obtaining water, and for no other purpose whatever. But they shall be under such restrictions as may be necessary to prevent their taking, drying, or curing fish therein, or in any other manner whatever abusing the privileges hereby

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THE most important departure in this Article from the Protocol of 1866 is the interpolation of the stipulation, "that the bays and harbours from which American vessels are in future to be excluded, save for the purposes for which entrance into bays and harbours is permitted by said Article, are hereby agreed to be taken to be such harbours as are 10, or less than 10, miles in width, and the distance of 3 marine miles from such bays and harbours shall be measured from a straight line drawn across the bay or harbour in the part nearest the entrance at the first point where the width does not exceed 10 miles."

This provision would involve a surrender of fishing rights which have always been regarded as the exclusive property of Canada, and would make common fishing-grounds of territorial waters which, by the law of nations, have been invariably regarded both in Great Britain and the United States as belonging to the adjacent country. In the case, for instance, of the Baie des Chaleurs, a peculiarly well-marked and almost land-locked indentation of the Canadian coast, the 10-mile line would be drawn from points in the heart of Canadian territory, and almost 70 miles distance from the natural entrance or mouth of the bay. This would be done in spite of the fact that, both by Imperial legislation and by judicial interpretation, this bay has been declared to form a part of the territory of Canada. (See Imperial Statute 14 & 15 Vict., cap. 63; and "*Mouat v. McPhee*," 5 Sup. Court of Canada Reports, p. 66.)

The Convention with France in 1839, and similar Conventions with other European Powers, form no precedents for the adoption of a 10-mile limit. Those Conventions were doubtless passed with a view to the geographical peculiarities of the coast to which they related. They had for their object the definition of boundary-lines which, owing to the configuration of the coast, perhaps could not readily be settled by reference to the law of nations, and involve other conditions which are inapplicable to the territorial waters of Canada.

This is shown by the fact that in the

*Ad interim Arrangement proposed by the  
United States' Government.*

*Observations on Mr. Bayard's Memorandum.*

reserved to them ;" and whereas differences have arisen in regard to the extent of the above-mentioned renunciation, the Government of the United States and Her Majesty the Queen of Great Britain, being equally desirous of avoiding further misunderstanding, agree to appoint a Mixed Commission for the following purposes, namely :—

1. To agree upon and establish by a series of lines the limits which shall separate the exclusive from the common right of fishing on the coast and in the adjacent waters of the British North American Colonies, in conformity with the 1st Article of the Convention of 1818, except that the bays and harbours from which American fishermen are in the future to be excluded, save for the purposes for which entrance into bays and harbours is permitted by said Article, are hereby agreed to be taken to be such bays and harbours as are 10 or less than 10 miles in width, and the distance of 3 marine miles from such bays and harbours shall be measured from a straight line drawn across the bay or harbour, in the part nearest the entrance, at the first point where the width does not exceed 10 miles, the said lines to be regularly numbered, duly described, and also clearly marked on Charts prepared in duplicate for the purpose.

2. To agree upon and establish such Regulations as may be necessary and proper to secure to the fishermen of the United States the privilege of entering bays and harbours for the purpose of shelter and of repairing damages therein, of purchasing wood, and of obtaining water, and to agree upon and establish such restrictions as may be necessary to prevent the abuse of the privilege reserved by said Convention to the fishermen of the United States.

3. To agree upon and recommend the penalties to be adjudged, and such proceedings and jurisdiction as may be necessary to secure a speedy trial and Judgment, with as little expense as possible, for the violators of rights and the transgressors of the limits and restrictions which may be hereby adopted :

Provided, however, that the limits, restrictions, and Regulations which may be agreed upon by the said Commission shall not be final, nor have any effect, until so jointly confirmed and declared by the United States and Her Majesty the Queen of Great Britain, either by Treaty or by laws mutually acknowledged.

French Convention the whole of the oyster-beds in Granville Bay, otherwise called the Bay of Cancale, the entrance of which exceeds 10 miles in width, were regarded as French, and the enjoyment of them is reserved to the local fishermen.

A reference to the action of the United States' Government, and to the admission made by their statesmen in regard to bays on the American coasts, strengthens this view; and the case of the English ship "Grange" shows that the Government of the United States in 1793 claimed Delaware Bay as being within territorial waters.

Mr. Bayard contends that the rule which he asks to have set up was adopted by the Umpire of the Commission appointed under the Convention of 1853 in the case of the United States' fishing-schooner "Washington," that it was by him applied to the Bay of Fundy, and that it is for this reason applicable to other Canadian bays.

It is submitted, however, that as one of the headlands of the Bay of Fundy is in the territory of the United States any rules of international law applicable to that bay are not therefore equally applicable to other bays the headlands of which are both within the territory of the same Power.

The second paragraph of the 1st Article does not incorporate the exact language of the Convention of 1818. For instance, the words, "and for no other purpose whatever," should be inserted after the mention of the purposes for which vessels may enter Canadian waters, and after the words, "as may be necessary to prevent," should be inserted, "their taking, drying, or curing fish therein, or in any other manner abusing the privileges reserved," &c.

To make the language conform correctly to the Convention of 1818, several other verbal alterations, which need not be enumerated here, would be necessary.



*Ad interim Arrangement proposed by the  
United States' Government.*

*Observations on Mr. Bayard's Memorandum.*

ARTICLE II.

Pending a definitive arrangement on the subject, Her Britannic Majesty's Government agree to instruct the proper Colonial and other British officers to abstain from seizing or molesting fishing-vessels of the United States unless they are found within 3 marine miles of any of the coasts, bays, creeks, and harbours of Her Britannic Majesty's dominions in America, there fishing, or to have been fishing or preparing to fish within those limits, not included within the limits within which, under the Treaty of 1818, the fishermen of the United States continue to retain a common right of fishery with Her Britannic Majesty's subjects.

This Article would suspend the operation of the Statutes of Great Britain and of Canada, and of the provinces now constituting Canada, not only as to the various offences connected with fishing, but as to Customs, harbours, and shipping, and would give to the fishing-vessels of the United States privileges in Canadian ports which are not enjoyed by vessels of any other class, or of any other nation. Such vessels would, for example, be free from the duty of reporting at the Customs on entering a Canadian harbour, and no safeguard could be adopted to prevent infraction of the Customs Laws by any vessel asserting the character of a fishing-vessel of the United States.

Instead of allowing to such vessels merely the restricted privileges reserved by the Convention of 1818, it would give them greater privileges than are enjoyed at the present time by any vessels in any part of the world.

ARTICLE III.

For the purpose of executing Article I of the Convention of 1818, the Government of the United States and the Government of Her Britannic Majesty hereby agree to send each to the Gulf of St. Lawrence a national vessel, and also one each to cruize during the fishing season on the southern coasts of Nova Scotia. Whenever a fishing-vessel of the United States shall be seized for violating the provisions of the aforesaid Convention by fishing or preparing to fish within 3 marine miles of any of the coasts, bays, creeks, and harbours of Her Britannic Majesty's dominions included within the limits within which fishing is by the terms of the said Convention renounced, such vessel shall forthwith be reported to the officer in command of one of the said national vessels, who, in conjunction with the officer in command of another of said vessels of different nationality, shall hear and examine into the facts of the case. Should the said commanding officers be of opinion that the charge is not sustained, the vessel shall be released. But if they should be of opinion that the vessel should be subjected to a judicial examination, she shall forthwith be sent for trial before the Vice-Admiralty Court at Halifax. If, however, the said commanding officers should differ in opinion, they shall name some third person to act as Umpire between them, and should they be unable

This Article would deprive the Courts in Canada of their jurisdiction, and would vest that jurisdiction in a Tribunal not bound by legal principles, but clothed with supreme authority to decide on most important rights of the Canadian people.

It would submit such rights to the adjudication of two naval officers, one of them belonging to a foreign country, who, if they should disagree and be unable to choose an Umpire, must refer the final decision of the great interests which might be at stake to some person chosen by lot.

If a vessel charged with infraction of Canadian fishing rights should be thought worthy of being subjected to a "judicial examination," she would be sent to the Vice-Admiralty Court at Halifax, but there would be no redress, no appeal, and no reference to any Tribunal if the naval officers should think proper to release her.

It should, however, be observed that the limitation in the second sentence of this Article of the violations of the Convention which are to render a vessel liable to seizure could not be accepted by Her Majesty's Government.

For these reasons, the Article in the form proposed is inadmissible, but Her Majesty's Government are not indisposed to agree to the principle of a joint inquiry by the naval officers of the two countries in the first instance, the vessel to be sent

*Ad interim Arrangement proposed by the  
United States' Government.*

to agree upon the name of such third person, they shall each name a person, and it shall be determined by lot which of the two persons so named shall be the Umpire.

ARTICLE IV.

The fishing-vessels of the United States shall have in the established ports of entry of Her Britannic Majesty's dominions in America the same commercial privileges as other vessels of the United States, including the purchase of bait and other supplies; and such privileges shall be exercised subject to the same Rules and Regulations and payment of the same port charges as are prescribed for other vessels of the United States.

ARTICLE V.

The Government of Her Britannic Majesty agree to release all United States' fishing-vessels now under seizure for failing to report at custom-houses when seeking shelter, repairs, or supplies, and to refund all fines exacted for such failure to report. And the High Contracting Parties agree to appoint a Joint Commission to ascertain the amount of damage caused to American fishermen during the year 1886 by seizure and detention in violation of the Treaty of 1818, said Commission to make awards therefor to the parties injured.

ARTICLE VI.

The Government of the United States and the Government of Her Britannic Majesty agree to give concurrent notification and warning of Canadian Customs Regulations, and the United States agrees to admonish its fishermen to comply with them and co-operate in securing their enforcement.

*Observations on Mr. Bayard's Memorandum.*

for trial at Halifax if the naval officers do not agree that she should be released.

They fear, however, that there would be serious practical difficulties in giving effect to this arrangement, owing to the great length of coast, and the delays, which must in consequence be frequent, in securing the presence at the same time and place of the naval officers of both Powers.

This Article is also open to grave objection. It proposes to give the United States' fishing-vessels the same commercial privileges as those to which other vessels of the United States are entitled, although such privileges are expressly renounced by the Convention of 1818 on behalf of fishing-vessels, which were thereafter to be denied the right of access to Canadian waters for any purpose whatever, except those of shelter, repairs, and the purchase of wood and water. It has frequently been pointed out that an attempt was made, during the negotiations which preceded the Convention of 1818, to obtain for the fishermen of the United States the right of obtaining bait in Canadian waters, and that this attempt was successfully resisted. In spite of this fact, it is proposed, under this Article, to declare that the Convention of 1818 gave that privilege, as well as the privilege of purchasing other supplies in the harbours of the Dominion.

By this Article it is proposed to give retrospective effect to the unjustified interpretation sought to be placed on the Convention by the last preceding Article.

It is assumed, without discussion, that all United States' fishing-vessels which have been seized since the expiration of the Treaty of Washington have been illegally seized, leaving, as the only question still open for consideration, the amount of the damages for which the Canadian authorities are liable.

Such a proposal appears to Her Majesty's Government quite inadmissible.

This Article calls for no remark.

No. 70.

*Foreign Office to Colonial Office.*

Sir, *Foreign Office, March 29, 1887.*  
 IN reply to your letter of the 18th instant, suggesting that, if there is any doubt whether Article XXIX of the Treaty of Washington is now in force or not, it might be advisable to consult the Law Officers of the Crown, I am directed by the Marquis of Salisbury to request you to refer Sir Henry Holland to my letter of the 19th instant, and to state that his Lordship does not think there is at present any necessity for a reference to the Law Officers on this point; but that it might be desirable to obtain the opinion of the Canadian Government as to whether that Article is affected by any recent American legislation.

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

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No. 71.

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

My Lord, *Washington, March 20, 1887.*  
 I HAVE the honour to inclose to your Lordship herewith copies of a Treasury Circular calling the attention of officers of Customs and others to the provisions of the recent Acts of Congress relating to the importing and landing of mackerel caught during the spawning season, and authorizing the President to protect the rights of American fishing-vessels.

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

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Inclosure in No. 71.

*Circular.*

THE FISHERIES.

To Collectors of Customs and others, *Treasury Department, Bureau of Navigation,  
 Washington, D.C., March 16, 1867.*  
 THE attention of officers of Customs and others is invited to the provisions of the recent Acts of Congress printed below, one relating "to the importing and landing of mackerel caught during the spawning season," and the other authorizing the "President of the United States to protect the rights of American fishing-vessels, American fishermen, American trading and other vessels, in certain cases," &c.

(Signed) C. B. MORTON, *Commissioner.*

Approved:  
 (Signed) C. S. FAIRCHILD, *Acting Secretary.*

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*An Act relating to the Importing and Landing of Mackerel caught during the Spawning Season.*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that for the period of five years from and after the 1st day of March, 1888, no mackerel, other than what is known as Spanish mackerel, caught between the 1st day of March and the 1st day of June, inclusive, of each year, shall be imported into the United States or landed upon its shores; provided, however, that nothing in this Act shall be held to apply to mackerel caught with hook and line from boats, and landed in said boats, or in traps and weirs connected with the shore.

Sec. 2. That section 43,021 of the Revised Statutes is amended for the period of five years aforesaid, so as to read before the last sentence as follows: "This licence does not grant the right to fish for mackerel, other than for what is known as Spanish mackerel, between the 1st day of March and the 1st day of June, inclusive, of this year." Or in lieu

of the foregoing there shall be inserted so much of said period of time as may remain unexpired under this Act.

Sec. 3. That the penalty for the violation or attempted violation of this Act shall be forfeiture of licence on the part of the vessel engaged in said violation, if a vessel of this country, and the forfeiture to the United States, according to law, of the mackerel imported or landed, or sought to be imported or landed.

Sec. 4. That all Laws in conflict with this Law are hereby repealed.

Approved, 28th February, 1887.

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*An Act to authorize the President of the United States to protect and defend the Rights of American Fishing Vessels, American Fishermen, American Trading and other Vessels, in certain cases, and for other purposes.*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that whenever the President of the United States shall be satisfied that American fishing-vessels or American fishermen, visiting, or being in the waters or at any ports or places of the British dominions of North America, are or then lately have been denied or abridged in the enjoyment of any rights secured to them by Treaty or Law, or are or then lately have [been] unjustly vexed or harassed in the enjoyment of such rights, or subjected to unreasonable restrictions, Regulations, or requirements in respect of such rights; or otherwise unjustly vexed or harassed in said waters, ports, or places; or whenever the President of the United States shall be satisfied that any such fishing-vessels or fishermen, having a permit under the Laws of the United States to touch and trade at any port or ports, place or places, in the British dominions of North America, are or then lately have been denied the privilege of entering such port or ports, place or places, in the same manner and under the same Regulations as may exist therein applicable to trading-vessels of the most-favoured nation, or shall be unjustly vexed or harassed in respect thereof, or otherwise be unjustly vexed or harassed therein, or shall be prevented from purchasing such supplies as may there be lawfully sold to trading-vessels of the most favoured nation; or whenever the President of the United States shall be satisfied that any other vessels of the United States, their masters or crews, so arriving at or being in such British waters or ports or places of the British dominions of North America, are or then lately have been denied any of the privileges therein accorded to the vessels, their masters or crews, of the most favoured nation, or unjustly vexed or harassed in respect of the same, or unjustly vexed or harassed therein by the authorities thereof, then, and in either or all of such cases, it shall be lawful, and it shall be the duty of the President of the United States, in his discretion, by Proclamation to that effect, to deny vessels, their masters and crews, of the British dominions of North America, any entrance into the waters, ports, or places of or within the United States (with such exceptions in regard to vessels in distress, stress of weather, or needing supplies as to the President shall seem proper), whether such vessels shall have come directly from said dominions on such destined voyage or by way of some port or place in such destined voyage elsewhere; and also to deny entry into any port or place of the United States of fresh fish or salt fish or any other product of said dominions, or other goods coming from said dominions to the United States. The President may, in his discretion, apply such Proclamation to any part or to all of the foregoing-named subjects, and may revoke, qualify, limit, and renew such Proclamation from time to time as he may deem necessary to the full and just execution of the purposes of this Act. Every violation of any such Proclamation, or any part thereof, is hereby declared illegal, and all vessels and goods so coming or being within the waters, ports, or places of the United States contrary to such Proclamation shall be forfeited to the United States; and such forfeiture shall be enforced and proceeded upon in the same manner and with the same effect as in the case of vessels or goods whose importation or coming to or being in the waters or ports of the United States contrary to law may now be enforced and proceeded upon. Every person who shall violate any of the provisions of this Act, or such Proclamation of the President made in pursuance hereof, shall be deemed guilty of a misdemeanour, and, on conviction thereof, shall be punished by a fine not exceeding 1,000 dollars, or by imprisonment for a term not exceeding two years, or by both said punishments, in the discretion of the Court.

Approved, 3rd March, 1887.

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